

COMMONWEALTH OF MASSACHUSETTS

Dukes, ss.

Edgartown District Court

FIRST DAY

INQUEST INTO THE DEATH OF

MARY JO KOPECHNE

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 Commonwealth.

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

JOHN J. McHUGH, SwornDIRECT EXAMINATION BY MR. FERNANDES:

Q For the record, would you please give the Court your full name?

A John J. McHugh, M-c H-u-g-h.

Q And where do you live, Mr. McHugh?

A 20 Brigham Road, B-r-i-g-h-a-m Road, Waltham, Massachusetts.

Q What is your occupation?

A State Police Chemist, Supervisor of Laboratories of the Department of Public Safety.

Q And how long have you been with that department?

A Twenty-four years.

Q If you prefer, you can sit down, Mr. McHugh; and if your Honor please, does your Honor wish the witness to be qualified?

THE COURT: I think you had better. This is a transcript of record.

Q (By Mr. Fernandes.) What is your educational background?

A I graduated from Tufts College. My degree was Bachelor of Science of Chemical Engineering in 1941 and graduate work at New York University, Boston University, Massachusetts Institute of Technology.

can say so.

A The first problem comes up on that level in bringing it over to the question of drink is the weight of the person involved. Now, in this particular case, assuming the party -- I don't know if you would allow this -- but assuming the party is 110 pounds or thereabouts, it would be consistent with about 3.75 to five ounces, 30 to 90 proof liquor within one hour prior to death. Now, let me put that another way. It could result from that or it could result into higher amounts of liquor over a period of two hours prior to death.

THE COURT: As a matter of fact, am I true in this; alcohol diminishes in the blood with time?

THE WITNESS: That is right, sir.

THE COURT: And a lot depends on how frequently you are replenishing it?

THE WITNESS: That is right, sir.

THE COURT: Taking a test such as this will give you no idea if you didn't know how much over how long a period of time a person had been drinking. That is, it would give you no idea of how much they had to drink?

THE WITNESS: Exactly.

examination of this item under visible and ultraviolet light disclosed the presence of reddish brown and brown washed-out stains principally on the back and left sleeve surfaces. Most of these stains gave positive benzidine reaction indicating the presence of residual traces of blood.

Q Would you point to those areas now?

A This would be the back of the shirt, this whole area in here gave positive benzidine tests. (Indicating.) To continue, the back of both sleeves and the back of the right sleeve of the submitted shirt reacted positive, right sleeve in particular reacted positive to the benzidine test. It is the back of these two sleeves extending down here. (Indicating.) Unusually strong benzidine tests were obtained on the outside rear collar areas of this shirt. That would be along this area right in here. (Indicating.)

Q All right. Did you examine any other items?

A If I might, confirmatory tests were repeatedly attempted to show as to the specific origin of this blood, but it was not possible to further define it outside of a positive benzidine test.

THE COURT: You mean to put it in a group?

DONALD R. MILLS, SwornEXAMINATION BY MR. FERNANDES:

Q Dr. Mills, will you please give the Court your full name?

A Surely. Donald R. Mills, M.D.

Q And your legal address?

A North Summer Street, Edgartown.

Q And you are a physician, are you not?

A Yes.

Q And have you a special occupation with reference to your profession?

A I am Associate Medical Examiner for the County.

Q And how long have you been so occupied, Doctor?

A In excess of 20 years.

Q And you have been a physician for how long in this community?

A Since 1935.

Q Now, Doctor, were you Associate Medical Examiner on or about July 18th and 19th, 1969?

A I was.

Q And sometime in that weekend and in your capacity as Medical Examiner, were you summonsed to so-called Dike Bridge?

Q Now, your duty as a Medical Examiner, Associate Medical Examiner is what, Doctor?

A To determine the cause of death.

Q Any death?

A Well, death in several categories of cases, unexplained deaths, deaths that have been unattended by a physician.

Q In general, to investigate sudden deaths, is that right?

