



FEDERAL ELECTION COMMISSION

1125 K STREET N.W.
WASHINGTON, D.C. 20461

THIS IS THE END OF TUB # 1271

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FEDERAL ELECTION COMMISSION

Sign-off card for general counsel's
report

The above-described material was removed from this file pursuant to the following exemption provided in the Freedom of Information Act, 5 U.S.C. Section 552(b):

- | | |
|--|---|
| <input type="checkbox"/> (1) Classified Information | <input type="checkbox"/> (6) Personal privacy |
| <input type="checkbox"/> (2) Internal rules and practices | <input type="checkbox"/> (7) Investigatory files |
| <input type="checkbox"/> (3) Exempted by other statute | <input type="checkbox"/> (8) Banking Information |
| <input type="checkbox"/> (4) Trade secrets and commercial or financial information | <input type="checkbox"/> (9) Well Information (geographic or geophysical) |
| <input checked="" type="checkbox"/> (5) Internal Documents | |

Signed R. La. Arch
date 8/26/81

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 24, 1981

David W. Cohen
Warshavsky, Hoffman & Cohen
30 Rockefeller Plaza
New York, New York 10112

Re: MUR 1271

Dear Mr. Cohen:

This is to advise you that after an investigation was conducted, the Commission concluded on August 18, 1981, that there is no probable cause to believe that your client, Reader's Digest Association, Inc. violated the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431 et seq. Accordingly the file in this matter, numbered MUR 1271, has been closed. This matter will become part of the public record within 30 days. Should you wish to submit any factual or legal materials to appear on the public record please do so within 10 days.

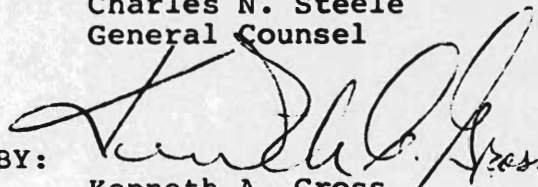
Also attached is the statement of Commissioner Harris who dissented from the determination made by the majority of the Commissioners in this matter. This statement will be appended to the file.

If you have any questions, contact R. Lee Andersen at (202) 523-5071.

Sincerely,

Charles N. Steele
General Counsel

BY:


Kenneth A. Gross
Associate General Counsel

Attachment

81040:94882

David W. Cohen
Warshavsky, Hoffman & Cohen
30 Rockefeller Plaza
New York, New York 10112

RWT
8/24/81

Re: MUR 1271

Dear Mr. Cohen:

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This is to advise you that after an investigation was conducted, the Commission concluded on August , 1981, that there is no probable cause to believe that your client, Reader's Digest Association, Inc. violated the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431 et seq. Accordingly the file in this matter, numbered MUR 1271, has been closed. This matter will become part of the public record within 30 days. Should you wish to submit any factual or legal materials to appear on the public record please do so within 10 days.

Also attached is the statement of Commissioner Harris who dissented from the determination made by the majority of the Commissioners in this matter. This statement will be appended to the file.

If you have any questions, contact R. Lee Andersen at (202) 523-5071.

Sincerely,

Charles N. Steele
General Counsel

EY:

Kenneth A. Gross
Associate General Counsel

Attachment

Larryann C. Willis
Route 2 Box 69
Vale, Oregon 97918

RHF
8/21/81

Re: MUR 1271

Dear Ms. Willis:

This is in reference to the complaint you filed with the Commission on August 6, 1980, concerning the publication by Reader's Digest Association, Inc. of an article entitled, "Chappaquiddick: The Still Unanswered Questions" in the February 1980 edition of Reader's Digest Magazine.

Based on your complaint, the Commission determined there was reason to believe that Reader's Digest Association, Inc. violated 2 U.S.C. § 441b, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), and instituted an investigation of this matter. After an investigation was conducted and brief of the General Counsel was considered, the Commission concluded on August , 1981, that there was no probable cause to believe that Reader's Digest Association, Inc. violated the Act. Accordingly, the file in this matter, numbered MUR 1271, has been closed. This matter will become part of the public record within 30 days. Should you wish to submit any factual or legal materials to appear on the public record, please do so within 10 days. The Federal Election Campaign Act allows a Complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Also attached is the statement of Commissioner Harris who dissented from the determination made by the majority of the Commissioners in this matter. This statement will be appended to the file.

If you have any questions, please contact R. Lee Andersen, the attorney assigned to this matter, at (202)523-5071.

Sincerely,

Charles M. Steele
General Counsel

cc:

Kenneth A. Gross
Associate General Counsel

Attachment



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

August 24, 1981

Larryann C. Willis
Route 2 Box 69
Vale, Oregon 97918

Re: MUR 1271

Dear Ms. Willis:

This is in reference to the complaint you filed with the Commission on August 6, 1980, concerning the publication by Reader's Digest Association, Inc. of an article entitled, "Chappaquiddick: The Still Unanswered Questions" in the February 1980 edition of Reader's Digest Magazine.

Based on your complaint, the Commission determined there was reason to believe that Reader's Digest Association, Inc. violated 2 U.S.C. § 441b, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), and instituted an investigation of this matter. After an investigation was conducted and brief of the General Counsel was considered, the Commission concluded on August 18, 1981, that there was no probable cause to believe that Reader's Digest Association, Inc. violated the Act. Accordingly, the file in this matter, numbered MUR 1271, has been closed. This matter will become part of the public record within 30 days. Should you wish to submit any factual or legal materials to appear on the public record, please do so within 10 days. The Federal Election Campaign Act allows a Complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

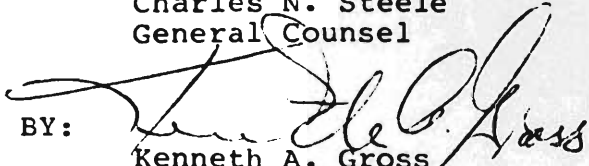
Also attached is the statement of Commissioner Harris who dissented from the determination made by the majority of the Commissioners in this matter. This statement will be appended to the file.

If you have any questions, please contact R. Lee Andersen, the attorney assigned to this matter, at (202)523-5071.

Sincerely,

Charles N. Steele
General Counsel

BY:


Kenneth A. Gross
Associate General Counsel

Attachment

81040294885



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 20, 1981

MEMORANDUM TO: Charles N. Steele
General Counsel

FROM: Thomas E. Harris *Thomas E. Harris*
Commissioner

SUBJECT: Statement to be appended to File in
MUR 1271, Reader's Digest

On April 21, 1981, the Commission approved a series of interrogatories to Reader's Digest which followed the guidelines of Judge Leval's opinion of March 19, 1981, in which Judge Leval denied the Reader's Digest's motion for a preliminary injunction against the Commission's investigation. In its interrogatories, the Commission narrowed its investigation to the factual issues surrounding the Digest's distribution of video tapes concerning Senator Kennedy's accident at Chappaquiddick. One of the questions asked was:

"Whether Reader's Digest has ever advertised or promoted magazine articles other than 'Chappaquiddick' through the use of video tape?"

As Judge Flannery's opinion in FEC v. Phillips Publishing, Inc., No. 81-0079, D.D.C., July 16, 1981, notes "circulation of a video tape to publicize a magazine article may well be a normal press function, (but) it is certainly more unusual and thus subject to greater scrutiny..." by the Commission. Yet, the Reader's Digest has never answered this yes or no interrogatory and the Commission is treating this non-answer as a basis for finding no probable cause to believe a violation has occurred. Thus, far from giving this area of inquiry "greater scrutiny," the Commission has failed to scrutinize it at all.

Without a response it is difficult to accept as fact the General Counsel's statement that Reader's Digest had acted within the normal course of its business operations. (OGC Report, pages 4-5). We simply do not know whether or not that is so.

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Charles N. Steele
Page (2)
August 20, 1981

In addition, the Commission has never adequately investigated the complainant's allegation that the distribution of the tapes was targeted to influence the N.H. primary and the Iowa caucus. Instead, the Commission has settled for the amorphous answer that the Reader's Digest "made available" certain tapes. The question still looms: To whom?

When the Commission closes the file without securing answers to these questions it is not doing its job.

cc: Marjorie Emmons
Commission Secretary

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Reader's Digest Association, Inc.)

MUR 1271

CERTIFICATION

I, Marjorie W. Emmons, Recording Secretary for the Federal Election Commission's Executive Session on August 18, 1981, do hereby certify that the Commission decided by a vote of 5-1 to take the following actions in MUR 1271:

1. Find no probable cause to believe that the Reader's Digest Association, Inc. committed a violation of 2 U.S.C. §441b by disseminating copies of video tapes of a computer reenactment of the fatal accident at Chappaquiddick.
2. CLOSE THE FILE.
3. Send the letters attached to the General Counsel's August 7, 1981 report in this matter.

Commissioners Aikens, McGarry, Reiche, Thomson, and Tiernan voted affirmatively for the decision; Commissioner Harris dissented.

Attest:

8/19/81

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE
FROM: MARJORIE W. EMMONS/JODY CUSTER *jc*
DATE: AUGUST 10, 1981
SUBJECT: OBJECTION - MUR 1271 General Counsel's Report
dated July 27, 1981, Signed August 7, 1981;
Received in OCS, 8-7-81, 12:20

The above-named document was circulated on a 48
hour vote basis at 11:00, August 10, 1981.

Commissioner Harris submitted an objection at 12:53,
August 10, 1981.

This matter will be placed on the Executive Session
Agenda for Tuesday, August 18, 1981.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE
FROM: MARJORIE W. EMMONS *MB*
DATE: AUGUST 12, 1981
SUBJECT: MUR 1271 - General Counsel's Report dated
July 27, 1981; signed August 7, 1981

Attached is a copy of Commissioner Aikens'
vote sheet with comments regarding MUR 1271.

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ATTACHMENT:
Copy of Vote Sheet

AIR TALLY SHEET

SENSITIVE

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

81 AUG 12 12:00



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

Date and Time Transmitted: MONDAY, 8-10-81, 11:00

Commissioner McGARRY, AIKENS, TIERNAN, THOMSON, REICHE, HARRIS

RETURN TO OFFICE OF COMMISSION SECRETARY BY: WEDNESDAY, AUGUST 12, 1981, 11:00

MUR 1271 -

~~XOROROK~~ General Counsel's Report dated July 27, 1981
signed August 7, 1981

- I approve the recommendation
- I object to the recommendation

COMMENTS: Approve the No PCTB though not
for the reasons given in GC's report.

Date: 8-12-81 Signature: J. Aikens

A DEFINITE VOTE IS REQUIRED AND ALL SHEETS SIGNED AND DATED.
PLEASE RETURN ONLY THE VOTE SHEETS TO THE OFFICE OF THE
COMMISSION SECRETARY NO LATER THAN THE DATE AND TIME SHOWN
ABOVE.



August 7, 1981 .

MEMORANDUM TO: Marjorie W. Emmons
FROM: Elissa T. Garr
SUBJECT: MUR 1271

Please have the attached General Counsel's Report distributed to the Commission on a 48 hour tally basis.
Thank you.

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SENSITIVE

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

BEFORE THE FEDERAL ELECTION COMMISSION

July 27, 1981 **81 AUG 7 12: 21**

In the Matter of)
Reader's Digest Association, Inc.)

MUR 1271

GENERAL COUNSEL'S REPORT

I. Background

On August 6, 1980, a signed and sworn complaint was filed before the Federal Election Commission (hereinafter the "Commission") against the Reader's Digest Association, Inc. (hereinafter the "Digest"). The complaint alleged that the Digest violated the Federal Election Campaign Act of 1971, as amended, § 431 et seq. (hereinafter the "Act"), section 44lb, by making corporate expenditures for the purchase of: (1) a computer study of the speed at which Senator Edward Kennedy's automobile was traveling when it crashed into the Poucha Pond, resulting in the death of Mary Jo Kopechne in 1969; (2) a study of the tides and currents in the area of the Chappaquiddick Island; and (3) the production and distribution of video tapes of a computer reenactment of the fatal accident at Chappaquiddick. On September 10, 1980, after notification by the Commission of the complaint, the Digest responded asserting that any investigation into its activities was barred by the first amendment and the statutory exemption for news stories, commentaries and editorials in 2 U.S.C. § 431(9)(B)(i).

After considering the allegations in the complaint and the response of the Digest, the Commission on November 11, 1980, found reason

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to believe that the Digest committed a violation of 2 U.S.C. § 441b by making expenditures "to disseminate to other media the video tapes of a computer reenactment of Senator Kennedy's automobile accident at Chappaquiddick Island." However, the Commission took no action regarding the allegations that violations of Section 441b arose from expenditures by the Digest for either the study of the automobile accident or the study of tidal currents. In a letter dated December 18, 1980, the Commission notified the Digest of the reason to believe finding and requested answers to a set of questions concerning the dissemination of the video tapes at issue. The Commission also requested copies of any video tape footage of the computer reenactment that the Digest might have in its possession.

The Digest filed a motion for a temporary restraining order and a preliminary injunction in the United States District Court for the Southern District of New York on January 30, 1981, in an attempt to halt the Commission investigation of the complaint. On March 19, 1981, the court denied the Digest's motion for a preliminary injunction. Following receipt of the court's order, the Commission again requested that the Digest voluntarily respond to the Commission original questions of December 15, 1980. The Digest replied in a letter dated April 13, 1981, that it read Judge Leval's order to require no answers to any Commission questions not tendered under compulsory process.

On April 23, 1981, the Commission authorized the issuance of an order to answer interrogatories and subpoena for the

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production of documents that were prepared along the lines of inquiry suggested by Judge Leval's opinion. On May 13, 1981, the Digest submitted a letter in response to the Commission's order and subpoena and attached a press package disseminated to various media outlets to promote the Chappaquiddick article in the February edition of the Reader's Digest magazine. In addition, the Digest offered to make copies of the original video tape and clips of the television coverage of the news regarding the studies and the video tape available for viewing in New York City. Commission staff viewed the video tapes in New York City on May 30, 1981.^{1/}

After analysis of all the facts available to it, the Office of General Counsel prepared a brief recommending that the Commission find no probable cause to believe that the Digest committed the violations alleged by the complainant. The brief was circulated to the Commission on July 1, 1981, and a copy was mailed to the respondent. The fifteen (15) day statutory period for a responsive brief from the Digest passed on July 23, 1981, without receipt of any communication from the Digest. The Office of General Counsel, therefore, submits this report recommending

^{1/} The Digest permitted Commission staff to view the tapes at their offices but did not "produce" them as would have been required to satisfy the letter of the Commission's subpoena. However, the video tapes viewed by Commission staff do not warrant further administrative or judicial action to obtain them for Commission viewing. The tapes make no explicit political expressions. Rather, they present factual data, in graphic form, supplementing the text of the study prepared by Research Associates, Inc., concerning the path of Senator Kennedy's automobile during his accident at Chappaquiddick Island.

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that the Commission find no probable cause to believe that the Digest committed violations of 2 U.S.C. § 441b of the Act.

II. Legal Analysis (see also Brief of the General Counsel)

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The Digest refused to provide a substantive response, to either the Commission's initial notification, or later, to the Commission's finding of reason to believe that the Digest committed violations. The Digest asserted that, as a publishing corporation, it was automatically exempt from Commission scrutiny. However, Judge Leval's ruling against the Digest's assertion of an absolute immunity from investigation permitted the Commission to conduct a limited inquiry into the factual question whether the dissemination of the video tapes was within the normal course of the Digest's publishing function. The results of this investigation, although admittedly incomplete on certain points,^{2/} combined with the information which the Digest put on the public record in its attempt to block the Commission's investigation, permit adequate appraisal of facts at issue in this matter. To wit, there is no evidence contrary to a conclusion that the Digest's use of a video tape

^{2/} One question which remains unanswered is whether the Digest has used video tapes to advertise Reader's Digest magazine articles other than the one complained of in this matter. The investigation produced no evidence that there was a "dissemination" of the video tapes that would qualify as an event outside of the normal course of the Digest's publishing business. Thus the importance of obtaining an answer to the Commission's question on other uses of the video tape mode to advertise Reader's Digest magazine is diminished.

reenactment of the accident at Chappaquiddick to promote the sale of the February 1980 edition of Reader's Digest magazine was within the ordinary course of its publishing business. Such a use is thus exempted by 2 U.S.C. § 431(9)(B)(i) from the Act's prohibition against expenditures by a corporation in connection with a federal election.

Accordingly, while it may be true that the Digest did not fully answer every single question proposed in the Commission's investigation of this matter, there is, nevertheless, no evidence that suggests that the Commission's investigation should go any further, or that the Commission should proceed to find probable cause to believe a violation has occurred. Given the sensitivity of the first amendment concerns at issue in this matter and the failure of the Commission's investigation to turn up evidence that suggest the use of the video tape was outside the scope of the Digest's publishing business, the Office of General Counsel recommends that the Commission find no probable cause to believe that the Digest violated 2 U.S.C. § 441b by disseminating copies of a video tape reenactment of Senator Kennedy's automobile accident at Chappaquiddick Island.

III. Recommendations


The Office of General Counsel recommends that the Commission:

1. Find no probable cause to believe that the Reader's Digest Association, Inc. committed a violation of 2 U.S.C. § 441b by disseminating copies of a video tape reenactment of Senator Kennedy's automobile accident at Chappaquiddick Island.

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2. Close the file.
3. Send the attached letters.

7 August 1951
Date



Charles W. Steele
General Counsel

BY: _____
Kenneth A. Gross
Associate General Counsel

Attachments
Letters to complainant and respondent

81040294898



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Larryann C. Willis
Route 2 Box 69
Vale, Oregon 97918

Re: MUR 1271

Dear Ms. Willis:

This is in reference to the complaint you filed with the Commission on August 6, 1980, concerning the publication by Reader's Digest Association, Inc. of an article entitled, "Chappaquiddick: The Still Unanswered Questions" in the February 1980 edition of Reader's Digest Magazine.

Based on your complaint, the Commission determined there was reason to believe that Reader's Digest Association, Inc. violated 2 U.S.C. § 441b, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), and instituted an investigation of this matter. After an investigation was conducted and brief of the General Counsel was considered, the Commission concluded on August , 1981, that there was no probable cause to believe that Reader's Digest Association, Inc. violated the Act. Accordingly, the file in this matter, numbered MUR 1271, has been closed. This matter will become part of the public record within 30 days. Should you wish to submit any factual or legal materials to appear on the public record, please do so within 10 days. The Federal Election Campaign Act allows a Complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

If you have any questions, please contact R. Lee Andersen, the attorney assigned to this matter, at (202)523-5071.

Sincerely,

Charles N. Steele
General Counsel

BY:

Kenneth A. Gross
Associate General Counsel

81040294899



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

David W. Cohen
Warshavsky, Hoffman & Cohen
30 Rockefeller Plaza
New York, New York 10112

Re: MUR 1271

Dear Mr. Cohen:

This is to advise you that after an investigation was conducted, the Commission concluded on August , 1981, that there is no probable cause to believe that your client, Reader's Digest Association, Inc. violated the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431 et seq. Accordingly the file in this matter, numbered MUR 1271, has been closed. This matter will become part of the public record within 30 days. Should you wish to submit any factual or legal materials to appear on the public record please do so within 10 days.

If you have any questions, contact R. Lee Andersen at (202) 523-5071.

Sincerely,

Charles N. Steele
General Counsel

BY:

Kenneth A. Gross
Associate General Counsel

81040294900



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 1, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

David W. Cohen
WARSHAVSKY, HOFFMAN & COHEN, P.C.
30 Rockefeller Plaza
New York, New York 10112

Re: MUR 1271

Dear Mr. Cohen:

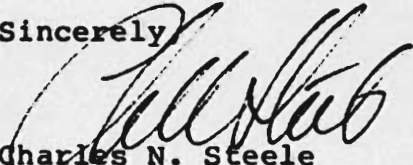
Based on a complaint filed with the Commission on August 6, 1980, and information supplied by your client, Reader's Digest Association, Inc., the Commission determined on November 7, 1980, that there was reason to believe that your client had violated 2 U.S.C. § 441b, a provision of the Federal Election Campaign Act of 1971, as amended and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find no probable cause to believe that a violation has occurred. The Commission may or may not approve the General Counsel's Recommendation.

Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies if possible) stating your position on the issues and replying to the brief of the General Counsel. Three copies of such brief should also be forwarded to the Office of General Counsel, if possible. The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of no probable cause to believe a violation has occurred.

Should you have any questions, please contact R. Lee Andersen at (202)523-5071.

Sincerely


Charles N. Steele
General Counsel

Enclosure
Brief

81040294902

July 1, 1961

MEMORANDUM TO: Marjorie W. Emons
FROM: Elissa T. Garr
SUBJECT: MUR 1271

**Please have the attached Memo and Brief distributed
to the Commission on an informational basis. Thank you.**

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

81 JUL 1 A10: 10

July 1, 1981

MEMORANDUM TO: The Commission

FROM: Charles N. Steele
General Counsel *CS*

SUBJECT: MUR 1271

Attached for the Commission's review is a brief stating the position of the General Counsel on the legal and factual issues of the above-captioned matter. A copy of this brief and a letter notifying the respondent of the General Counsel's intent to recommend to the Commission a finding of no probable cause to believe was mailed on July 1, 1981. Following receipt of the Respondent's reply to this notice, this Office will make a further report to the Commission.

