The 'Burden' of the Constitution

By EDWARD M. KENNEDY

The men at the executive levels of justice have trampled on traditions and ideals and principles of justice. They see the Constitution as a burden, an obstruction to be overcome, as a technical barrier to be avoided when inconvenient, evaded where possible, and ignored if necessary. Pledged by oath to preserve, protect and defend the Constitution, instead they defile, dilute and debase it. Proclaiming that they will strictly construe it, rather they constrict and destroy it. Slowly, stealthily, they arrogate to themselves the powers that the Constitution meant to be shared and powers that the Constitution never meant Government to have at all.

They wear buttons that say, "We care about Congress." But they will not tell Congress the whole story about military spying on civilians, about foreign aid plans, or about so-called national-security wiretapping.

They wear American flag pins, but for the first time since King George they have succeeded in imposing prior restraints on that most basic American ideal, freedom of the press, managing to keep the nation's papers from printing the truth about the war the whole time the House and Senate were voting on this year's antiwar amendments.

They cry for "law and order," and so they institute criminal proceedings against Daniel Ellsberg in a matter of hours, convene two grand juries, call his friends and mother-in-law and young son to testify, and grant them immunity where necessary to get them to talk. But they take fifteen months to decide that the killing in cold blood of four unarmed students at Kent State requires no grand jury, no sworn witnesses, no immunity.

They argue that bugging and tapping and undercover spying are necessary to get intelligence on dangerous groups, but they are so unprepared for the Mayday conflict that their only recourse is to suspend the Constitution, arrest anyone and everyone, forget about due process and evidence and probable cause, forget about humane detention, and instead of apologizing, recommend their methods to local officials, so that they too can crow the familiar cry: "We made the buses run on time."

They say that they care about Vietnam veterans, but when the veterans assemble in Washington to plead for an end to the war, the same Government which sent them eight thousand miles to sleep in the mud of Indochina sues to keep them from sleeping on the grass of the capital.

They deny that they are repressing dissent, but they issue an unprecedented and probably unlawful Executive Order directing the domestic and powerless—but dangerous—Subversive Activities Control Board to start checking up not only on dissident groups but also on those who have "sympathetic association" with them.

They say they don't want only "yes" men around, but Pat Moynihan, Walter Hickel, James Farmer, James Allen, Cliff Alexander, Terry Lenzner and Leon Panetta find that there's no room for "no" men.

They say that they want the young and the poor to work within and through the system, but they try to emasculate the legal-services program, dismantle the poverty program, and head off the 18-year-old vote, and they reject the Scranton Commission plea for reconciling leadership.

The list could go on, but the point is apparent enough already. The letter and the spirit of the Constitution have been stretched to the breaking point by those who are going to choose the interpreters of the Constitution.

Yet only strong, independent courts can call the executive to task. The Supreme Court itself had to step in to preserve freedom of the press, even if belatedly. An appeals court said flatly that domestic wiretapping without court order violated the Constitution, and the high court has the case. Another appeals court threw out almost all the Mayday cases and made the Government return the bail money and call back the arrest records. Another Federal court blasted the Government for its handling of the veterans. The Supreme Court had to straighten out the Attorney General on school desegregation. And a state supreme court refused to throw out a case based on the same Kent State facts that left the Attorney General unmoved, or at least unmoving. The S.A.C.B. order is already under court review.

So that has been and will be a conflict of interest of the grossest magnitude. To succeed in debilitating the Constitution, the Administration must first debilitate the Court, and the President has part of the power to do so. He need only eschew excellence, discourage eminence, disqualify intelligence, minimize experience, bar firmness, greatness and sensitivity in his nominations. He need only follow the advice of those who say mediocrity has a right to be represented on the Court.

But I hope he will not.

These are excerpts from an address made this week in New York by Senator Edward M. Kennedy, Democrat of Massachusetts.