A Yes, that is right.

Q Now, you say you made an examination of this body at the scene. Could you tell us exactly what you did, just for the record?

A Sure, I would be glad to. I pulled back the blankets and saw the body fully dressed, appropriately dressed of an attractive woman. I would say in her twenties, blonde, hair swept back, wearing some bracelets on her right wrist and arm. I believe there was a ring. She was in complete total rigor mortis.

Q Could you tell us how were her arms, down in a fixed position?

A Her arms were raised. Her hands in a sort of a semi-claw position.

Q You mean this fashion? (Indicating.)

A That is right.

Q And her head?

12
A Her head was tipped back a little bit to one side.

Q And, ----

A She was completely stiff; that is, in complete rigor mortis.

Q Could you tell from your examination, Doctor, approximately how long this body had been dead?

A My estimate was six or more hours.

Q Six or more hours.

THE COURT: Would you be able to give extreme limits both ways?

THE WITNESS: I really couldn't because of so many variables as far as rigor mortis is concerned; temperature of the water.

Q (By Mr. Fernandes) Temperature of the water for one?

A Yes.

Q Now, Doctor, you say that you formed an opinion as to what the cause of death was?

A Yes.

Q Could you tell us how you formed the opinion and then tell us what the opinion was?

A I formed my opinion by the fact that this girl was completely filled with water; that is, her bronchial tubes were full, her mouth was full of water. There

was water in her nose. This was clearly demonstrated by making just light pressure on the chest wall in which case water would simply pour out of the nose and mouth. There was some foam about the nose and mouth which is characteristic of drowning.

Q And your opinion was that she had died of drowning?

A Yes.

Q Did you find any external marks on the body?

A No.

Q In your examination, as I recall from previous testimony, Doctor, although you say you did not, I think you said you rendered a complete examination of the body, you did not remove all the clothing. You would ----

A No, that is correct.

Q Would you tell us exactly what you did?

A I removed the clothing as much as was necessary.

Q And you examined the head?

A Yes.

Q You found no incised wounds?

A No.

Q No other bruises?

A No.

Q How long were you at the scene with this body?

A Approximately from ten to fifteen minutes.

Q At that time was the identity of the body of the young woman known?

A It was not known to me.

Q And did there -- what did you do at that time after you finished examining the body?

A After I finished examining the body I released it to the undertaker.

Q Which was who?

A Eugene Frieh, and I instructed him to hold it pending my notification of the District Attorney's office, particularly in connection with whether an autopsy should be performed.

Q You say you released the body to the undertaker, the mortician?

A That is right.

Q And until conversation was had with the District Attorney?

A Yes.

Q Did you ever speak with the District Attorney personally at that time about the autopsy?

A No.

Q As a result of a conversation with someone in the State

Police, did you give any instructions to the mortician?

A Yes, I working through the State Police, which is my custom, I requested the officer to notify the District Attorney's office that such -- that there was such a case, giving the details, such details as I had and asking if an autopsy should be done, requesting an autopsy if in the opinion of the District Attorney's office an autopsy was indicated. I received a reply back that the District Attorney himself was not available at that time, but his associate, Lieutenant George Killen, had stated that if I was satisfied that there had been no foul play, that as far as he was concerned there was no need for an autopsy.

Q Did you receive instructions to take a blood sample?

A Yes, thank you, I did.

Q From Lieutenant Killen?

A Yes, from Lieutenant Killen.

Q And you related those instructions to the ----

A To the mortician.

Q To the mortician?

A That is right.

Q And then you released the body?

A Yes.

Q At that time the identity of the girl was still not known, is that right?

A I didn't know who the girl was.

Q And at the scene, Doctor, was there any mention of the fact that whether or not this girl had been alone in the car, were you aware -- let me strike that -- were you aware of any facts as to how the accident happened when you formed your opinion as to death? For example, did you know that she was alone in the car or she was accompanied by somebody else?