Attachments

1. Brief
2. Letter to Respondent

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BEFORE THE FEDERAL ELECTION COMMISSION

June 9, 1981

In the Matter of)
Reader's Digest Association, Inc.)

MUR 1271

GENERAL COUNSEL'S BRIEF

I. Factual Background and Statement of the Case

On August 6, 1980, Larryann C. Willis filed a signed and sworn complaint before the Federal Election Commission (hereinafter the "Commission") against the Reader's Digest Association, Inc. (hereinafter "RDA"). The complaint alleged that RDA violated the Federal Election Campaign Act of 1971, as amended, § 431 et seq. (hereinafter the "Act"), section 441b, by making corporate expenditures for the purchase of: (1) a computer study of the speed at which Senator Edward Kennedy's automobile was traveling when it crashed into the Poucha Pond, resulting in the death of Mary Jo Kopechne in 1969; (2) a study of the tides and currents in the area of the Chappaquiddick Island; and (3) the production and distribution of video tapes of a computer reenactment of the fatal accident at Chappaquiddick.

Pursuant to 2 U.S.C. § 437g(a)(1), the Commission notified RDA of the complaint filed against it mailing a copy with all accompanying documents to RDA corporate headquarters on August 8, 1980. In accordance with Commission regulation 11 C.F.R. § 111.23, RDA submitted to the Commission written notification that it would be represented by legal counsel. On September 10, 1980,

Attachment 1

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the Commission received a response to its initial notification of complaint which asserted that any investigation into RDA's activities was barred by the first amendment and the statutory exemption for news stories, commentaries and editorials in 2 U.S.C. § 431(9)(B)(i).

After considering the allegations in the complaint and the assertion of blanket first amendment protection by RDA, the Commission on November 11, 1980, found reason to believe that RDA committed a violation of 2 U.S.C. § 441b by making expenditures "to disseminate to other media the video tapes of a computer reenactment of Senator Kennedy's automobile accident at Chapquiddick Island." However, the Commission took no action regarding the allegations that violations of Section 441b arose from RDA expenditures for either the study of the automobile accident or the study of tidal currents. In a letter dated December 18, 1980, the Commission notified RDA of the reason to believe finding and requested answers to a set of questions concerning the dissemination of the video tapes at issue. The Commission also requested copies of any video tape footage of the computer reenactment that RDA might have in its possession.

RDA filed a motion for a temporary restraining order and a preliminary injunction in the United States District Court for the Southern District of New York on January 30, 1981, in an attempt to halt any Commission investigation into the complaint. On February 6, 1981, the Office of General Counsel filed a brief in opposition to RDA's motion. On March 19, 1981, the court denied RDA's motion for a preliminary injunction. Although the

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court did not believe that all the Commission's questions were warranted, it did agree that the Commission could ask questions directed to the factual background of the distribution of the video tape and request copies of the video tape. Following receipt of the court's order, the Commission again requested that RDA respond to the Commission's original questions of December 15, 1980. RDA responded in a letter dated April 13, 1981, that it read Judge Leval's order to require no answers to any Commission questions not tendered under compulsory process.

On April 23, 1981, the Commission authorized the issuance of an order to answer interrogatories and subpoena for the production of documents that were prepared along the lines of inquiry suggested by Judge Leval's opinion. On May 13, 1981, RDA submitted a letter in response to the Commission order and subpoena and attached the press package disseminated to various media outlets to promote the Chappaquiddick article. In addition, RDA offered to make copies of the original video tape and clips of the television coverage of the news regarding the studies and the video tape available for viewing in New York City.

The press package consisted of a press release and copies of the written results of the two studies which were in part the basis for the February 1980 article in Reader's Digest magazine. The press release summarizes the results of the studies and the content of the magazine article on the Chappaquiddick accident, making a brief reference

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to the existence of the video tape of the computer printout.
Commission staff viewed the video tapes on May 20, 1981.^{1/}

II. Legal Analysis

The issue here is whether by the dissemination of the video tapes in question RDA made a prohibited expenditure in connection with the 1980 presidential primary election. 2 U.S.C. § 441b(b)(2) defines expenditure as:

"any direct or indirect payment, distribution, loan, advance, deposit or gift of money, or any services, or anything of value...to any candidate, campaign committee or political organization, in connection with any federal election..."

However, the term "expenditure" does not include:

any news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine or other periodical publication, unless such facilities are owned or controlled by any political party, political committee or candidate...

2 U.S.C. § 431(9)(B)(i).

^{1/} In addition to a video tape reenactment of the accident at Chappaquiddick Island, RDA showed Commission staff five other clippings from network and local television stations which covered the news of the RDA magazine article, the research underlying it and, in two instances, also showed brief excerpts of the video tape. The clippings were identified as follows: (1) 11:00 P.M. Channel 2 local New York CBS network news; (2) CBS Evening News Network with Walter Cronkite; (3) NBC Nightly Network News; (4) 6:00 P.M. Channel 4 local New York news (included an excerpt of the video tape) and (5) NBC Today Show (included an excerpt of the video tape). In No.'s (2) and (3) the news coverage included reporting on a study commissioned by the Washington Star newspaper also attacking Senator Kennedy's version of the facts concerning the Chappaquiddick Island accident.

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Thus 2 U.S.C. § 431(9)(B)(i) does not exempt all election related expenditures made by a corporate publisher, but only those which involve the distribution of a "news story, commentary or editorial." Because RDA failed to inform the Commission of the contents of the video tapes or the factual circumstances under which they were distributed, the Commission could not make a determination whether such distribution was within RDA's legitimate publishing function and found reason to believe that the alleged dissemination of these video tapes may have been in violation of the Act. If the distribution of the video tape concerning Senator Kennedy's accident at Chappaquiddick Island was unrelated to any of RDA's legitimate publishing functions, the media exemption in the prohibition in Section 431(9)(B)(i) is not available to protect the substance of the video tape from the application of the Section 441b prohibition against corporate expenditures.

The Commission commenced its investigation by directing questions to those factual issues surrounding distribution of the tape, and ultimately ordered RDA to answer five questions and subpoenaed two kinds of documents. Summarized, the requests for information issued under compulsory process were as follows:

- (1) did the video tape advertise the February 1980 article, "Chappaquiddick";
- (2) did RDA agree to pay anyone for broadcasting the video tape;
- (3) has RDA ever advertised or promoted magazine articles other than "Chappaquiddick" through the use of video tape;
- (4) who was in charge of the use made of the video tape at RDA;

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(5) submit a copy of the original video tape; (6) submit any recordings showing television broadcasts of the video tape; and (7) what was meant by Mr. Oursler's statement that six copies of the video tape were "made available".

Documents filed with RDA's January 30, 1981 motion for a preliminary injunction, together with the May 13, 1981 response to the Commission's order and subpoena and the May 20, 1981 viewing by Commission staff of the video tape and clippings effectively answered requests No.'s (1), (2), (4), (5), (6) and (7) in the Commission's order and subpoena. The papers filed in the district court by RDA included an affidavit by Mr. Fulton Oursler, Jr., who was the executive editor of the February 1980 issue of the Reader's Digest magazine and supervised the content of the issue containing the article on the Chappaquiddick accident. In his affidavit, Mr. Oursler discusses RDA's use of the video tapes produced by Research Associates. He states that as a part of the final report in the study of the accident at Chappaquiddick, Mr. Raymond McHenry, the engineer in charge of the study, prepared a "computer line drawing video tape which illustrates the reconstructed sequence of events." Mr. Oursler continues with a description of RDA's distribution of these tapes as follows:

On January 14, 1980, RDA distributed copies of the February 1980 issue together with a press release and copies of the studies to the major television networks, local television stations and other media outlets. Six copies of the McHenry video tape were also made available. The results of the studies contained in the

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Article were discussed on major television network news shows on January 15, 1980 including, among others, the NBC Today show, and the NBC 6:00 P.M. News program which included a 12-second segment of the video tape. (CBS Evening News with Walter Cronkite and other news programs carried the story but did not use the video tape.)

* * *

The Article was published in Reader's Digest magazine in the ordinary course of business because it was timely, newsworthy and of general interest to our readers. Indeed, the studies and the videotape in and of themselves were newsworthy.

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This language in Mr. Oursler's affidavit supplies the Commission with a statement that the purpose of distributing information about the studies, including the video tape, was to promote the sale of Reader's Digest magazine by providing the public with newsworthy information about the Chappaquiddick accident. The press kit submitted to Commission focuses on new evidence about the circumstances of the accident uncovered though the studies commissioned by RDA confirming that information supplied by RDA to various media outlets was for the purpose of advertising the magazine article. Thus question (1) is satisfactorily answered.^{2/}

According to Mr. Oursler, the distribution of copies of the magazine article and of the studies was undertaken in the ordinary course of publishing the Reader's Digest magazine article about Senator Kennedy's 1969 automobile accident at Chappaquiddick Island. RDA's May 13, 1981 response to the Commission's order and subpoena support this conclusion. The affidavit states that

^{2/} In the view of Judge Leval, a "convincing" answer to this question alone would be sufficient to terminate the Commission's investigation of this matter. Reader's Digest Association, Inc. v. Federal Election Commission, 509 F. Supp. 1210, 1215 (S.D. N.Y. 1981).

six copies of the video tape were "made available." There is no suggestion that any payment to any person or entity was involved. Discussions with counsel for RDA at the time Commission staff viewed the video tapes confirmed that no payments of money were associated with the television stations' use of the tapes. Thus question (2) is answered by Mr. Oursler's affidavit, the press package submitted to the Commission and explanatory remarks by counsel for RDA.

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Although question (3), concerning previous use of video tape to promote or advertise other Reader's Digest magazine articles, was not directly answered, this information beomes less crucial to the Commission's analysis of the matter in light of clarification of what Mr. Oursler meant in his sworn statement that copies of the McHenry video tape were "made available".^{3/} If there had been a general distribution of the McHenry tape, such a distribution might have been profitably compared to other distributions of video tape promotion or advertisement conducted by RDA in the past. However, there is no evidence to support the view that copies of the McHenry video tape were disseminated as alleged by the complainant.

The McHenry tape is a 45 second summary of the results of the engineering study silently depicting factual data about the speed and path of Senator Kennedy's car at the time of the accident at Chappaquiddick Island. And, the two portions of

^{3/} The May 13, 1981 RDA response containing the press package confirms that Mr. Pinchman was in charge of the use made of the video tape by RDA. Thus question (4) is answered.

this tape which RDA possesses showing television network use of the tape are consistent with the other materials and information supplied to media outlets promoting the sale of the February 1980, edition of Reader's Digest magazine. Finally, information volunteered by counsel during the Commission staffs' viewing of the video tapes that the six copies of the original video tape were not distributed along with the press package, but supplied to television stations upon request, confirms that RDA's use of the video tapes was limited to the province of legitimate, commercial advertising.

The Commission's subpoena for available copies of the tape and recordings of broadcasts thereof in questions (5) and (6) were partially satisfied by RDA's permitting Commission staff to view the tapes. However, the content of the video tape, an animation of the McHenry study's conclusions showing a car silently driving off an incline from several angles of observation, sheds no light on the question of dissemination posed by the Commission's investigation of this matter. The investigation would not benefit from Commission possession of these tapes.

Commission question (7) requests information on the distribution of the video tapes to clarify the statement in Mr. Oursler's affidavit that the tapes were "made available". The press package submitted to the Commission in RDA's most recent communication to the Commission refers briefly to the existence of the tape, however, there is no indication in this press package that the McHenry tape was included as a part of this set of materials. The tapes of the network news broadcasts indicate that portions

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of the tape were used by two network television stations. There is no evidence in the material presented to the Commission thus far, or in the representations made by counsel during the May 20, 1981 viewing of the tapes, that copies of the video tape in question were disseminated as alleged by the complainant. Counsel confirmed that copies of the tape were made available to the television stations only upon request.

Furthermore, in previous matters, the Commission has recognized that publishing corporations may advertise their product by a variety of means, including the purchase of advertising space in other media, without running afoul of the Section 441b prohibition against corporate expenditures. The production of six copies of the video tape, made available to television stations but not distributed with the other materials in the RDA press package, is not a circumstance sufficient to take RDA's efforts to promote and advertise the sale of its February 1980, Reader's Digest magazine outside of the normal course of its publishing business.

The evidence garnered from all of the information which the Office of General Counsel has obtained relating to this matter fail to show that RDA actively distributed the McHenry video tape. The content of the video tape itself is no more than a summary of some results from the research that RDA commissioned for the Chappaquiddick article. The materials supplied to the media in the press package inform the reader about and advertise this magazine article, and there is no indication in the evidence that the McHenry video tape was produced for any other purpose.

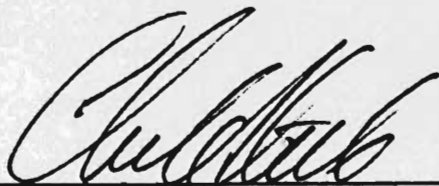
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Thus on the basis of the evidence supplied by RDA, there is no factual predicate for a conclusion that the respondent made expenditures for dissemination of the video tapes in question outside of the exemption in 2 U.S.C. § 431(9)(B)(i). Therefore, the Office of General Counsel recommends that the Commission find no probable cause to believe that RDA violated 2 U.S.C. § 441b by distributing to other media the video tapes of a computer reenactment of Senator Kennedy's automobile accident at Chappaquiddick Island.

III. General Counsel's Recommendation

Find no probable cause to believe that the Reader's Digest Association, Inc. violated 2 U.S.C. § 441b by distributing to other media the video tapes of a computer reenactment of Senator Kennedy's automobile accident at Chappaquiddick Island and close the file.

30 June 1981
Date


Charles N. Steele
General Counsel

Attachment

Letter to respondent.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 1, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

David W. Cohen
WARSHAVSKY, HOFFMAN & COHEN, P.C.
30 Rockefeller Plaza
New York, New York 10112

Re: MUR 1271

Dear Mr. Cohen:

Based on a complaint filed with the Commission on August 6, 1980, and information supplied by your client, Reader's Digest Association, Inc., the Commission determined on November 7, 1980, that there was reason to believe that your client had violated 2 U.S.C. § 441b, a provision of the Federal Election Campaign Act of 1971, as amended and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find no probable cause to believe that a violation has occurred. The Commission may or may not approve the General Counsel's Recommendation.

Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies if possible) stating your position on the issues and replying to the brief of the General Counsel. Three copies of such brief should also be forwarded to the Office of General Counsel, if possible. The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of no probable cause to believe a violation has occurred.

Should you have any questions, please contact R. Lee Andersen at (202)523-5071.

Sincerely,


Charles N. Steele
General Counsel

Enclosure
Brief

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WARSHAVSKY, HOFFMAN & COHEN, P. C.

30 ROCKEFELLER PLAZA

NEW YORK, N. Y. 10112

STEPHEN D. HOFFMAN
SUZANNE M. WARSHAVSKY
DAVID W. COHEN

TELEPHONE (212) 847-0350

May 11, 1981

The Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

ATTENTION: Charles N. Steele, Esq.
General Counsel

Re: MUR 1271

31 MAY 13 P12: 51

GENERAL COUNSEL

Dear Mr. Steele:

This letter is in response to your letter of April 24, 1981, which has attached to it a document entitled "Order To Answer Interrogatories And Subpoena To Produce Documents", dated April 24, 1981, addressed to my client, The Reader's Digest Association, Inc. ("RDA") and which I received on May 1, 1981.

As you know, from the outset, RDA has taken the position that any inquiry by the Federal Election Commission ("FEC") into the circumstances surrounding the preparation, publication and distribution of the article entitled "Chappaquiddick: The Still Unanswered Questions", which appeared in the February 1980 issue of Reader's Digest, violates the First Amendment, and we remain firmly convinced that the entire process of preparation, publication and dissemination of the article is protected by the First Amendment.

However, as indicated by the affidavit of Fulton Oursler, Jr., sworn to January 29, 1981 RDA made certain materials available to the public in connection with the appearance of the article. Therefore, I have been authorized to make available to the FEC the "public" information about the article, including the press kit which accompanied its release, a copy of which I am enclosing with this letter. In addition,

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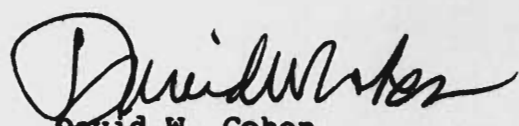
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I am authorized to make available to you a copy of the videotape containing the animation of the computer print-out study and a copy of the recordings of the media broadcasts in which portions of the videotape were used. Please let me know when you would like to view these videotapes, and we will arrange a mutually convenient time.

After review of this material, I am confident that it will be obvious to the FEC that there is no basis for its proceeding.

Very truly yours,


David W. Cohen

DWC:dw

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NEWS RELEASE

PLEASANTVILLE, NEW YORK 10570

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Contact: Charles Pintchman (914) 769-7000 Ext. 2567

NOT FOR RELEASE BEFORE 6 P.M. EASTERN STANDARD TIME
MONDAY, JANUARY 14, 1980

Independent scientific studies commissioned by the Reader's Digest show that Senator Edward M. Kennedy's account of his actions at Chappaquiddick is false in significant respects, the magazine reports in its February issue.

With the Senator's emergence as a candidate for President, major newspapers and other responsible commentators have declared that Chappaquiddick now deserves the most searching scrutiny possible.

For its investigations, The Digest commissioned an elaborate computer analysis of the accident in which Mary Jo Kopechne died. It reveals that Kennedy was traveling far faster than he has said when his car hurtled off a bridge on Chappaquiddick Island. The analysis further reveals that as Kennedy approached the bridge, he was driving on the wrong side of the road and engaged in "panic braking," which contributed to the fatal accident.

These findings are contained in a 10,000-word report, "Chappaquiddick, The Still Unanswered Questions," written by award-winning investigative reporter John Barron, a senior editor of the magazine.

A tidal study by an internationally renowned oceanographic engineer disproves Kennedy's story of his famous nighttime swim across the Edgartown harbor channel. Kennedy claims that a ferocious current swept him far northward out toward the ocean and almost drowned him. However, the authoritative tidal study discloses that the current prevailing at the time was quite weak and flowing southward. Thus, the current would have carried Kennedy inland in a direction exactly opposite from that he reports.

The Digest's special feature article additionally cites evidence extracted from sworn testimony which flatly contradicts Kennedy's oft-repeated assertion that he cooperated fully with investigating authorities.

Kennedy last fall professed willingness to answer any and all journalistic questions about Chappaquiddick. However, he ignored repeated Digest requests for an interview even though his office was told that the magazine had developed new information.

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At the inquest into the death of Miss Kopechne, Kennedy swore he was driving only about 20 miles an hour when he came upon the bridge. He also testified under oath that he did not see the bridge until "fractions of a second" before driving on it. The judge presiding at the inquest ruled that to travel the jarring Dyke Road even at a speed of 20 miles per hour was "negligent and possibly reckless."

The Digest consulted experienced traffic engineers who upon examining evidence of the accident were convinced that Kennedy must have been driving much faster than 20 miles an hour.

"The Digest then commissioned an elaborate scientific study by Raymond R. McHenry one of the nation's foremost experts in automobile-accident analysis," the article states.

"Utilizing sophisticated analytical techniques validated by the Department of Transportation and accepted in numerous legal cases, McHenry fed masses of data -- including the weight and wheel base of the car, the elevation of the road and the geometric features of the bridge -- into an IBM computer. After repeated computer runs, he mathematically recreated the movements of the car." (As part of his analysis, McHenry also prepared a "computer line drawing" film which recreates the accident.)

The Digest reports that McHenry's findings were as follows:

"Driving on the wrong (left) side of the road, Kennedy approached the bridge at approximately 34 mph. (Abiding by rigorous scientific standards, McHenry stipulates that his speed computations could be in error by plus or minus 4 mph. Thus, the car was traveling at a minimum of 30 mph; it could have been going as fast as 38 mph.)

"Kennedy saw the bridge when he was at least 50 feet away from it, probably farther away. At least 17 feet from the bridge, he slammed the brakes down hard -- 'panic braking,' which locked the front wheels. Propelled by the high speed, the car skidded 17 feet along the road, about another 25 feet up the bridge, jumped a 5 1/2-inch-high rub rail and hurtled approximately 35 more feet into the water. Despite Kennedy's braking effort, the car was traveling between 22 mph and 28 mph when it shot out over the pond."

The magazine asserts that "by approaching the hazardous bridge at 30 to 38 mph, Kennedy clearly invited the disaster that in fact ensued."

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According to the chronology emerging from the testimony of Kennedy and his two friends, Joseph F. Gargan and Paul F. Markham, the Senator "impulsively" jumped in the harbor channel to swim from Chappaquiddick toward Martha's Vineyard sometime between 1:35 a.m. and 1:45 a.m. July 19, 1969.

"Of all the episodes Kennedy has narrated, the channel swim is among the most melodramatic," the Digest declares. "He knew again that he was 'going to drown.' Three times he mentions the ferocious tide that almost pulled him down and swept him northward 'toward the direction of the Edgartown Light and well out into the darkness' as his strength ebbed perilously."

But the scientific findings of oceanographer Bernard Le Mehaute, who in 1979 received the American Society of Civil Engineers' International Coastal Engineering Award, show that it just could not have happened this way.

"Around 1:30 a.m., the current was weak to zero," Dr. Le Mehaute reports. "After about 1:30 a.m., the current flowed southward toward Katama Bay at an increasing velocity until approximately 4 a.m. (see page 7 of Dr. LeMehaute's report, attached)."

