

FIRST DAY

Opening Statement by Judge Boyle and Testimony of  
Edward M. Kennedy

BEFORE:

Hon. James A. Boyle, Justice of the Edgartown District  
Court

PRESENT:

Edmund Dinis, District Attorney for the Southern District  
of Massachusetts,  
Armand Fernandes, Assistant District Attorney,  
Peter Gay, Assistant District Attorney, for the Common-  
wealth.

Edward B. Hanify, Esq. and Robert G. Clark, Jr., Esq., in  
behalf of Edward M. Kennedy.

Thomas Teller, Clerk of Courts  
Helen S. Tyra, Temporary Court Officer  
Harold T. McNeil and Sidney R. Lipman  
Official Court Stenographers.

Edgartown, Massachusetts  
Monday, January 5, 1970

MR. TELLER. The inquest re: Mary Jo Kopechne origi-  
nally scheduled for September 3, 1969, restrained by order  
of a Justice of the Massachusetts Supreme Court and re-  
scheduled for today, will now begin.

The Court will recess for lunch at 1:00 p.m. and will  
resume at 2:00 p.m.

THE COURT. Today.

[Sidney R. Lipman and Harold T. McNeil sworn as official  
inquest stenographers.]

THE COURT. It appears to be appropriate at the outset of  
this inquest that the reason for its existence, the results that  
it is intended to accomplish, and the rules of procedure and  
conduct I am adopting and ordering, with reasons therefor,  
where advisable, should be pronounced, to the end that all  
shall take due notice thereof and be duly forewarned.

The pertinent statutory proceedings in Massachusetts ex-  
emplify a public policy that the inquest serves as an aid in the  
achievement of justice in obtaining information as to whether  
or not a crime has been committed, so says our Massachusetts  
Supreme Court in 1969. Inquests are, of course, primarily for  
the purpose of ascertaining whether or not any crime has been  
committed says the Massachusetts Law Quarterly 1921. The  
primary object of an inquest is to ascertain the facts, to de-  
cide the question of whether or not criminal proceedings shall  
be instituted against the person or persons responsible for the  
death. Massachusetts Law Quarterly 1925.

I am grateful to you, Mr. Hanify, for your very accurate  
Memorandum of Law.

MR. HANIFY. Thank you, your Honor.

THE COURT. An inquest is an investigation. It is not a  
prosecution of anybody. It is not a trial of anyone. It is the  
duty of the Court to seek out and receive any and all infor-  
mation and testimony which is relevant, pertinent and mate-  
rial to the question as to whether criminal conduct caused or  
contributed to the death and conversely to reject that which  
is not.

Although the Judge is not bound by the rules of evidence  
that apply in criminal cases, it is as much the duty of the  
Court to decline to receive such improper testimony to the  
end that persons innocent of any criminal involvement be not  
injured in reputation.

For the reasons stated above and because this is not an  
adversary proceeding, transcript of testimony will not be fur-  
nished to the District Attorney or counsel.

The District Attorney, who is given an option by the statute  
to examine witnesses, does not function as a prosecutor but  
rather as an aide to the Court in the presentation of testimony.  
This assistance does not relieve the Court of the duty to seek  
and obtain additional information if it considers such to be  
necessary.

Witnesses will come into the courtroom singly; may be  
represented during their appearance in the courtroom by  
counsel for the sole purpose of advice or constitutional rights  
against self-incrimination and, where appropriate, on privi-  
leged communications and for no other purpose, and counsel  
for that witness will leave the courtroom when the witness  
leaves the courtroom.

If circumstances arise where in my opinion the cause of  
justice will be served I will relax this rule. If counsel has addi-  
tional testimony which will be helpful and material I will re-  
ceive it.

I will not exercise the option to separate witnesses. The  
personal facilities of the courthouse do not allow it and much  
time has elapsed, many witnesses have been interviewed by  
the press, some have previously testified in another court and  
some have been closely associated, so I question that their  
separation will have any value.

However, witnesses after testifying are ordered not to  
discuss their testimony with anyone except his or her counsel  
until the transcript of the testimony and the Court's report  
have been made public. There may be some difficulty in this  
regard as to those witnesses who have the same counsel, so  
such counsel is ordered not to discuss the testimony of one  
client with another client. Witnesses, if not fully briefed by  
counsel before testifying, will be advised by the Court as to  
their constitutional right not to incriminate themselves.

The inquest has been closed by the Massachusetts Supreme  
Judicial Court. As I interpret that decision, the purpose is to  
prevent pre-trial publicity in the event of a subsequent crimi-  
nal prosecution. However, nothing in this announcement  
would jeopardize that. Therefore, since the press is here in  
force outside and may publish which is conjectural or dis-  
torted, it is my intention to release this announcement to the  
news media.

MR. FERNANDES: If your Honor please, solely for the  
purposes of the letter which your Honor has sent to the  
District Attorney's office in presenting a memorandum or  
brief; as a reply, we did a significant amount of research  
including two trips to Boston. However, in preparing the  
brief or memorandum, Mr. Hanify's brief came to our office  
and we found it to be excellent and we agree with the law he  
found and in fact we found nothing different than what he  
stated in his brief.

THE COURT: We are short of facilities. I will now ask the  
witnesses to leave. We have a room here, the so-called jury  
room and we have a law library. You are not limited to go  
there until you are needed here.

I am concerned where you are, and I want to discuss later  
with the District Attorney the question of whether or not the  
timing may be such as some witnesses may be excused for a  
morning or for a day. It is not our intention to force you to  
remain in some closed enclosure, some small enclosure here  
for a length of time. For the moment at least witnesses will  
leave and go through that door, because you are going in a  
room in that direction.

(All witnesses left the room.)

MR. HANIFY: Might I address your Honor for a moment?  
I would like to express my appreciation of Mr. Fernandes'  
pleasant tribute to my memorandum. I am delighted that we  
seem to be in accord with respect to the nature of the presen-  
tation made therein.

I note that your Honor has said that witnesses - counsel  
will leave with witnesses, with their witness and that you will  
relax that rule if it is necessary. I take it that in substance -

THE COURT: That is not quite what I said, but -

MR. HANIFY: Well, what I wanted -

THE COURT: If the circumstances warrant it in my  
opinion.

MR. HANIFY: In your opinion. I understand that, your  
Honor. I just wanted to be sure so far as I am concerned as  
counsel for Edward M. Kennedy, I will be permitted with  
Judge Clark to be here while he testifies, but unless you make  
some other rule, I will be excused and will not be permitted  
to remain.

THE COURT: Yes.

MR. HANIFY: Is that correct?

THE COURT: Yes.

MR. HANIFY: Thank you, your Honor. To the extent of  
any regard for preservation of rights on that point, I respect-  
fully make it.

I also gather that the instructions which you gave with respect to witnesses conferring only with their counsel after testifying is an implicit instruction to all counsel present, of course, that we are to respect the privacy of the proceeding.

THE COURT: Yes.

MR. HANIFY: And are not to discuss with the press what goes on.

THE COURT: The purpose is that once a witness has testified I do not wish that witness, number one, to disclose to another prospective witness what has been said; and two, because of the secrecy imposed by the Supreme Judicial Court that it shouldn't be disclosed to anybody else except that I assume because of an attorney-client relationship that this would be equivalent to disclosing it to the attorney, because, of course, the attorney has heard it here, but we do have one situation where one group of lawyers represents a very substantial number of witnesses. I saw a possibility of conflict of interest; the duty to the client and the duty to the Court in this order, but I didn't want an attorney who heard what one witness said to disclose to another witness-client of his before testifying what the testifying witness has said.

MR. HANIFY: Thank you, your Honor. I quite understand, I think, the scope and nature of your comments and appreciate very much your kindness in further elucidating.

THE COURT: If there is nothing further to be said, all counsel will be excused except for the District Attorney and his staff.

(All counsel left the room.)

THE COURT: I might add that this is simply because I don't know who the first witness is going to be.

MR. DINIS: If your Honor please, may we have a discussion not concerning directly this particular matter before the Court. We are having a problem with the County Treasurer with regards to the payment. We understand that your Honor is counsel for the County in that capacity.

THE COURT: No, the County has no counsel. From time to time the County Commissioners present me questions of laws for opinions.

MR. DINIS: Of course, this is going to necessitate our getting a mandatory order from the Superior Court ordering the County Treasurer to pay these bills which I have assumed under the statute, Chapter 12 which authorizes me to make certain expenditures for purposes of investigation and we have presented that to the County Treasurer and we have been denied.

THE COURT: Is there anything I can do about it?

MR. DINIS: Well, I inquired as to who counsels the County Commissioners and I received the information that occasionally your Honor has fulfilled that role.

THE COURT: Only when they present me with a spot question.

MR. DINIS: I see, your Honor. For purposes of clarification with me this morning is Mr. Guay, my first assistant; Mr. Fernandes, Lieutenant Killen of the State Police who is head of this investigation and Corporal Enos of the State Police who has been assigned to me during this investigation.

Is there any objection that any of these parties remain in the courtroom?

THE COURT: I would prefer that only your legal staff, attorneys-at-law, members of your staff remain in the courtroom.

MR. DINIS: Well, your Honor, I yield to whatever your Honor orders.

THE COURT: I will not allow other counsel to bring in anybody but counsel.

MR. DINIS: That is fine.

THE COURT: And I want to be just as impartial as we can.

MR. DINIS: Your Honor, you have our full cooperation.

THE COURT: And I would prefer that you and your two legal assistants remain.

MR. DINIS: Your Honor, the first witness we want to call will be the Telephone Company representative, a Mr. A. Robert Malloy for purposes of obtaining information concerning certain telephone calls made with the credit card of Edward M. Kennedy on July the 18th and the morning of the 19th.

THE COURT: I suggest otherwise, in the first place until some foundation has been made such as to indicate that that type of testimony may be relevant.

MR. DINIS: Well, the only problem, your Honor, with

that is that this gentleman is here today. Do you want us to excuse him?

THE COURT: I merely suggest that he not be the first witness.

MR. DINIS: All right. The next witness we suggest to the Court to be called be the driver of the automobile, Edward M. Kennedy.

THE COURT: All right. Would you ask -- there is an officer outside -- that Mr. Kennedy and his counsel come in and I think that I prefer that everybody come in and go out this door.

MR. DINIS: If your Honor please, may there be a clarification? The witnesses will be seated when they testify?

THE COURT: If they wish.

MR. DINIS: With regards to counsel, does your Honor have any preference in that direction?

THE COURT: If they stand or be seated?

MR. DINIS: Yes, your Honor.

THE COURT: I prefer they stand.

MR. DINIS: So be it.

THE COURT: When examining, and you are in a good location.

### TESTIMONY OF EDWARD M. KENNEDY

Before:

Hon. James A. Boyle, Justice of the Edgartown District Court

Present:

Edmund Dinis, District Attorney for the Southern District of Massachusetts,

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Official Court Stenographers.

Edgartown, Massachusetts

Monday, January 5, 1970

THE COURT: Senator, would you take the witness stand?

SENATOR KENNEDY: Yes.

EDWARD M. KENNEDY, Sworn

EXAMINATION BY MR. DINIS:

Q Please give your name to the Court.

A Edward Moore Kennedy.

Q And where is your legal residence, Mr. Kennedy?

A 3 Charles River Square, Boston.

Q Directing your attention to July 18, 1969, were there plans made by you to have a gathering on Martha's Vineyard Island?

A There were.

Q And what were these plans, Mr. Kennedy?

A There were plans to participate in an annual sailing regatta in Edgartown on the dates of Friday, July 18th and Saturday, July 19th, and with my cousin Joe Gargan, Mr. Markham, Mr. LaRosa and a number of other people, a number of other individuals.

Q When were these plans made?

A Well, I had planned to participate in the regatta for some period of weeks.

Q And were there any particular arrangements made for this gathering that we have just discussed?

A Well, I had entered my boat in the regatta and had listed my crew. I had made those arrangements through my cousin, Joe Gargan.

Q Were there any arrangements made to rent a house on Chappaquiddick?

A I had made no such arrangements myself.

Q Do you know who did?

A Yes, I do.