A No, I did not.

Q Did you know whose car she was in?

A No, I didn't know.

Q So, at the scene, is it safe to say the facts surrounding the circumstances under which the car came into the water were not known?

A Completely unknown to me.

Q All right. What time did you leave the scene?

A Approximately between 9:45 and 9:50.

Q And also for the record, Doctor, when you say you had your conversation with Lieutenant Killen or someone relaying a conversation with Lieutenant Killen, at that time you did not know the facts surrounding the

Chief
Arena
said
Kennedy
turned
himself
in about
9 AM

Q Other than you say you remember the bra?

A I remember the bra.

MR. FERNANDES: May we go off the record a second, your Honor?

THE COURT: Yes.

[Discussion off the record.]

THE COURT: Expert evidence already introduced has indicated that that white blouse was subjected to chemical analysis and shows evidence of blood.

THE WITNESS: Yes.

THE COURT: Now, assuming that that white blouse was the one worn by the decedent at the time you examined her, are you able to express a medical opinion with reasonable certainty whether the presence of that blood is consistent with your diagnosis of death by drowning?

THE WITNESS: Yes.

THE COURT: And what is that opinion, that it is consistent or that it is not consistent?

THE WITNESS: That it is consistent.

THE COURT: With your diagnosis?

THE WITNESS: With my diagnosis of death by drowning.

Q Could you explain to the Court the reasons why you formed that opinion?

A In a drowning case when a person drowns there is what we call an exacerbation of blood or a putting out of blood from the lungs in the violent attempts to gain air, and blood may and I believe usually perhaps more often than not, may be evidenced in the mouth and the nose of the decedent. Such blood might, in the efforts, the physical efforts to avoid drowning, might spread I suppose almost anywhere to the person's clothing.

Q Are you able, Doctor, to render an opinion as to how much blood normally is released from this kind of death?

THE COURT: Off the record.

[Discussion off the record.]

Q Can you render an opinion?

A A very small amount. I mean, less than half a cupful, for example.

MR. FERNANDES: I am satisfied, Doctor.

I have no other questions.

THE COURT: I have no further questions.

MR. FERNANDES: Just one more.

THE COURT: Has she gone out for somebody?

MR. DINIS: Yes, your Honor, Mr. Frieh, the undertaker.

EUGENE FRIEH, Sworn

DIRECT EXAMINATION BY MR. FERNANDES:

Q Please give the Court your full name, Mr. Frieh?

A My full name is Eugene Frieh, no middle initial.

Q And how do you spell your last name?

A F-r-i-e-h. It spells Frieh, but I've always been called Frieh.

Q What is your legal address?

A Delano Road in Vineyard Haven, Massachusetts.

Q Your occupation, sir?

A Mortician.

Q And you were so occupied on July 13, 19, 1969?

A I was.

Q And in that capacity were you called or summonsed to Dike Bridge in Chappaquiddick?

A I was.

Q Could you tell the Court the circumstances under which you went to Chappaquiddick that day and what time?

A Yes. Possibly between 9:00 or 9:15. We didn't jot down the time. I received a call from communications

A I did so.

Q And what did you observe when Dr. Mills performed his examination?

A Well, the usual procedure of general examination of a body so found. Dr. Mills loosened up the front of the blouse, took his stethoscope and applied it to various sections of the thoracic region and the abdominal region. He also manipulated the thoracic region with his hands.

Q Did this produce a flow of water?

A And looked at her eyes.

Q Did this produce a flow of water?

A It produced some water flow, water and foam, mostly foam.

Q Some water and foam?

A Yes.

Q After you left the scene you took the body to your funeral home?

A That is right.

Q And you say you waited until you heard from Dr. Mills?

A Yes, I was so instructed by Dr. Mills at the dock.

Q Can you tell us approximately when you heard from Dr. Mills?

A It would appear to be about 12:30 that noon.

Q What did Dr. Mills say to you?