The Digest emphasizes that "had Kennedy encountered any current at all, it would have swept him not northward toward the lighthouse, as he says, but southward, in exactly the opposite direction."

The magazine further reports that "an analysis of the inquest transcript discloses that Kennedy's account of his swim is contradicted by the separate, sworn testimony of his two loyal allies, Gargan and Markham.

"From the ferry landing on Chappaquiddick, they watched three or four minutes until Kennedy was half to three quarters of the way across the channel -- well past the area where he claims the awful tides beset him. He was not being swept away. On the contrary, Markham testified that he was swimming toward the landing at Edgartown. Neither Markham nor Gargan observed him experiencing any difficulty; neither saw any cause for alarm."

Through the years, Kennedy consistently has contended that from the outset, he wholeheartedly cooperated with investigators and responded fully to all their inquiries. But in combing the inquest transcript, The Digest discovered heretofore ignored evidence to the contrary.

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When Kennedy finally decided to go to the police some ten hours after the accident, he said to his friends Markham and Gargan, both lawyers, "As far as you know, you didn't know anything about the accident that night."

After reading the sparse and sketchy statement Kennedy initially gave police, a state investigator attempted to question him. The Digest found in the transcript that Kennedy tersely replied, "I have no comment," and walked away.

The Digest also points out that Kennedy in his statement to police concealed the fact that there were ten witnesses to events preceding and following the accident, two of whom, Markham and Gargan, had detailed information. "By omitting these facts, Kennedy enabled all the witnesses to leave the island before nightfall on July 19 and avoid interrogation at a time when their memories were fresh and before they could be coached."

The article additionally raises doubts about the truthfulness of other facets of Kennedy's story, particularly about where he actually was taking Miss Kopechne when he drove her to her death.

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TIDAL CURRENTS AT MARTHA'S VINEYARD

by
Bernard Le Méhauté, Ph.D.
and
Ernest Daddio, M.S.

I. Purpose of Investigation

The purpose of this study is to establish the time history of current intensity and direction at the Dike Bridge on Chappaquiddick Island and in Edgartown harbor on the night of July 18, 1969 and the morning of July 19, 1969.

II. Methodology

Basic principle: If wind conditions are substantially the same and no major bathymetric changes have occurred, then a tidal current which is measured presently under identical tidal conditions (amplitude and appropriate time) will yield the same velocities as existed on 18-19 July 1969.

III. Matching Time Scales

Using National Ocean Survey tide table for 1969 and 1979, the predicted tidal elevation was plotted as a function of time 18-19 July 1969 and a two week period in November 1979 for the main tide stations of Boston Harbor and Newport, R.I. as well as for the sub-stations of Edgartown and Wasque Point. The plots indicate that the tide of 9-10 November 1979 is nearly identical with that of 18-19 July 1969. As a result velocity measurements made on the 9-10 November 1979 can be related to corresponding points on the tide plot of 18-19 July 1969.

The time scale for the 9-10 November 1979 tide was matched with the 18-19 July 1969 tide by matching times of high and low

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predicted tides at Edgartown. For example, the predicted low tide for Edgartown at 0851 a.m. Eastern Standard Time 9 November 1979 corresponds to 0904 p.m. Daylight Saving Time 18 July 1969.

The curves presented in the following sections are plotted with respect to one unique time axis on which we have established the above time equivalence + 4 minutes for graphic convenience and in compatibility with measurement accuracy.

IV. Bathymetric Changes

A) Dike Bridge

Tidal inlets such as that encountered at Cape Poge Gut are "carved" by tidal currents and waves. Since the tidal amplitude (half the distance from low to high tide or high to low tide) in 1969 and 1979 is the same, the cross section of the tidal inlet does not vary with time. However, at times wave action may temporarily transport sediment into the tidal inlet which constricts the channel until it is removed by tidal currents. There is no indication that the tidal inlet Cape Poge Gut was substantially different in July 1969 as compared to its present configuration. It is also assumed that Cape Poge Bay and Poucha Pond have approximately the same water volume capacity now as they had in 1969. Consequently, velocity measurements made at the Dike Bridge by one of the authors are judged to reliably represent tide current conditions in July 1969.

B) Edgartown

Due to a tidal phase difference (difference in time of occurrence of high and low tide) between Wasque Point and Edgartown, the tidal current at Edgartown varies considerably depending on whether or not the sand spit forming Norton Point is open.

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There is presently no tidal cut through the spit, whereas it is reported by local fishermen that an opening did exist in July 1969. Therefore, current measurements obtained in Edgartown for the purposes of this study do not represent prevailing tidal conditions for 18-19 July 1969. However, tidal amplitude differences between Edgartown and Nasque point permit us to approximate the time history of current direction.

V. Wind Effect

An eyewitness account by Jared Grant indicates no wind on the night and early morning of 18-19 July 1969 ("Beautiful night very calm, the water was like glass"). During our tide current measurement, the wind was not measured but was estimated at less than 5 knots from the southwest for the 9 November experiment and between 5 and 15 knots also from the southwest for the 10 November experiment. It is expected that the wind had little effect on the current measurements at the Dike Bridge, whereas the effect was substantial on the Edgartown measurements.

VI. Measurements

A) Dike Bridge

Measurements of current velocity were conducted on the north side of Dike Bridge at three points along the bridge span and at various depths. The west position is 12 ft from the west bank of the channel, the middle position is 40 ft from the west bank, and the east position is 24 ft from the east bank. The velocities at 1-ft depth for the middle and east position are presented in the accompanying Figure 1. Measurements were obtained from 0730 a.m. to 0515 p.m. Eastern Standard Time (EST) on 9 November 1979 using a Teledyne Gurley current meter.

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Tidal elevation was monitored during the same time period. These measurements were not referred to a tidal or geodetic datum and therefore give us only relative values and the distance between low and high tide, i.e., tidal range.

B) Edgartown

Measurements of water level were also conducted at Edgartown on 9 November near the ferry. These measurements allow us to establish the time difference in the occurrence of low tide and high tide at Edgartown and the Dike Bridge. Measurements of tidal elevation and currents were conducted at the Edgartown channel on 10 November between 0830 a.m. and 0500 p.m. (EST), and are presented in the accompanying Figure 2.

VII. Results at Dike Bridge

The results in this section refer to Figure 1 which gives the complete time history of tidal events to which can be assigned all non-oceanographic events. The main results are:

1) The maximum current at Dike Bridge does not exceed 1.6 knots under the conditions described herewith.

2) Low water slack (zero current) occurred at 1020 a.m. (EST) on 9 November 1979 corresponding to 1030 p.m. Daylight Saving Time (DST) 18 July 1969. This is event A in Figure 1. After that time current direction was toward Poucha Pond.

3) The time 1105 to 1125 a.m. (EST) (event B) on 9 November 1979 corresponds to 1115 to 1135 p.m. DST on July 18, 1969. During this period the current speed was between 0.8 and 1.0 knot at the middle position and 1.1 to 1.3 knots at the east position. The direction was into Poucha Pond.

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4) The time period 1205 to 1250 p.m. EST on 9 November 1979 corresponds to 1215 to 0100 a.m. DST on 19 July 1969 (event C). During this period, the measured current was about 1.25 knots in the middle of the bridge and 1.5 knots at the east position with direction toward Poucha Pond.

5) Event D refers to the eyewitness account of tide current conditions by John Farrar for 0855 a.m. DST 19 July 1969. This is approximately 1 hour and 45 minutes before the next low tide (event E) at Dike Bridge and 2 hours before low water slack (zero current).

Several additional points can be made concerning the relationship of the tide between Edgartown and Dike Bridge.

1) One will notice in the plot of tide elevations in Figure 1 that there is a phase difference (time difference) of one hour in the occurrence of low or high tide between Edgartown and the Dike Bridge. That is, low and high tide occur one hour later at the Dike Bridge than at Edgartown.

2) Slack tide occurs approximately 15 minutes after low or high tide at the Dike Bridge.

3) The channel at the Dike Bridge is characterized by very rapid changes in current conditions around slack tide. That is, within a period of half an hour to one hour, tidal currents experience a decrease in intensity in one direction to zero, followed by a rapid increase in intensity in the opposite direction.

VIII. Results - Edgartown

The current in the Edgartown channel did not exceed 0.5 knot during the period of measurement on 10 November 1979. However, as was indicated in Sections IV and V, these measurements are not a reliable indication of tidal current condition for 18-19 July 1969

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due to bathymetric changes and, to a lesser extent, wind effects.

However, referring to tide tables of 1969, it is possible to obtain the time for high tide and low tide on both sides of Katama Bay, i.e. at Edgartown on the north and at Wasque Point on the south. (It is recalled that a tidal inlet near Wasque Point was open in July 1969 and is now closed). However, the tide tables do not allow us to determine how the two levels are related with respect to each other, since they are not referred to a common datum. For navigation purposes, they are referred to the local mean low water, which could be different from place to place.

The basic information which will permit us to establish the relationship between tide with sufficient accuracy (less than one inch) is not available and may not exist. However, one will notice that at low tide, the phase difference between the two points is only an hour. Therefore, during slack tide, the level at Edgartown and Wasque Point must be close to being horizontal. Still considering the phase difference and relative tidal amplitude, the low tide at Wasque Point must be slightly higher (around one inch) than the low tide at Edgartown.

At high tide the time phase difference is too large and the sea surface cannot be nearly horizontal as during low tide.

Another hypothesis is to assume the mid sea level to be the same at both places.

The truth probably lies between the two cases. The curves corresponding to these two limit assumptions (same low level on one hand, same mid level on the other) are plotted on Fig. 2.

In the first case: same horizontal level during slack tide: the water enters Katama Bay by both inlets (Edgartown and Wasque Point) from around 8:30 PM (2030) DST July 18, 1969 to around 1 AM (0100) DST July 19, 1969. After (1:30 AM DST) the level at Edgartown keeps rising whereas it decreases at Wasque Point, therefore the current at Edgartown

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is towards Katama Bay and increases till around 4 AM DST. Therefore, based on this hypothesis, it can be concluded that at 1:30 AM the current is weak and toward Katama Bay.

In the second hypothesis, Katama Bay is initially filled by the water entering the southern tidal inlet near Wasque Point, since the level at Edgartown is lower, a small current towards the north exists till around 1:30 AM when the two levels at Wasque Point and Edgartown nearly coincide. Since the tide continues to rise at Edgartown, the current reverses towards Katama Bay and becomes stronger till around 4:30 AM DST.

In summary the uncertainties are, 1) the exact tidal time history (which has been assumed to be a nice smooth sinusoidal type curve, but actually has many harmonics- bumps- as shown on Fig. 2, top of page), 2) the lack of knowledge of the bathymetry, 3) the lack of a common tidal datum. Nevertheless, the fact remains that the tide was rising at Edgartown at 1:30 AM DST whereas it stops rising at Wa-que Point. Therefore the data do justify the following conclusions:

1. Around 1:30 AM DST the current was weak to zero, i.e., slack.
2. Such current such as existed at 1:30 A.M. was flowing probably southwards towards Katama Bay.
3. After around 1:30 AM DST, the current flowed southward with increasing velocity toward Katama Bay till approximately 4:00 AM DST.

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APPENDIX

The following events refer to Fig. 1.

Event A: Low water slack at Dike Bridge.

Time: 1020 a.m. EST November 9, 1979
1030 p.m. DST July 18, 1969

Event B: Time of occurrence of accident and initial attempt by Kennedy to save Mary Jo Kopechne. Current velocity 0.8 to 1.0 knot at center of bridge and 1.1 to 1.3 knots at east position. Direction toward Poucha Pond.

Time: 1105 to 1125 a.m. EST November 9, 1979
1115 to 1135 p.m. DST July 18, 1969

Event C: Second attempt by Kennedy to save Mary Jo Kopechne. Current velocity 1.25 knots at center of bridge and 1.5 knots at east position. Direction toward Poucha Pond.

Time: 1205 to 1250 p.m. EST November 9, 1979
1215 to 0100 a.m. DST July 19, 1969

Event D: Time of recovery of body of Mary Jo Kopechne by diver John Farrar. Current velocity probably 1 to 1.5 knots northward and out of Poucha Pond.

Time: 0845 p.m. EST November 9, 1979
0855 a.m. DST July 19, 1969

Event E: Probable time of low tide at Dike Bridge followed within 15 minutes by slack tide.

Time: 1030 p.m. EST November 9, 1979
1040 a.m. DST July 19, 1969

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The following refers to Fig. 2:

Event 1: Time at which Kennedy swam the Edgartown channel.
Current probably weak and toward Katama Bay.

Time: 0215 p.m. EST November 10, 1979
0130 a.m. DST July 19, 1969

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11

FIG. 1

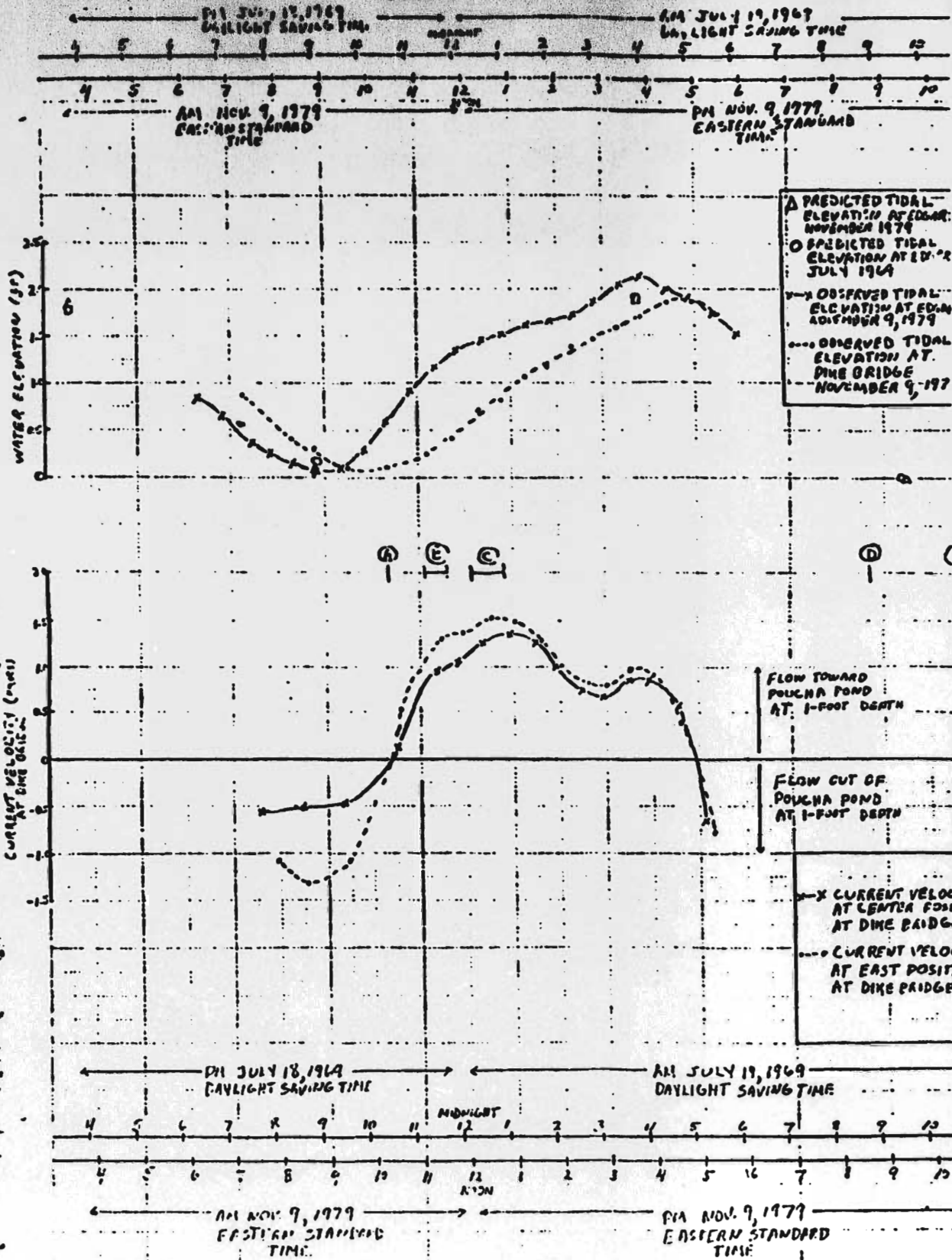


FIG. 1: (TOP) PREDICTED TIDAL ELEVATION AT EDGARTOWN NOVEMBER 1979 AND JULY 1969. OBSERVED TIDAL ELEVATION AT EDGARTOWN AND DIKE BRIDGE NOVEMBER 9, 1979. (BOTTOM) OBSERVED CURRENT VELOCITY AT DIKE BRIDGE NOVEMBER 9, 1979.

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FIG. 2

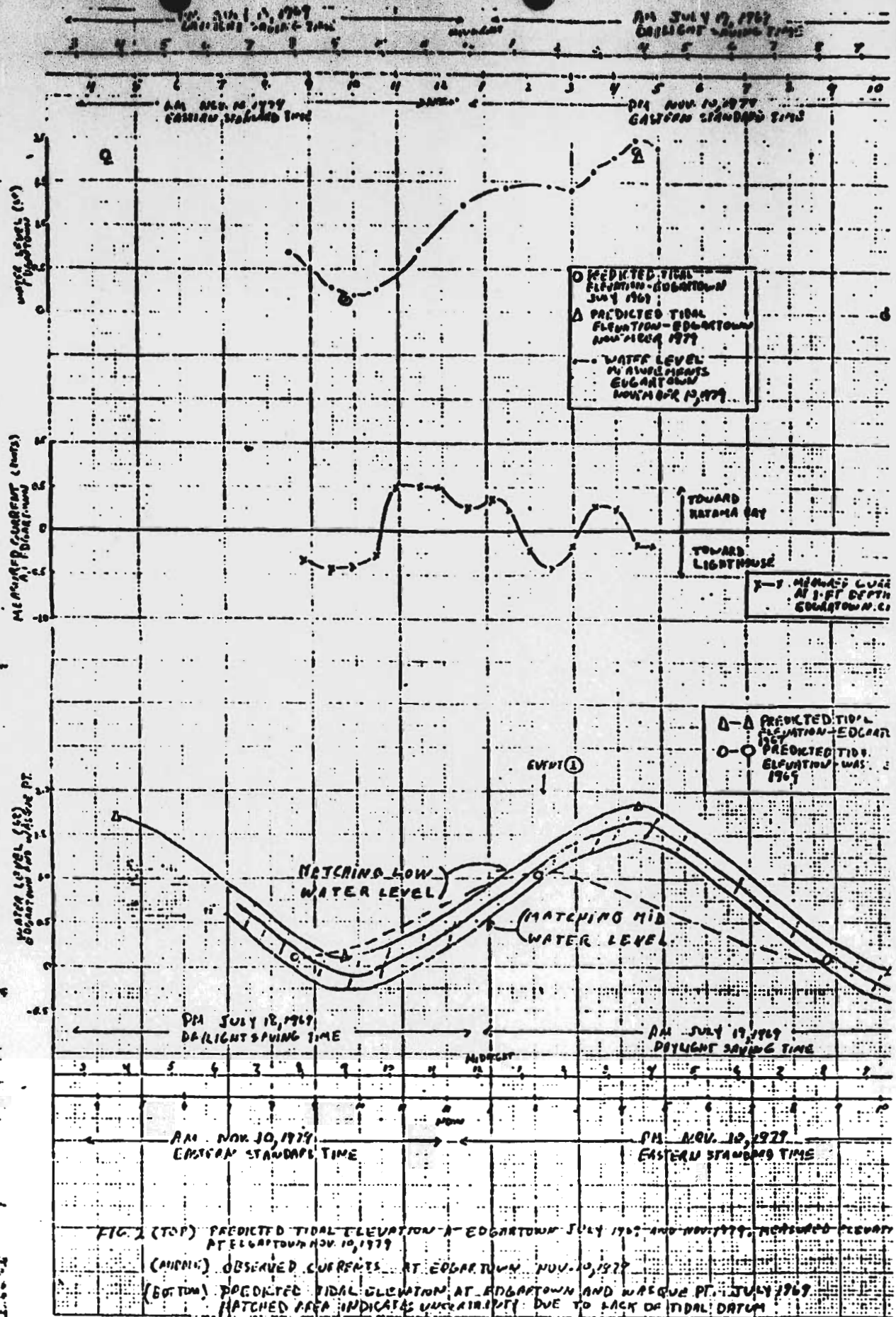


FIG. 2 (TOP) PREDICTED TIDAL ELEVATION AT EDGARTOWN JULY 1969 AND NOV. 1979, MEASURED ELEVATION AT EDGARTOWN NOV. 10, 1979
 (MIDDLE) OBSERVED CURRENTS AT EDGARTOWN NOV. 10, 1979
 (BOTTOM) PREDICTED TIDAL ELEVATION AT EDGARTOWN AND NAHQUE PT. JULY 1969
 HATCHED AREA INDICATES UNCERTAINTY DUE TO LACK OF TIDAL DATA

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DR. BERNARD LE MEHAUTE BIOGRAPHICAL SKETCH

Dr. Bernard Le Méhauté was born and educated in France. He obtained his doctoral degree in hydrodynamics in 1957 at the University of Grenoble. He divided his career between industry and academia. He is a co-founder of Tetratech, Inc., a major oceanographic engineering company headquartered in California, where he has been senior vice president and corporate chief engineer for many years.