- Q May we have that name?  
A Mr. Gargan.
- Q Mr. Gargan, When did you arrive on the Island in conjunction with this gathering?  
A On July 18th about 1 o'clock.
- Q 1:00 p.m.?  
A That is correct.
- Q Was there anyone with you?  
A No, I arrived by myself.
- Q And where did you stay, Senator?  
A Well, at the Shiretown Inn.
- Q Could you tell the Court what your activities were during that afternoon from the time of your arrival?  
A Well, I arrived shortly after 1 o'clock on July 18th, was met by Mr. John B. Crimmins, driven through town, made a brief stop to pick up some fried clams, traveled by ferry to Chappaquiddick Island to a small cottage there where I changed into a bathing suit, later visited the beach on I imagine the east side of that island for a brief swim, returned to the cottage and changed into another bathing suit, returned to the ferry slip and waded out to my boat, the VICTORIA, later participated in a race which ended approximately 6 o'clock.
- Q When did you check into the Shiretown Inn that day?  
A Sometime after 6:30, before 7 o'clock.
- Q Was anyone else in your party staying at the Shiretown Inn?  
A My cousin Joe Gargan.
- Q Did your nephew, Joseph Kennedy, stay there?  
A Not to my knowledge.
- Q Now, following your checking in at the Shiretown Inn, what were your activities after that?  
A I returned to my room, visited with a few friends just prior to returning to that room on the porch which is outside the room of the Shiretown -- outside my room at the Shiretown Inn, washed up briefly and returned to Chappaquiddick Island.
- Q What time did you return to Chappaquiddick Island at that time?  
A It was sometime shortly after 7 o'clock.
- Q And these friends that you had some conversation with at the Shiretown, do you have their names?  
A I do.
- Q May we have them?  
A Well, they are Mr. Ross Richards; I believe Mr. Stanley Moore was there that evening, and perhaps one or two of their crew, maybe Mrs. Richards. I am not familiar with the names. I know the other members of his crew, but I would say a group of approximately five or six.
- Q Do you recall the number of the room in which you were staying?  
A I believe it was 9. 7 or 9.
- Q Now, you say you returned to Chappaquiddick around 7:30 p.m.?  
A About 7:30.
- Q About that time. Now, were you familiar with the island of Chappaquiddick? Had you been there before?  
A Never been on Chappaquiddick Island before that day.
- Q I believe you did state in one of your prepared statements that you had been visiting this island for about thirty years?  
A Martha's Vineyard Island.
- Q But you had never been to Chappaquiddick?  
A Never been to Chappaquiddick before 1:30 on the day of July 18th.
- Q Now, when you left the Shiretown Inn and returned to Chappaquiddick around 7:30 p.m., was there anyone with you?  
A Mr. Crimmins.
- THE COURT. Might I just impose a moment and ask this question? You said you took a swim on Chappaquiddick Island Friday afternoon?  
THE WITNESS. That is correct.
- THE COURT. Did you travel over the Dike Bridge to go to the beach on that swim?  
THE WITNESS. Yes, I did.
- If your Honor would permit me, at the time of the afternoon upon arrival on Chappaquiddick Island as at the time that I was met at Martha's Vineyard Airport I was driven by Mr. Crimmins to the cottage and to the beach, returned to the cottage subsequent to the point of rendezvous with the VICTORIA.
- Q What automobile was being used at that time?  
A A four-door Oldsmobile 88.
- THE COURT. Might I ask you just a question? Who drove you to the beach?  
THE WITNESS. Mr. Crimmins.
- THE COURT. Was the car operated over the Dike Bridge or was it left on the side?  
THE WITNESS. No, it was operated over the Dike Bridge.
- Q Was there anyone at the cottage when you arrived there at 7:30 p.m.?  
A No, I don't believe so.
- Q Had there been anyone there when you changed your swimming suits early in the afternoon?  
A Not when I first arrived there. Subsequently a group returned to the cottage after the swim.
- Q When you returned?  
A They were either outside the cottage or in its immediate vicinity. I wasn't aware whether they were inside the cottage or outside at the time that I changed.
- Q Do you have the names of these persons who were there?  
A I can only give them in a general way because I am not absolutely sure which people were there at that particular time and which were in town making arrangements.
- Q Were a part of the group there later that evening?  
A Yes, they were.
- Q Were there any persons other than the crew that participated in the cookout there?  
A No.
- Q Were there any other automobiles at that house on Chappaquiddick that afternoon?  
A Yes, there were.
- Q Do you know how many?  
A Just two to my best knowledge. One other vehicle, so there were two in total to my best knowledge.
- Q Did you have any plans at that time to stay on Chappaquiddick Island?  
A No, I did not.
- Q Did you plan on staying overnight?  
A No, I did not.
- Q And how long did you actually stay on Chappaquiddick Island that evening?  
A Well, to my best knowledge I would say 1:30 in the morning on July 19th.
- THE COURT. When you left?  
THE WITNESS. When I left.
- Q What transpired after you arrived at the cottage after your arrival at 7:30 p.m.?  
A Well, after my arrival I took a bath in the tub that was available at the cottage, which was not available at the Shiretown Inn, and soaked my back; I later was joined by Mr. Markham who arrived some time about 8 o'clock, engaged in conversations with Mr. Markham until about 8:30, and the rest of the group arrived at 8:30 or shortly thereafter.
- During this period of time Mr. Crimmins made me a drink of rum and Coca-Cola.
- Q Now, did you have dinner at the cottage?  
A Well, at 8:30 the rest of the group arrived and were made to feel relaxed and at home, enjoyed some hors d'ouvres, were served a drink, those who wanted them, and steaks were cooked on an outdoor burner by Mr. Gargan at about approximately quarter of 10:00, I would think.
- Q Do you recall who did the cooking? Was there any cooking at that time?  
A Yes, there was.
- Q And do you recall who performed the job?  
A Well, principally Mr. Gargan. I think the young ladies did some of the cooking of the hor d'ouvres and some of the gentlemen helped in starting the charcoal fire, and also the cooking of the steaks, the making of the salad, and so forth.
- Q Were there any drinks served, cocktails served?  
A There were.
- Q Did anyone in particular tend bar or have charge of this particular responsibility?  
A Well, I tried initially to respond to any of the requests of the guests when they arrived and then I think most of the individuals made their drinks after that that they wanted.
- Q And I believe you said earlier that Mr. Gargan was in charge of the arrangements of renting the cottage and making the preparation for the cookout, as far as you know?

- A That is correct. I would say the other gentlemen did some of the purchasing of food and others got the stuff for the cookout. Others -- some brought the steaks, others brought the other ingredient for the cookout.
- Q Did you have occasion to leave the cottage at any time during that evening?
- A That is correct.
- Q Did you leave more than once?
- A That is correct.
- Q Well, will you please give us the sequence of events with regard to your activities after 8:30 p.m.?
- A Well, during the course of the evening, as I mentioned, I engaged in conversation and recollections with those that were attending this group which were old friends of myself and our families. Some alcoholic beverages were served.
- THE COURT. Excuse me. Read the question back to me. [Question read.]
- Q How many times did you leave the cottage that evening, Senator?
- A Two different occasions.
- Q Would you please tell us about the first time?
- A The first I left at approximately 11:15 the evening of July 18th and I left a second time, sometime after midnight, by my best judgment it would be approximately 12:15 for the second time. On the second occasion I never left the cottage itself, I left the immediate vicinity of the cottage which was probably fifteen or twenty feet outside the front door.
- Q And when you left the second time, did you then return to Edgartown?
- A Sometime after I left the second time, I returned to Edgartown. I did not return immediately to Edgartown.
- Q Now, when you left on the first occasion, were you alone?
- A I was not alone.
- Q And who was with you?
- A Miss Mary Jo Kopechne was with me.
- Q Anyone else?
- A No.
- Q And did you use the 88 Oldsmobile that was later taken from the river?
- A I used -- yes, I did.
- Q What time did Miss Kopechne arrive at the cottage that evening?
- A My best knowledge approximately 8:30.
- Q At 8:30 p.m.?
- A That is correct.
- Q Do you know how she arrived?
- A To my best knowledge she arrived in a white Valiant that brought some of the people to that party.
- Q Do you know who owned that car?
- A I believe it was a rented car.
- Q Do you know who rented it?
- A No. One of the group that was there, I would say. I'm not sure.
- Q When you left at 11:15 with Miss Kopechne, had you had any prior conversation with her?
- A Yes, I had.
- Q Will you please give that conversation to the Court?
- A At 11:15 I was talking with Miss Kopechne perhaps for some minutes before that period of time. I noticed the time, desired to leave and return to the Shiretown Inn and indicated to her that I was leaving and returning to town. She indicated to me that she was desirous of leaving, if I would be kind enough to drop her back at her hotel. I said, well, I'm leaving immediately; spoke with Mr. Crimmins, requested the keys for the car and left at that time.
- Q Does Mr. Crimmins usually drive your car or drive you?
- A On practically every occasion.
- Q On practically every occasion?
- A Yes.
- Q Was there anything in particular that changed those circumstances at this particular time?
- A Only to the extent that Mr. Crimmins, as well as some of the other fellows that were attending the cookout, were concluding their meal, enjoying the fellowship, and it didn't appear to me to be necessary to require him to bring me back to Edgartown.
- Q Do you know whether or not Miss Kopechne had her pocketbook with her at the time you left?
- A I do not.
- Q Mr. Kennedy, how were you dressed at the time you left the first time at 11:15?
- A In a pair of light slacks and a dark jersey and I believe shoes, moccasins, and a back brace.
- Q Do you know how Miss Kopechne was dressed, do you recall that?
- A Only from what I have read in the -- I understand, slacks and a blouse, sandals, perhaps a sweater; I'm not completely --
- Q And when you left the house at Chappaquiddick at 11:15, you were driving?
- A That is correct.
- Q And where was Miss Kopechne seated?
- A In the front seat.
- Q Was there any other person -- was there any other person in the car at that time?
- A No.
- Q Was there any other item, thing, or object in the car at that time of any size?
- A Well, not to my knowledge at that particular time. I have read subsequently in newspapers that there was another person in that car, but that is only what I have read about and to my knowledge at that time there wasn't any other object that I was aware of.
- Q Well, Senator, was there any other person in the car?
- A No, there was not.
- Q And on leaving the cottage, Senator -- Mr. Kennedy, where did you go?
- A Well, I traveled down, I believe it is Main Street, took a right on Dyke Road and drove off the bridge at Dike Bridge.
- Q Did you at any time drive into Cemetery Road?
- A At no time did I drive into Cemetery Road.
- Q Did you back that car up at any time?
- A At no time did I back that car up.
- Q Did you see anyone on the road between the cottage and the bridge that night?
- A I saw no one on the road between the cottage and the bridge.
- THE COURT: Did you stop the car at any time?
- THE WITNESS: I did not stop the car at any time.
- Q (By Mr. Dinis) Did you pass any other vehicle at that time?
- A I passed no other vehicle at that time. I passed no other vehicle and I saw no other person and I did not stop the car at any time between the time I left the cottage and went off the bridge.
- Q Now, would you describe your automobile to the Court?
- A Well, it is a four-door black sedan, Oldsmobile.
- Q Do you recall the registration plate?
- A I do not recall the registration plate.
- Q Senator, I show you a photograph and ask you whether or not you can identify that?
- A I believe that to be my car.
- Q Your automobile?
- A Yes.
- MR. DINIS: This is the automobile that the Senator identifies as his.
- THE COURT: I think we ought to have a little more. This location is --
- THE WITNESS: I have no --
- THE COURT: Mr. Kennedy says this is his automobile after the accident and he doesn't know the location of where the automobile is or when this picture was taken. Mark that Exhibit 1.
- (The picture was marked Exhibit No. 1.)
- Q (By Mr. Dinis) I show you two photographs. Are you able to identify the automobile in the photographs?
- A In my best judgment that is my automobile that went off the bridge.
- Q In examining the registration plate, would that help you at all?
- A I would believe that is my vehicle.
- MR. DINIS: If your Honor please, these are photographs that have been taken of the car which has been removed from the water.
- THE COURT: Well, are you going to have any witness testify when these were taken?
- MR. DINIS: Yes, your Honor, we can have that.
- THE COURT: And where they were taken.
- MR. DINIS: Yes, your Honor.

A By the time I came up I was, the best estimate would be somewhere over here, which would be probably 8-10 feet, it is difficult for me to estimate specifically, and I think by the time I was able at least to regain my strength, I would say it is about 30 feet after which time I swam in this direction until I was able to wade, and wade back up here to this point here, and went over to the front of the car, where the front of the car was, and crawled over to here, dove here, and the tide would sweep out this way there, and then I dove repeatedly from this side until, I would say, the end, and then I will be swept away the first couple of times, again back over to this side, I would come back again and again to this point here, or try perhaps the third or fourth time to gain entrance to some area here until at, the very end when I couldn't hold my breath any longer I was breathing so heavily it was down to just a matter of seconds. I would hold my breath and I could barely get underneath the water. I was just able to hold on to the metal undercarriage here, and the water itself came right out to where I was breathing and I could hold on, I knew that I just could not get under water any more.

Q And you were fully aware at that time of what was transpiring?

