

Lack of Kennedy Case Evidence Cited

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VINEYARD HAVEN, Mass., May 3—No additional legal action was taken against Senator Edward M. Kennedy in the drowning last year of Mary Jo Kopechne because the Massachusetts officials who might have acted were apparently convinced there were no witnesses and no evidence that would substantiate a new charge against him.

That conclusion emerged this weekend from a series of interviews with sources close to District Court Judge James A. Boyle and District Attorney Edmund S. Dinis of Dukes County and with Leslie H. Leland, foreman of the Dukes County grand jury that held closed sessions on the case last month.

In addition, Judge Boyle was said to feel that justice had been served when Senator Kennedy pleaded guilty to a charge of leaving the scene of the auto accident, which occurred the night of July 18-19 on Chappaquiddick Island, off Martha's Vineyard.

Unanswered Question

A question that remained unanswered was why Judge Boyle, if he believed that no conviction was possible, said in a document that was eventually going to be made public that he thought the Senator might have been negligent. The judge included that assertion in his report on an inquest he conducted in January. The report became public last week.

Judge Boyle also said in his report that he believed that Senator Kennedy had turned intentionally onto the dirt road leading to the narrow bridge from which his car plunged, trapping Miss Kopechne inside. Mr. Kennedy testified at the inquest that he had made the turn by mistake.

Efforts to reach Judge Boyle for clarification of his action were unsuccessful.

The judge, who retired last week after 31 years on the bench, was reported to be playing golf when a reporter called his home from Boston yesterday.

Today, Mrs. Boyle came to the door of the couple's brick ranch home on Long Pond Road here. After greeting a visitor cordially, she said in response to questions about the judge's reasoning in making his conclusions public without any prospect of criminal action, and about the legal basis of such a procedure, that the judge was not making any statements about the case.

The death of Miss Kopechne was considered legally closed on April 6 when Mr. Dinis announced, after a two-day session of the Dukes County grand jury, that the panel had voted no indictment. It was reopened to legal speculation last Wednesday with the public release here of the hitherto secret inquest proceedings presided over by Judge Boyle.

State Law Cited

Because of the judge's conclusions, some observers thought he was obliged, under Massachusetts law, to order Senator Kennedy arrested for violation of a statute that 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 recklessly, or operate such a vehicle negligently so that lives or safety of the public might be endangered."

The Massachusetts inquest law says a judge will hear evidence and report the name of any person whose unlawful act appears to have contributed to a death, and it goes on to state that if that person is at large, "the magistrate shall forthwith issue process for his arrest."

In his inquest report, however, Judge Boyle quoted a 1945 ruling of the Supreme Judicial Court of Massachusetts that used the word "may" rather than "shall."

Why did Judge Boyle not order Senator Kennedy's arrest?

A source close to District Attorney Dinis said from New Bedford yesterday, "The only things there were to work with were the words of the one party to the incident. His own testimony in the inquest was that he was going 20 miles an hour, no more than that. You can't use a defendant in a trial."

It was noted that there were only three persons present at the inquest proceedings—Judge Boyle, Mr. Dinis and an assistant. "There was no independent evidence," the source said, "no witnesses."

Access to Transcript

"If there had been independent witnesses, they could have been brought to a grand jury. Since the Supreme [Judicial] Court did not allow access either to the transcript of the inquest or to the judge's report, independent grand jury action was needed."

The court had ordered the

inquest to be secret to preserve Senator Kennedy's rights and had impounded its proceedings "until after probability of criminal proceedings had ceased."

The source said there was nothing sinister in the court ruling. "If Ed Dinis had had other evidence or witnesses, he could have gotten an indictment."

There have been persistent reports that the grand jury and Mr. Leland were upset because they had been denied access to the inquest proceedings. Yesterday Mr. Leland said in an interview in his home in Vineyard Haven that that was not so.

"There's always the possibility of the grand jury being recalled, if Mr. Dinis wants it recalled," he said, but as far as he knew there were no such plans. He denied being angry because the grand jury had not seen the inquest transcript, and he implied that it would not have changed the panel's findings.

He said he saw "nothing to be surprised about" in Judge Boyle's opinion, although he said it was "strongly worded."

Dinis Declines Comment

Mr. Dinis, reached at his home in New Bedford, said he had "no comment" about any contemplated grand jury action and he refused to talk about the case. "The court instructed me not to talk," he said, "and I have no desire to get off those instructions."

A source close to Mr. Dinis said, however, "If there wasn't anything for a grand jury before, there probably wouldn't be anything now."

As for Judge Boyle's opinion, the source said: "The judge gave the conditions

which could lead to negligence. The man said he was doing 20 miles an hour. The judge said he should know better. Should he? How can that be legally answered? Why didn't the judge raise the complaint? I think he had reservations about whether he wanted further prosecution. He would be going beyond the facts. There simply was insufficient evidence."

The source said that Judge Boyle had based his opinion on "inferences, known as presumption of facts."

"You don't win court cases with these," he added.

He said further that the misdemeanor Senator Kennedy might have been charged with, driving to endanger, "usually gets lumped together with the prior charge of leaving the scene" and since Senator Kennedy had already pleaded guilty to that, "there was nowhere else to go."

The source pointed out that Edgartown's police chief, Dominick J. Arena, who arrested the Senator for leaving the scene, had said that since there was no witness to the accident, he could not prefer further charges. The source also quoted Judge Boyle's words when the judge sentenced Senator Kennedy last July 25:

"Where . . . he has already been and will continue to be punished far beyond any sentence this court can impose, the ends of justice would be satisfied by imposition of a minimum sentence and suspension of that sentence."

Mrs. Boyle said yesterday, "I can assure you that the judge was completely on his own when he wrote his report. There was no one here on the island. He didn't discuss it with anybody. He doesn't even talk in his sleep."