Dr. Le Méhauté has designed a number of large coastal engineering projects throughout the world such as the largest LNG (liquefied natural gas) harbor in the world, in Algeria. He has written a number of books in the field of water waves which have been translated into many languages and also is the author of numerous scientific articles.

Both in the Ford and Carter Administrations he was nominated by the Secretary of Commerce to the National Sea Grant Review Panel of the National Oceanographic and Atmospheric Administration. Dr. Le Méhauté has been the recipient of a number of awards, including the International Coastal Engineering Award in 1979, which is granted on a worldwide selection by the American Society of Civil Engineers, for his contribution to theoretical development, engineering design and education in the field of coastal engineering.

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Research Engineers, Inc. CONSULTING ENGINEERS

REI FILE NO. 79-2188

**RESULTS OF AN INVESTIGATION OF VEHICLE DYNAMICS IN A PLUNGE
FROM THE SIDE OF A NARROW BRIDGE**

Investigation Conducted

for

Reader's Digest
Washington, D. C.

By

Raymond R. McHenry
Raymond R. McHenry
Staff Scientist

December 1979

P.O. Box 12072 Research Triangle Park, North Carolina 27709 (919) 549-8346

81040294935

1.0 SUMMARY

In the subject accident, the path of the vehicle across the Dike Bridge was produced by a tangential departure from the 150-foot radius left turn preceding the bridge. The alignment of the reported tire marks in relation to the centerline of the approach road clearly indicates that the approach to the bridge was made in the left lane of the approach road and, further, that a hard application of the brakes occurred at a point at least 17 feet before contact with the bridge. Locked front wheels prevented steering control as the vehicle skidded approximately 25 feet along and across the wooden bridge prior to vaulting from the right side of the bridge.

At entry to the final left turn leading to the bridge, the speed of the accident vehicle was approximately 34 ± 4 miles/hour. The hard brake application that preceded contact with the bridge reduced its speed at the point of departure from the bridge to approximately 25 ± 3 miles/hour.

The cited findings are based on an analysis of the reported physical evidence from the accident, which has included the use of a computer simulation program (see Appendix). The direction of motion and the distance traveled from the edge of the bridge to the reported landing area on the channel bottom (approximately 35 feet of travel by the center of gravity) are the primary items of evidence upon which the speed estimates are based. The contacted portion of the bridge includes

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surfaces that are inclined upward and also a 5 1/2" high rub-rail that was mounted by the vehicle. The computer program which was applied includes approximations of effects produced by the cited bridge features on the upward launch angle of the vehicle center of gravity.

The indicated ranges in the speed estimates reflect an allowance for a corresponding lack of precision in some of the reported evidence. They also reflect allowances for omission of effects on the final landing position that were produced by travel through the approximately 6-foot depth of water and for use of a simplified analytical treatment of friction and plowing forces produced by contact with the channel bottom.

As part of the analysis, a computer line drawing film was prepared. It graphically illustrates the reconstructed sequence of events (see Appendix).

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2.0 MATERIALS REVIEWED

Police report prepared by D. J. Arena.

Inquest testimony related to scientific studies and analyses
(A. D. Little study).

Inquest testimony of scuba diver and investigating officers.

Accident report prepared by George W. Kennedy.

Testimony of D. J. Arena and John N. Farrar in Petition for
Exhumation and Autopsy.

Scene sketches prepared by George W. Kennedy and D. J. Arena.

Photographs of accident vehicle and accident scene.

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4.

APPENDIX

3.0 DESCRIPTION OF METHODOLOGY APPLIED IN THE ACCIDENT RECONSTRUCTION

Computer simulation is a process whereby mathematical equations that define relationships and interactions among the various parts of a complicated system are solved simultaneously to predict the behavior of the system. In some forms of systems that are simulated, the equations are purely empirical or are based on hypothesis. However, for mechanical systems, the governing relationships are based on fundamental physical laws (i.e., Newtonian dynamics of rigid bodies) and on measured experimental data (e.g., the force-generating properties of components).

The Highway Vehicle Object Simulation Model (HVOSM) computer program that has been applied in this accident study was originally developed in 1968 for the purpose of supplementing test procedures in highway safety research (Ref. 1). Development of the computer program was sponsored by the Federal Highway Administration, U. S. Department of Transportation.

In view of the requirement for generality of motions in realistic near-accident and accident situations, the HVOSM program was designed to permit the simulation of general, three-dimensional vehicle motions. The analytical approach is similar to that used for aerospace vehicles. However, the force-generating properties of tires, in contact with either

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smooth or irregular terrain surfaces, required the development of a detailed analytical representation of the tires and the use of tables to define the terrain surface. The computer program was developed in digital form, in the Fortran IV language. In this form, the relative ease of adaptation to a variety of computers has led to the distribution, by the sponsor, to a large number of research organizations in the time period since 1968.

During the past ten years, the validity and accuracy of the HVOSM vehicle simulation have been rigorously established by comparisons of response predictions with test results in a variety of applications. In particular, the applications have included impacts with curbs and concrete median barriers, violent skidding maneuvers and even thrill show ramp jumps (Ref. 2).

In applications, the equations defining three-dimensional motions of the vehicle in response to steering and throttle or braking control inputs and to terrain irregularities (e.g., bumps, curbs, etc.) are solved at closely spaced intervals of time throughout the duration of the maneuver. The solution time intervals typically range between 0.001 and 0.010 seconds, depending on the event being simulated. The detailed motion predictions are printed out in a tabular format.

The application procedure may be viewed as being equivalent to the performance of experiments with a fully instrumented vehicle. It permits variation of a single item in the vehicle or terrain definitions while

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identically repeating everything else in a given application run. In vehicle experiments, it is generally not possible to achieve identical repetition of all test conditions. Thus, an experimental measurement of the effects of changing a single item of the overall vehicle-terrain system requires that a series of test runs be performed both before and after the change to isolate response differences related to the change.

In applications to accident reconstruction, the computer simulation program permits an investigation of the initial direction of motion, the vehicle speed and control inputs by means of comparisons of the predicted rest position, trajectory, tire marks and contact points with corresponding items of physical evidence.

A computer graphics display of the predicted vehicle behavior has been developed to ease the task of interpreting the extensive output information. The display produces detailed perspective drawings of the vehicle and terrain, or obstacles, as seen from selected viewing positions and at selected intervals of time during a simulated maneuver or collision. Such a display has been found to be extremely valuable as an aid for program development, for understanding complex motions and for presenting results.

The primary benefit provided by the computer simulation technique in reconstructing the subject accident has been in approximating the effective elevation angle of the launch from the side of the inclined

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7.

bridge surface. In the manner of a simple ballistic trajectory, the horizontal distance traveled to the landing area at a given vehicle speed is determined by the launch angle and by the change in height between the launch point and the landing area. The separate times of departure of the four wheels from the inclined right-side rub-rail and the contact of the vehicle underside with the rub-rail prolong and complicate the launch process from the viewpoint of an application of simple ballistic calculations.

Horizontal movement of the vehicle subsequent to contact with the channel bottom was resisted both by drag created by motion through the water and by friction and plowing forces produced by the side, roof and hood contacts that stopped the vertical motion and then supported the vehicle weight. The applied simulation in its present form does not include the drag effects of the water. Also, the resistance to movement produced by contact with the channel bottom was approximated by means of a simple friction coefficient on a flat, horizontal surface. Thus, the predicted extent of horizontal movement subsequent to contact with the channel bottom tends to be greater than actual. Variations in the predicted rest position that are introduced by the cited motion-resisting factors are reflected in the range of the speed estimate at point of brake application.

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4.0 REFERENCES

1. McHenry, Raymond R., "An Analysis of the Dynamics of Automobiles During Simultaneous Cornering and Ride Motions," Proceedings of the Symposium on Handling of Vehicles Under Emergency Conditions, Institution of Mechanical Engineers (London), Loughborough University of Technology, 8 January 1969.
2. McHenry, Raymond R., "The Astro Spiral Jump - An Automobile Stunt Designed via Simulation," Society of Automotive Engineers Transactions, 1976.

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Research Engineers, Inc. CONSULTING ENGINEERS

Resume
of
Raymond R. McHenry

July 1978

Professional Experience

1978 to date. Staff Scientist, Research Engineers, Inc., Research Triangle Park, North Carolina. Technical duties: Application of analytical and experimental techniques to the reconstruction of vehicle and occupant dynamics in highway collisions. Evaluation and analysis of vehicle defects and failure modes. Performance of research related to highway safety.

1961 to 1978. Staff Scientist, Calspan (Formerly Cornell Aeronautical Laboratory, Inc.), Buffalo, New York. Technical duties: As a Staff Scientist with Calspan Field Services, Inc., and previously with Calspan Corporation, Mr. McHenry was responsible for the technical direction of a variety of research projects related to the improvement of highway safety. He has been involved in the application of analytical and experimental techniques to the problems of occupant protection in collisions and has analyzed automobile dynamics in single vehicle accidents and in violent evasive maneuvers. He also served as the Principal Investigator on the development of techniques for analytical reconstruction of highway accidents (Simulation Model of Automobile Collisions (SMAC) and Calspan Reconstruction of Accident Speeds on the Highway (CRASH)).

Mr. McHenry developed techniques for study of physical criteria for roadside structures and cross-section designs by mathematically modeling the dynamics of single vehicle accidents (Highway Vehicle Object Simulation Model (HVOSM)). He has performed analyses and developed computer simulations of the dynamics of automobile braking and of the ride and steering dynamics of the Westinghouse Transit Expressway Vehicle. He has studied advanced technology applicable to highway transportation in the Boston-Washington Corridor in 1980. He has developed a nonlinear mathematical model of the automobile crash victim and mathematical models of highway guardrails and test vehicles for simulation of impact.

1960 to 1961. Technical Advisor, American Machine & Foundry Company, Greenwich, Connecticut. Technical duties: Mr. McHenry was technical advisor on the design of vehicles for aircraft cargo loading (Air Force 463L System).

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1956 to 1960. Senior Design Engineer, Ford Motor Company, Dearborn, Michigan. Technical duties: Senior Design Engineer and project engineer on programs involving experimental hydropneumatic suspension vehicles, air suspension vehicles, and stroke-sensitive shock absorber design and development. Member of the Ford Advanced Ride and Handling Committee.

1953 to 1956. Chrysler Corporation, Highland Park, Michigan. Technical duties: Participated in various experimental suspension and chassis component design and development programs. He also served as a mathematics instructor in calculus, analytic geometry and algebra (Lawrence Institute of Technology, Chrysler Institute, Detroit).

Education

Graduate Studies, State University of New York, 1962, 1964.

Graduate Studies, Cornell University, 1961.

Master of Science Degree, Automotive Engineering, Chrysler Institute, 1955.

Bachelor of Science Degree, Engineering Physics, University of Maine, 1953.

Professional Activities and Honors

Registered Professional Engineer, Connecticut, No. 5207

Sigma Xi

Tau Beta Pi

Crompton-Lanchester Medal of the Automobile Division, The Institution of Mechanical Engineers (London), 1968-1969.

The Safety Award in Mechanical Engineering, The Institution of Mechanical Engineers (London), 1969.

"Man of the Year" Award, 1967, from Science & Technology on the Niagara Frontier, official publication of the Technical Societies Council.

American Men and Women of Science, 12th Edition, The Physical and Biological Sciences.

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Selected Publications (from a total of 33 technical papers and 39 technical reports)

1. "Analysis of Spring Installations for Low-Frequency Suspension of Vehicles" Industrial Mathematics, Vol. 10, Part I, 1960, Industrial Mathematics Society, Detroit, Michigan.
2. "Research for Better Barriers - Analytical Prediction of Highway Barrier Performance Confirmed by Crash Testing," Research Trends, Vol. X, No. 3, 1962, Calspan Corporation.
3. "Analysis of the Dynamics of Automobile Passenger-Restraint Systems" Seventh Stapp Car Crash Conference, University of California and University of Minnesota, Playa del Rey, California, 11-13 November 1963.
4. "Highway Guardrails - A Review of Current Practice," National Cooperative Highway Research Program Report 36, Transportation Research Board, Washington, D.C., 1967 (with N. J. DeLeys).
5. "Computer Simulation of Single Vehicle Accidents," Society of Automotive Engineers Transactions, 1968 (with D. J. Segal and N. J. DeLeys).
6. "An Analysis of the Dynamics of Automobiles During Simultaneous Cornering and Ride Motions," Proceedings of the Symposium on Handling of Vehicles Under Emergency Conditions, Institution of Mechanical Engineers (London), Loughborough University of Technology, 8 January 1969.
7. "Mathematical Models for Injury Prediction," Impact Injury and Crash Protection (Charles C. Thomas, publisher), Springfield, Illinois, 1970.
8. "A Review of the Current State of the Art of Automobile Structural Crashworthiness," 1970 International Automobile Safety Conference Compendium, Society of Automotive Engineers, 1970 (with P. M. Miller).
9. "Multidegree, Nonlinear Mathematical Models of the Human Body and Restraint Systems: Applications in the Engineering Design of Protective Systems," Symposium on Biodynamic Models and Their Applications, Wright-Patterson Air Force Base, Dayton, Ohio, 26-28 October 1970.
10. "An Analytical Aid for Evaluating Highway and Roadside Geometrics," Highway Research Record Number 371, National Research Council, National Academy of Sciences, Washington, D.C., 1971 (with N. J. DeLeys and J. P. Eicher).

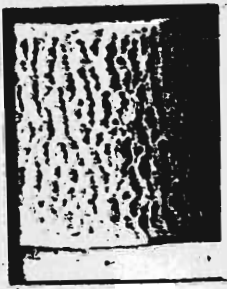
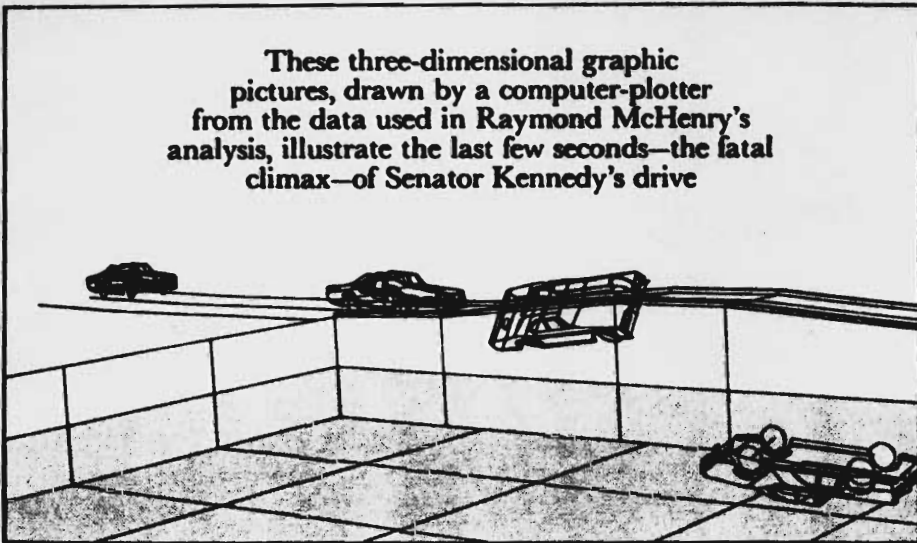
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11. "Research in Automobile Dynamics - A Computer Simulation of General Three-Dimensional Motions," Society of Automotive Engineers Transactions, 1971.
12. "Approximation of Impact Conditions Via Computer Simulation," Paper presented at the NATO Conference on Accident Investigation, Brussels, Belgium, June 28-29, 1973.
13. "A Computer Program for Reconstruction of Highway Accidents," Proceedings of the Seventeenth Stapp Car Crash Conference, Oklahoma City, Oklahoma, November 12-13, 1973.
14. "A Comparison of Results Obtained With Different Analytical Techniques for Reconstruction of Highway Accidents," Society of Automotive Engineers, International Automobile Engineering and Manufacturing Meeting, Detroit, Michigan, October 13-17, 1975.
15. "The CRASH Program: A Simplified Collision Reconstruction Program," presented at the Motor Vehicle Collision Investigation Symposium, October 6-10, 1975, at Calspan Corporation, Buffalo, New York.
16. "The Astro Spiral Jump - An Automobile Stunt Designed via Simulation," SAE Paper No. 760339, Automotive Engineering Congress & Exposition, Detroit, Michigan, February 23-27, 1976.
17. "Computer Aids for Accident Reconstruction," Society of Automotive Engineers No. 760776, 1976 SAE Automobile Engineering and Manufacturing Meeting, October 18-22, 1976.

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These three-dimensional graphic pictures, drawn by a computer-plotter from the data used in Raymond McHenry's analysis, illustrate the last few seconds—the fatal climax—of Senator Kennedy's drive



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Warshavsky, Hoffman & Cohen
30 Rockefeller Plaza
New York, N.Y. 10020

CERTIFIED
P29 2426396
MAIL

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

The Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

ATTENTION: Charles N. Steele, Esq.
General Counsel

MAY 11 1981
NEW YORK
1175315



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 24, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

David W. Cohen
WARSHAVSKY, HOFFMAN & COHEN
30 Rockefeller Plaza
New York, New York 10112

Re: MUR 1271

Dear Mr. Cohen:

The Federal Election Commission notified your client, Reader's Digest Association, Inc., on August 8, 1980, of a complaint which alleges that your client may have violated certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was forwarded to Reader's Digest Association, Inc. at that time.

Upon further review of the allegations contained in the complaint and information supplied by you, the Commission, on November 6, 1980, determined that there is reason to believe that your client violated 2 U.S.C. § 441b.

On December 16, 1981, the Commission issued Reader's Digest a letter requesting answers to questions and production of documents to be submitted to the Commission within ten (10) days of receipt. The due date for answers to these questions and production of documents was extended by the Commission at the request of Reader's Digest until January 30, 1981, and extended again during the pendency of the motion of Reader's Digest for a preliminary injunction brought in the District Court for the Southern District of New York. The motion for preliminary injunction was denied on March 19, 1981, and the Commission notified Reader's Digest by letter of March 24, 1981, of a due date for response to the Commission's December 16, 1980 request for information ten (10) days hence. Reader's Digest has failed to adequately respond to the Commission's request for answers to questions and production of documents. Therefore, the the Commission has authorized the issuance

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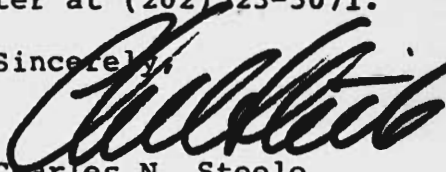
David W. Cohen
Page Two

of the attached order to answer interrogatories and subpoena to produce documents and materials. Please submit answers to the enclosed interrogatories within 10 days of receipt of this letter. You may also submit any other factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact R. Lee Andersen, the attorney assigned to this matter at (202)523-5071.

Sincerely,



Charles N. Steele
General Counsel

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SEARCHED		SERIALIZED	
INDEXED		FILED	
MAY 11 1985			
FBI - WASHINGTON			
RECEIVED			
DAVID W. COHEN			
5/11/85			
1271 Andersen		R. Lee Andersen	

BEFORE THE FEDERAL ELECTION COMMISSION

ORDER TO ANSWER INTERROGATORIES AND SUBPOENA TO PRODUCE DOCUMENTS

TO: David W. Cohen
Warshavsky, Hoffman & Cohen
30 Rockefeller Plaza
New York, New York

RE: MUR 1271

At the instance of the Federal Election Commission, (hereinafter the "Commission"), pursuant to 2 U.S.C. § 437d(a), the Reader's Digest Association (hereinafter "Reader's Digest") is hereby ordered to answer interrogatories and produce for inspection and copying the documents and materials listed below that are in the possession or control of Reader's Digest or its officers, agents, staff members or employees. If a question in this request has not been fully answered or if a request for production of documents and materials has not been fully complied with, please state the objection to such question or request for production documents and materials and the reasons for the objection in lieu of an answer to the question or production of the documents and materials.

1. Please state whether the video tape animation of a computer printout of a study of the speed at which Senator Kennedy's automobile was driven in the accident at Chappaquiddick Island in 1969 (hereinafter "video tape") advertised the Reader's Digest, February 1980 article, "Chappaquiddick".
2. Please state whether Reader's Digest agreed to pay any person or entity for broadcasting the video tape.

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3. Please state whether any video tape, other than the video tape which is the subject of MUR 1271, has ever been used by Reader's Digest to promote, advertise or summarize articles contained in the Reader's Digest magazine. If the answer to this question is yes, please give examples, stating the subject matter, date and method of dissemination for such video tapes.
4. Please state whether Mr. Pinchman of the Public Relations Department of Reader's Digest was the person in charge of uses made of the video tape for Reader's Digest. If the answer to this question is no, please state the name and position of the person who was in charge of such uses of the video tape for Reader's Digest.
5. Does Reader's Digest have possession of the original or any copy of the video tape at the present time? If the answer to this question is yes, please submit a copy of this video tape to the Federal Election Commission.
6. Does Reader's Digest have possession of any recording of any media broadcast upon which the video tapes were used? If the answer to this question is yes, please submit a copy of this video tape to the Federal Election Commission.