A Well, I was fully aware that I was trying to get the girl out of that car and I was fully aware that I was doing everything that I possibly could to get her out of the car and I was fully aware at that time that my head was throbbing and my neck was aching and I was breathless, and at that time, the last time, hopelessly exhausted.

Q You were not confused at that time?

A Well, I knew that there was a girl in that car and I had to get her out. I knew that.

Q And you took steps to get her out?

A I tried the best I thought I possibly could to get her out.

Q But there was no confusion in your mind about the fact that there was a person in the car and that you were doing the best you could to get that person out?

A I was doing the very best I could to get her out.

THE COURT. May I ask you some questions here about the depth of the water?

THE WITNESS. No, it was not possible to stand. The highest level of the car to the surface were the wheels and the undercarriage itself when I held onto the undercarriage and the tide would take me down, it was up to this point. [Indicating.]

Q [By the Court] You were not able to stand up at any point around any portion of that car?

THE WITNESS. Yes.

Q Mr. Kennedy, how many times if you recall did you make an effort to submerge and get into the car?

A I would say seven or eight times. At the last point, the seventh or eighth attempts were barely more than five- or eight-second submersions below the surface. I just couldn't hold my breath any longer. I didn't have the strength even to come down even close to the window or the door.

Q And do you know how much time was used in these efforts?

A It would be difficult for me to estimate, but I would think probably 15-20 minutes.

Q And did you then remove yourself from the water?

A I did.

Q And how did you do that?

A Well, in the last dive I lost contact with the vehicle again and I started to come down this way here and I let myself float and came over to this shore and I came onto this shore here, and I sort of crawled and I staggered up some place in here and was very exhausted and spent on the grass.

Q On the west bank of the river?

A Yes.

Q As indicated by that chart?

A Yes, that's correct.

Q And how long did you spend resting?

A Well, I would estimate probably 15-20 minutes trying to get my - I was coughing up the water and I was exhausted and I suppose the best estimate would be 15 or 20 minutes.

Q Now, did you say earlier you spent 15 or 20 minutes trying to recover Miss Kopechne?

A That is correct.

Q And you spent another 15 or 20 minutes recovering on the west side of the river?

A That is correct.

Q Now, following your rest period, Senator, what did you do after that?

A Well, I--

Q You may remain seated.

A All right. After I was able to regain my breath I went back to the road and I started down the road and it was extremely dark and I could make out no forms or shapes or figures, and the only way that I could even see the path of the road was looking down the silhouettes of the trees on the two sides and I could watch the silhouette of the trees on the two sides and I started going down that road walking, trotting, jogging, stumbling, as fast as I possibly could.

Q Did you pass any houses with lights on?

A Not to my knowledge; never saw a cottage with a light on it.

Q And did you then return to the cottage where your friends had been gathered?

A That is correct.

Q And how long did that take you to make that walk, do you recall?

A I would say approximately fifteen minutes.

Q And when you arrived at the cottage, as you did, is that true?

A That is true.

Q Did you speak to anyone there?

A Yes, I did.

Q And with whom did you speak?

A Mr. Ray LaRosa.

Q And what did you tell him?

A I said, get me Joe Gargan.

Q And was Joe Gargan there?

A He was there.

Q He was at the party?

A Yes.

THE COURT: Excuse me a moment. Did you go inside the cottage?

THE WITNESS: No, I didn't go inside.

Q (By Mr. Dinis) What did you do? Did you sit in the automobile at that time?

A Well, I came up to the cottage, there was a car parked there, a white vehicle, and as I came up to the back of the vehicle, I saw Ray LaRosa at the door and I said, Ray, get me Joe; and he mentioned something like, right away, and as he was going in to get Joe, I got in the back of the car.

Q In this white car?

A Yes.

Q And now, did Joe come to you?

A Yes, he did.

Q And did you have conversation with him?

A Yes, I did.

Q Would you tell us what the conversation was?

A I said, you had better get Paul, too.

Q Did you tell him what happened?

A At that time I said, better get Paul, too.

Q What happened after that?

A Well, Paul came out, got in the car. I said, there has been a terrible accident, we have got to go, and we took off down the road, the Main Road there.

Q How long had you known Mr. LaRosa prior to this evening?

A Eight years, ten years, eight or ten years.

Q Were you familiar with the fact or - strike that - did you have any knowledge that Mr. LaRosa had some experience in skin diving?

A No, I never did.

Q Now, before you drove down the road, did you make any further explanations to Mr. Gargan or Mr. Markham?

A Before driving? No, sir. I said, there has been a terrible accident, let's go, and we took off ---

Q And they went ---

A --- driving.

Q And they drove hurriedly down?

A That is right.

Q Towards the Dike Bridge area.

- A Well, Mr. Dinis, I would say that I, having lived on Cape Cod and having visited these islands, I am aware some roads are paved.
- THE COURT: I am sorry, that is not quite responsive. The question is whether or not you realized the road from the ferry to the cottage was paved.
- MR. DINIS: That is correct.
- THE WITNESS: Yes.
- THE COURT: That is, did you become aware of it during your two trips?
- THE WITNESS: Well, I would just say it was not of particular notice to me whether it was paved or unpaved.
- THE COURT: Were you driving the car in either one of these times?
- THE WITNESS: I was not.
- Q (By Mr. Dinis) Well, while you were driving down Dyke Road and after you noticed it was a dirt road and you were driving at twenty miles an hour, what happened, Mr. Kennedy?
- A Well, I became —
- THE COURT: I'm going to ask one question. At any time after you got on the unpaved road, the so-called Dyke Road, did you have a realization that you were on the wrong road?
- THE WITNESS: No.
- THE COURT: Do you remember the question?
- THE WITNESS: After I realized it was an unpaved road, what did I become aware of?
- Q (By Mr. Dinis) Well, after you realized it was an unpaved road and that you were driving at twenty miles an hour, what happened then?
- A I went off Dike Bridge or I went off a bridge.
- Q You went off a bridge into the water?
- A That is correct.
- Q Did you apply the brakes of that automobile prior to going off into the water?
- A Perhaps a fraction of a second before.
- Q What prompted you to do that?
- A Well, I was about to go off a bridge and I applied the brakes.
- Q Were there any lights in that area?
- A Absolutely no lights in that area I noticed other than the lights on my vehicle.
- Q Did you realize at that moment that you were not heading for the ferry?
- A At the moment I went off the bridge, I certainly did.
- Q Do you recall whether or not the — strike that question — well, what happened after that, Senator?
- A Well, I remembered the vehicle itself just beginning to go off the Dike Bridge and the next thing I recall is the movement of Mary Jo next to me, the struggling, perhaps hitting or kicking me and I, at this time, opened my eyes and realized I was upside-down, that water was crashing in on me, that it was pitch black. I knew that and I was able to get half a gulp, I would say, of air before I became completely immersed in the water. I realized that Mary Jo and I had to get out of the car.
- I can remember reaching down to try and get the door-knob of the car and lifting the door handle and pressing against the door and it not moving. I can remember reaching what I thought was down, which was really up, to where I thought the window was and feeling along the side to see if the window was open and the window was closed, and I can remember the last sensation of being completely out of air and inhaling what must have been a half a lung full of water and assuming that I was going to drown and the full realization that no one was going to be looking for us that night until the next morning and that I wasn't going to get out of that car alive and then somehow I can remember coming up to the last energy of just pushing, pressing, and coming up to the surface.
- Q Senator, how did you realize that you were upside down in the car?
- A Because — that was a feeling that I had as soon as I became aware that — the water rushing in and the blackness, I knew that I was, I felt I was upside down. I really wasn't sure of anything, but I thought I was upside down.
- Q Were you aware that the windows on the passenger's side were blown out of the car, were smashed?
- A I have read that subsequently. I wasn't aware of it at the time.
- Q Were you aware that there was any water rushing in on the passenger's side?
- A There was complete blackness. Water seemed to rush in from every point, from the windshield, from underneath me, above me. It almost seemed like you couldn't hold the water back even with your hands. What I was conscious of was the rushing of the water, the blackness, the fact that it was impossible to even hold it back.
- Q And you say at that time you had a thought to the effect that you may not be found until morning?
- A I was sure that I was going to drown.
- Q Did you make any observations of the condition of Miss Kopechne at that time?
- A At what time?
- Q At that particular moment when you were thrashing around in the car?
- A Well, at the moment I was thrashing around I was trying to find a way that we both could get out of the car, and at some time after I tried the door and the window I became convinced I was never going to get out.
- Q Was the window closed at that time?
- A The window was open.
- Q On the driver's side?
- A That's correct.
- Q And did you go through the window to get out of the car?
- A I have no idea in the world how I got out of that car.
- Q Do you have any recollection as to how the automobile left the bridge and went over into the water?
- A How it left the bridge?
- Q Yes. What particular path did it take?
- A No.
- Q Did it turn over?
- A I have no idea.
- THE COURT. I would like to inquire, Mr. Dinis, something about the operation of the car, if you are finished.
- MR. DINIS. Go right ahead, your Honor.
- THE COURT. You are driving along the dike sandy road and you are approaching the Dike Bridge. Now, can you describe to me what you saw, what you did, what happened from the point when first you saw the bridge?
- THE WITNESS. I would estimate that time to be fractions of a second from the time that I first saw the bridge and was on the bridge.
- THE COURT. Did you have on your high beams, do you remember?
- THE WITNESS. I can't remember.
- THE COURT. Is it your custom to use high beams when you are driving?
- THE WITNESS. I rarely drive. I really couldn't tell you. I may have.
- THE COURT. It is recommended.
- THE WITNESS. It is recommended, but sometimes if there is a mist you see better with low beams.
- THE COURT. Did you see the bridge before you actually reached it?
- THE WITNESS. The split second before I was on it.
- THE COURT. Did you see that it was at an angle to the road?
- THE WITNESS. The bridge was at an angle to the road?
- THE COURT. Yes.
- THE WITNESS. Just before going on it I saw that.
- THE COURT. Did you make any attempt to turn your wheels to follow that angle?
- THE WITNESS. I believe I did, your Honor. I would assume that I did try to go on the bridge. It appeared to me at that time that the road went straight.
- THE COURT. Were you looking ahead at the time you were driving the car, at that time?
- THE WITNESS. Yes, I was.
- THE COURT. Your attention was not diverted by anything else?
- THE WITNESS. No, it wasn't.
- THE COURT. I don't want to foreclose you, Mr. Dinis. I want to go into the question of alcoholic beverages. Perhaps you had that in mind later?
- MR. DINIS. Yes, your Honor.
- THE COURT. All right.
- Q Going back to the cottage earlier in the day, you stated, you volunteered the information that you had a rum and Coca-Cola?

A That is right.  
Q Did you have more than one?  
A Yes, I did.  
Q How many did you have?  
A I had two.  
THE COURT. What time was this?  
THE WITNESS. The first was about 8 o'clock.  
THE COURT. I would like to go back before that. I think that you said you visited some friends at the Shiretown Inn?  
THE WITNESS. That is right.  
THE COURT. Did you do some drinking then?  
THE WITNESS. I had about a third of beer at that time.  
THE COURT. And you had nothing further until this.  
THE WITNESS. No, I had nothing further.  
Q And when did you have this second rum and coke?  
A The second some time later on in the evening. I think before dinner, sometime about 9:15. It would be difficult for me to say.  
Q Now, during the afternoon of the 18th did you have occasion to spend some time with your nephew, Joseph Kennedy?  
A I might have greeted him in a brief greeting, but otherwise, no. I know he was concerned about where he was going to stay; that he had some reservations and that somehow they had gotten cancelled, but I would say other than a casual passing and a greeting, I would say No.  
Q He was at this time on Chappaquiddick Island?  
A Not to my knowledge. I never saw him at Chappaquiddick.  
Q Did you see him at the Shiretown Inn?  
A I might have seen him in inquiring whether he could stay at the Shiretown Inn.  
Q Did he stay with you in your room?  
A No, he did not.  
THE COURT. I would like to ask some questions. You said you had a portion of beer late in the afternoon at the Shiretown Inn?  
THE WITNESS. That is correct.  
THE COURT. Then you had two rums and coke at this cottage at Chappaquiddick Island some time after you arrived at about 8:30?  
THE WITNESS. That is right.  
THE COURT. Who poured those drinks?  
THE WITNESS. Mr. Crimmins poured the first one. I poured the second one.  
THE COURT. What amount of rum did you put in?  
THE WITNESS. It would be difficult, your Honor, to estimate.  
THE COURT. Well, by ounces.  
THE WITNESS. By ounces? I suppose two ounces.  
THE COURT. I mean, some people pour heavy drinks. Some pour light drinks.  
THE WITNESS. Yes.  
THE COURT. When did you take the last one?  
THE WITNESS. I would think about 9 o'clock. The only way I could judge that, your Honor, would be that I ate about 10:00 and it was some time before I ate.  
THE COURT. You had nothing alcoholic to drink after eating?  
THE WITNESS. No, I didn't.  
THE COURT. How much liquor was at this cottage?  
THE WITNESS. There were several bottles so that I wouldn't be able to tell specifically.  
THE COURT. Not a large supply?  
THE WITNESS. I wouldn't be able to tell how much. There was an adequate supply.  
THE COURT. Was there a sustained amount of drinking by the group?  
THE WITNESS. No, there wasn't.  
THE COURT. By any particular person?  
THE WITNESS. Not that I noticed. There wasn't prior to the time I left.  
THE COURT. Mr. Hanify, you have advised your client of his constitutional rights?  
MR. HANIFY. Yes, I have, your Honor.  
THE COURT. Were you at any time that evening under the influence of alcohol?  
THE WITNESS. Absolutely not.  
THE COURT. Did you imbibe in any narcotic drugs that evening?