A He had said to me that he would be in touch with the District Attorney's office and I can't recall whether he mentioned names or not, but that in his own words, as I recall, he said if I was perfectly satisfied with my diagnosis, that no further examination such as an autopsy would be necessary and just to go ahead and make arrangements.

Q He also told you they wanted a blood sample, did he not?

A He did at that time.

Q And you produced a blood sample for the doctor?

A Yes, we did. At the time of the preparation it was taken from the axillary region.

Q Now, let me ask you; at this time you embalmed the body, prepared the body?

A Yes.

Q After receiving the telephone call?

A Yes, after the call we cleansed the body first and then prepared the body.

Q In your preparation of the body, did you notice any external signs or marks or bruises or what did you observe?

A Well, I assisted my own assistant in cleansing the body, soaping the body down with a germicidal soap and taking the spray and washing the body and I personally took charge of cleansing the hair which was impregnated with much salt water and a little seaweedage and things of that sort that we usually find on a decedent, and in so doing I thoroughly examined the scalp and manipulated it in my fingers to see if there were any fractures, feeling in my own mind going over a bridge of that sort and crashing there might be some fractures, but I didn't find any fractures.

Q Was the body still in rigor mortis?

A Very much.

Q That would make it pretty stiff anyway, would it not?

A Yes.

Q In any event you saw no marks or bruises or anything?

A The only bruising I saw was on the left knuckle. That was very slight. We call that a slight abrasion, that is all.

Q On the left hand, on the left knuckle?

A Oh, boy, I'm not certain.

Q You may refresh your recollection if you want.

Q How, how was it that you knew who this body was?

A Through a call from the Kielty Funeral Home in Plymouth, Pennsylvania. They had been authorized by Mrs. Kopechne, the mother of this decedent, to take charge and see that the daughter was brought back to Plymouth for service and burial.

Q You spoke with Mr. Kielty?

A John Kielty.

Q Mr. Kielty told you and identified the woman?

A He didn't identify the woman. It was actually presumed that this was the daughter of Mrs. Kopechne.

Q What exactly did Mr. Kielty tell you?

A He told me he was authorized by Mrs. Kopechne to make arrangements; that he interrogated me as to the condition of the body and I told him that the body had been fully cleansed and properly prepared. So, he told me to ship it down as soon as possible to Pennsylvania, and I asked him how; and he said, well, can you fly it down? I said, yes, we have arrangements. So, in due course it was flown down.

Q Well, can you tell me how -- could you tell me whether or not you had a conversation with Mr. Gifford?

A Yes, that was in the middle of the afternoon, about

3:00 o'clock.

Q Where did you see Mr. Gifford?

A When he arrived at my office he entered my funeral home and apparently heard myself and Mr. Guay speaking in my office and walked directly into the office making himself known as being on the Kennedy staff.

Q This was about 3:00 o'clock?

A About 3:00, thereabouts.

Q And at that time did he identify the girl?

A He did not. We wouldn't allow him to go down in the prep room. No one has authority to go in there other than the personnel we authorize.

Q And what did he say?

A Well, he said he just had flown in from Nantucket and he wanted to make arrangements, and I said, by whose authority? Well, he said, I was told that I could come here and make arrangements. I said, well, you have no authority as far as I am concerned. I'm taking all my orders from the Kielty Funeral Home down in Pennsylvania. So, he let it go at that. He asked me if he could use the telephone and he made some telephone calls and during his presence I had said to Dave Guay, I said, you had better run down and catch Dr. Mills on

JOHN N. FARRAR, SwornEXAMINATION BY MR. FERNANDES:

Q Would you please tell the Court your full name?

A John N. Farrar.

Q And your legal address, Mr. Farrar?

A Oakdale Drive, Edgartown.

Q And what is your occupation, sir?

A Manager of the Turf and Tackle Shop here in Edgartown.

Q And are you a member of the local Search and Rescue Squad of the fire department?