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7. According to the January 29, 1981, affidavit which Mr. Fulton Oursler, Jr., submitted to the District Court for the Southern District of New York on January 30, 1981, as part of Reader's Digest motion for a preliminary injunction, six copies of the video tape were "made available." Mr. Oursler's affidavit also states that copies of the February 1980 issue of Reader's Digest magazine along with press releases and copies of the accident studies were distributed to television networks and other media operations. Please state for each of the six (6) copies of the video tape the following:

- a. to whom it was distributed
- b. upon what date it was distributed
- c. what arrangements were made by Reader's Digest with any person or entity concerning its broadcast to the general public
- d. whether it was distributed in conjunction with any of the following (please specify):
 1. copies of the February 1980 Reader's Digest magazine
 2. press releases
 3. copies of the accident studies

Please submit to the Commission responses to these interrogatories, along with copies of the documents and materials requested and any other information which Reader's Digest may wish to provide, within ten (10) days of your receipt of this letter.

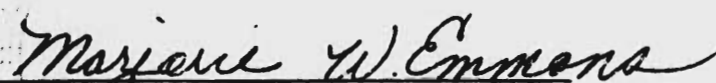
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WHEREFORE, the Chairman of the Federal Election Commission
has hereunto set his hand at Washington, D.C., this 24 day
of April, 1981.



John Warren McGarry, Chairman
Federal Election Commission

ATTEST:



Marjorie W. Emmons
Secretary to the Commission

81040294955

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

David W. Cohen
WARSHAVSKY, HOFFMAN & COHEN
30 Rockefeller Plaza
New York, New York 10112

D.W.C.
4/25/81

Re: MUR 1271

Dear Mr. Cohen:

The Federal Election Commission notified your client, Reader's Digest Association, Inc., on August 8, 1980, of a complaint which alleges that your client may have violated certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was forwarded to Reader's Digest Association, Inc. at that time.

Upon further review of the allegations contained in the complaint and information supplied by you, the Commission, on November 6, 1980, determined that there is reason to believe that your client violated 2 U.S.C. § 441b.

On December 16, 1981, the Commission issued Reader's Digest a letter requesting answers to questions and production of documents to be submitted to the Commission within ten (10) days of receipt. The due date for answers to these questions and production of documents was extended by the Commission at the request of Reader's Digest until January 30, 1981, and extended again during the pendency of the motion of Reader's Digest for a preliminary injunction brought in the District Court for the Southern District of New York. The motion for preliminary injunction was denied on March 19, 1981, and the Commission notified Reader's Digest by letter of March 24, 1981, of a due date for response to the Commission's December 16, 1980 request for information ten (10) days hence. Reader's Digest has failed to adequately respond to the Commission's request for answers to questions and production of documents. Therefore, the the Commission has authorized the issuance

81040294956

David W. Cohen
Page Two

of the attached order to answer interrogatories and subpoena to produce documents and materials. Please submit answers to the enclosed interrogatories within 10 days of receipt of this letter. You may also submit any other factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact R. Lee Andersen, the attorney assigned to this matter at (202)523-5071.

Sincerely,

81040294957



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE *MWE*
FROM: MARJORIE W. EMMONS/JODY CUSTER *JC*
DATE: APRIL 24, 1981
SUBJECT: ORDER AND SUBPOENA REGARDING MUR 1271

The attached order and subpoena which was Commission approved at the Executive Session on April 21, 1981, by a vote of 5-0, has been signed and sealed this date.

81040294938

Attachment:
Order and Subpoena (Cohen)

BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of)	
)	
Authorization to Issue Order and)	MUR 1271
Subpoena in Connection with MUR 1271)	
(Reader's Digest Association, Inc.))	

CERTIFICATION

I, Lena L. Stafford, Recording Secretary for the Federal Election Commission's Executive Session on April 21, 1981, do hereby certify that the Commission took the following actions in MUR 1271:

1. Failed by a vote of 2-3 to pass a motion to amend the letter attached to the General Counsel's memorandum dated April 16, 1981, to be sent to Mr. David W. Cohen.

Commissioners Harris and Reiche voted affirmatively for the above action. Commissioners McGarry, Thomson, and Tiernan dissented. Commissioner Aikens was not present at the time of the vote.

2. Decided by a vote of 5-0 to authorize the order and subpoena attached to the General Counsel's Memorandum dated April 16, 1981, in the matter of Reader's Digest Association, Inc.

Commissioners Harris, McGarry, Reiche, Thomson, and Tiernan voted for this decision. Commissioner Aikens was not present at the time of the vote.

Attest:

4-23-81

Date

Lena L. Stafford

Recording Secretary

81040294959



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE *mwe*
FROM: MARJORIE W. EMMONS/JODY CUSTER *JC*
OFFICE OF THE SECRETARY TO THE COMMISSION
DATE: APRIL 20, 1981
SUBJECT: ADDITIONAL OBJECTION - MUR 1271, Memo
to the Commission, dated 4-16-81,
Received in OCS, 4-16-81, 4:02

You were notified previously of an objection by
Commissioner Reiche.

Commissioner Harris submitted an additional objection
at 10:59, April 20, 1981.

This matter will be discussed in executive session
on Tuesday, April 21, 1981.

81040294960



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE *mwe*
FROM: MARJORIE W. EMMONS/JODY CUSTER *jc*
DATE: APRIL 20, 1981
SUBJECT: OBJECTION - MUR 1271 Memorandum to the
Commission, dated 4-16-81; Received in
OCS, 4-16-81, 4:02

The above-named document was circulated on a 48
hour vote basis at 2:00, April 17, 1981.

Commissioner Reiche submitted an objection at 5:00,
April 17, 1981.

This matter will be placed on the Executive Session
Agenda for Tuesday, April 21, 1981. Commissioner Reiche's
vote sheet with comments is attached.

Attachment:
Vote sheet

81040294961

SENSITIVE



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

Date and Time Transmitted: FRIDAY, 4-17-81,

2:00

Commissioner McGARRY, AIKENS, TIERNAN, THOMSON, REICHE, HARRIS

RETURN TO OFFICE OF COMMISSION SECRETARY BY: TUESDAY, APRIL 21, 1981,

AUTHORIZATION ATTACHED

2:00

MUR No. 1271 Memorandum to the Commission, dated April 16, 1981,
Authorization to Issue Order and Subpoena

() I approve the recommendation

(✓) I object to the recommendation

COMMENTS: *We should state that these questions were framed in accordance with Judge Leval's order. In view of the Commission's discussion, I am surprised it was not handled in this fashion.*

Date: 4/17/81 Signature: Frank P. Reiche

A DEFINITE VOTE IS REQUIRED AND ALL SHEETS SIGNED AND DATED. PLEASE RETURN ONLY THE VOTE SHEETS TO THE OFFICE OF THE COMMISSION SECRETARY NO LATER THAN THE DATE AND TIME SHOWN ABOVE.

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April 16, 1981

MEMORANDUM TO: Marjorie W. Emmons

FROM: Elissa T. Garr

SUBJECT: MUR 1271

Please have the attached Memo distributed to the
Commission on a 48 hour tally basis. Thank you.

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SENSITIVE

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

81 APR 16 P4:02

April 16, 1981

MEMORANDUM TO: The Commission

FROM: Charles N. Steele
General Counsel *CNS*

SUBJECT: Authorization to Issue Order and Subpoena
in Connection with MUR 1271 (Reader's
Digest Association, Inc.)

Discussion

Subsequent to Judge Leval's denying the motion of Reader's Digest Association, Inc. ("RDA") for a preliminary injunction against the Commission's investigation of this matter, we notified respondent by letter that a response to the Commission's questions and request for production of documents was due ten days from receipt of the notification. As the ten days have passed without a satisfactory response from RDA, the Office of General Counsel has prepared an order for answers to questions and subpoena for production of written documents which is attached.

In addition to questions specifically approved in Judge Leval's order of February 19, 1981, we have included a question which is raised by the affidavit of Mr. Fulton Oursler, Jr., submitted to the court by RDA along with their complaint and motion for preliminary injunction. The question is within the framework of inquiry sanctioned by Judge Leval. We therefore recommend that the Commission authorize the attached order and subpoena.

Recommendation

The Office of General Counsel recommends that the Commission authorize the attached order and subpoena in the matter of Reader's Digest Association, Inc.

Attachments

1. Cover Letter to Respondent
2. Order and Subpoena
3. Commission Authorization
4. April 13, 1981, response of Reader's Digest Association

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

David W. Cohen
WARSHAVSKY, HOFFMAN & COHEN
30 Rockefeller Plaza
New York, New York 10112

Re: MUR 1271

Dear Mr. Cohen:

The Federal Election Commission notified your client, Reader's Digest Association, Inc., on August 8, 1980, of a complaint which alleges that your client may have violated certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was forwarded to Reader's Digest Association, Inc. at that time.

Upon further review of the allegations contained in the complaint and information supplied by you, the Commission, on November 6, 1980, determined that there is reason to believe that your client violated 2 U.S.C. § 441b.

On December 16, 1981, the Commission issued Reader's Digest a letter requesting answers to questions and production of documents to be submitted to the Commission within ten (10) days of receipt. The due date for answers to these questions and production of documents was extended by the Commission at the request of Reader's Digest until January 30, 1981, and extended again during the pendency of RDA's motion for preliminary injunction brought in the District Court for the Southern District of New York. The motion for preliminary injunction was denied on March 19, 1981, and the Commission notified Reader's Digest by letter of March 24, 1981, of a due date for response to the Commission's December 16, 1980 request for information ten (10) days hence. RDA has failed to adequately respond to the Commission's request for answers to questions and production of documents. Therefore, the Commission has authorized the issuance

Attachment 1

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David W. Cohen
Page Two

of the attached order to answer interrogatories and subpoena to produce documents and materials. Please submit answers to the enclosed interrogatories within 10 days of receipt of this letter. You may also submit any other factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact R. Lee Andersen, the attorney assigned to this matter at (202)523-5071.

Sincerely,

Charles N. Steele
General Counsel

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BEFORE THE FEDERAL ELECTION COMMISSION

ORDER TO ANSWER INTERROGATORIES AND SUBPOENA TO PRODUCE DOCUMENTS

TO: David W. Cohen
Warshavsky, Hoffman & Cohen
30 Rockefeller Plaza
New York, New York

RE: MUR 1271

At the instance of the Federal Election Commission, (hereinafter the "Commission"), pursuant to 2 U.S.C. § 437d(a), the Reader's Digest Association (hereinafter "Reader's Digest") is hereby ordered to answer interrogatories and produce for inspection and copying the documents and materials listed below that are in the possession or control of Reader's Digest or its officers, agents, staff members or employees. If a question in this request has not been fully answered or if a request for production of documents and materials has not been fully complied with, please state the objection to such question or request for production documents and materials and the reasons for the objection in lieu of an answer to the question or production of the documents and materials.

1. Please state whether the video tape animation of a computer printout of a study of the speed at which Senator Kennedy's automobile was driven in the accident at Chappaquiddick Island in 1969 (hereinafter "video tape") advertised the Reader's Digest, February 1980 article, "Chappaquiddick".
2. Please state whether Reader's Digest agreed to pay any person or entity for broadcasting the video tape.

Attachment 2

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3. Please state whether any video tape, other than the video tape which is the subject of MUR 1271, has ever been used by Reader's Digest to promote, advertise or summarize articles contained in the Reader's Digest magazine. If the answer to this question is yes, please give examples, stating the subject matter, date and method of dissemination for such video tapes.

4. Please state whether Mr. Pinchman of the Public Relations Department of Reader's Digest was the person in charge of uses made of the video tape for Reader's Digest. If the answer to this question is no, please state the name and position of the person who was in charge of such uses of the video tape for Reader's Digest.

5. Does Reader's Digest have possession of the original or any copy of the video tape at the present time? If the answer to this question is yes, please submit a copy of this video tape to the Federal Election Commission.

6. Does Reader's Digest have possession of any recording of any media broadcast upon which the video tapes were used? If the answer to this question is yes, please submit a copy of this video tape to the Federal Election Commission.

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7. According to the January 29, 1981, affidavit which Mr. Fulton Oursler, Jr., submitted to the District Court for the Southern District of New York on January 30, 1981, as part of Reader's Digest motion for a preliminary injunction, six copies of the video tape were "made available." Mr. Oursler's affidavit also states that copies of the February 1980 issue of Reader's Digest magazine along with press releases and copies of the accident studies were distributed to television networks and other media operations. Please state for each of the six (6) copies of video tape the following:

- a. to whom it was distributed
- b. upon what date it was distributed
- c. what arrangements were made by Reader's Digest with any person or entity concerning its broadcast to the general public
- d. whether it was distributed in conjunction with any of the following (please specify):
 1. copies of the February 1980 Reader's Digest magazine
 2. press releases
 3. copies of the accident studies

Please submit to the Commission responses to these interrogatories, along with copies of the documents and materials requested and any other information which Reader's Digest may wish to provide, within ten (10) days of your receipt of this letter.

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David W. Cohen
Interrogatories and Request for Production of Documents
Page Four

WHEREFORE, the Chairman of the Federal Election Commission
has hereunto set his hand at Washington, D.C., this day
of April, 1981.

John Warren McGarry, Chairman
Federal Election Commission.

ATTEST:

Marjorie W. Emmons
Secretary to the Commission

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

AUTHORIZATION TO ISSUE ORDERS TO ANSWER INTERROGATORIES
AND PRODUCE DOCUMENTS AND MATERIALS

The Commission hereby authorizes the issuance of orders to answer interrogatories and produce documents and materials to the Reader's Digest Association, Inc., in connection with MUR 1271(80).

John Warren McGarry
Chairman

Joan D. Aikens
Commissioner

Frank P. Reiche
Vice Chairman

Robert O. Tiernan
Commissioner

Thomas E. Harris
Commissioner

Vernon Thomson
Commissioner

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WARSHAVSKY, HOFFMAN & COHEN
30 ROCKEFELLER PLAZA
NEW YORK, N. Y. 10112

81 APR 16 12:08

STEPHEN D. HOFFMAN
SUZANNE M. WARSHAVSKY
DAVID W. COHEN

TELEPHONE (212) 847-0350

April 13, 1981

The Federal Election Commission
Washington, D. C. 20463

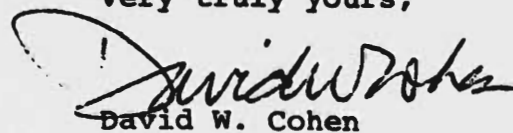
Attention: Charles N. Steele, Esq.
General Counsel

Dear Mr. Steele:

This letter is written in response to your letter to me of March 24, 1981 and will confirm the several telephone conversations I have had in the last few days with Larry Noble and Lee Anderson of your office.

As I have told Messrs. Noble and Anderson, in accordance with the decision of Judge Leval referred to in your letter of March 24, 1981, my client, The Reader's Digest Association Inc. is under no legal compulsion to respond to the Commission's letter of December 18, 1980 and therefore will not do so.

Very truly yours,


David W. Cohen

DWC:cd

Attachment 4

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE *MWE*
FROM: MARJORIE W. EMMONS/JODY CUSTER *jc*
DATE: MARCH 26, 1981
SUBJECT: OBJECTION - MUR 1271 - Interim
Investigative Report, dated 3-23-81;
Received in OCS, 3-25-81, 11:17

The above-named report was circulated to the Commission on a 24 hour no-objection basis at 4:00, March 25, 1981.

Commissioner Harris submitted an objection at 10:58, March 26, 1981.

This matter will be placed on the Executive Session agenda for Tuesday, April 7, 1981.

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March 25, 1981

MEMORANDUM TO: Marjessé W. Emmons

FROM: Elissa T. Garr

SUBJECT: MUR 1271

Please have the attached Interim Invest Report distributed to the Commission. Thank you.

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81 MAR 25 All: 17

In the Matter of)
Reader's Digest Association, Inc.) MUR 1271

INTERIM INVESTIGATION REPORT # 1

On November 16, 1980, the Commission found reason to believe that the Reader's Digest Association, Inc. ("RDA") violated 2 U.S.C. § 441b by disseminating copies of a video tape re-enactment of Senator Kennedy's 1969 automobile accident at Chappaquiddick Island. Including an extension of time for responding granted by the Commission, RDA was asked to provide the Commission with answers to questions and production of documents by January 30, 1981. On that date the RDA instead filed motions for a temporary restraining order and a preliminary injunction in an effort to halt the Commission's investigation of this matter. (RDA has also filed a complaint for a declaratory judgment that 2 U.S.C. § 441b is unconstitutional as applied.)

At a hearing on the motions held in the United States District Court the Southern District of New York on January 30, 1981, counsel for the Commission agreed to extend the due date for responses to the Commission's questions during the pendency of the motion for preliminary injunctions. The Commission filed its opposition to RDA's motion on February 6, 1981, and RDA filed its reply on February 17, 1981.


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In that over two months had passed since the Commission submitted questions and request for production of documents to RDA, and in that over one month had passed since the court took on this case under advisement, the Office of General Counsel filed a motion to expedite the court's decision on the preliminary injunction.

On March 19, 1981, the court issued an opinion order denying RDA's motion for a preliminary injunction. Although the court rejected the Office of General Counsel's argument that the case was not ripe for judicial review, it approved those questions in the Commission's investigation pertaining to the issue of whether the dissemination of the video tapes was part of the publishing business of RDA. And, although the court stated that Commission questions related to the content of the video were impermissible at this stage of the proceedings, the court also approved of the Commission's request for production of a copy of the tape in question (see attachment 1).

We are requesting that RDA respond to the Commission's letter of Decemeber 16, 1981, (notification of reason to believe and request for answers to questions and production of documents) within 10 days (see attachment 2).

24 March 1981
Date



Charles N. Steele
General Counsel

- Attachments
1. Opinion Order of Judge Leval
2. Letter to RDA

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
THE READER'S DIGEST ASSOCIATION, INC.,

Plaintiff,

81 Civ. 596 (PNL)

-against-

OPINION AND ORDER

FEDERAL ELECTION COMMISSION, JOHN
W. MCGARRY, FRANK P. REICHE, JOAN
D. AIKENS, THOMAS C. HARRIS,
ROBERT O. TIERNAN, VERNON W. THOMSON,
WILLIAM F. HILDENBRAND and EDMUND
L. HENSHAW, JR., as Members of
the Federal Election Commission,

Defendants.

----- X
PIERRE N. LEVAL, U.S.D.J.

The Reader's Digest Association (RDA) sues to enjoin the Federal Election Commission (FEC) from proceeding with an investigation into whether RDA violated certain sections of the Federal Election Campaign Act of 1971, 2 U.S.C. § 431 et seq., "by making expenditures to disseminate to other media outlets video tapes of a computer reenactment of Senator Kennedy's accident at Chappaquiddick...." According to the RDA, the video tape was part of a study commissioned from an engineer, Raymond McHenry, an expert in auto accident reconstruction, as research for a Reader's Digest article on the accident that appeared in the February 1980 issue. RDA states that on January 14, 1980, it distributed copies of the February issue, along with a press release, the McHenry study, six copies of the video tape, and a tidal current.

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study, to major television networks, local television stations, and other media outlets. The article and the results of the studies contained in it were discussed on network news shows, and the NBC broadcast included a 12-second segment of the video tape. Affidavit of Fulton Oursler, Jr., a Reader's Digest Managing Editor.

In August, 1980, the FEC received a complaint alleging that RDA had violated the Act by making "an illegal corporate expenditure to negatively influence" the 1980 presidential election, based on RDA's purchase, in connection with the February 1980 article, of (1) a computer study of the speed at which Senator Kennedy's car was traveling when it crashed into the water; and (2) a study of the tides and currents in the area of Chappaquiddick Island, and (3) the production and distribution of video tapes of the computer reenactment to major media outlets. The Act, 2 U.S.C. § 441b(a), makes it illegal for "any corporation whatever...to make a contribution or expenditure in connection with any" federal election or primary. Section 441b(b)(2) defines "contribution or expenditure" as:

"any direct or indirect payment, distribution, loan, advance, deposit or gift of money, or any services, or anything of value...to any candidate, campaign committee or political organization, in connection with any [federal] election..."

The statute creates an exclusion for:

any news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine or other periodical publication.

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unless such facilities are owned or controlled by any political party, political committee, or candidate...

2 U.S.C. § 431(9)(B)(i).

Pursuant to the statute, RDA was notified, and mailed a copy, of the complaint. RDA responded with a letter claiming that the article was protected by the First Amendment and the news story exemption of 2 U.S.C. § 431(9)(B)(i), and that "requiring [RDA] to respond substantively...would impinge on its constitutional rights."

Thereupon, on November 11, 1980, pursuant to 2 U.S.C. § 437g(a)(2), the FEC found "reason to believe" that RDA violated the statute, with regard to an expenditure to disseminate to other media the computer reenactment video tapes. The FEC's reason-to-believe finding did not mention the funding of background research nor the publication of the article itself. The FEC then sent a letter to RDA requesting answers to 15 questions and production of a copy of the video tape; the letter ~~did not~~ not order that any reply be made, nor was any subpoena issued. The 15 questions concern the content of the video tape, how it was obtained, and what use RDA made of it. After receiving an extension of time in which to respond, RDA filed this suit and did not otherwise answer the letter.*

*The FEC has stated that "nearly all" of the 15 questions were answered in RDA papers filed with this Court. Defendants' Memorandum in Opposition to Plaintiff's Motion, at 4.