THE WITNESS. Absolutely not.  
THE COURT. Did anyone at the party to your knowledge?  
THE WITNESS. No, absolutely not.  
THE COURT. In your opinion would you be sober at the time that you operated the motor vehicle to the Dike Bridge?  
THE WITNESS. Absolutely sober.  
Q Senator Kennedy, what did you do immediately following your release from the automobile?  
A I was swept away by the tide that was flowing at an extraordinary rate through that narrow cut there and was swept along by the tide and called Mary Jo's name until I was able to make my way to what would be the east side of that cut, waded up to about my waist and started back to the car, at this time was gasping and belching and coughing, went back just in front of the car.  
Now, the headlights of that car were still on and I was able to get to what I thought was the front of the car, although it was difficult -- and I was able to identify the front of the car from the rear of the car by the lights themselves. Otherwise I don't think I would be able to tell.  
Q How far were you swept along by the current?  
A Approximately 30--40 feet.  
Q Did you pass under the bridge?  
A The vehicle went over the bridge on the south side and rested on the south side, and that was the direction the current was flowing, and I was swept I would think to the south or probably east, which would be the eastern shore of that.  
Q Some 30 feet?  
A I would think 30 to 40 feet.  
Q Now, in order to get back to the car was it necessary for you to swim?  
A I couldn't swim at that time because of the current. I waded into -- swam to where I could wade and then waded along the shore up to where I could go to the front of the car and start diving in an attempt to rescue Mary Jo.  
Q Was the front of the car facing a westerly direction?  
A I would think it was facing in a northerly direction.  
Q Well, in regard to the bridge could you describe the location of the automobile with relation to the bridge?  
A Well, your Honor, in the direction of north and south I will do the best I can.  
THE COURT. We don't have any map, do we?  
MR. TELLER. The bridge runs north and south, fairly close to north and south.  
THE COURT. That is, coming towards Edgartown would be north and towards the ocean would be south?  
MR. TELLER. Yes, sir.  
MR. DINIS. May we use the chalk, your Honor?  
THE COURT. Yes, if it is helpful.  
Q Would that be helpful, Mr. Kennedy?  
A It may be.  
Q I believe there is a board behind you. Assuming the bridge is north and south--  
A Yes.  
[Witness draws a sketch on blackboard.]  
I would bet that that bridge runs more east--west than north--south.  
MR. TELLER. Not directly north, but southeast--northwest.  
Q Will you indicate, Mr. Kennedy, Edgartown?  
A I would rather have counsel draw and respond. I will be delighted to do whatever the Court desires.  
THE COURT. It is only for the purposes of illustration.  
THE WITNESS. I suppose the road runs something like this.  
THE COURT. You are trying to get the relation of the car to the bridge?  
MR. DINIS. Yes, your Honor.  
Q As you went off the bridge.  
A I think it was like this.  
THE COURT. All right, Mr. Dinis.  
Q Mr. Kennedy, after you emerged from the automobile you say you were swept some 30 feet away from the car, is that correct?  
A In this direction [indicating].  
Q And how much time did it take you after you left the automobile to be swept down to about 30 feet, down the river?

A By the time I came up I was, the best estimate would be somewhere over here, which would be probably 8-10 feet, it is difficult for me to estimate specifically, and I think by the time I was able at least to regain my strength, I would say it is about 30 feet after which time I swam in this direction until I was able to wade, and wade back up here to this point here, and went over to the front of the car, where the front of the car was, and crawled over to here, dove here, and the tide would sweep out this way there, and then I dove repeatedly from this side until, I would say, the end, and then I will be swept away the first couple of times, again back over to this side, I would come back again and again to this point here, or try perhaps the third or fourth time to gain entrance to some area here until at, the very end when I couldn't hold my breath any longer I was breathing so heavily it was down to just a matter of seconds. I would hold my breath and I could barely get underneath the water. I was just able to hold on to the metal undercarriage here, and the water itself came right out to where I was breathing and I could hold on, I knew that I just could not get under water any more.

Q And you were fully aware at that time of what was transpiring?

A Well, I was fully aware that I was trying to get the girl out of that car and I was fully aware that I was doing everything that I possibly could to get her out of the car and I was fully aware at that time that my head was throbbing and my neck was aching and I was breathless, and at that time, the last time, hopelessly exhausted.

Q You were not confused at that time?

A Well, I knew that there was a girl in that car and I had to get her out. I knew that.

Q And you took steps to get her out?

A I tried the best I thought I possibly could to get her out.

Q But there was no confusion in your mind about the fact that there was a person in the car and that you were doing the best you could to get that person out?

A I was doing the very best I could to get her out.

THE COURT. May I ask you some questions here about the depth of the water?

THE WITNESS. No, it was not possible to stand. The highest level of the car to the surface were the wheels and the undercarriage itself when I held onto the undercarriage and the tide would take me down, it was up to this point. [Indicating.]

Q [By the Court] You were not able to stand up at any point around any portion of that car?

THE WITNESS. Yes.

Q Mr. Kennedy, how many times if you recall did you make an effort to submerge and get into the car?

A I would say seven or eight times. At the last point, the seventh or eighth attempts were barely more than five- or eight-second submersions below the surface. I just couldn't hold my breath any longer. I didn't have the strength even to come down even close to the window or the door.

Q And do you know how much time was used in these efforts?

A It would be difficult for me to estimate, but I would think probably 15-20 minutes.

Q And did you then remove yourself from the water?

A I did.

Q And how did you do that?

A Well, in the last dive I lost contact with the vehicle again and I started to come down this way here and I let myself float and came over to this shore and I came onto this shore here, and I sort of crawled and I staggered up some place in here and was very exhausted and spent on the grass.

Q On the west bank of the river?

A Yes.

Q As indicated by that chart?

A Yes, that's correct.

Q And how long did you spend resting?

A Well, I would estimate probably 15-20 minutes trying to get my - I was coughing up the water and I was exhausted and I suppose the best estimate would be 15 or 20 minutes.

Q Now, did you say earlier you spent 15 or 20 minutes trying to recover Miss Kopechne?

A That is correct.

Q And you spent another 15 or 20 minutes recovering on the west side of the river?

A That is correct.

Q Now, following your rest period, Senator, what did you do after that?

A Well, I--

Q You may remain seated.

A All right. After I was able to regain my breath I went back to the road and I started down the road and it was extremely dark and I could make out no forms or shapes or figures, and the only way that I could even see the path of the road was looking down the silhouettes of the trees on the two sides and I could watch the silhouette of the trees on the two sides and I started going down that road walking, trotting, jogging, stumbling, as fast as I possibly could.

Q Did you pass any houses with lights on?

A Not to my knowledge; never saw a cottage with a light on it.

Q And did you then return to the cottage where your friends had been gathered?

A That is correct.

Q And how long did that take you to make that walk, do you recall?

A I would say approximately fifteen minutes.

Q And when you arrived at the cottage, as you did, is that true?

A That is true.

Q Did you speak to anyone there?

A Yes, I did.

Q And with whom did you speak?

A Mr. Ray LaRosa.

Q And what did you tell him?

A I said, get me Joe Gargan.

Q And was Joe Gargan there?

A He was there.

Q He was at the party?

A Yes.

THE COURT: Excuse me a moment. Did you go inside the cottage?

THE WITNESS: No, I didn't go inside.

Q (By Mr. Dinis) What did you do? Did you sit in the automobile at that time?

A Well, I came up to the cottage, there was a car parked there, a white vehicle, and as I came up to the back of the vehicle, I saw Ray LaRosa at the door and I said, Ray, get me Joe; and he mentioned something like, right away, and as he was going in to get Joe, I got in the back of the car.

Q In this white car?

A Yes.

Q And now, did Joe come to you?

A Yes, he did.

Q And did you have conversation with him?

A Yes, I did.

Q Would you tell us what the conversation was?

A I said, you had better get Paul, too.

Q Did you tell him what happened?

A At that time I said, better get Paul, too.

Q What happened after that?

A Well, Paul came out, got in the car. I said, there has been a terrible accident, we have got to go, and we took off down the road, the Main Road there.

Q How long had you known Mr. LaRosa prior to this evening?

A Eight years, ten years, eight or ten years.

Q Were you familiar with the fact or - strike that - did you have any knowledge that Mr. LaRosa had some experience in skin diving?

A No, I never did.

Q Now, before you drove down the road, did you make any further explanations to Mr. Gargan or Mr. Markham?

A Before driving? No, sir. I said, there has been a terrible accident, let's go, and we took off ---

Q And they went ---

A --- driving.

Q And they drove hurriedly down?

A That is right.

Q Towards the Dike Bridge area.



A That is right.  
Q And where did you finally stop the white automobile that you were riding in?  
A Mr. Gargan drove the vehicle across the bridge to some location here (indicating) and turned it so that its headlights shown over the water and over the submerged vehicle. (Indicating on blackboard.)  
Q And what happened after the three of you arrived there?  
A Mr. Gargan and Mr. Markham took off all their clothes, dove into the water, and proceeded to dive repeatedly to try and save Mary Jo.  
Q Now, do you recall what particular time this is now when the three of you were at the —  
A I think it was at 12:20, Mr. Dinis. I believe that I looked at the Valiant's clock and believe that it was 12:20.  
Q Now, Mr. LaRosa remained at the cottage?  
A Yes, he did.  
Q Was Mr. LaRosa aware of the accident?  
A No, he hadn't heard — no, I don't believe so.  
Q No one else at the cottage was told of the accident?  
A No.  
Q How many times did you go back to Dike Bridge that night?  
A Well, that was the only —  
Q After the accident, that was the only occasion?  
A The only time, the only occasion.  
Q Now, how long did Mr. Markham and Mr. Gargan remain there with you on that particular occasion?  
A I would think about forty-five minutes.  
Q And they were unsuccessful in entering the car?  
A Well, Mr. Gargan got half-way in the car. When he came out he was scraped all the way from his elbow, underneath his arm was all bruised and bloodied, and this is the one time that he was able to gain entrance I believe into the car itself.  
Q And did he talk to you about his experience in trying to get into the car?  
A Well, I was unable to, being exhausted, to get into the water, but I could see exactly what was happening and made some suggestions.  
Q So that you were participating in the rescue efforts?  
A Well, to that extent.  
Q You were fully aware of what was transpiring at that time?  
A Well, I was fully aware that Joe Gargan and Paul Markham were trying to get in that car and rescue that girl, I certainly would say that.  
Q Did you know at that time or did you have any idea how long Mary Jo had been in the water?  
A Well, I knew that some time had passed.  
Q Well, you testified earlier that you spent some fifteen or twenty minutes of —  
A Well, Mr. District Attorney, I didn't add up the time that I was adding to rescue her and time on the beach, the shore, and the time to get back and the time it took back and calculate it.  
Q Was it fair to say that she was in the water about an hour?  
A Yes, it is.  
Q Was there any effort made to call for assistance?  
A No, other than the assistance of Mr. Gargan and Mr. Markham.  
Q I know, but they failed in their efforts to recover —  
A That is right.  
Q — Miss Kopechne?  
A That is correct.

(Discussion off the record.)

MR. DINIS. I believe, your Honor, before the witness left the courtroom the question was whether or not any assistance had been asked for.

THE COURT. I think the answer had been No.

Q [By Mr. Dinis] And now may I ask you, Mr. Kennedy, was there any reason why no additional assistance was asked for?

A Was there any reason?

Q Yes, was there any particular reason why you did not call either the police or the fire department?

A Well, I intended to report it to the police.

THE COURT. That is not quite responsive to the question.

Q Was there a reason why it did not happen at that time?

THE COURT. Call for assistance.

