

fair chance for a fair trial." He held that Calley had been deprived of due process on four counts. The charges against him had been improperly drawn because "the prosecution did not identify any individual as being one that the petitioner killed or ordered to be killed."

Further, the defense should have been permitted to call such higher-ups as then Defense Secretary Melvin Laird to bolster the argument that undue command influence had affected the trial. And the defense should have been given access to a confidential House Armed Services Committee report on My Lai. Judge Elliott cited Watergate and ruled that "the Supreme Court in deciding the Nixon [tapes] case also decided the Calley case."

Elliott reserved his most withering prose, however, for what he apparently considered the largest issue—publicity. Wrote he: "If there has ever been a case in which a conviction should be set aside because of prejudicial publicity, this is it." With press references to Calley as "everything from a mass murderer to a ghoul," it seemed as if "all that would be necessary would be for the court-martial to convene and for the judge to announce, 'Bring the guilty rascal in and we will give him a fair trial.'" Then, hyping up his own hyperbole, the judge launched into the opinion's alliterative climax: "He was pummeled and pilloried by the press. He was taunted and tainted by television. He was reproached and ridiculed by radio. He was criticized and condemned by commentators."

Vulnerable Opinion. Many legal experts were initially skeptical of much of Elliott's reasoning, and agreed with a Justice Department official's assessment that "the opinion appears vulnerable on most of its points." Elliott's conclusions about publicity were the most controversial. For one thing, members of the court-martial panel were not likely to read or hear anything substantive outside the courtroom that was not presented in exceptionally grim detail by prosecution witnesses.

For another, the panel—made up of a captain, four majors and a colonel—scarcely seemed to have been stampeded. "I wanted to believe [that the massacre] didn't happen, that it was a hoax," said one member after the verdict. "We looked for anything that would prove Lieut. Calley innocent," said another. Lawyer-Author Alfred Avins, a military-law specialist, notes that officers "are required by virtue of their training to maintain a degree of detachment" and thus are not so prone to "mob psychology" as other jurors.

Specific proof that the jurors had actually been improperly influenced would seem necessary to reverse a conviction. With the recent history of publicity and justice for such defendants as Angela Davis, Charles Manson and Jack Ruby, Avins says, "there is no reason to believe that extensive press coverage should paralyze judicial procedure,

whether it's civil or criminal or military, if you have the right kind of triers of fact."

Judge Elliott, a Kennedy appointee and son of a Methodist minister, is a well-respected, generally conservative jurist, but from the first day of hearing the Calley appeal, when he noted that "command influence can be a subtle thing," he has made his feelings about the case apparent. After announcing his opinion last week, he added from the bench: "Joshua did not have charges brought against him for the slaughter of the civilian population of Jericho. But then the Lord was with Joshua, we are told." The judge had already been reversed once in the case by the Fifth Circuit Court of Appeals, when he released Calley on bail pending his decision. Last week the Fifth Circuit again blocked Calley's release, at least temporarily, to give the Army time to appeal through the Justice Department, which represents the military in federal court proceedings. It will do so formally this week.



CALLEY BEFORE DECISION

CHAPPAQUIDDICK

The Memory That Would Not Fade

From a sailboat offshore, two men and a woman swam to the beach on Chappaquiddick Island one recent afternoon. Some startled fishermen—and Edgartown Police Chief Jessie J. Oliver III—recognized one of the trio as Senator Edward M. Kennedy. Two days before he was to announce his withdrawal as a candidate for President in 1976, there was Kennedy walking meditatively on the island where his White House hopes foundered five years ago.

Kennedy claimed that his withdrawal was chiefly motivated by concern for his family. But the Chappaquiddick affair, in which Mary Jo Kopeczne died some time during the night of July 18-19, 1969, obviously was a crucial factor. Anticipating his candidacy and spurred by an effective New York Times Magazine piece by Robert Sherrill last July re-examining the case, several major news organizations had sent reporters to the tiny island across from Edgartown on Martha's Vineyard. TIME's own preliminary probe turned up facts that contradicted key points in Kennedy's version of what happened; further disclosures seemed likely.

There are few incontrovertible facts about the incident. Around midnight of that fatal Friday, a black 1967 Oldsmobile sedan hurtled off narrow, hump-backed Dike Bridge, landing upside down in about eight feet of water in Poucha Pond, an inlet on the island's eastern end. Next morning, fishermen discovered the car and alerted the police. At about 9 a.m., a skindiver, John N. Farrar, retrieved the stiffened body of the 28-year-old woman. An hour later

Kennedy told Edgartown Police Chief Dominick Arena that he had been the driver of the car.