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Plaintiff claims the investigation is having, and will continue to have, a severe effect on its right to speak freely and comment on newsworthy events. RDA claims that since there is no time limit imposed by the Act or the regulations, the investigation may continue indefinitely and serves as a constant reminder that articles about political figures may result in governmental scrutiny and "interrogation," disclosure of news sources, and attendant economic burdens. RDA asserts that responding to the investigation will require a great deal of time, effort, and money, for attorneys' fees, searching documents, and preparing written responses, with the claimed result of making publishers more reluctant to take on controversial political stories. This, plaintiff claims, is a "chilling effect" prohibited by the first amendment.

RDA also claims that the statute was not meant to regulate this type of activity. In support, RDA cites the news-story exemption noted above, 2 U.S.C. § 431(9)(B)(1), and the regulations issued pursuant to the statute, [REDACTED] provide that "[a]ny cost incurred in covering or carrying a news story, commentary, or editorial by an broadcasting station, newspaper, magazine, or other periodical publication is not an expenditure..." 11 C.F.R. § 100.8(b)(2). RDA claims that its expenditures are excluded from the Act, and that these exclusions are required to avoid a conflict between the Act and the First Amendment.*

* RDA also maintains that the expenditures in question are not prohibited by the statute, since they were not made to any "candidate, campaign or political party or organization." However, the statute also covers indirect payments, 2 U.S.C. § 431(9)(B)(1).

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The FEC contends that this investigation is at its most preliminary stage, at which point it has no detrimental effect on RDA. After this investigation is completed, the Office of the General Counsel can recommend that the FEC find probable cause to believe a violation occurred. 2 U.S.C. § 437g(a)(3). If that happens, RDA will be given a copy of the General Counsel's brief and an opportunity to reply, raising all factual and legal arguments. Id. After reviewing the briefs, the FEC can determine there is probable cause to believe a violation occurred. If probable cause is found, there is a mandatory requirement that the FEC try, for not less than 30 days, nor more than 90 days, to reach a voluntary agreement with the alleged violator. 2 U.S.C. § 437g(a)(4)(A)(i). If no agreement is reached, the FEC would then vote on whether to bring action in the district court, where the defendant would be entitled to a de novo trial. 2 U.S.C. § 437g(a)(6)(A). The FEC also emphasizes that it has not served a subpoena upon RDA; if it does, RDA could move to quash the subpoena.

The FEC therefore contends both that the Act provides adequate remedies at law for plaintiff's claim, thereby obviating the need for equitable relief, and that the claim lacks ripeness. The test of ripeness for review of agency determinations comes from Abbott Laboratories v. Gardner, 387 U.S. 136 (1967). This is a two-part test, requiring the Court to evaluate (1) the fitness of the issues for judicial decision, including a determination of whether the issue tendered is legal or factual, and whether the conduct is

"final agency action" within § 10 of the Administrative Procedure Act, 5 U.S.C. § 704; and (2) the hardship to the parties of withholding court consideration.

In the recent case of Federal Trade Commission v. Standard Oil Company of Calif., 49 U.S.L.W. 4054 (Dec. 15, 1980) ("Socal"), the Supreme Court held that an FTC complaint, finding reason to believe that Socal was violating the FTCA, was not final agency action and therefore was not ripe for judicial review under Abbott. Under the relevant provisions of the FTCA, the respondent could present evidence at a hearing before an Administrative Law Judge, whose decision would be appealable to the full FTC. If the FTC entered a cease and desist order, the respondent would not be bound by the decision until judicial review was complete or the opportunity for review had lapsed. The reason to believe finding was therefore "a prerequisite to a definitive agency position...but itself...a determination only that adjudicatory proceedings will commence." The Court found that the "reason to believe" complaint did not have the legal force or effect upon the defendant's daily business that the court had found in Abbott, where the defendants would either "risk serious criminal and civil penalties" for non-compliance, or have to change all their labels, advertisements, and printed materials to comply with the challenged regulations. The only burden on the defendant in Socal was the burden of responding to the charges; on the other hand judicial review

at such a premature stage would have interfered with the proper functioning of the agency and burdened the courts. 49 U.S.L.W. at 4056.

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The circumstances here presented differ from those in Socal in three important respects. First, while Socal conceded that the pendency of the complaint had no practical effect on its conduct of its affairs, 49 U.S.L.W. at 4056, RDA contends that its present editorial policy is intimidated by concern lest it subject itself to further investigation. Second, the express statutory exemption in favor of dissemination of information or opinion by the press seems intended to bar the FEC from even investigating incidents that are exempted exercises of the press' prerogatives. Third, this dispute involves First Amendment considerations based on a recognition that freedom of the press is substantially eroded by investigation of the press, even if legal action is not taken following the investigation. Those concerns are particularly acute where a governmental entity is investigating the press in connection with the dissemination of political matter. These factors support the interpretation of the statutory exemption as barring even investigation of press activities which fall within the exemption.

Both the constitution and the statutory exemption for press activities suggest that the Socal ruling deferring judicial scrutiny until a later stage in the administrative

Re necessary process is not properly applicable to these circumstances. This is easily demonstrated in the context of a more extreme example:

If a newspaper relying on a secret source were publishing a series of articles containing derogatory information about the incumbent President during his campaign for re-election, and the FEC undertook to investigate the newspaper asking among other questions the source of the information published, could it seriously be contended that an application by the newspaper for judicial intervention would be premature because of the preliminary stage of the FEC's proceedings? In my view the statute, in creating an exemption for the press in its news and opinion dissemination function, commands the FEC not even to investigate such circumstances and authorizes court intervention if the FEC oversteps the limitation.

This observation does not, however, dispose of the issue. The press exemption has certain limitations. First, in exempting "distribut[ion]" of news or commentary "through the facilities of any broadcasting station, newspaper, magazine or other periodical publication ...", the statute would seem to exempt only those kinds of distribution that fall broadly within the press entity's legitimate press function. It would not seem to exempt any dissemination or distribution using the press entity's personnel or equipment, no matter how unrelated to its press function. If, for example, on Election Day a partisan newspaper hired an army of incognito propaganda distributors to stand on street corners denouncing

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allegedly illegal acts of a candidate and sent sound trucks through the streets blaring the same denunciations, all in a manner unrelated to the sale of its newspapers, this activity would not come within the press exemption - even though it might comply with a technical reading of the statutory exemption, being a "news story ... distributed through the facilities of ... [a] newspaper."

The second limitation on the press exemption is that press "facilities owned or controlled by any political party, political committee or candidate" are outside the exemption.

There should be no question that the FEC is authorized by the statute to pursue its investigation at least for the limited purpose of determining whether the press exemption is applicable. Accordingly it would be appropriate for the FEC to investigate whether a press entity charged with a violation is owned or controlled by a party or candidate and whether the distribution complained of was of the type exempted by the statute. Without conducting such a limited investigation the FEC would be unable to determine whether the acts complained of fell within the statute's press exemption.

In my view, the statute calls for a two step process when a substantial complaint is received alleging a violation of the statute by a press entity. In the first stage, until and unless the press exemption were found inapplicable, the FEC is barred from investigating the substance of the

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complaint. No inquiry may be addressed to sources of information, research, motivation, connection with the campaign, etc. Indeed all such investigation is permanently barred by the statute unless it is shown that the press exemption is not applicable. The only investigation permitted in the first stage is into the two questions on which the exemption turns - whether the press entity is owned by the political party or candidate and whether the press entity was acting as a press entity in making the distribution complained of. If the Commission makes a finding of probable cause that the press exemption did not apply to the circumstances, see § 437g(a)(3), then and only then would investigation be permitted into whether a substantive violation had occurred.

No explicit reference is to be found in the statute to this two-step process. It seems to me, however, to be the necessary accommodation between, on the one hand, the Commission's duty to investigate possible violations and, on the other, the statutory exemption for the press combined with a First Amendment distaste for government investigations of press functions.

The issue of ownership or control by a party or candidate does not appear to be of concern in this case. None of the questions put to RDA by the FEC is addressed to this issue.

The FEC does appear to have been concerned with the question whether the other limitation is applicable.

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As noted above, only the dissemination to other media of the video tapes was within the FEC's reason to believe finding, suggesting a recognition by the FEC that the research and the publication of the article were on their face exempt functions. It seems appropriate within the framework of the statutory exemption for the FEC to investigate the limited question whether in disseminating the tape, RDA was acting in the context of the distribution of a news story through its facilities or whether it was acting in a manner unrelated to its publishing function.

To the extent that the investigation is directed to that question, I conclude there would be no basis for the injunction sought by RDA. The press exemption would not protect RDA if its dissemination of the tape had nothing to do with its press function as a magazine publisher.

On the other hand, if RDA was acting in its magazine publishing function, - if, for example, the dissemination of the tape to television stations was to publicize the issue of the magazine containing the Chappaquiddick article, then it would seem that the exemption is applicable and that the FEC would have no occasion to investigate whether the dissemination or the publication constituted an attempt to influence an election.

I conclude that so long as the FEC is investigating the limited question whether RDA was acting in its magazine

publisher capacity in distributing the tape, so as to determine whether the press exemption is applicable, and so long as the investigation does not address itself to issues beyond this proper subject, there is no basis to grant the injunction sought by RDA.

Of the questions put by the FEC to RDA in its letter about half appear directed toward the appropriate question (Nos. 3, 5, 6, 7, 11, 13, 14 and 15). Curiously, none of these questions directly addresses what seems to be the crucial issue: Was the distribution of the tape publicity for the Chappaquiddick issue? ** If the answer to that question was convincingly in the affirmative, there would be no further basis for investigation.

The other questions, as noted above, go beyond what I consider to be the permitted scope of the FEC's investigation at this stage. They inquire into the source of the tape, whether it summarized a study, whether RDA received payment, what uses were made by others of the tape, whether the tape was intended to publicize the results of a study of the Chappaquiddick incident, and what was the content of the tape. Such questions may become appropriate if RDA was not acting in its press capacity in distributing the tape. Pending

** Question 3 comes close in asking whether the tape "advertised" the February issue. It appears from the information submitted that the tape was part of the content of the article. It did not advertise the article. The question should be whether the distribution of the tape was publicity for the article.

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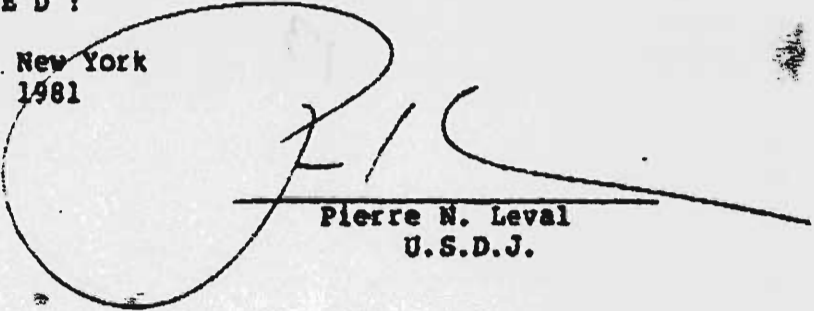
such a determination, in my view they may not be asked.

Nonetheless it seems unnecessary at this point to grant an injunction merely because the letter of inquiry was slightly overbroad. RDA is under no legal compulsion to answer the letter. The FEC appears by its actions to recognize the limited proper subject for its opening inquiry - the availability of the exemption. If the FEC should pursue an attempt to investigate beyond the permitted scope as outlined in this opinion, RDA may reapply for an injunction.

The motion is denied.

SO ORDERED:

Dated: New York, New York
March 19, 1981



Pierre N. Leval
U.S.D.J.

81040294991



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

David W. Cohen
Warshavsky, Hoffman & Cohen
30 Rockefeller Plaza
New York, New York 10112

Re: MUR 1271

Dear Mr. Cohen:

This is to confirm your telephone conversation of March 23, 1981, with Lee Andersen of our office. As you know, the Federal Election Commission extended the due date for a response to our request for answers to questions and production of documents in MUR 1271 pending the motion of your client, Reader's Digest Association, Inc., for a preliminary injunction. Reader's Digest Association, Inc. v. Federal Election Commission, 80 CIV 596 (PNL) (S.D.N.Y., Mar. 19, 1981) (order denying preliminary injunction). Since Judge Leval denied this motion on March 19, 1981, we are setting a new due date for your response.

Please respond to the Commission's letter of December 16, 1980, within ten (10) days of your receipt of this letter. If you have any questions, please contact R. Lee Andersen, the attorney assigned to this matter at (202)523-5071.

Sincerely,

Charles N. Steele
General Counsel

81040294992
Attendant 2



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 24, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

David W. Cohen
Warshavsky, Hoffman & Cohen
30 Rockefeller Plaza
New York, New York 10112

Re: MUR 1271

Dear Mr. Cohen:

This is to confirm your telephone conversation of March 23, 1981, with Lee Andersen of our office. As you know, the Federal Election Commission extended the due date for a response to our request for answers to questions and production of documents in MUR 1271 pending the motion of your client, Reader's Digest Association, Inc., for a preliminary injunction. Reader's Digest Association, Inc. v. Federal Election Commission, 80 CIV 596 (PNL) (S.D.N.Y., Mar. 19, 1981) (order denying preliminary injunction). Since Judge Leval denied this motion on March 19, 1981, we are setting a new due date for your response.

Please respond to the Commission's letter of December 16, 1980, within ten (10) days of your receipt of this letter. If you have any questions, please contact R. Lee Andersen, the attorney assigned to this matter at (202)523-5071.

Sincerely,

Charles N. Steele
General Counsel

81040294993



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 15, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Madelyn Littman
Warshavsky, Hoffman & Cohen
30 Rockefeller Plaza
New York, New York 10112

Re: MUR 1271

Dear Ms. Littman:

This is to inform you that the Federal Election Commission ("Commission") has granted your request of December 29, 1980, for an extension to respond to the Commission's Request to Answer Questions and Produce Documents received by you on December 23, 1980. We expect to receive your response on or before January 30, 1981, as per your request.

If you have any questions, please contact Lee Andersen, the attorney assigned to this matter at (202)523-5071.

Sincerely,

Charles N. Steele
General Counsel

81040294995



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Madelyn Littman
Warshavsky, Hoffman & Cohen
30 Rockefeller Plaza
New York, New York 10112

RH
1/8/81

Re: MUR 1271

Dear Ms. Littman:

This is to inform you that the Federal Election Commission ("Commission") has granted your request of December 29, 1980, for an extension to respond to the Commission's Request to Answer Questions and Produce Documents received by you on December 23, 1980. We expect to receive your response on or before January 30, 1981, as per your request.

If you have any questions, please contact Lee Andersen, the attorney assigned to this matter at (202)523-5071.

Sincerely,

Charles N. Steele
General Counsel

7 backmt 2

81040294996

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Reader's Digest Association, Inc.) MUR 1271

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on January 13, 1981, the Commission decided by a vote of 6-0 to grant the respondent, Reader's Digest Association, Inc., an extension to January 30, 1981, to respond to the Commission's December 18, 1980, Request to Answer Questions and Produce Documents.

Commissioners Aikens, Harris, McGarry, Reiche, Thomson, and Tiernan voted affirmatively in this matter.

Attest:

1-13-81

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary to the Commission

Received in Office of the Commission Secretary: 1-9-81, 10:43
Circulated on 48 hour vote basis: 1-9-81, 2:00

81040294997

January 9, 1981

MEMORANDUM TO: Marjorie W. Emmons
FROM: Elissa T. Garr
SUBJECT: MUR 1271

Please have the attached Memo distributed to the
Commission on a 48 hour tally basis. Thank you.

81040294998



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

81 JAN 9 A10: 43

January 9, 1981

MEMORANDUM TO: The Commission

FROM: Charles N. Steele
General Counsel *CS*

SUBJECT: MUR 1271

81040294999

On December 29, 1980, counsel for Reader's Digest Association, Inc. telephoned the Office of General Counsel to request an extension of time to answer the questions posed to the respondent in this matter. These questions concern the dissemination of certain video tapes relating to Senator Kennedy's automobile accident at Chappaquiddick. Counsel stated that due to the need to coordinate with other people an extension until the end of January would be necessary to respond to the Commission's questions. (The Commission received the attached letter from counsel for respondent requesting the extension in writing on December 30, 1980).

Given the potential complexity of the factual and legal issues involved here, as well as the expressed desire of the Commission to seek respondent's cooperation in the investigation of this matter, the Office of General Counsel recommends that the Commission grant the extension as requested by counsel for respondent.

Recommendation

The Office of General Counsel recommends that the Commission grant respondent, Reader's Digest Association, Inc., an extension to January 30, 1981, to respond to the Commission's December 18, 1980, Request to Answer Questions and Produce Documents.

Attachments

Letter from counsel for Reader's Digest Association, Inc.
Letter to counsel for Reader's Digest Association, Inc.

Andersen
WARSHAVSKY, HOFFMAN & COHEN
30 ROCKEFELLER PLAZA
NEW YORK, N. Y. 10112

DEC 30 11:21
0007 3657

STEPHEN D. HOFFMAN
SUZANNE M. WARSHAVSKY
DAVID W. COHEN

TELEPHONE (212) 247-0350

December 29, 1980

EXPRESS MAIL

Kenneth Gross, Esq.
Office of the General Counsel
Federal Election Commission
1325 K Street
Washington, D.C. 20463

Re: Willis v. The Reader's Digest
Association, Inc.--MUR 1271

Dear Mr. Gross:

We are attorneys for The Reader's Digest Association, Inc. ("RDA") and respectfully request an extension until January 30, 1981 of RDA's time to respond to the Request to Answer Questions and Produce Documents (the "Request") received from the Federal Election Commission on December 23, 1980.

The Request is extensive and raises important issues under the Federal Election Campaign Act and the First Amendment to the United States Constitution. In addition, employees of RDA who are critical to framing any kind of response to the Request are out of town and cannot be reached until after January 2, 1981.

Thank you for your cooperation in this matter.

Very truly yours,

Madelyn Littman
Madelyn C. Littman

MCL:dw

81040295000

Attachment 1



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Madelyn Littman
Warshavsky, Hoffman & Cohen
30 Rockefeller Plaza
New York, New York 10112

Re: MUR 1271

Dear Ms. Littman:

This is to inform you that the Federal Election Commission ("Commission") has granted your request of December 29, 1980, for an extension to respond to the Commission's Request to Answer Questions and Produce Documents received by you on December 23, 1980. We expect to receive your response on or before January 30, 1981, as per your request.

If you have any questions, please contact Lee Andersen, the attorney assigned to this matter at (202)523-5071.

Sincerely,

Charles N. Steele
General Counsel

8104029501



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

December 30, 1980

MEMORANDUM

TO: The File

FROM: Ken Gross *KG*

RE: MUR 1271

On December 29, 1980, Madeline Littman, attorney for Readers' Digest, called with regard to the above-referenced matter. She indicated that she would need an extension of time to answer the interrogatories posed along with a reason to believe finding. She suggested that she would need until the end of January because it required coordination with other people to fully answer all the questions. I told her that under the circumstances that we would recommend the extension but that I could not guarantee that the Commission would grant it, because they are generally strict on matters such as that.

In this case, it would be in our interest to recommend the granting of the extension. Ms. Littman's telephone number is: 212 247-0350.

cc: Gary Johansen
Lee Andersen

81040295002

RECEIVED

000-3657

80 DEC 30 AM 11:21

WARSHAVSKY, HOFFMAN & COHEN
30 ROCKEFELLER PLAZA
NEW YORK, N. Y. 10112

STEPHEN D. HOFFMAN
SUZANNE M. WARSHAVSKY
DAVID W. COHEN

TELEPHONE (212) 847-0350

December 29, 1980

EXPRESS MAIL

Kenneth Gross, Esq.
Office of the General Counsel
Federal Election Commission
1325 K Street
Washington, D.C. 20463

Re: Willis v. The Reader's Digest
Association, Inc.--MUR 1271

Dear Mr. Gross:

We are attorneys for The Reader's Digest Association, Inc. ("RDA") and respectfully request an extension until January 30, 1981 of RDA's time to respond to the Request to Answer Questions and Produce Documents (the "Request") received from the Federal Election Commission on December 23, 1980.

The Request is extensive and raises important issues under the Federal Election Campaign Act and the First Amendment to the United States Constitution. In addition, employees of RDA who are critical to framing any kind of response to the Request are out of town and cannot be reached until after January 2, 1981.

Thank you for your cooperation in this matter.

Very truly yours,

Madelyn Littman

Madelyn C. Littman

MCL:dw

81040295003

81040295004

WARSHAVSKY, HOFFMAN & COHEN
30 ROCKEFELLER PLAZA
NEW YORK, N. Y. 10112



EXPRESS MAIL

Kenneth Gross, Esq.
Office of the General Counsel
Federal Election Commission
1325 K Street
Washington, D.C. 20463



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 18, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

David W. Cohen
WARSHAVSKY, HOFFMAN & COHEN
30 Rockefeller Plaza
New York, New York 10112

Re: MUR 1271

Dear Mr. Cohen:

The Federal Election Commission notified your client, Reader's Digest Association, Inc., on August 8, 1980, of a complaint which alleges that your client may have violated certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was forwarded to Reader's Digest Association, Inc. at that time.

Upon further review of the allegations contained in the complaint and information supplied by you, the Commission, on November 6, 1980, determined that there is reason to believe that your client violated 2 U.S.C. § 441b. Specifically, it appears that Reader's Digest Association, Inc., violated 2 U.S.C. § 441b by making expenditures to disseminate to other media outlets video tapes of a computer reenactment of Senator Kennedy's accident at Chappaquiddick Island in 1969.