THE WITNESS. I intended to call for assistance and to report the accident to the police within a few short moments after going back into the car.

Q I see, and did something transpire to prevent this?

A Yes.

Q What was that?

A With the Court's indulgence, to prevent this, if the Court would permit me I would like to be able to relate to the Court the immediate period following the time that Mr. Gargan, Markham and I got back in the car.

THE COURT. I have no objection.

MR. DINIS. I have no objection.

THE WITNESS. Responding to the question of the District Attorney —

MR. DINIS. Yes.

THE WITNESS. —at some time, I believe it was about 45 minutes after Gargan and Markham dove they likewise became exhausted and no further diving efforts appeared to be of any avail and they so indicated to me and I agreed. So they came out of the water and came back into the car and said to me, Mr. Markham and Mr. Gargan at different times as we drove down the road towards the ferry that it was necessary to report this accident. A lot of different thoughts came into my mind at that time about how I was going to really to be able to call Mrs. Kopechne at some time in the middle of the night to tell her that her daughter was drowned, to be able to call my own mother and my own father, relate to them, my wife, and I even — even though I knew that Mary Jo Kopechne was dead and believed firmly that she was in the back of that car I willed that she remained alive.

As we drove down that road I was almost looking out the front window and windows trying to see her walking down that road. I related this to Gargan and Markham and they said they understood this feeling, but it was necessary to report it. And about this time we came to the ferry crossing and I got out of the car and we talked there just a few minutes.

I just wondered how all of this could possibly have happened. I also had sort of a thought and the wish and desire and the hope that suddenly this whole accident would disappear, and they reiterated that this has to be reported and I understood at the time that I left that ferry boat, left the slip where the ferry boat was, that it had to be reported and I had full intention of reporting it, and I mentioned to Gargan and Markham something like, "You take care of the girls, I will take care of the accident," — that is what I said and I dove into the water.

Now, I started to swim out into that tide and the tide suddenly became, felt an extraordinary shove and almost pulling me down again, the water pulling me down and suddenly I realized at that time even as I failed to realize before I dove into the water that I was in a weakened condition, although as I had looked over that distance between the ferry slip and the other side, it seemed to me an inconsequential swim; but the water got colder, the tide began to draw me out and for the second time that evening I knew I was going to drown and the strength continued to leave me. By this time I was probably 50 yards off the shore and I remembered being swept down toward the direction of the Edgartown Light and well out into the darkness, and I continued to attempt to swim, tried to swim at a slower pace to be able to regain whatever kind of strength that was left in me.

And some time after, I think it was about the middle of the channel, a little further than that, the tide was much calmer, gentler, and I began to get my — make some progress, and finally was able to reach the other shore and all the nightmares and all the tragedy and all the loss of Mary Jo's death was right before me again. And when I was able to gain this shore, this Edgartown side, I pulled myself on the beach and then attempted to gain some strength.

After that I walked up one of the streets in the direction of the Shiretown Inn.

By walking up one of the streets I walked into a parking lot that was adjacent to the Inn and I can remember almost having no further strength to continue, and leaning against a tree for a length of time, walking through the parking lot, trying to really gather some kind of idea as to



*Hardy souls brave cold to view the accident scene.*

Q Had you known Miss Kopechne prior to July the 18th?

A Well, I have known her -- my family has known her for a number of years. She has visited my house, my wife. She has visited Mrs. Robert Kennedy's house. She worked in the Robert Kennedy Presidential campaign, and I would say that we have known her for a number of years.

Q Now, directing your ---

A If the question is, have I ever been out with Mary Jo ---

Q No, that is not the question. The question was whether you just knew her socially prior to this event.

A Well, could I give you a fuller explanation of my knowledge of Mary Jo, your Honor?

MR. DINIS: I have no objection.

THE COURT: Go ahead.

THE WITNESS: I have never in my life, as I have stated in my television, had any personal relationship whatsoever with Mary Jo Kopechne. I never in my life have been either out with Mary Jo Kopechne nor have I ever been with her prior to that occasion where we were not in a general assemblage of friends, associates, or members of our family.

Q (By Mr. Dinis) Directing your attention to the 19th at around 7:30 a.m., did you have any conversation with anyone at that time?

A Could I hear the question, please?

Q The 19th, which was that morning around 7:00 a.m., 7:30 a.m. ---

A Yes.

Q --- did you meet anyone at your room?

A Not at 7:30 a.m., I did not.

Q Did you meet anyone at anytime that morning at your room?

A Yes, I did.

Q And whom did you meet there?

A If your Honor would permit me to give -- I would like to be specifically responsive, and I can, I think. It might be misleading to the Court if I just gave a specific response to it. Whatever the Court wants.

Q Well, the point is, what time did you get up that morning?

A I never really went to bed that night.

Q I see. After that noise at 2:30 in the morning, when did you first meet anyone, what time?

A It was sometime after 8:00.

Q And you met whom?

A Sometime after 8:00 I met the woman that was behind the counter at the Shiretown Inn and I met Mr. Richards and Mr. Moore, very briefly Mrs. Richards, and Mr. Gargan and Mr. Markham, and I saw Mr. Tretter, but to be specifically responsive as to who I met in my room, which I believe was the earlier question, was Mr. Markham and Mr. Gargan.

Q What time was this, something around 8:00 o'clock?

A I think it was close to 8:30.

Q Did you have any conversation with Mr. Moore or Mrs. Moore or Mr. Richards or Mrs. Richards?

A It is my impression that they did the talking.

Q Well, what was that conversation, do you recall?

A Mr. Moore was relating about how I believe some members of his crew were having difficulty with their housing arrangements.

Q Now, what time did Mr. Markham and Mr. Gargan arrive?

A About a few -- I would think about 8:30, just a few minutes after I met Mr. Moore probably.

Q And do you recall how they were dressed?

A To the best of my knowledge, a shirt and slacks.

Q Do you recall at this time the condition of their dress?

A Well, they had an unkempt look about it.

Q Nothing further, nothing more than that?

A Well, I mean, it was not pressed; it was messy looking. It was unkempt looking.

Q Did you have any conversation with Mr. Markham or Mr. Gargan or both at that time?

A Yes, I did.

Q Can you give the Court what the conversation was?

A Well, they asked, had I reported the accident, and why I hadn't reported the accident; and I told them about my own thoughts and feelings as I swam across that channel and how I was always willed that Mary Jo still lived; how I was hopeful even as that night went on and as I almost tossed and turned, paced that room and walked around

what happened and feeling that I just had to go to my room at that time, which I did by walking through the front entrance of the Shiretown Inn up the stairs.

Q Do you have any idea what time you arrived at the Shiretown Inn?

A I would say some time before 2:00.

Q Can you tell us now how great a distance you swam when you left the ferry slip?

A I left just adjacent to the ferry slip here, I would say on the north side of it and I was swept down for a number of yards and then across. I don't think I can estimate the terms of the yardage.

Q When you arrived at the Shiretown Inn, did you talk to anyone at that time?

A I went to my room and I was shaking with chill. I took off all my clothes and collapsed on the bed, and at this time I was very conscious of a throbbing headache, of pains in my neck, of strain on my back, but what I was even more conscious of is the tragedy and loss of a very devoted friend.

Q Now, did you change your clothing?

A I was unable really to determine, detect the amount of lapse of time, and I could hear noise that was taking place. It seemed around me, on top of me, almost in the room, and after a period of time I wasn't sure whether it was morning or afternoon or nighttime, and I put on -- and I wanted to find out and I put on some dry clothes that were there, a pants and a shirt, and I opened the door and I saw what I believed to be a tourist or someone standing under the light off the balcony and asked what time it was. He mentioned to me it was, I think, 2:30, and went back into the room.

that room that night that somehow when they arrived in the morning that they were going to say that Mary Jo was still alive. I told them how I somehow believed that when the sun came up and it was a new morning that what had happened the night before would not have happened and did not happen, and how I just couldn't gain the strength within me, the moral strength to call Mrs. Kopechne at 2:00 o'clock in the morning and tell her that her daughter was dead.

Q Now, at some time you actually did call Mrs. Kopechne?

A Yes, I did.

Q And prior to calling Mrs. Kopechne, did you cross over on the Chappaquiddick Ferry to Chappaquiddick Island?

A Yes, I did.

Q And was Mr. Markham and Mr. Gargan with you?

A Yes, they were.

Q Now, did you then return to Edgartown after some period of time?

A Yes, I did.

Q Did anything prompt or cause you to return to Edgartown once you were on Chappaquiddick Island that morning?

A Anything prompt me to? Well, what do you mean by prompt?

Q Well, did anything cause you to return? You crossed over to Chappaquiddick?

A Other than the intention of reporting the accident, the intention of which had been made earlier that morning.

Q But you didn't go directly from your room to the police department?

A No, I did not.

Q Did you have a particular reason for going to Chappaquiddick first?

A Yes, I did.

Q What was that reason?

A It was to make a private phone call to one of the dearest and oldest friends that I have and that was to Mr. Burke Marshall. I didn't feel that I could use the phone that was available, the public phone that was available outside of the dining room at the Shiretown Inn, and it was my thought that once that I went to the police station, that I would be involved in a myriad of details and I wanted to talk to this friend before I undertook that responsibility.

Q You mean that ---

THE COURT: Excuse me, Mr. Dinis, we are now at 1:00 o'clock.

MR. DINIS: The recess.

THE COURT: I think we will take the noon luncheon recess.

(Whereupon, at 1:04 o'clock p.m., the inquest was recessed for lunch.)

### AFTERNOON SESSION

2:00 p.m.

THE COURT: All right, Mr. Dinis.

Q [By Mr. Dinis] Mr. Kennedy, you said that you made a phone call to a friend, Mr. Burke Marshall?

A I made a phone call with the intention of reaching Mr. Burke Marshall.

Q You did not reach him?

A No, I did not.

Q And then I believe the evidence is that you left Chappaquiddick Island, crossed over on the ferry and went over to the local police department?

A That is correct.

Q There you made a report to Chief Arena?

A That is right.

Q And you arrived at the police station at approximately 10:00 a.m.?

A I think it was sometime before 10:00.

Q And you made a statement in writing, is that correct?

A That's correct.

Q Did the chief reduce this to a typewritten statement, do you know?

A No, he did not.

Q Now, I have in my hand what purports to be the statement that you made to Chief Arena at that time, and I would like to give you a copy of that, and in this statement you say -- well, would you read it first, Senator?

A Yes.

That is correct.

Q Now, Senator, prior to the phone call you made, the effort you made to contact Burke Marshall by phone, did you make any other phone calls?

A Yes, I did.

Q Where did you make these phone calls?

A I made one call after 8 o'clock in the morning from the public phone outside of the restaurant at the Shiretown Inn.

Q One call?

A That is all. This was made sometime after 8:00.

Q And to whom did you make this call?

A I was attempting to reach Mr. Stephen Smith, the party that I felt would know the number.

Q Were you alone in the police station?

A No. At certain times I was, but if the thrust of the question is did I arrive at the police station with someone with me, I did.

Q And who was that?

A Mr. Markham.

Q Mr. Markham?

A Yes.

Q With regard to the statement that you made at the police station, Senator, you wind up by saying, "When I fully realized what had happened this morning I immediately contacted the police."

Now, is that in fact what you did?

THE COURT: Mr. Dinis, are you going to ask the statement be put in the record?

MR. DINIS: Yes, your Honor.

THE COURT: Mr. Kennedy already said this was a copy of the statement he made. He already testified as to all his movements. Now, won't you let the record speak for itself?

MR. DINIS: All right, your Honor.

THE COURT: This will be Exhibit--

MR. TELLER: 2.

THE COURT: --2.

[Statement given to Chief Arena by Senator Kennedy marked Exhibit 2.]

Q [By Mr. Dinis] Senator, you testified earlier that when you arrived at the cottage you asked Mr. LaRosa to tell Mr. Markham you were outdoors, outside of the house, when you arrived back at the house?

A No, that is not correct.

Q Did you ask someone to call Mr. Markham?

A I asked Joe Gargan when he entered the vehicle to call for Mr. Markham.

Q Well, did you at that time ask anyone to take you back to Edgartown at that time when you arrived back at the house after the accident?

A No. I asked Mr. Gargan to go to the scene of the accident.

Q But you didn't ask anyone to take you back directly to Edgartown?

A I asked them to take me to Edgartown after their diving.

Q After the diving?

A After their diving.

Q I show you, Mr. Kennedy, what purports to be a copy of the televised broadcast which you made approximately a week after the accident. Would you read that statement and tell me whether or not that is an exact copy of what you said?

A [Witness complied.] Yes.

After a quick reading of it, I would say that that is accurate.

