

**WILLIAM F. BUCKLEY, JR.**

## Teddy Kennedy Took the Fifth

What Sen. Kennedy has done, in effect, is to plead the 5th Amendment. Not only has he said, or rather has had it said in his behalf, that he will not ever again discuss the mystery of Chappaquiddick, he has apparently sworn his entire party to silence.

(Editor's Note: Sen. Kennedy has consented to testify in an inquest.)

The Massachusetts judiciary meanwhile gives promise of cooperating. So do the police in Edgartown, who acted towards the senator like equerries. At this point dignitaries flew into Hyannis Port from all over the country to contrive a statement which was a combination of tusheries ("I was not under the influence of alcohol"), and heroic but guarded self-mortification ("what I then did was indefensible").

I have a letter from my friend Edgar Smith, who resides in the death cell at Trenton, N.J. "Thirty years the Kennedys have been attending the Edgartown Regatta, sez Teddy. And there are only two roads on that little island, so how did he take the wrong turn?" asks Smith. "Seriously, Bill, I told a better story than Teddy, and I got convicted."

That is a harshly-stated version of what is nevertheless on the mind of many people who were left unsatisfied by Senator Kennedy's public performance—not so much unsatisfied by what he said, as unsatisfied that that was to be all that he said. It is as if the president of the Chase Manhattan Bank, deeply implicated in, let us say, the disappearance of a million dollars from the safe, were to closet himself in the Waldorf Towers, consulting only with Edward Bennett Williams and Dean Rusk, summon in the networks, announce that he had indeed been careless in the handling of money, but that not one penny had been turned to his own use, that he would continue as president of Chase Manhattan, but would never again allude to the Case of the Missing Million.

Over the years there has been much controversy over the

question whether it is proper to draw negative inferences from the pleading of the 5th Amendment. There was general agreement that it is proper to do so, though Dean Griswold of the Harvard Law School challenged that assumption vigorously during the McCarthy days when so many people were pleading the 5th.

The line of reasoning went roughly as follows: that by pleading the 5th you were not necessarily engaged in suppressing evidence that would incriminate you of the crime of which you were suspect. You might plead the 5th, said its defenders, on the grounds that you wanted to keep hidden information that would damage someone else (granted, it is illegal to plead the 5th in behalf of someone else: but who is going to find out?); or you might plead the 5th in order to guard against the discovery of a completely different involvement, unsuspected by the prosecutor. For example, if asked where you were on the night of the murder, you might plead the 5th not because you killed her, but because at that moment it happened that you were asleep in a motel under embarrassing circumstances.

Now notwithstanding that it is theoretically an open question whether damaging inferences are to be drawn by someone's use of the 5th Amendment, it remains accepted that an employe may be dismissed for refusing to answer questions put to him by his employer. That is to say, an employe may not appeal to the courts if he is fired after refusing to answer a question put to him by an employer. The analogy to a senator and his constituency is obvious.

Justice Douglas of the Su-

preme Court once wrote (Beilan vs. Board of Education) that "private citizens . . . may make such deductions and reach such conclusions as they choose from the failure of a citizen to disclose." And a revered chief justice from Senator Kennedy's home state put it most trenchantly: "When . . . it is apparent that the accused is so situated that he could offer evidence of all the facts and circumstances as they existed, and show, if such was the truth, that the suspicious circumstances can be accounted for consistently with innocence, and he fails to offer such proof, the natural conclusion is that the proof, if produced, instead of rebutting would tend to sustain the charge."\* (Shaw, in Commonwealth vs. Webster.)

### PEOPLE in the News

## Fund Will Honor Miss Kopechne

The memory of Mary Jo Kopechne, the secretary killed in an auto accident involving Sen. Edward M. Kennedy of Massachusetts, will be perpetuated by a scholarship fund at Caldwell, N. J., College for Women.

A spokesman for the college said the fund has been established by a group of Boston area businessmen who were "impressed by the idealism manifested by Mary Jo."

Miss Kopechne was graduated from the college in 1962. The accident in which she was killed July 18 occurred near Chappaquiddick Island, Mass. Her parents are residents of Berkeley Heights, N.J.

### Princess' Mate III

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