THE KENNEDY VERSION

The episode began with a party for twelve people. There were six women, former campaign workers for the late Robert Kennedy: Mary Jo; Rosemary Keough, 23; Maryellen Lyons, 27, and her sister Nance, 26; Esther Newberg, 26; and Susan Tannenbaum, 24. Besides Teddy, there were five men, longtime friends or retainers of the Kennedy clan: Jack Crimmins, 63, Kennedy's part-time chauffeur; Joseph Gargan, 39, Kennedy's cousin; Ray LaRosa, 41, a civil defense official and ex-fireman; Paul Markham, 39, a former U.S. Attorney; and Charles Tretter, 30, an attorney.

By about 8:30 p.m., the Senator and the others had taken the ferry from Edgartown to Chappaquiddick and driven three miles in an Oldsmobile or a rented 1968 white Valiant to a small cottage for an evening cookout. Between 11:15 and 11:30 p.m., Kennedy told Crimmins—but no one else—that he was tired and was returning to his room at the Shiretown Inn in Edgartown. Mary Jo left too, telling the Senator that she wanted to be driven back to her motel, some two miles from the Shiretown. But Mary Jo told none of the others; she left her pocketbook and her room key at the cottage.

Instead of turning west on the paved road to the ferry slip, Kennedy went east along the dirt road to Dike Bridge. Kennedy insisted that he thought he was headed for the ferry. At a speed of about

* ¹⁴ JUL 74 (DO NOT HAVE)
SFC 28 JUL 74 (FROM NYT)

THE NATION

20 m.p.h., he came upon Dike Bridge, and the car crashed into the pond.

Kennedy described how he frantically tried to open the door and how Mary Jo struggled to escape. But he could not recall how he got out of the car. Despite a brace on his back, he dove seven

or eight times in a futile attempt to save Mary Jo. Then he made his way 1.2 miles back to the cottage.

In the Valiant, he drove back to the bridge with Gargan and Markham, who tried vainly to save Mary Jo. After driving to the ferry landing, Kennedy dove into the channel and swam the 500 feet to Edgartown. He walked to his motel, changed into dry clothes and collapsed on his bed. At 2:25 a.m. he spoke to Innkeeper Russell Peachey about the noise from a party near by. For reasons never fully explained, Kennedy told no one of the accident.

The next morning he heard that his car had been discovered in Poucha Pond. Only then, ten hours after the accident, did he go to the police station to turn himself in.

THE DOUBTS

From the beginning, Kennedy's story inspired skepticism. His account was contradicted by the testimony of Deputy Sheriff Christopher F. ("Huck") Look Jr., who lived on Chappaquiddick. Driving home that night, Look saw a car cross in front of him at about 12:45 a.m., stop in a lane called Cemetery Road, back up and go down Dike Road. Look noted that the car carried Massachusetts license L7----7; he forgot the middle numbers. Farther along the road, he came upon a man and two women who declined his offer of a ride.

At Dike Bridge the next morning, Look declared: "Gee, that is the same car I saw last night." Its registration number was L78-207. At the inquest, Kennedy insisted that he had been on the road more than an hour earlier and had encountered no other car. But La-Rosa and the Lyons sisters confirmed that while out for a late-night stroll, they had been offered a ride.

At the inquest nearly six months later, the cookout crowd's memories were contradictory. But on two particulars, their memories were sharp and uniform: Kennedy drank only one or two rum-and-Cokes, and he left with Mary Jo between 11 and 11:45. In late July and again in early August 1969, Esther Newberg told TIME that she had not been aware at the time that the couple had even left the party. At the inquest, however, she said that Kennedy and Mary Jo had left at 11:30. How did she know? "I have a rather large watch

that I wear all the time. I looked at it."

Moreover, many questions were raised by the Kennedy story. Was it likely that Mary Jo would leave for her motel without her pocketbook or room key? How could Kennedy mistake a rough dirt road for the paved road leading to the ferry? Why had he not sought help at the houses that he passed after the accident? Why did he refuse to answer further questions about the affair, telling reporters, as he did last week, "I can live with my testimony"?