MR. DINIS: Your Honor, may I introduce this statement made by Senator Kennedy in a televised broadcast?

THE COURT: You may, Exhibit No. 3.

[Statement made by Senator Kennedy in televised broadcast marked Exhibit 3.]

Q Now, Senator, in that televised broadcast, you said and I quote, "I instructed Gargan and Markham not to alarm Mary Jo's friends that night," is that correct?

A That is correct. I would like to ---

Q Look at it?

A --- look at it. I believe that that is correct.

Q It would be on Page 3.

(Witness examined document.)

A That is correct.

Q Can you tell the Court what prompted you to give this instruction to Markham and Gargan?

A Yes, I can.

Q Will you do that, please?

A I felt strongly that if those girls were notified that an accident had taken place and that Mary Jo had in fact drowned, which I became convinced of by the time that Markham and Gargan and I left the scene of the accident, that it would only be a matter of seconds before all of those girls who were long and dear friends of Mary Jo's to go to the scene of the accident and dive themselves and enter the water and with, I felt, a good chance that some serious mishap might have occurred to any one of them. It was for that reason that I refrained - asked Mr. Gargan and Mr. Markham not to alarm the girls.

MR. DINIS: I have no further questions of Mr. Kennedy.

THE COURT: And I have no further questions. Would you be available in the event we needed you back for anything?

THE WITNESS: I will make myself so available, your Honor.

THE COURT: Well, were you planning to stay in Hyannisport or some place near?

THE WITNESS: Well, I will. I will be glad to be available.

THE COURT: Otherwise you would go back to Boston?

THE WITNESS: No, I would return to Cape Cod tonight and I would hope to be able to return to Washington sometime this week, but I would be glad to remain available to the Court if the Court so desired.

THE COURT: Well, it is difficult for me to say right now.

THE WITNESS: Well, then, I will remain available as long as ---

THE COURT: We will try to give you as much notice as possible if we felt it essential to have you back.

MR. DINIS: Your Honor, I think we could make it an overnight notice, so if the Senator had to be in Washington, we would arrange for his arrival the next day, if necessary, which may not be.

THE COURT: All right, subject to that, you are excused.

THE WITNESS: Your Honor, could I talk to my counsel before being released, just on one point that I might like to address the bench on?

THE COURT: Go ahead.

(Off the record discussion between Mr. Kennedy and lawyers.)

(An off the record discussion.)

THE COURT: And I think we can put in the record this question. Why did you not seek further assistance after Mr. Markham and Mr. Gargan had exhausted their efforts in attempting to reach Mary Jo? Now, you give the answer.

THE WITNESS: It is because I was completely convinced at that time that no further help and assistance would do Mary Jo any more good. I realized that she must be drowned and still in the car at this time, and it appeared the question in my mind at that time was, what should be done about the accident.

THE COURT: Anything further? Off the record.

(Discussion off the record.)

THE COURT: All right, take this.

THE WITNESS: Since the alcoholic intake is relevant; there is one further question, your Honor, and although I haven't been asked it, I feel that in all frankness and fairness and for a complete record that it should be included as a part of the complete proceedings, and that is that during the course of the race that afternoon that there were two other members of my crew and I shared what would be two beers between us at different points in the race, and one other occasion in which there was some modest intake of alcohol would be after the race at the slip in which Ross Richards' boat was attached, moored, that I shared a beer with Mr. John Driscoll. The sum and substance of that beer would be, I think, less than a quarter of one, but I felt that for the complete record that at least the Court should at least be aware of these instances as well.

THE COURT: Anything more?

THE WITNESS: There is nothing further.

THE COURT: Anything more, Mr. Dinis?

MR. DINIS: No, your Honor.

THE COURT: All right, you are excused subject to further recall. Off the record.

(Discussion off the record.)

THE COURT: All right, your next witness, Mr. Dinis.

MR. DINIS: Mr. Malloy of the Phone Company.

THE COURT: Ask the officer to bring him in.

**TESTIMONY  
OF  
A. ROBERT MALLOY**

Before:

Hon. James A. Boyle, Justice of the  
Edgartown District Court

Present:

Edmund Dinis, District Attorney for the  
Southern District of Massachusetts,  
Armand Fernandes, Assistant District Attorney,  
Peter Gay, Assistant District Attorney,  
for the Commonwealth.

Charles R. Parrott, Esq., in behalf of  
New England Telephone Company.

Thomas Teller, Clerk of Courts

Helen S. Tyra, Temporary Court Officer

Harold T. McNeil and Sidney R. Lipman,  
Official Court Stenographers.

Edgartown, Massachusetts  
Monday, January 5, 1970.

MR. DINIS: Mr. Malloy, would you please take the witness stand?

MR. PARROTT: I represent the New England Telephone Company today.

MR. DINIS: Are you an attorney?

MR. PARROTT: Yes, I am an attorney.

THE COURT: Have you filed an appearance?

MR. PARROTT: Not as of - not yet, your Honor.

THE COURT: I wish you would do so. Were you here this morning?

MR. PARROTT: Yes, your Honor, I was.

A. ROBERT MALLOY, Sworn

EXAMINATION BY MR. DINIS:

Q Your name, please?

A A. Robert Malloy.

Q And your legal address?

A 37 Alba Road, Wellesley Hills.

Q And you are employed by the New England Telephone Company?

A That is correct.

Q In what capacity?

A I am general accounting supervisor in Massachusetts.

Q Now, in regard to a summons directed to John O'Connor, and, by the way, what is Mr. O'Connor's position with the phone company?

A He currently is commission manager in Hyannis.

Q I see. Did you bring with you as a result of that summons records of telephone calls made with a credit card of Edward M. Kennedy on July 18th and 19th, 1969?

A I did, sir.

Q Do you have those records with you?

A Yes, I do.

Q Would you produce those records at this time?

A Yes.

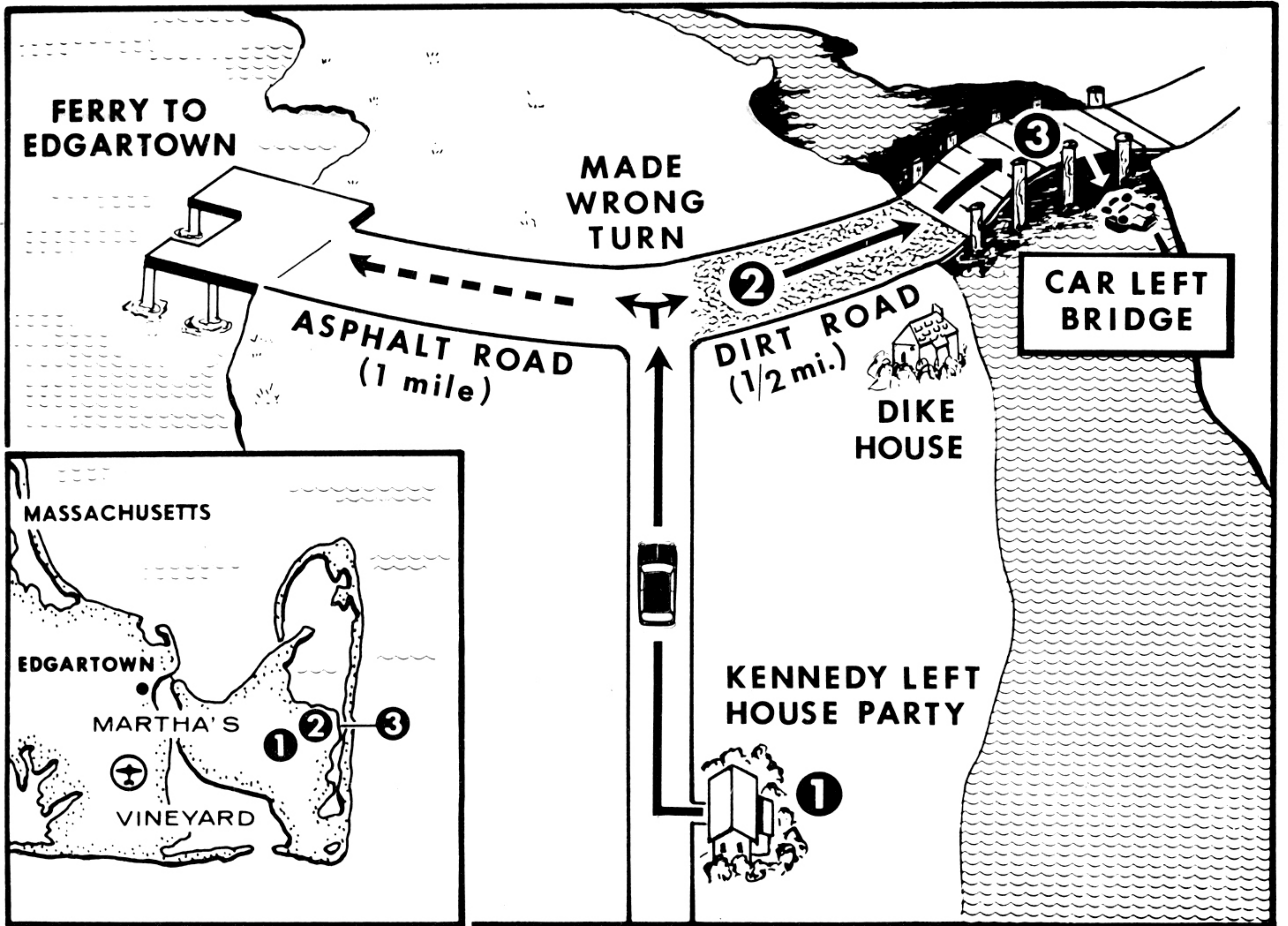
THE COURT: This doesn't mean one single thing if the name of the witness doesn't appear.

MR. PARROTT: Fine, your Honor, will add it on.

Q Now, in response to my inquiry, did you tell me that Edward M. Kennedy had more than one credit card?

A The information that I have on credit cards that are billed through Senator Kennedy's accounts are, in one case there were more than one billed to a single account, yes, sir.

THE COURT: You are talking about the number of cards;



*Route taken by Sen. Kennedy and Mary Jo that July night.*

FIRST DAY

Opening Statement by Judge Boyle and Testimony of  
Edward M. Kennedy

BEFORE:

Hon. James A. Boyle, Justice of the Edgartown District  
Court

PRESENT:

Edmund Dinis, District Attorney for the Southern District  
of Massachusetts,  
Armand Fernandes, Assistant District Attorney,  
Peter Gay, Assistant District Attorney, for the Common-  
wealth.

Edward B. Hanify, Esq. and Robert G. Clark, Jr., Esq., in  
behalf of Edward M. Kennedy.

Thomas Teller, Clerk of Courts  
Helen S. Tyra, Temporary Court Officer  
Harold T. McNeil and Sidney R. Lipman  
Official Court Stenographers.

Edgartown, Massachusetts  
Monday, January 5, 1970

MR. TELLER. The inquest re: Mary Jo Kopechne origi-  
nally scheduled for September 3, 1969, restrained by order  
of a Justice of the Massachusetts Supreme Court and re-  
scheduled for today, will now begin.

The Court will recess for lunch at 1:00 p.m. and will  
resume at 2:00 p.m.

THE COURT. Today.

[Sidney R. Lipman and Harold T. McNeil sworn as official  
inquest stenographers.]

THE COURT. It appears to be appropriate at the outset of  
this inquest that the reason for its existence, the results that  
it is intended to accomplish, and the rules of procedure and  
conduct I am adopting and ordering, with reasons therefor,  
where advisable, should be pronounced, to the end that all  
shall take due notice thereof and be duly forewarned.

The pertinent statutory proceedings in Massachusetts ex-  
emplify a public policy that the inquest serves as an aid in the  
achievement of justice in obtaining information as to whether  
or not a crime has been committed, so says our Massachusetts  
Supreme Court in 1969. Inquests are, of course, primarily for  
the purpose of ascertaining whether or not any crime has been  
committed says the Massachusetts Law Quarterly 1921. The  
primary object of an inquest is to ascertain the facts, to de-  
cide the question of whether or not criminal proceedings shall  
be instituted against the person or persons responsible for the  
death. Massachusetts Law Quarterly 1925.

I am grateful to you, Mr. Hanify, for your very accurate  
Memorandum of Law.

MR. HANIFY. Thank you, your Honor.

THE COURT. An inquest is an investigation. It is not a  
prosecution of anybody. It is not a trial of anyone. It is the  
duty of the Court to seek out and receive any and all infor-  
mation and testimony which is relevant, pertinent and mate-  
rial to the question as to whether criminal conduct caused or  
contributed to the death and conversely to reject that which  
is not.