A I am the captain of the Edgartown Fire Department Search and Rescue Division, Scuba Search and Rescue Division.

Q And how long have you been involved in scuba diving?

A Since I was 15 years old.

Q And how old are you now?

A Thirty-three.

Q Now, I direct your attention to July 18th and 19th; in your capacity as captain of the Scuba Search and Rescue Division were you summonsed to Dyke Road and Dike Bridge?

A Yes, I was.

Q Will you tell us approximately what time?

Mr. Edward M. Kennedy by Chief Arena or did he say Ted Kennedy?

A Yes. I believe it was Ted Kennedy but I was informed as I got out of the car by Chief Arena who was sitting on the rear of the car in the middle of the stream that it was registered to Ted Kennedy and that he thought somebody may be inside.

Q What did you do?

A The Chief was in a bathing suit and had attempted to dive to the car but stated that he could not make it to the car because the current was too swift. The tide was going out and the water depth was approximately six to seven feet. The car was upside down.

Q You said the car was upside down. Were you in the water?

A No.

Q What you just described is what the police chief told you?

A That is right.

Q He said the water is six feet deep here?

A No, I am sorry. This was a conclusion that I formed after going into the water.

Q I want you to tell me what you did. You went into the water?

- A I saw the two feet together in the top of the right side of the rear window. Now, by top I am referring crossways to the surface of the water.
- Q So you mean the floor of the car?
- A The section of the window closest to the floor of the car, if you will, yes.
- Q What did you do?
- A The position of this is diagonally across from where I first looked into the car. On entering the open right window -- I proceeded around to the right side. On entering the open right window and looking up I found the victim's head cocked back, face pressed into the foot well, hand holding onto the front edge of the back seat. By holding herself in a position such as she could avail herself of the last remaining air in the car.
- Q Well, so we understand each other, you don't know what was done, I want you to describe just exactly what you saw.
- A That is what I am describing, sir. I may offer a picture if that would be of any help. It would be worth a thousand words.
- Q Let me see what you have.

[Sketch handed to Mr. Fernandes.]

Q Was that prepared by you?

A That was prepared by an artist under my direction. It was actually redrawn approximately three times to become as close as possible to that which I observed.

THE COURT: To what side is the bridge?

THE WITNESS: The bridge is to the left.

Q The car is resting on its roof?

A The car is resting upside down on its roof so the bridge would be to the left. This is the surface of the pond. This is the bottom of the pond. The bridge would be to the left. We are looking---

THE COURT: Are you sure? Look at it again now.

THE WITNESS: Yes, sir, I am very sure. We are looking at it from the side that the individual was removed from.

MR. FERNANDES: May we go off the record for a moment, your Honor?

THE COURT: Yes.

[Discussion off the record.]

THE COURT: This will be No. 14.

[Sketch of car in water marked
Exhibit No. 14.]

Q Now, Mr. Farrar, having observed this body in that position

what did you do?

A Since both right front and back windows were blown out the removal was accomplished through the right rear window.

Q You determined that under the water?

A Yes, sir.

Q By the way, had you come up at any time to tell Chief Arena what you found?

A I had not come up at any time to tell Chief Arena what I found. At that point I was working under what I considered emergency conditions. I could observe a body there by the feet, but I could not come to any conclusion as to whether she was alive or dead.

Q So you went into the car through the driver's side?

A No, sir, from the right rear window. I started from the driver's window, walked around the back and gained access through the right rear window.

Q Which was open?

A Which was blown out.

Q Had you determined that before you went in?

A I determined that both the right front and the right rear windows were blown out. I did determine that before I went in because the fragments of glass were

still in evidence around the periphery of the window frame.

Q So you entered the vehicle, did you?

A I did.

Q And what did you do then?

A I reached up with my hand inside. I observed her position first, carefully reached up with my hand inside taking ahold of her right thigh. I turned her within the car. At this point, of course, I was aware that the girl was dead since the girl was hard and rigor mortis had set in.

