

KENNEDY HEARING SCHEDULED OCT. 8

Court Moves Up Appeal on
Procedure for Inquest

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BOSTON, Sept. 12 — The Supreme Judicial Court of Massachusetts will hear arguments Oct. 8 on constitutional questions that brought about a postponement in a planned inquest into the death of Mary Jo Kopechne.

Miss Kopechne, a 28-year-old secretary, was killed the night of July 18 when a car driven by Senator Edward M. Kennedy, Democrat of Massachusetts, plunged off a low bridge into a tidal pond. The accident took place on Chappaquiddick Island, off Martha's Vineyard, where the Senator and Miss Kopechne had attended a cookout with 10 other persons.

The date for the court hearing was announced today by Richard A. McLaughlin, the court clerk, following a conference held by Judge Paul C. Reardon with representatives of the commonwealth and lawyers in the case.

Judge Reardon ordered a postponement of the inquest on Sept. 2, the day before it was to have begun in Edgartown District Court. Acting on a petition from Senator Kennedy, he delayed the inquest to let the full court decide whether the Senator's rights were being violated.

Mr. McLaughlin said that the lawyers at today's conference, which apparently involved procedural matters, had agreed to file briefs with the court before Oct. 8. The lawyers themselves declined to comment.

Change in Schedule

The high court begins its fall session on Oct. 6, and Mr. McLaughlin said that the inquest appeal had been "advanced somewhat ahead of where it normally would be" on the court calendar.

However, he said this was "not unusual" when the court thinks there is "some reason that warrants it."

In the matter of the inquest, Mr. McLaughlin said, the court may have felt that "the sooner the matter is disposed, the quicker justice will be done." He said it had been many years since the high court had concerned itself with inquest

procedures and particularly "the problems that had been raised this time."

It was not known when a decision might be rendered. Normally, the court does not go into consultation on cases until the last week in the month.

There are seven justices on the court, and four constitute a quorum. Ordinarily, five judges hear a case, Mr. McLaughlin said, although six or seven sit on some cases.

One judge, Paul G. Kirk, announced last week that he would disqualify himself from hearing the inquest appeals. He explained that his son Paul G. Kirk Jr. is counsel to the Senate Subcommittee on Administrative Practice and Procedure, which Senator Kennedy heads.

In his ruling on Sept. 2 delaying the inquest, Judge Reardon said that "grave constitutional questions" had been raised by the publicity surrounding the case and by the inquest procedures laid down by Judge James A. Byle of the Edgartown court.

Senator Kennedy's lawyers argued that the inquest would be an "accusatory" proceeding and should be conducted according to the rules governing a criminal trial, with all the rights of due process of law.

Judge Boyle, in addition to opening the inquest to the press, refused to allow lawyers to cross-examine witnesses and said that lawyers could be present in the courtroom only when their clients were testifying.

The others who were at the cookout, with the exception of Paul F. Markham, a former United States Attorney in Boston, have also asked the Supreme Judicial Court to intervene. Their suits, filed last week, are similar to Senator Kennedy's petition, but also assert that their constitutional right to privacy would be invaded by an inquest open to the press.

Usually, inquests in Massachusetts are secret, but there have been many exceptions. An inquest is a process for determining the legal, as distinct from the medical, cause of death.

The accident that took the life of Miss Kopechne went unreported for about nine hours, and Senator Kennedy subsequently pleaded guilty before Judge Boyle to a charge of leaving the scene of an accident. He received a two-month suspended jail sentence and his driving license was suspended for a year.

The inquest was scheduled at the request of District Attorney Edmund Dinis of the Sutherland District of Massachusetts. He is also requesting Pennsylvania authorities to allow the exhumation of Miss Kopechne's body for an autopsy. She is buried in Larksville, Pa.

If the Massachusetts high court should accept the arguments of Senator Kennedy and the others, it could order new ground rules for the inquest and have it closed to the press.

It would then be up to Mr. Dinis to decide whether to go ahead with an inquest or, perhaps, to proceed with an ordinary grand jury investigation behind closed doors.