Although the Judge is not bound by the rules of evidence  
that apply in criminal cases, it is as much the duty of the  
Court to decline to receive such improper testimony to the  
end that persons innocent of any criminal involvement be not  
injured in reputation.

For the reasons stated above and because this is not an  
adversary proceeding, transcript of testimony will not be fur-  
nished to the District Attorney or counsel.

The District Attorney, who is given an option by the statute  
to examine witnesses, does not function as a prosecutor but  
rather as an aide to the Court in the presentation of testimony.  
This assistance does not relieve the Court of the duty to seek  
and obtain additional information if it considers such to be  
necessary.

Witnesses will come into the courtroom singly; may be  
represented during their appearance in the courtroom by  
counsel for the sole purpose of advice or constitutional rights  
against self-incrimination and, where appropriate, on privi-  
leged communications and for no other purpose, and counsel  
for that witness will leave the courtroom when the witness  
leaves the courtroom.

If circumstances arise where in my opinion the cause of  
justice will be served I will relax this rule. If counsel has addi-  
tional testimony which will be helpful and material I will re-  
ceive it.

I will not exercise the option to separate witnesses. The  
personal facilities of the courthouse do not allow it and much  
time has elapsed, many witnesses have been interviewed by  
the press, some have previously testified in another court and  
some have been closely associated, so I question that their  
separation will have any value.

However, witnesses after testifying are ordered not to  
discuss their testimony with anyone except his or her counsel  
until the transcript of the testimony and the Court's report  
have been made public. There may be some difficulty in this  
regard as to those witnesses who have the same counsel, so  
such counsel is ordered not to discuss the testimony of one  
client with another client. Witnesses, if not fully briefed by  
counsel before testifying, will be advised by the Court as to  
their constitutional right not to incriminate themselves.

The inquest has been closed by the Massachusetts Supreme  
Judicial Court. As I interpret that decision, the purpose is to  
prevent pre-trial publicity in the event of a subsequent crimi-  
nal prosecution. However, nothing in this announcement  
would jeopardize that. Therefore, since the press is here in  
force outside and may publish which is conjectural or dis-  
torted, it is my intention to release this announcement to the  
news media.

MR. FERNANDES: If your Honor please, solely for the  
purposes of the letter which your Honor has sent to the  
District Attorney's office in presenting a memorandum or  
brief; as a reply, we did a significant amount of research  
including two trips to Boston. However, in preparing the  
brief or memorandum, Mr. Hanify's brief came to our office  
and we found it to be excellent and we agree with the law he  
found and in fact we found nothing different than what he  
stated in his brief.

THE COURT: We are short of facilities. I will now ask the  
witnesses to leave. We have a room here, the so-called jury  
room and we have a law library. You are not limited to go  
there until you are needed here.

I am concerned where you are, and I want to discuss later  
with the District Attorney the question of whether or not the  
timing may be such as some witnesses may be excused for a  
morning or for a day. It is not our intention to force you to  
remain in some closed enclosure, some small enclosure here  
for a length of time. For the moment at least witnesses will  
leave and go through that door, because you are going in a  
room in that direction.

(All witnesses left the room.)

MR. HANIFY: Might I address your Honor for a moment?  
I would like to express my appreciation of Mr. Fernandes'  
pleasant tribute to my memorandum. I am delighted that we  
seem to be in accord with respect to the nature of the presen-  
tation made therein.

I note that your Honor has said that witnesses - counsel  
will leave with witnesses, with their witness and that you will  
relax that rule if it is necessary. I take it that in substance -

THE COURT: That is not quite what I said, but -

MR. HANIFY: Well, what I wanted -

THE COURT: If the circumstances warrant it in my  
opinion.

MR. HANIFY: In your opinion. I understand that, your  
Honor. I just wanted to be sure so far as I am concerned as  
counsel for Edward M. Kennedy, I will be permitted with  
Judge Clark to be here while he testifies, but unless you make  
some other rule, I will be excused and will not be permitted  
to remain.

THE COURT: Yes.

MR. HANIFY: Is that correct?

THE COURT: Yes.

MR. HANIFY: Thank you, your Honor. To the extent of  
any regard for preservation of rights on that point, I respect-  
fully make it.



COMMONWEALTH OF MASSACHUSETTS  
 Dukes County, ss District Court  
 Inquest re Mary Jo Kopechne  
 Docket No. 15220

**REPORT**  
 James A. Boyle, Justice

I, James A. Boyle, Justice of the District Court for the County of Dukes County, in performance of the duty required of me by Section 12 of Chapter 38 of the General Laws of Massachusetts, in the matter of the inquest into the death of Mary Jo Kopechne, holden at Edgartown January 5, 1970 to January 8, 1970 inclusive, herewith submit my report.

There are 763 pages of transcript and 33 numbered exhibits. Although most testimony was given orally, some was accepted by affidavit and included as exhibits.

It is believed that, to aid in understanding this report, certain names and places should first be relatively located and some measurements shown;

- (1) The Town of Edgartown, which is one of six towns on Martha's Vineyard, includes a small, sparsely settled island named Chappaquiddick. (Map, Exhibit 32)
- (2) The mainland of Edgartown is separated from Chappaquiddick by Edgartown Harbor, the distance between being approximately five hundred feet, and transportation of vehicles and persons is provided by a small motor ferry which plies between two ferry slips or landings. The ferry slip on the Edgartown side is near the center of town. (Exhibit 19)
- (3) Chappaquiddick has few roads. At the ferry slip, begins a macadam paved road called Chappaquiddick Road, the main road of the island, with a white center line which is partly obliterated at the Curve. The road is approximately twenty feet wide, running in a general easterly direction for two and one-half miles, whence it

- Curves south and continues in that direction past the Cottage to the southeast corner of the island. Chappaquiddick Road is sometimes referred to in the testimony as Main Street and, after it Curves, as School Road or Schoolhouse Road, because a schoolhouse formerly stood on that portion of it. (Exhibits 16, 19)
- (4) At the Curve, and continuing easterly, begins Dyke Road, a dirt and sand road, seventeen to nineteen feet wide, which runs a distance of seven-tenths mile to Dyke Bridge, shortly beyond which is the ocean beach. (Exhibits 15, 16, 17)
- (5) Dyke Bridge is a wooden structure, ten feet six inches wide, has timber curbs on each side four inches high by ten inches wide, no other guard rails, and runs at an angle of twenty-seven degrees to the left of the road. There are no signs or artificial lights on the bridge or its approach. It spans Poucha Pond. (Exhibits 7, 8, 9, 10)
- (6) The Kennedy Oldsmobile is eighteen feet long and eighty inches wide. (Exhibits 1, 33)
- (7) Poucha Pond is a salt water tidal pond, and has a strong current where it narrows at Dyke Bridge. (Exhibits 10, 18)
- (8) Cemetery Road is a single car-width private dirt road, which runs northerly from the junction of Chappaquiddick and Dyke Roads. (Exhibits 16, 22)
- (9) The Lawrence Cottage (herein called Cottage) is one-half miles from the junction of Chappaquiddick and Dyke Roads and approximately three miles from the

ferry slip. (Exhibit 20)

- (10) Proceeding northerly from the Cottage, on the east side of Chappaquiddick Road, a distance of one-tenth mile before the Curve, is a metal sign with an arrow pointing toward the ferry landing.
- (11) Katama Shores Motor Inn (called Katama Shores) is located approximately two miles from the Edgartown ferry slip.
- (12) Shiretown Inn (called Shiretown) is a very short distance from the Edgartown ferry slip, approximately one block.

Although the testimony is not wholly consistent, a general summary of the material circumstances is this: A group of twelve persons, by invitation of Edward M. Kennedy, a United States Senator from Massachusetts, were gathered together at Edgartown to attend the annual sailing regatta held on Friday and Saturday, July 18 and 19, 1969. They were

John B. Crimmins	Rosemary Keough
Joseph Gargan	Mary Jo Kopechne
Edward M. Kennedy	Ann (also called Nance) Lyons
Raymond S. LaRosa	Maryellen Lyons
Paul F. Markham	Esther Newburgh
Charles C. Tretter	Susan Tannebaum

(All hereafter referred to by surnames)

The six young women, in their twenties, had been associated together in Washington, D. C. and were quite close friends. Kopechne shared a Washington apartment with Ann Lyons. Reservations had been made for them to stay at Katama Shores, in three double rooms. Kopechne roomed with Newburgh. Crimmins, chauffeur for Kennedy when he was in Massachusetts, drove Kennedy's black Oldsmobile sedan from Boston to Martha's Vineyard on Wednesday, July 16. He brought a supply of liquor with him and stayed at the Cottage. Tretter, who brought some of the young women, arrived late Thursday and stayed at Shiretown. LaRosa, who brought his Mercury car, came Thursday and shared the room with Tretter. Gargan and Markham sailed Kennedy's boat to Edgartown on Thursday and roomed together at Shiretown. Kennedy arrived by plane on Friday, July 18, was met by Crimmins at the airport, and was driven to the Cottage. Kennedy shared a room at Shiretown with Gargan. The Lyons sisters arrived Friday morning and were driven by Gargan to Katama Shores. Markham, who stayed at Shiretown Thursday night, moved to the Cottage to stay with Crimmins for Friday and Saturday nights. Kennedy, with Gargan, was entered to sail his boat in the regatta on Friday and Saturday.

The Cottage became headquarters for the group and a cook-out was planned for Friday night. Three cars were available for general transportation; LaRosa's Mercury, Kennedy's Oldsmobile 88, and a rented white Valiant.

Thursday night, those present, including Kopechne, visited the Cottage; Friday morning, they, including Kopechne, traveled over Dyke Bridge to the beach to swim; Friday evening, they, including Kopechne, traveled to the Cottage for the cook-out. Kennedy, who arrived at 1:00 P.M. Friday and was driven by Crimmins to the Cottage, was then driven by Crimmins over Dyke Road and Dyke Bridge to the beach to swim; he was driven back to the Cottage to change, to the ferry to sail in the race and, after the race, was driven back to the Cottage. There were other trips between Edgartown and the Cottage but not including Kopechne or Kennedy. These are set forth to indicate the use of, and increasing familiarity with, the roads on Chappaquiddick.

The Cottage is small, contains a combination kitchen-living room, two bedrooms and bath, has an open yard, no telephone, and is near to and visible from Chappaquiddick Road, which had little traffic. The entire group of twelve had assembled there by approximately 8:30 P.M. on Friday. Two cars were available for transportation on Chappaquiddick, the Oldsmobile and Valiant. LaRosa's Mercury was at the Shiretown. Activities consisted of cooking, eating, drinking, conversation, singing, and dancing. Available alcoholic beverages consisted of vodka, rum, scotch, and beer. There was not much drinking and no one was under the influence of liquor at any time. No one admitted to more than three drinks; most only to two or less.

During the evening, Tretter, with Keough, drove to Edgartown in the Oldsmobile to borrow a radio. Keough left her pocketbook in the vehicle on that trip.

Only Crimmins and Markham planned to stay the night at the Cottage. The others intended to return to their respective hotels in Edgartown. It was known that the last ferry trip was about midnight, but that a special arrangement for a later trip could be made.

Between 11:15 and 11:30 P.M. Kennedy told Crimmins (but no other person) that he was tired, wanted to return to Shiretown to bed, that Kopechne did not feel well (some conflict here - see pages 32 and 346) and he was taking her back to Katama Shores, requested and obtained the car keys to the Oldsmobile, and both he and Kopechne departed. Kopechne told no one, other than Kennedy, that she was leaving. Kopechne left her pocketbook at the Cottage.

Kennedy stated he drove down Chappaquiddick Road toward the ferry, that when he reached the junction of Dyke Road, instead of bearing left on the Curve to continue on Chappaquiddick Road, he mistakenly turned right onto Dyke Road, realized at some point he was on a dirt road, but thought nothing of it, was proceeding at about twenty miles per hour when suddenly Dyke Bridge was upon him. He braked but the car went off the bridge into Poucha Pond and landed on its roof. The driver's window was open and he managed to reach the surface and swim to shore. It was extremely dark, there was a strong current, and repeated efforts by him to extricate Kopechne from the car were unsuccessful. Exhausted, he went to shore and, when recovered, walked back to the Cottage, not noticing any lights or houses on the way. He summoned Gargan and Markham, without notifying the others, and they returned in the Valiant to the bridge, where Gargan and Markham unsuccessfully attempted to recover Kopechne.

The three drove back to the ferry landing. After much discussion, it was decided that Kennedy would return to Edgartown (no mention how) to telephone David Burke, his administrative assistant, and Burke Marshall, an attorney, and then report the accident to the police. Kennedy advised Gargan and Markham to return to the Cottage but not to tell the others of the accident. Suddenly and unexpectedly, Kennedy left the car, dove into the harbor and swam across to Edgartown. Gargan and Markham finally returned to the Cottage, but did not then tell the others what had occurred.