I reached her head through the same previously-mentioned right rear window, secured my safety line which I had with me around her neck in the event that I was unable swimming with her to stem the strong tide which I faced with the bulk of both our bodies on removal.

The point of the safety line is simply to the extent for my own safety I could let her go and not lose the body.

I was able to stem the tide and I swam up to the outer rear of the car which was just barely submerged and where Chief Arena waited for me.

It was approximately 8:55 a.m. The recovery took ten minutes.

As soon as Chief Arena saw the body, he called the county coroner, the Medical Examiner. He directed, excuse me; the county coroner, the Medical Examiner and the Registry of Motor Vehicles inspector to be called and issued a pick-up order for Ted Kennedy.

Q What did you do with the body?

A Chief Arena and I placed the body in a boat and it was removed to the cruiser by the police and fire department personnel.

Q After handing the body over, did you again do something at the scene?

A I again returned to the wreck through the right-hand front window, again the passenger's side. I removed a purse resting on the headliner inside the car.

Q The headliner?

A By headliner I mean the liner which goes on the inside of the roof. If I say the roof a great many people think the top of the car; It was resting on the roof inside the car which was upside down.

Q Was it in the front or back?

A It was in the front seat area. I removed it through

the front window. In other words, directly on top of the right seat area.

Q And then what did you do?

A I quickly checked the rest of the car and brought the purse to the surface and gave it to Chief Arena. Upon opening it, the water and contents began to spill out. The Chief then closed it and returned it to me for removal to the shore.

Q Did you do anything after that?

A I removed it. I proceeded to get into the boat with the person, my initial inspection of the vehicle having been done.

Would you like to get into -- I examined the purse at a later date with the police. Do you want to get into that?

Q No, we will get into that with the Chief.

Did you go back into the water and make any other search?

A As far as the car itself was concerned, no, I didn't go back into the water. We did conduct at a later time--- Since it was still thought that another person could be in the car we conducted another up-tide

search and found no other body.

Q Did you find a chain belt of some kind, a waistband?

A Yes. Back at the time I removed the body there was around her waist, and I observed at the time, it was around her waist, I observed a gold chain belt.

As she came through the window the belt became unlinked and fell to the bottom. I believe I picked that up when I picked up the purse. Yes, that is correct.

Q Were you present when the motor vehicle was righted?

A Yes, I was.

Q What did you do?

A I swam down-tide, was then down-tide of the motor vehicle in the event anything else was dislodged. I was partially on the surface and partially under the water and at the time it was righted I observed large air bubbles and at the time it was being towed out, emanating from the vehicle.

Q The car was taken from the water, was it not?

A Yes.

Q Did you have occasion to observe it?

A Yes, I did. At the time it was pulled onto the shore so that the rear end, I believe there is a picture of it, as a matter of fact, taken from the newspaper

Q What did you observe?

A On removal of the car I unlocked and opened, I should say on partial removal of the car in the position in those pictures you just showed me, the first picture you showed me, I had occasion to open the driver's door after unlocking it and entered the car and I found the ignition and the headlight switch in the On position. The car was in Drive. The gear was in Drive and the brake off and at a later date we examined the trunk which we found remarkably dry.

...K

Q (By Mr. Fernandes) The 36 feet, would you tell me where that is from, for my own purposes?

A That would be the point measured from approximately the middle, the marks on the bridge, the middle between the two marks on the bridge to the perpendicular in front of the car.

Q All right. Now, did you make any other measurements at that time?

A No, I did not, sir.

Q Have you an opinion as to what the current was or the tide pulling you in that water? I know you mentioned you had difficulty at the time.

A Yes, the tide at that time was approximately four knots at the time of recovery, 8:55 a.m., was approximately four knots. It later slacked up and, of course, went completely slack with the change of the tide which was approximately 11:30 a.m.

Q And if you know, how often does the tide change in that area?

A Well, of course, every six hours is the oscillation of the tide.