Your response to the Commission's initial notification of this complaint did not provide complete information regarding the matter in question. Therefore, the Commission requests that you answer the attached questions and produce the indicated documents. Please submit answers to the attached questions and respond to the request for documents and materials within 10 days of receipt of this letter. You may also submit any other factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

81040295006


David W. Cohen
Page Two

In absence of any additional information which demonstrates that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred, and proceed with formal conciliation. Of course, this does not preclude the settlement of this matter through informal conciliation prior to a finding of probable cause to believe if you so desire.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact R. Lee Andersen, the attorney assigned to this matter at (202)523-5071.

Sincerely,



John Warren McGarry
Acting Chairman for the
Federal Election Commission

81040295007



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

RMA

David W. Cohen
WARSHAVSKY, HOFFMAN & COHEN
30 Rockefeller Plaza
New York, New York 10112

Re: MUR 1271

Dear Mr. Cohen:

The Federal Election Commission notified your client, Reader's Digest Association, Inc., on August 8, 1980, of a complaint which alleges that your client may have violated certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was forwarded to Reader's Digest Association, Inc. at that time.

Upon further review of the allegations contained in the complaint and information supplied by you, the Commission, on November 6, 1980, determined that there is reason to believe that your client violated 2 U.S.C. § 441b. Specifically, it appears that Reader's Digest Association, Inc., violated 2 U.S.C. § 441b by making expenditures to disseminate to other media outlets video tapes of a computer reenactment of Senator Kennedy's accident at Chappaquiddick Island in 1969.

Your response to the Commission's initial notification of this complaint did not provide complete information regarding the matter in question. Therefore, the Commission requests that you answer the attached questions and produce the indicated documents. Please submit answers to the attached questions and respond to the request for documents and materials within 10 days of receipt of this letter. You may also submit any other factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

81040295008

David W. Cohen
Page Two

In absence of any additional information which demonstrates that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred, and proceed with formal conciliation. Of course, this does not preclude the settlement of this matter through informal conciliation prior to a finding of probable cause to believe if you so desire.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact R. Lee Andersen, the attorney assigned to this matter at (202)523-5071.

Sincerely,

61040295009

BEFORE THE FEDERAL ELECTION COMMISSION

REQUEST TO ANSWER QUESTIONS AND PRODUCE DOCUMENTS

TO: David W. Cohen
Warshavsky, Hoffman & Cohen
30 Rockefeller Plaza
New York, New York 10112

RE: MUR 1271

The Federal Election Commission, (hereinafter the "Commission"), requests that the Reader's Digest Association (hereinafter "Reader's Digest") answer questions and produce for inspection and copying the documents and materials listed below that are in the possession or control of Reader's Digest or its officers, agents, staff members or employees.

1. Please state whether Brian McHenry, Project Assistant for Research Engineers, Inc., provided Reader's Digest with a video tape animation of a computer printout (hereinafter the "video tape") a study of the speed at which Senator Kennedy's automobile was driven in the accident at Chappaquiddick Island in 1969.
2. Please describe the content of the video tape.
3. Please state whether the video tape advertised the Reader's Digest, February 1980 article, "Chappaquiddick".

81040295010

David W. Cohen

Request for Answers to Questions and Production of Documents

Page Two

4. Please state whether the video tape summarized the results of the study conducted by Research Engineers of the speed at which Senator Kennedy's automobile was driven in the accident at Chappaquiddick Island in 1969.

5. Please state whether the video tape was distributed to any person or entity outside of Reader's Digest. If the answer to this question is yes, please state to whom distribution was made.

6. If the answer to question No. 5 is yes, please state what arrangements Reader's Digest made with those persons or entities receiving the video tape regarding its dissemination to the general public.

7. Please state whether Reader's Digest agreed to pay any person or entity for broadcasting the video tape.

8. Please state whether any person or entity agreed to pay Reader's Digest for broadcasting the video tape.

9. Please state whether Reader's Digest is aware of any use made of the video tape by any persons or entities other than Reader's Digest?

81040295011

David W. Cohen

Request for Answers to Questions and Production of Documents
Page Three

10. If the answer to question No. 9 is yes, please state who used the video tape other than Reader's Digest.

11. Please state whether any video tape, other than the video tape which is the subject of MUR 1271, has ever been used by Reader's Digest to promote, advertise or summarize articles contained in the Reader's Digest magazine. If the answer to this question is yes, please give examples, stating the subject matter, date and method of dissemination for such video tapes.

12. Please state whether the video tape was paid for and disseminated by Reader's Digest in order to publicize the results of the study undertaken by Research Engineers, Inc. of the speed at which the automobile of Senator Kennedy was driven during the accident at Chappaquaddick Island in 1969.

13. Please state whether Mr. Pinchman of the Public Relations Department of Reader's Digest was the person in charge of uses made of the video tape for Reader's Digest. If the answer to this question is no, please state the name and position of the person who was in charge of such uses of the video tape for Reader's Digest.

14. Does Reader's Digest have possession of the original or any copy of the video tape at the present time? If the answer to this question is yes, please submit a copy of this video tape to the Federal Election Commission.

81040295012

David W. Cohen
Request for Answers to Questions and Production of Documents
Page Four

15. Does Reader's Digest have possession of any recording of any media broadcast upon which the video tapes were used? If the answer to this question is yes, please submit a copy of this video tape to the Federal Election Commission.

Please submit to the Commission responses to these questions, along with copies of the documents and materials requested and any other information which Reader's Digest may wish to provide, within ten (10) days of your receipt of this letter.

81040295013



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE *MWE*
FROM: MARJORIE W. EMMONS/MARGARET CHANEY *MC*
DATE: DECEMBER 18, 1980
SUBJECT: MUR 1271 - Memorandum to the Commission
dated 12-16-80; Received in OCS 12-16-80,
2:18

The above-named document was circulated to the Commission on a 24 hour no-objection basis at 11:00, December 17, 1980.

At the time of the deadline, Commissioners Harris, Reiche, and Tiernan had returned their papers without objection. Commissioner Aikens submitted an objection but requests that it be for the record only and the item not be placed on the agenda.

81040295014

December 16, 1980

MEMORANDUM TO: Marjorie W. Emmons
FROM: Elissa T. Garr
SUBJECT: MUR 1271

Please have the attached Memo distributed to the
Commission on a 24 hour no-objection basis. Thank you.

81040295015



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
COMMUNICATIONS SECTION

80 DEC 16 P 2: 10

December 16, 1980

MEMORANDUM TO: The Commission

FROM: Charles N. Steele
General Counsel *CNS*

SUBJECT: Request for Approval of
Questions in MUR 1271

On November 11, 1980, the Commission found reason to believe that the Reader's Digest Association, Inc. committed a violation of 2 U.S.C. § 441b by making expenditures to disseminate to other media the video tapes of a computer reenactment of Senator Kennedy's automobile accident at Chappaquiddick Island. The Commission authorized the Office of General Counsel to conduct an investigation into the facts of this matter.

In order to investigate this matter, we recommend that the Commission approve the attached questions and request for production of documents and materials.

Recommendation:

Approve and send the attached questions and request to produce documents and materials and cover letter.

Attachments

1. Request to Answer Questions and Produce Documents and Materials
2. Cover Letter

81040295016

BEFORE THE FEDERAL ELECTION COMMISSION

REQUEST TO ANSWER QUESTIONS AND PRODUCE DOCUMENTS

TO: David W. Cohen
Warshavsky, Hoffman & Cohen
30 Rockefeller Plaza
New York, New York 10112

RE: MUR 1271

The Federal Election Commission, (hereinafter the "Commission"), requests that the Reader's Digest Association (hereinafter "Reader's Digest") answer questions and produce for inspection and copying the documents and materials listed below that are in the possession or control of Reader's Digest or its officers, agents, staff members or employees.

1. Please state whether Brian McHenry, Project Assistant for Research Engineers, Inc., provided Reader's Digest with a video tape animation of a computer printout (hereinafter the "video tape") a study of the speed at which Senator Kennedy's automobile was driven in the accident at Chappaquiddick Island in 1969.
2. Please describe the content of the video tape.
3. Please state whether the video tape advertised the Reader's Digest, February 1980 article, "Chappaquiddick".

81040295017

David W. Cohen

Request for Answers to Questions and Production of Documents

Page Two

4. Please state whether the video tape summarized the results of the study conducted by Research Engineers of the speed at which Senator Kennedy's automobile was driven in the accident at Chappaquiddick Island in 1969.

5. Please state whether the video tape was distributed to any person or entity outside of Reader's Digest. If the answer to this question is yes, please state to whom distribution was made.

6. If the answer to question No. 5 is yes, please state what arrangements Reader's Digest made with those persons or entities receiving the video tape regarding its dissemination to the general public.

7. Please state whether Reader's Digest agreed to pay any person or entity for broadcasting the video tape.

8. Please state whether any person or entity agreed to pay Reader's Digest for broadcasting the video tape.

9. Please state whether Reader's Digest is aware of any use made of the video tape by any persons or entities other than Reader's Digest?

81040295018

David W. Cohen

Request for Answers to Questions and Production of Documents
Page Three

10. If the answer to question No. 9 is yes, please state who used the video tape other than Reader's Digest.

11. Please state whether any video tape, other than the video tape which is the subject of MUR 1271, has ever been used by Reader's Digest to promote, advertise or summarize articles contained in the Reader's Digest magazine. If the answer to this question is yes, please give examples, stating the subject matter, date and method of dissemination for such video tapes.

12. Please state whether the video tape was paid for and disseminated by Reader's Digest in order to publicize the results of the study undertaken by Research Engineers, Inc. of the speed at which the automobile of Senator Kennedy was driven during the accident at Chappaquaddick Island in 1969.

13. Please state whether Mr. Pinchman of the Public Relations Department of Reader's Digest was the person in charge of uses made of the video tape for Reader's Digest. If the answer to this question is no, please state the name and position of the person who was in charge of such uses of the video tape for Reader's Digest.

14. Does Reader's Digest have possession of the original or any copy of the video tape at the present time? If the answer to this question is yes, please submit a copy of this video tape to the Federal Election Commission.

81040295019

David W. Cohen
Request for Answers to Questions and Production of Documents
Page Four

15. Does Reader's Digest have possession of any recording of any media broadcast upon which the video tapes were used? If the answer to this question is yes, please submit a copy of this video tape to the Federal Election Commission.

Please submit to the Commission responses to these questions, along with copies of the documents and materials requested and any other information which Reader's Digest may wish to provide, within ten (10) days of your receipt of this letter.

81040295020



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

David W. Cohen
WARSHAVSKY, HOFFMAN & COHEN
30 Rockefeller Plaza
New York, New York 10112

Re: MUR 1271

Dear Mr. Cohen:

The Federal Election Commission notified your client, Reader's Digest Association, Inc., on August 8, 1980, of a complaint which alleges that your client may have violated certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was forwarded to Reader's Digest Association, Inc. at that time.

Upon further review of the allegations contained in the complaint and information supplied by you, the Commission, on November 6, 1980, determined that there is reason to believe that your client violated 2 U.S.C. § 441b. Specifically, it appears that Reader's Digest Association, Inc., violated 2 U.S.C. § 441b by making expenditures to disseminate to other media outlets video tapes of a computer reenactment of Senator Kennedy's accident at Chappaquiddick Island in 1969.

Your response to the Commission's initial notification of this complaint did not provide complete information regarding the matter in question. Therefore, the Commission requests that you answer the attached questions and produce the indicated documents. Please submit answers to the attached questions and respond to the request for documents and materials within 10 days of receipt of this letter. You may also submit any other factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

81040295021

David W. Cohen
Page Two

In absence of any additional information which demonstrates that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred, and proceed with formal conciliation. Of course, this does not preclude the settlement of this matter through informal conciliation prior to a finding of probable cause to believe if you so desire.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact R. Lee Andersen, the attorney assigned to this matter at (202)523-5071.

Sincerely,

81040295022



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE W. EMMONS/MARGARET CHANEY *mc*
OFFICE OF THE SECRETARY TO THE COMMISSION

DATE: DECEMBER 5, 1980

SUBJECT: ADDITIONAL OBJECTION - MUR 1271 - Memorandum to
Commission dated 12-4-80

You were notified previously of an objection by
Commissioner Aikens.

Commissioner Friedersdorf submitted an objection at
3:41, December 5, 1980.

This matter will be discussed in executive session
on Tuesday, December 9, 1980.

WJ drawn

81040295023



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE *mwe*
FROM: MARJORIE W. EMMONS/MARGARET CHANEY
OFFICE OF THE SECRETARY TO THE COMMISSION
DATE: DECEMBER 8, 1980
SUBJECT: ADDITIONAL OBJECTION TO MUR 1271

You were notified previously of an objection by
Commissioners Aikens and Friedersdorf to the above-named OGC report.

Commissioner Reiche submitted an additional objection at
12:25 p.m. on December 8, 1980.

This matter will be discussed in executive session
on December 9, 1980.

A copy of Commissioner Reiche's vote sheet containing comment
is attached.

Attachment as noted

81040295024



FEDERAL ELECTION COMMISSION
 1325 K STREET N.W.
 WASHINGTON, D.C. 20463

80 DEC 8 P12: 25

DATE AND TIME TRANSMITTED: THURSDAY, 12-4-80
 4:00

COMMISSIONER AIKENS, FRIEDERSDORF, HARRIS, MCGARRY, REICHE, TIERNAN

RETURN TO OFFICE OF COMMISSION SECRETARY BY: MONDAY, DECEMBER 8, 1980
 4:00

AUTHORIZATION SHEET ATTACHED

MUR NO. 1271 - Memorandum to the Commission dated 12-4-80

- () I approve the recommendation and issuance of subpoena/order.
- () I object to the recommendation and issuance of subpoena/order.

COMMENTS: Question the use of a subpoena
at the time.

Date: 12/8/80

Signature: Frank P. Reiche

THE OFFICE OF GENERAL COUNSEL WILL TAKE NO ACTION IN THIS MATTER UNTIL THE APPROVAL OF FOUR COMMISSIONERS IS RECEIVED. PLEASE RETURN ALL PAPERS NO LATER THAN THE DATE AND TIME SHOWN ABOVE TO THE OFFICE OF COMMISSION SECRETARY. ONE OBJECTION PLACES THE ITEM ON THE EXECUTIVE SESSION AGENDA.

81040295025



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE
FROM: MARJORIE W. EMMONS/MARGARET CHANEY *mc*
DATE: DECEMBER 5, 1980
SUBJECT: OBJECTION - MUR 1271 - Memorandum to the
Commission dated 12-4-80; Received in
OCS 12-4-80, 12:51

The above-named document was circulated on a 48
hour vote basis at 4:00, December 4, 1980.

Commissioner Aikens submitted her objection at 11:00,
December 5, 1980.

This matter will be placed on the Executive Session
Agenda for Tuesday, December 9, 1980.

81040395026

December 4, 1980

MEMORANDUM TO: Marjorie W. Emmons
FROM: Elissa T. Garr
SUBJECT: MUR 1271

Please have the attached Memo distributed to the Commission on a 48 hour tally basis. Thank you.

81040295027



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

80 DEC 4 P12: 51

December 4, 1980

MEMORANDUM TO: The Commission

FROM: Charles N. Steele *CS*
General Counsel

SUBJECT: Request for Authorization to Issue
Discovery Orders in MUR 1271

On November 11, 1980, the Commission found reason to believe that the Reader's Digest Association, Inc. committed a violation of 2 U.S.C. § 441b by making expenditures to disseminate to other media the video tapes of a computer reenactment of Senator Kennedy's automobile accident at Chappaquiddick Island. The Commission authorized the Office of General Counsel to conduct an investigation into the facts of this matter.

In order to investigate this matter in the most expeditious manner, we recommend that the Commission authorize the issuance of orders to answer interrogatories and produce documents and materials.

Recommendation:

Authorize the attached orders to answer interrogatories and produce documents and materials and cover letter.

Attachments

1. Order to Answer Interrogatories and Produce Documents and Materials
2. Authorization Form
3. Cover Letter

81040295028

BEFORE THE FEDERAL ELECTION COMMISSION

ORDER TO ANSWER INTERROGATORIES AND PRODUCE DOCUMENTS

TO: David W. Cohen
Warshavsky, Hoffman & Cohen
30 Rockefeller Plaza
New York, New York 10112

RE: MUR 1271

At the instance of the Federal Election Commission, (hereinafter the "Commission"), pursuant to 2 U.S.C. § 437d(a), the Reader's Digest Association (hereinafter "Reader's Digest") is hereby ordered to answer interrogatories and produce for inspection and copying the documents and materials listed below that are in the possession or control of Reader's Digest or its officers, agents, staff members or employees.

1. Please state whether Brian McHenry, Project Assistant for Research Engineers, Inc., provided Reader's Digest with a video tape animation of a computer printout (hereinafter the "video tape") a study of the speed at which Senator Kennedy's automobile was driven in the accident at Chappaquiddick Island in 1969.
2. Please describe the content of the video tape.
3. Please state whether the video tape advertised the Reader's Digest, February 1980 article, "Chappaquiddick".

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Attachment 1

4. Please state whether the video tape summarized the results of the study conducted by Research Engineers of the speed at which Senator Kennedy's automobile was driven in the accident at Chappaquiddick Island in 1969.

5. Please state whether the video tape was distributed to any person or entity outside of Reader's Digest. If the answer to this question is yes, please state to whom distribution was made.

6. If the answer to question No. 6 is yes, please state what arrangements Reader's Digest made with those persons or entities receiving the video tape regarding its dissemination to the general public.

7. Please state whether Reader's Digest agreed to pay any person or entity for broadcasting the video tape.

8. Please state whether any person or entity agreed to pay Reader's Digest for broadcasting the video tape.

9. Please state whether Reader's Digest is aware of any use made of the video tape by any persons or entities other than Reader's Digest?

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10. If the answer to question No. 10 is yes, please state who used the video tape other than Reader's Digest.

11. Please state whether any video tape, other than the video tape which is the subject of MUR 1271, has ever been used by Reader's Digest to promote, advertise or summarize articles contained in the Reader's Digest magazine. If the answer to this question is yes, please give examples, stating the subject matter, date and method of dissemination for such video tapes.

12. Please state whether the video tape was paid for and disseminated by Reader's Digest in order to publicize the results of the study undertaken by Research Engineers, Inc. of the speed at which the automobile of Senator Kennedy was driven during the accident at Chappaquaddick Island in 1969.

13. Please state whether Mr. Pinchman of the Public Relations Department of Reader's Digest was the person in charge of uses made of the video tape for Reader's Digest. If the answer to this question is no, please state the name and position of the person who was in charge of such uses of the video tape for Reader's Digest.

14. Does Reader's Digest have possession of the original or any copy of the video tape at the present time? If the answer to this question is yes, please submit a copy of this video tape to the Federal Election Commission.

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- 15: Does Reader's Digest have possession of any recording of any media broadcast upon which the video tapes were used? If the answer to this question is yes, please submit a copy of this video tape to the Federal Election Commission.

Please submit to the Commission responses to these interrogatories, along with copies of the documents and materials requested and any other information which Reader's Digest may wish to provide, within ten (10) days of your receipt of this letter.

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand at Washington, D.C., this day of November, 1980.

Max L. Friedersdorf, Chairman
Federal Election Commission

ATTEST:

Marjorie W. Emmons
Secretary to the Commission

81040295032



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AUTHORIZATION TO ISSUE ORDERS TO ANSWER INTERROGATORIES
AND PRODUCE DOCUMENTS AND MATERIALS

The Commission hereby authorizes the issuance of orders to answer interrogatories and produce documents and materials to the Reader's Digest Association, Inc., in connection with MUR 1271(80).

Max L. Friedersdorf
Chairman

Joan D. Aikens
Commissioner

John W. McGarry
Vice Chairman

Frank P. Reiche
Commissioner

Thomas E. Harris
Commissioner

Robert O. Tiernan
Commissioner

81040295033

Adkins 2



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

David W. Cohen
WARSHAVSKY, HOFFMAN & COHEN
30 Rockefeller Plaza
New York, New York 10112

Re: MUR 1271

Dear Mr. Cohen:

The Federal Election Commission notified your client, Reader's Digest Association, Inc., on August 8, 1980, of a complaint which alleges that your client may have violated certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was forwarded to Reader's Digest Association, Inc. at that time.

Upon further review of the allegations contained in the complaint and information supplied by you, the Commission, on November 6, 1980, determined that there is reason to believe that your client violated 2 U.S.C. § 441b. Specifically, it appears that Reader's Digest Association, Inc., violated 2 U.S.C. § 441b by making expenditures to disseminate to other media outlets video tapes of a computer reenactment of Senator Kennedy's accident at Chappaquiddick Island in 1969.

Your response to the Commission's initial notification of this complaint did not provide complete information regarding the matter in question. Therefore, the Commission has authorized the issuance of the attached order to answer interrogatories and produce documents and materials. Please submit answers to the enclosed interrogatories within 10 days of receipt of this letter. You may also submit any other factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

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Attachment 3

David W. Cohen
Page Two

In absence of any additional information which demonstrates that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred, and proceed with formal conciliation. Of course, this does not preclude the settlement of this matter through informal conciliation prior to a finding of probable cause to believe if you so desire.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact R. Lee Andersen, the attorney assigned to this matter at (202)523-5071.