After Kennedy and Kopechne had left the Cottage, their purported destination unknown to anyone except Crimmins, the social activities gradually diminished. The absence of Kennedy and Kopechne was noticed but it was presumed they had returned to Edgartown. Some persons went walking. Only LaRosa saw Kennedy return at about 12:30 A.M. and he, at Kennedy's request, summoned Gargan and Markham, who went to Kennedy, seated outside in the rear seat of the Valiant, and they took off. When Markham and Gargan returned about 2:00 A.M., some were sleeping and the others, realizing they would not return to Edgartown that night, then slept or tried to. There not being sufficient beds, some slept on the floor.

In the morning, those in the Cottage returned to Edgartown at different times. The young women eventually reached Katama Shores and were then told what had happened, although some of them had previously been made aware that Kopechne was missing.

Kennedy, after swimming across to Edgartown, went to his room, took off his wet clothes, lay on the bed, then dressed, went outside and complained to someone (later identified as the innkeeper, Russell Peachey) of noise and to inquire the time. He was told it was 2:25 A.M. He returned to his room and remained there until 7:30 A.M. when he went outside, met Richards, a sailing competitor; chatted with him for one-half hour, when Gargan and Markham appeared and the three retired to Kennedy's room. When Kennedy informed them he had failed to report the accident, they all went to Chappaquiddick to use the public telephone near the ferry slip and Kennedy called David Burke, his administrative assistant, in Washington. (But Exhibit 4, list of calls charged to Kennedy,



does not show this call.) Gargan returned to the Cottage to tell those there about the accident. Kennedy and Markham went to the Edgartown Police Station, and were later joined by Gargan.

At about 8:20 A.M., Police Chief Arena, receiving notice of a submerged car at Dyke Bridge, hurried to the scene, changed into swim trunks, and made several futile attempts to enter the Oldsmobile. Farrar, a scuba diver, was summoned, found and recovered the body of Kopechne from the car, and also found in the car the pocketbook of Keough. The car was later towed to shore.

Dr. Ronald R. Mills of Edgartown, Associate Medical Examiner, was summoned and arrived about 9:15 A.M.; examined the body and pronounced death by drowning; turned it over to Eugene Frieh, a mortician, who took the body to his establishment at Vineyard Haven. The clothing and a sample of blood from the body were turned over to the State Police for analysis. No autopsy was performed and the body was embalmed and flown to Pennsylvania on Sunday for burial.

When Kennedy and Markham arrived at the Police Station, Chief Arena was at Dyke Bridge. He returned to the station at Kennedy's request. Kennedy stated he was the operator of the car and dictated a statement of the accident as Markham wrote it down. Chief Arena then typed the statement which Kennedy said was correct but did not sign. (Exhibit 2)

On July 25, 1969, Kennedy pleaded guilty in this Court to, and was sentenced on, a criminal charge of "leaving the scene of an accident after causing personal injury, without making himself known." That same night, Kennedy made a television statement to the voters of Massachusetts. (Exhibit 3)

A petition by District Attorney Edmund Dinis in the Court of Common Pleas for Lucerne County, Pennsylvania, for exhumation and autopsy on the body of Kopechne, was denied after hearing. Expert evidence was introduced that chemical analysis of the blouse worn by Kopechne showed blood stains, but medical evidence proved this was not inconsistent with death by drowning. (Exhibit 31)

Christopher F. Look, Jr., a deputy sheriff then living on Chappaquiddick, was driving easterly on Chappaquiddick Road to his home about 12:45 A.M. on July 19. As he approached the junction of Dyke Road, a car crossed in front of him and entered Cemetery Road, stopped, backed up, and drove easterly on Dyke Road. He saw two persons in the front seat a shadow on the shelf back of the rear seat which he thought could have been a bag, article of clothing, or a third person. The car was dark colored with Massachusetts registration plate L7----7. He was unable to remember any other numbers or how many there were intervening. Later that morning, he saw the Kennedy Oldsmobile when it was towed to shore, but he cannot positively identify it as the same car he saw at 12:45 A.M. During the inquest, a preliminary investigation was initiated through the Registry of Motor Vehicles to determine whether a tracking of the location on July 18 and 19, 1969, of all dark colored cars bearing Massachusetts plates with any and all combinations of numbers beginning with L7 and ending in 7, would be practicable. The attempt disclosed that it would not be feasible to do this since there would be no assurance that the end result would be helpful and, in any event, the elimination of all other cars within that registration group, (although it would seriously affect the credibility of some of the witnesses) would not alter the findings in this report.

A short distance before Dyke Bridge, there is a small house called "Dyke House," then occupied by a Mrs. Malm and her daughter. (Exhibit 18) Both heard a car sometime before midnight but are not sure of its direction. The daughter turned off her light at midnight. (Page 593 et seq.)

Drs. Watt and Brougham examined Kennedy on July 19 and 22. Diagnostic opinion was "concussion, contusions and abrasions of the scalp, acute cervical strain. Impairment of judgment and confused behavior are consistent with this type of injury." (Exhibit 27)

Eugene D. Jones, a professional engineer, testified by affidavit as to the condition of Dyke Road and Dyke

Bridge and concluded that the site is well below approved engineering standards and particularly hazardous at night. (Exhibits 29, 30)

Donald L. Sullivan, an employee of Arthur D. Little, Inc., testified by affidavit as to a road test conducted on or about October 10, 1969 describing the factors involved in a motor vehicle, on high beam light, approaching Dyke Bridge at night, with film showing the results of such test. (Exhibit 28)

State Police Chemist McHugh, who analyzed the blood sample taken from the body of Kopechne, testified the alcoholic content was .09 percent, the equivalent of three and one-half to five ounces of eighty to ninety proof liquor consumed by a person, weighing about one hundred ten pounds, within an hour prior to death, or a larger amount if consumed within a longer period.

This concludes, in substance, the material circumstances as testified to by the witnesses.

The failure of Kennedy to seek additional assistance in searching for Kopechne, whether excused by his condition, or whether or not it would have been of any material help, has not been pursued because such failure, even when shown, does not constitute criminal conduct.

Since there was no evidence that any air remained in the immersed car, testimony was not sought or allowed concerning how long Kopechne might have lived, had such a condition existed, as this could only be conjecture and purely speculative.

As previously stated, there are inconsistencies and contradictions in the testimony, which a comparison of individual testimony will show. It is not feasible to attempt to indicate each one.

I list my findings as follows:

- I. The decedent is Mary Jo Kopechne, 28 years of age, last resident in Washington, D. C.
- II. Death probably occurred between 11:30 P.M. on July 18, 1969 and 1:00 A.M. on July 19, 1969.
- III. Death was caused by drowning in Poucha Pond at Dyke Bridge on Chappaquiddick Island in the Town of Edgartown, Massachusetts, when a motor vehicle, in which the decedent was a passenger, went off Dyke Bridge, overturned and was immersed in Poucha Pond. The motor vehicle was owned and operated by Edward M. Kennedy of Boston, Massachusetts.

The statute states that I must report the name of any person whose unlawful act or negligence appears to have contributed to Kopechne's death. As I stated at the commencement of the hearing, the Massachusetts Supreme Court said in its decision concerning the conduct of this inquest "the inquest serves as an aid in the achievement of justice by obtaining information as to whether a crime has been committed." In LaChappelle vs. United Shoe Machinery Corporation, 318 Mass. 166, decided in 1945, the same Court said "It is designed merely to ascertain facts for the purpose of subsequent prosecution" and "... the investigating judge may himself issue process against a person whose probable guilt is disclosed." (Emphasis added)

Therefor, in guiding myself as to the proof herein required of the commission of any unlawful act, I reject the cardinal principle of "proof beyond a reasonable doubt" applied in criminal trials but use as a standard the principle of "probable guilt."

I have also used the rule, applicable to trials, which permits me to draw inferences, known as presumption of facts, from the testimony. There are several definitions and I quote from the case of Commonwealth vs. Green, 294 Pa. 573: "A presumption of fact is an inference which a reasonable man would draw from certain facts which have been proven. The basis is in logic and its source is probability." Volume 29 American Jurisprudence 2nd Evidence Section 161 states in part, "A presumption of fact or an inference is nothing more than a probable or natural explanation of facts... and arises from the commonly accepted experiences of mankind and the inferences which reasonable men would draw from experiences."

I find these facts:

- A. Kennedy was the host and mainly responsible for the assembly of the group at Edgartown.
- B. Kennedy was rooming at Shiretown with Gargan, his

- cousin and close friend of many years.
- C. Kennedy had employed Crimmins as chauffeur for nine years and rarely drove himself. Crimmins drove Kennedy on all other occasions herein set forth, and was available at the time of the fatal trip.
  - D. Kennedy told only Crimmins that he was leaving for Shiretown and requested the car key.
  - E. The young women were close friends, were on Martha's Vineyard for a common purpose as a cohesive group, and staying together at Katama Shores.
  - F. Kopechne roomed with Newburgh, the latter having in her possession the key to their room.
  - G. Kopechne told no one, other than Kennedy that she was leaving for Katama Shores and did not ask Newburgh for the room key.
  - H. Kopechne left her pocketbook at the Cottage when she drove off with Kennedy.
  - I. It was known that the ferry ceased operation about midnight and special arrangements must be made for a later trip. No such arrangements were made.
  - J. Ten of the persons at the cook-out did not intend to remain at the Cottage overnight.
  - K. Only the Oldsmobile and the Valiant were available for transportation of those ten, the Valiant being the smaller car.
  - L. LaRosa's Mercury was parked at Shiretown and was available for use.

I infer a reasonable and probable explanation of the totality of the above facts is that Kennedy and Kopechne did not intend to return to Edgartown at that time; that Kennedy did not intend to drive to the ferry slip and his turn onto Dyke Road was intentional. Having reached this conclusion, the question then arises as to whether there was anything criminal in his operation of the motor vehicle.

From two personal views, which corroborate the Engineer's statement (Exhibit 29), and other evidence, I am fully convinced that Dyke Bridge constitutes a traffic hazard, particularly so at night, and must be approached with extreme caution. A speed of even twenty miles per hour, as Kennedy testified to, operating a car as large as this Oldsmobile, would at least be negligent and, possibly, reckless. If Kennedy knew of this hazard, his operation of the vehicle constituted criminal conduct.

Earlier on July 18, he had been driven over Chappaquiddick Road three times, and over Dyke Road and Dyke Bridge twice. Kopechne had been driven over Chappaquiddick Road five times and over Dyke Road and Dyke Bridge twice.

I believe it probable that Kennedy knew of the hazard that lay ahead of him on Dyke Road but that, for some reason not apparent from the testimony, he failed to exercise due care as he approached the bridge.

IV. I, therefor, find there is probable cause to believe that Edward M. Kennedy operated his motor vehicle negligently on 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.

February 18, 1970

JAMES A. BOYLE  
Justice

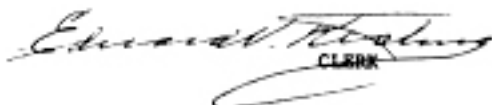
Commonwealth of Massachusetts.

SUFFOLK, ss.

SUPERIOR COURT FOR THE TRANSACTION  
OF CRIMINAL BUSINESS No. 47279

I, EDWARD V. KEATING, Clerk of the Superior Court for the Transaction of Criminal Business within and for the County of Suffolk, certify that the foregoing is a true copy of a document entitled "TRANSCRIPT" consisting of five volumes containing pages numbered from 1 to 763, and three documents consisting of 29 unnumbered pages entitled: 1.) Affidavit of Robert D. Watt; 2.) Affidavit of Donald L. Sullivan; 3.) Affidavit of Eugene D. Jones, said three documents having been made part of the record by the Justice of the District Court of Dukes County.

IN TESTIMONY WHEREOF, I hereunto set my hand this thirteenth day of April in the year of our Lord one thousand nine hundred and seventy.

  
CLERK

FORM 144-26-1 12

Commonwealth of Massachusetts.

SUFFOLK, ss.

SUPERIOR COURT FOR THE TRANSACTION  
OF CRIMINAL BUSINESS No. 47279

I, EDWARD V. KEATING, Clerk of the Superior Court for the Transaction of Criminal Business within and for the County of Suffolk, certify that the foregoing is a true copy of a document entitled "REPORT" - INQUEST RE: MARY JO KOPECHNE and which was filed in said Superior Court on February 18, 1970.

IN TESTIMONY WHEREOF, I hereunto set my hand this thirteenth day of April in the year of our Lord one thousand nine hundred and seventy.

CLERK

FORM 144-26-1 12