Q And are you familiar with this area? You have swum there before?

A Yes, I have.

Q And do you know the various tide depths in the area of the accident?

A Tide depths?

Q Yes, the high and the low, approximately.

A Yes.

Q If he knows.

THE COURT: Wait a minute. Off the record.

(Discussion off the record.)

Q (By Mr. Fernandes) Mr. Farrar, did you have occasion to make observation as to how this body was clothed, dressed?

A Yes, sir, I did.

Q Would you tell us what you observed?

A She had on a white blouse with a gold chain belt, a dark blue slacks, and sandals on her feet. In other words, dressed as if she had just come from a party.

Q I show you the items. Were you present when Dr. Mills was at the scene?

A Yes, sir, I was not only present, but I observed Dr. Mills make his examination of the body at the scene.

Q And do you recognize any of these articles?

A Well, these are the same clothes we had at Wilkes-Barre.

I saw them at Wilkes-Barre and I recognized them there, and I say I recognize them here if they are indeed the same clothes.

Q Did you make any other observations at the scene, Mr. Farrar?

A With regard to what, Mr. Fernandes?

Q The automobile or the body that you have not yet told us?

A Physical observations?

Q Yes, sir.

A Yes, I made only in that I saw Dr. Mills and spoke with Dr. Mills at the scene as he was making his examination of the body. Would you like me to go into that briefly or is that unnecessary?

Q No, Dr. Mills has testified.

A All right. I spoke with Mr. Frier at the scene. We went through the car extensively after it was drawn out, which was already observed; the inside, the back seat, the trunk, and the trunk was remarkably dry.

Q There was no identity of this girl made?

A At the time we thought because I went through the purse on the shore, we were under the impression, I was under the impression and the other police were

DOMINICK J. ARENA, SwornDIRECT EXAMINATION BY MR. FERNANDES:

- Q For the record, would you please give the Court your full name?
- A Dominick J. Arena.
- Q And your occupation?
- A Chief of Police, Edgartown, Massachusetts.
- Q And were you so occupied, Chief Arena, on July 18, 1969?
- A I was.
- Q And for the record also, your legal address?
- A My legal address is Cooke Street, Edgartown; Cooke with an e on the end.
- Q Now, Chief, sometime on July 19 were you summonsed to so-called Dyke Road and Dike Bridge?
- A I was.
- Q Could you tell us what time, under what circumstances?
- A At approximately 3:20 a.m. a call was received at the Edgartown Police Department from the Dukes County Communications Center concerning a car overturned in the water near the Dike Bridge on Chappaquiddick Island.
- Q And what did you do after receiving this call?
- A I proceeded to the Edgartown cruiser, went to the ferry landing, boarded the ferry. There was no other traffic

saw him down by the ferry landing," so at this time I proceeded right to Mrs. Malm's house and I called with the intent of advising my office, my desk officer, to send somebody down to the ferry landing to see if they could find Senator Kennedy.

Q What time is this about?

A Now, time once again I would have to say it would have been after 9 o'clock, but I don't really know how much time elapsed. At any rate, when I called her she said, "He is here." This is Mrs. Albocter. She meant the Senator and he wanted to talk to me so he got on the phone and I said words to the effect that "I am sorry, I have some bad news, your car was in an accident over here and the young lady is dead." He said, "I know."

I said, "Can you tell me was there anybody else in the car?"

He said, "Yes."

I said, "Are they in the water?"

He said, "No."

I said, "Can I talk to you?"

He said, "Yes."

I said, "Would you like to talk to me?"

He said, "I prefer for you to come over here."

I had the opportunity to ask a resident over there, Dr. Self, to come there to the Chappaquiddick ferry landing. I had called by the cruiser radio or I think I notified Salvatore to have one of my men come down and pick me up in his own car, so Officer Roy Meecham picked me up at the ferry landing and we drove back to the station.