THE CONTRADICTIONS

On two important matters, TIME correspondents have turned up evidence that contradicts Kennedy's account:

His Familiarity with Chappaquiddick. Kennedy flatly said that he had "never been to Chappaquiddick before 1:30 on the day of July 18." Two islanders remember differently. Says Harbor Master John Edwards, who formerly operated the ferry: "I took him to Chappaquiddick many times." Harold ("Ham") Kelley Jr., manager of the Chappaquiddick Beach Club, about a quarter-mile east of the ferry landing, recalls that on a regatta weekend in 1963, "I kicked him out. We're open to members only, and he was not a member." There is no evidence, however, that Kennedy was familiar with Dike Road and the bridge before the accident.

His Timing of Events. District Attorney Edmund Dinis asked Kennedy at the inquest what time he, Gargan and Markham arrived back at the bridge. Replied the Senator: "I think it was 12:20, Mr. Dinis. I believe that I looked at the Valiant's clock and believe that it was 12:20." If Look was correct about having spotted Kennedy's car at 12:45, the Senator would not have had time to make "seven or eight" rescue attempts, return to the cottage, bring back his companions for further attempts, swim across the channel and change his clothing before he spoke with the innkeeper at 2:25 a.m. If Look was right, moreover, Kennedy could not very well have been headed for the ferry, which stopped regular operations at midnight. But Kennedy's recollection was wrong. The reason: the Valiant had no clock. Indeed, Chrysler Corp. officials say that "this particular model [100] does not offer a clock as factory-installed equip-

ment." Further, TIME found and examined the Valiant and discovered no drill holes, dashboard scratches nor any other indications that the car had ever had a clock. The rental agency sold the Valiant about 1½ months after the accident for \$1,725 to an elderly widow, who still garages it in a small red shed adjoining her home on Martha's Vineyard.

THE UPSHOT

A thorough investigation of the accident might have answered all of the critical questions about Chappaquiddick. But Chief Arena accepted Kennedy's 240-word statement with no questions. There was no autopsy.

Dinis' performance in the case was even more baffling. At first he refused to get involved. Three weeks later he changed his mind, and an inquest was held in January 1970. But by then, Dinis' attitude seemed to have changed again. His questions were soft or off the point. In the end, the four-day hearing produced 763 typed pages of testimony from 27 witnesses—but little new information.

Some authorities in Massachusetts suspect that he dragged his feet on the case for political reasons. For more than two decades, Dinis has been a political wheeler-dealer. He served as district attorney for eleven years while managing a private law practice as well as insurance and real estate businesses. He was not much of a crime buster.

Whatever his motive, Dinis did not encourage the grand jury to get involved after the inquest.

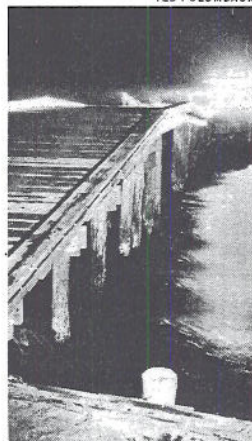
At the insistence of Foreman Leslie H. Leland, a pharmacist, the grand jury was reconvened in April 1970. But it was muzzled by Dinis' reluctance to press the investigation and by a court order prohibiting the jurors from summoning witnesses who had already testified at the inquest and from examining the inquest transcript. The grand jury quit in frustration, and Dinis declared: "The case is closed."

But public interest continued, as well as rumors about what really had happened. According to one theory, Kennedy delayed reporting the accident so that he could sober up. Another was that he had talked Gargan into taking the rap but changed his mind the next morning. According to still another, Kennedy got out after running into Look and, fearful that Look was following, sent Mary Jo on alone in the car.

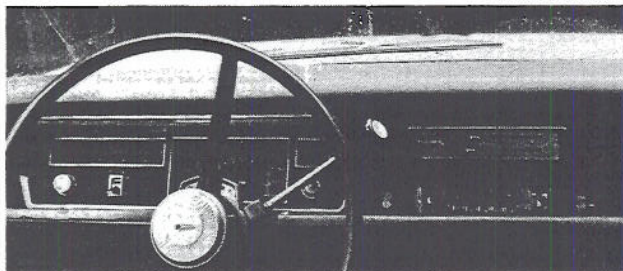
The facts may well be far different from any of these theories. For five years, Kennedy kept silent, apparently hoping that the public memory of Chappaquiddick would fade. It did not.



MARY JO KOPECHNE



DIKE BRIDGE



DASHBOARD OF TEDDY'S VALIANT

WILLIAM WOOLVERTON