I walked into the station and ⁱⁿ my office in the station was Paul Markham on my right and Senator Kennedy on the telephone. The Senator hung up on the phone, came over, said Hello, shook my hand, and I think I said something to the effect, I am sorry about what happened.

He said, "Yes, I know, I was the driver," so I don't think I said anything there for a minute.

He said, "What would you like for me to do, we must do what is right or we will both be criticized for it."

I said, "The first thing we will have to do is have a statement from you about what happened."

He asked me if it would be all right if he wrote it. I said, "Yes, it would be."

Q And whether or not there were any lights out that day, if you know?

A She said that she had a light on in herhouse. I think her daughter was in her room reading, which Mrs. Malm said reflected on the roadway.

Q Until what time?

A The daughter gave a statement. I think if I remember right, until some time after midnight. I'm not really sure. I think I have it.

Q If you have that statement, would you check your records?

A I think I have it.

Q Have you that statement?

A Yes, I have a statement from the daughter and a statement from the mother, if you would like.

Q Could you tell us what they said?

A All right. This is from Sylvia R. Malm; she is the mother of the family. On Saturday morning, July 19, 1969, two boys knocked on my door and said there is a car upside-down in the water by the bridge. I called 693-1212, the communications center, and reported the car and its location. The operator said she would relay the message. Sometime during the evening before I was aware of a car going faster than usual going toward

the Dike. I have no idea of the time. I think I went to sleep sometime between 11:30 and 12:00 midnight, but I do not know the time. I heard nothing during the night. We have two dogs and a night light was burning all night.

Then I have a statement from Sylvia A. Malm who is the daughter. On Friday night, July 18, 1969, I read in bed underneath an open window which faces east from 11:00 p.m. to 12:00 midnight, looking at the clock just before I turned my light out. Between 11:15 and 11:45 I heard a car going fairly fast on the Dyke Road. I didn't look out the window, so I am uncertain of the direction, but thought at the time it was heading towards the Dike. I heard nothing further that night. On Saturday morning I was awakened at 8:25 a.m. by two boys at the door telling my mother that there was a car turned over in the water by the Dike.

Q Do you recall, she said sometime between 11:15 and 12:45; she couldn't get it any closer in time?

A Right, the daughter, I talked to the mother first. I didn't even know the daughter was at the house and the mother was very vague about the time and said that

she thought it was close to midnight, as she said in this statement. She said 11:30 to 12:00 and she only said she heard the car engine going by the house and did not hear anything happen.

Q How old is this daughter?

A I think she is a college student, probably 17 or 18.

Q And do you know where she is at now?

A I think she is in Lebanon, Pennsylvania. That is where they are from.

THE COURT: I didn't notice anything in that letter which indicated which way the car was going.

Q (By Mr. Fernandes) If I may, your Honor, I thought she said she didn't know which way it was going, but she thought it was heading toward the Dike.

A She said, I didn't look out the window, so I am uncertain of the direction, but thought at the time it was heading towards the Dike.

Q She indicated this was the only light that would have been on in the house?

A Yes. Let's see. I read in bed underneath an open window which faces east from 11:00 p.m. to 12:00 looking at the clock just before I turned my light out.

Q Is this the house? And I point to a house which is

COMMONWEALTH OF MASSACHUSETTS

Dukes County, ss

District Court

Inquest re Mary Jo Kopechne

Docket No. 15220

R E P O R T

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 plys 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

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 mile 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

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 pur-

ported 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. Donald 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 LaChapelle 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

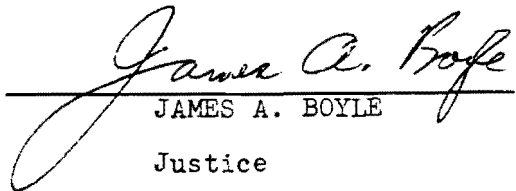
car as large as this Oldsmobile, would at least be negligent and, possibly, reckless. If Kennedy knew of this hazard, his operation of the vehicle constituted criminal conduct.

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