Sincerely,

81040295035

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 1271
Reader's Digest Association, Inc.)

CERTIFICATION

I, Marjorie W. Emons, Recording Secretary for the Federal Election Commission's Executive Session on November 5, 1980, do hereby certify that the Commission decided by a vote of 4-2 to take the following actions in MUR 1271:

1. Find reason to believe that the Reader's Digest Association, Inc. committed a violation of 2 U.S.C. §441b by making expenditures to disseminate to other media the video tapes of a computer reenactment of Senator Kennedy's automobile accident at Chappaquiddick Island.
2. Send an appropriate letter to the respondent.

Commissioners Harris, McGarry, Reiche, and Tiernan voted affirmatively for the decision; Commissioners Aikens and Friedersdorf dissented.

Attest:

11-7-80

Date

Marjorie W. Emons

Marjorie W. Emons
Secretary to the Commission

81040295036



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE *mwe*
FROM: MARJORIE W. EMMONS/MARGARET CHANEY *mc*
DATE: OCTOBER 30, 1980
SUBJECT: OBJECTION - MUR 1271 - First General
Counsel's Report dated 10-28-80; Received
in OCS 10-28-80

The above-named document was circulated on a 48 hour
vote basis at 4:00, October 28, 1980.

Commissioner Reiche submitted an objection at 4:46,
October 29, 1980. A copy of his vote sheet is provided.

This matter will be placed on the Executive Session
Agenda for ~~Wednesday~~, November 5, 1980.

ATTACHMENT:
Copy of Vote Sheet

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K00

48 HOUR TALLY SHEET



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

Date and Time Transmitted: TUESDAY, 10-28-80
4:00

Commissioner FRIEDERSDORF, AIKENS, TIERNAN, MCGARRY, REICHE, HARRIS

RETURN TO OFFICE OF COMMISSION SECRETARY BY: THURSDAY, OCTOBER 30, 1980

MUR No. 1271 - First General Counsel's Report dated 10-28-80

- () I approve the recommendation
- (✓) I object to the recommendation

COMMENTS: While I agree with the result,
I have difficulty with the language
on page 2.

Date: 10/29/80 Signature: Frank A. Reiche

A DEFINITE VOTE IS REQUIRED AND ALL SHEETS SIGNED AND DATED.
PLEASE RETURN ONLY THE VOTE SHEETS TO THE OFFICE OF THE
COMMISSION SECRETARY NO LATER THAN THE DATE AND TIME SHOWN
ABOVE.



81040295038

RECEIVED
OCT 30 1980
P 4:46
SECRETARY

October 28, 1980

MEMORANDUM TO: Marjorie W. Emmons

FROM: Elissa T. Garr

SUBJECT: MUR 1271

Please have the attached First GC Report distributed to the Commission on a 48 hour tally basis. Thank you.

81040295039

FEDERAL ELECTION COMMISSION
1325 K Street, N.W.
Washington, D.C. 20463

RECEIVED
COMMISSION SECRETARY

80 OCT 28 A10: 02

FIRST GENERAL COUNSEL'S REPORT

DATE AND TIME OF TRANSMITTAL
BY OGC TO THE COMMISSION 10-28-80

MUR 1271
DATE COMPLAINT RECEIVED
BY OGC: 08/06/80
STAFF MEMBER:
R. Lee Andersen

COMPLAINANT'S NAME: Larryann C. Willis
RESPONDENT'S NAME: Reader's Digest Association, Inc.
RELEVANT STATUTE: 2 U.S.C. § 441b and § 431(9)(B)
INTERNAL REPORTS CHECKED: None
FEDERAL AGENCIES CHECKED: None

SUMMARY OF ALLEGATIONS

Complainant Larryann C. Willis alleges that the Reader's Digest Association, Inc. ("Reader's Digest") violated 2 U.S.C. § 441b of the Federal Election Campaign Act of 1971, as amended (the "Act") by expending corporate funds to influence a federal election. The complainant's theory is that purchases by Reader's Digest of: (1) a computer study of the speed at which Senator Edward Kennedy's car was traveling in 1969 when it crashed into the Poucha Pond Killing Mary Jo Kpechne; (2) a study of the tides and currents in the area of the Chappaquiddick Island and (3) the production and distribution of video tapes of a computer re-enactment of the fatal accident to major media outlets in the northeast United States were illegal corporate expenditures. Complainant characterizes these expenditures, made as they were in close proximity to the date of the New Hampshire Primary, as going beyond the reporting and commenting exemption to the 2 U.S.C. § 441b prohibitions found in 2 U.S.C. § 431(9)(B)(i).

FACTUAL AND LEGAL ANALYSIS

The core of the complainant's allegations is that the expenditures made by Reader's Digest for background research and distribution of the fruits of this research were, in effect, the purchase of a "news media event" and as such outside the scope of the reporting and commenting parameters of the 2 U.S.C. § 431(9)(B)(i) exemption to § 441b. Relying upon the Commission's decision and the First General Counsel's Report in MURs 1167, 1168 and 1170 (Nashua Telegraph), complainant argues that Reader's

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Digest has made expenditures outside of the normal course of business to produce and disseminate false information concerning Senator Kennedy's accident at Chappaquiddick. The rationale for this conclusion is that the purchase of the research was unnecessary given the abundance of reputable information available on the public record, and that Reader's Digest, therefore, "expended funds on a study which mathematically speculated on the speed Senator Kennedy's car was traveling on a certain night 11 years earlier" for the purpose of influencing an election (see complaint at page 2).

Thus complainant is asking the Commission to evaluate the Reader's Digest article concerning Senator Kennedy's accident at Chappaquiddick and conclude that an inference can be drawn that Reader's Digest's "intent was to disparage Senator Kennedy's campaign with the studies they purchased with corporate funds," and that further, this alleged disparagement is a violation of the Act (see complaint at page 3). However, the problem with Ms. Willis' theory is that it would require the Commission to preempt the magazine's editorial discretion and make a determination that (1) the research funded by the corporation was unnecessary and (2) that distribution techniques used to disseminate the story resulting from this research was prohibited by 2 U.S.C. § 441b. It is the opinion of the Office of General Counsel that the Commission should not involve itself in the evaluation of the inner workings of a publishing company in order to discern whether certain background research is necessary or whether certain marketing techniques are outside of the normal course of business, and therefore, prohibited by 2 U.S.C. § 441b.

Whatever may be the outside boundary of the reporting and commenting provision of the 2 U.S.C. § 431(9)(B)(i) exemption to § 441b, which permits corporate expenditures incidental to carrying out the ordinary functions of the media, Reader's Digests' funding background research for a feature story and disseminating information about this story to major news outlets, via presumably ordinary means, does not reach this limit.^{1/}

^{1/} Counsel for Reader's Digest submitted a response to the Commission on September 15, 1980, in which they declined to address the complaint substantively on the grounds that the First Amendment privilege, as incorporated in 2 U.S.C. § 431(9)(B)(i), protects Reader's Digest article fully, and that to require any such substantive response from the magazine would be to impinge up on its constitutional rights (see Exhibit 1).

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Therefore, the Office of General Counsel recommends that the Commission find no reason to believe that Reader's Digest committed a violation of 2 U.S.C. § 441b by the publication or dissemination of information about its February 1980 article on Senator Kennedy's automobile accident at Chappaquiddick Island.

RECOMMENDATIONS

The Office of General Counsel recommends that the Commission:

1. Find no reason to believe that the Reader's Digest Association committed a violation of 2 U.S.C. § 441b by publication or dissemination of information about its February 1980 news story concerning Senator Kennedy's automobile accident at Chappaquiddick Island.
2. Close the file.
3. Send the attached letters to complainant and respondent.

Attachments

1. Exhibit 1 - Reader's Digest response
2. Letters to Complainant and Respondent

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NOTE

Because the complaint in this matter is quite lengthy with many attachments, the original will not be reproduced again for the Commission. Commissioners have a copy of the complaint in their files to which they can refer.

81040295043

Andersen
600#2630
WARSHAVSKY, HOFFMAN & CO. RECEIVED

30 ROCKEFELLER PLAZA

NEW YORK, N. Y. 10112

80 SEP 15 4 9: 07

STEPHEN D. HOFFMAN
SUZANNE M. WARSHAVSKY
DAVID W. COHEN

TELEPHONE (212) 247-0350

September 10, 1980

Lee Andersen, Esq.
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: Willis v. The Reader's Digest Association, Inc.
MUR 1271(80)

30 SEP 15 11: 36

RECEIVED
GENERAL INVESTIGATIVE
DIVISION

Dear Mr. Andersen:

We are the attorneys for The Reader's Digest Association, Inc. in the above entitled matter. This letter will constitute the response of my client to the complaint.

As I am sure you know, the complaint involves charges made concerning an article which appeared in the February 1980 issue of Reader's Digest Magazine.

It is our position that the article falls within the protection of the First Amendment to the United States Constitution. Indeed, the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §431(9)(B)(i) expressly incorporates this privilege. To require my client to respond substantively to MUR 1271(80) would impinge on its constitutional rights and consequently such a response will not be offered.

If you have any questions, please call me.

Very truly yours,

David W. Cohen
David W. Cohen

DWC:mm

81040295044
Exhibit 1.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Larryann C. Willis
Route 2 Box 69
Vale, Oregon 97918

Re: MUR 1271

Dear Ms. Willis:

The Federal Election Commission has reviewed the allegations of your complaint dated August 6, 1980, and determined that on the basis of the information provided in your complaint that there is no reason to believe that a violation of the Federal Election Campaign Act of 1971, as amended (the "Act") has been committed.

Accordingly, the Commission has decided to close the file in this matter.

Should additional information come to your attention which you believe establishes a violation of the Act, please contact R. Lee Andersen, the attorney assigned to this matter at (202)523-5071.

Sincerely,

Charles N. Steele
General Counsel

81040295045



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

David W. Cohen, Esquire
WARSHAVSKY, HOFFMAN & COHEN
30 Rockefeller Plaza
Suite 2855
New York, New York 10020

Dear Mr. Cohen:

On August 8, 1980, the Commission notified your client, the Reader's Digest Association, Inc. of a complaint alleging that they may have violated certain sections of the Federal Election Campaign Act of 1971, as amended.

The Commission, on October , 1980, determined that on the basis of the information in the complaint that there is no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission has closed its file in this matter. This matter will become a part of the public record within 30 days.

Sincerely,

Charles N. Steele
General Counsel

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PS Form 3811, Apr. 1977 RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

RECEIVED

● **SENDER** Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one):
 Show to whom and date delivered
 Show to whom, date, and address of delivery
 RESTRICTED DELIVERY
 Show to whom and date delivered
 RESTRICTED DELIVERY
 Show to whom, date, and address of delivery
 (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Losepman

3. ARTICLE DESCRIPTION:
 REGISTERED NO. | CERTIFIED NO. | INSURED NO.
 | | *145Lhb* |

(Always obtain signature of addressee or agent)

I have received the article described above.
 SIGNATURE Addressee Authorized agent
Losepman

4. DATE OF DELIVERY
12-18-80

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

POSTMARK
 DEC 1980
 CLERK'S INITIALS
W

1271 address



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 12, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Larryann C. Willis
Route 2, Box 69
Vale, Oregon 97918

Re: MUR 1271

Dear Ms. Willis:

This is to acknowledge receipt of your letter addressed to the Federal Election Commission, dated November 18, 1980. Pursuant to your request I have enclosed a copy of the General Counsel's report made in the Nashua Telegraph (MUR 1167, MUR 1168 and MUR 1170) as well as a copy of Attachment C of your complaint.

The Commission is presently in the process of analyzing your complaint, and in that no final determination has yet been made, the confidentiality provisions of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 437g(a)(4)(B)(i) and § 437g(a)(12)(A), prohibit me from making any statement concerning possible Commission action taken in this matter at the present time.

Finally, although you indicated that you had enclosed \$2.00 to cover the cost of photocopies, the Commission found no such sum accompanying your letter of November 18, 1980. We have provided you with the materials which you have requested, however, without charge. If you should have any further questions, please contact R. Lee Andersen, the attorney assigned to this matter, at (202)523-5071.

Sincerely,

Charles N. Steele
General Counsel

81040295048



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Larryann C. Willis *RhA*
Route 2, Box 69
Vale, Oregon 97918

Re: MUR 1271

Dear Ms. Willis:

This is to acknowledge receipt of your letter addressed to the Federal Election Commission, dated November 18, 1980. Pursuant to your request I have enclosed a copy of the General Counsel's report made in the Nashua Telegraph (MUR 1167, MUR 1168 and MUR 1170) as well as a copy of Attachment C of your complaint.

The Commission is presently in the process of analyzing your complaint, and in that no final determination has yet been made, the confidentiality provisions of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 437g(a)(4)(B)(i) and § 437g(a)(12)(A), prohibit me from making any statement concerning possible Commission action taken in this matter at the present time.

Finally, although you indicated that you had enclosed \$2.00 to cover the cost of photocopies, the Commission found no such sum accompanying your letter of November 18, 1980. We have provided you with the materials which you have requested, however, without charge. If you should have any further questions, please contact R. Lee Andersen, the attorney assigned to this matter, at (202)523-5071.

Sincerely,

Charles N. Steele
General Counsel

81040295049



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 11, 1980

MEMORANDUM TO THE FILE

FROM: Kenneth A. Gross *KAG*
RE: MURs 1271 and 1283
CC: Charles N. Steele

David Fuller, attorney for Readers' Digest, called concerning the above-referenced matters. I informed him that Gary Johansen and Lee Andersen would be handling MUR 1271 and that Gary Johansen was also responsible for MUR 1283. He indicated that Readers' Digest has sent a letter of representation on behalf of Fuller.

I told him that I did not want to get into too much detail about the case, but I did indicate that he would be receiving a letter concerning MUR 1271 shortly and that we were aware of the news story exemption and that is why the Commission's focus would be on the dissemination of the material and the videotapes themselves. I further indicated that when he received the questions that he should get in contact with Gary or Lee to further the dialogue. I tried to encourage him to answer the questions as the only possible way of resolving this matter and I think he understood that. I suspect what they may do is answer the questions and reserve their rights to raise further objections under the first amendment which would be fine as far as we are concerned. He asked if there was a specific provision in the regs for preservation of rights or submission without prejudice, and I told him there was not, but that our statutory scheme was such that if we did go to court to enforce any penalties or violation of the Act that he would be entitled to de novo review. That was the extent of the conversation.

cc: Gary Johansen
Lee Andersen
Judy Thedford

81040295050

1167, 1168, 1170

RECEIVED
911401 Gcc#
3443

Larryann G. Willis 9:25

Democratic National Committeewoman
State of Oregon

November 18, 1980

Charles N. Steele
General Counsel
Federal Election Commission
Washington D.C.
20463

NOV 18 11 27

GENERAL COUNSEL



Dear Mr. Steele:

On August 6, 1980 I filed a complaint which you acknowledged against the Reader's Digest Association, Inc. It is my understanding that some action must be taken within 90 days. 105 days has past. Please inform me of the status of the case.

Please send me a copy of the Summary of the Nashua Telegraph case prepared by your office. I would also like a copy of attachment C to my complaint. (1 page I believe)

I have enclosed \$2.00 to cover photocopies.

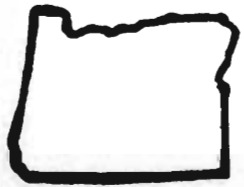
Thank you very much.

Sincerely,

Larryann Willis

No money
was enclosed.

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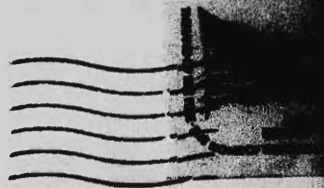
Larryann C. Willis

Democratic National Committeewoman

State of Oregon

Dist. 2, Box 69

VALE, OREGON 97918



Mr. Charles N. Steele
General Counsel
Federal Election Commission
Washington D.C.
20463

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WARSHAVSKY, HOFFMAN & COHEN **RECEIVED**
30 ROCKEFELLER PLAZA
NEW YORK, N.Y. 10112
80 SEP 15 4:08

STEPHEN D. HOFFMAN
SUZANNE M. WARSHAVSKY
DAVID W. COHEN

TELEPHONE (212) 847-0350

September 10, 1980

30 SEP 15 11:36

RECEIVED
GENERAL COUNSEL

Lee Andersen, Esq.
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: Willis v. The Reader's Digest Association, Inc.
MUR 1271(80)

81040295053

Dear Mr. Andersen:

We are the attorneys for The Reader's Digest Association, Inc. in the above entitled matter. This letter will constitute the response of my client to the complaint.

As I am sure you know, the complaint involves charges made concerning an article which appeared in the February 1980 issue of Reader's Digest Magazine.

It is our position that the article falls within the protection of the First Amendment to the United States Constitution. Indeed, the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §431(9)(B)(i) expressly incorporates this privilege. To require my client to respond substantively to MUR 1271(80) would impinge on its constitutional rights and consequently such a response will not be offered.

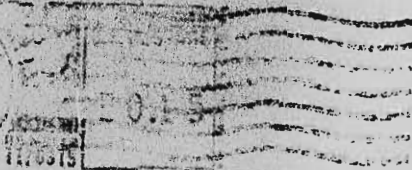
If you have any questions, please call me.

Very truly yours,

David W. Cohen
David W. Cohen

DWC:mm

WARSHAVSKY, HOFFMAN & COHEN
30 ROCKEFELLER PLAZA
NEW YORK, N. Y. 10112



Lee Andersen, Esq.
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

80 SEP 15 4 3 : 07

RECEIVED

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WARSHAVSKY, HOFFMAN & COHEN
30 ROCKEFELLER PLAZA
NEW YORK, N. Y. 10112

RECEIVED
GCC#2501
80 SEP 2 AIO: 86

STEPHEN D. HOFFMAN
SUZANNE M. WARSHAVSKY
DAVID W. COHEN

TELEPHONE (212) 247-0350

August 25, 1980

Gary Johansen, Esq.
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

Re: Willis v. The Reader's Digest Association, Inc.
MUR 1271(80)

Dear Mr. Johansen:

This letter is to confirm our telephone conversation wherein you advised me that the response of The Reader's Digest Association, Inc. to the complaint in this matter is due on or before September 12, 1980.

Thank you for your cooperation in this matter.

Very truly yours,

Madelyn Littman
Madelyn C. Littman

MCL:cm

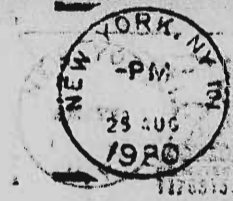
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RECEIVED
GENERAL INVESTIGATIVE
DIVISION

6100295056

WARSHAVSKY, HOFFMAN & COHEN
30 ROCKEFELLER PLAZA
NEW YORK, N. Y. 10112



80 SEP 2 AM: 38

Gary Johansen, Esq.
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

909847
GCC
2447

RECEIVED

THE READER'S DIGEST ASSOCIATION INC. AUG 25 11:00
200 Park Avenue - New York, N.Y. 10017

LEGAL DEPARTMENT
Ava K. Doppelt
Martha J.C. Farquhar
David Otis Fuller, Jr.
William Barnabas McHenry
Marjorie Weiner Normand

Writer's Direct Dial:
212-972-3779

August 18, 1980

Certified Mail
Return Receipt Requested

Federal Election Commission
Washington, D.C. 20463

Attn: Charles D. Steele, Esq.
General Counsel

Re: MUR 1271 (80)

Dear Sir:

In accordance with your letter to The Reader's Digest Association, Inc. ("RDA") of August 8, 1980 which was received by the Legal Department on August 15, regarding a complaint filed against this company under the Federal Election Campaign Act of 1971, as amended, we hereby inform you that counsel representing RDA in this matter is:

David W. Cohen, Esq.
Messrs. Warshavsky, Hoffman & Cohen
30 Rockefeller Plaza
Suite 2855
New York, New York 10020
Tel. 212-247-0350.

Mr. Cohen is hereby authorized by RDA to receive

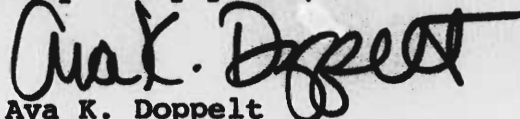
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August 18, 1980

any notifications and other communications from the Commission relevant to this matter.

Very truly yours,


Ava K. Doppelt

AKD:jh

cc: David W. Cohen, Esq.

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Reader's Digest

LEGAL DEPARTMENT

Certified Mail
Return Receipt Requested

Federal Election Commission
Washington, D.C. 20463

Attn: Charles D. Steele, Esq.
General Counsel

200 Park Avenue • New York, N. Y. 10017

FIRST CLASS

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MAIL



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 8, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

The Reader's Digest
Association, Inc.
Pleasantville, New York 10570

Re: MUR 1271(80)

Dear Sir or Madam:

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This letter is to notify you that on August 6, 1980 the Federal Election Commission received a complaint which alleges that you may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act") or Chapters 95 and 96 of Title 26, U.S. Code. A copy of this complaint is enclosed. We have numbered this matter MUR 1271. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate, in writing, that no action should be taken against your Committee in connection with this matter. Your response must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.


Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you intend to be represented by counsel in this matter, please advise the Commission by sending a letter of representation stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

If you have any questions, please contact Lee Andersen, the attorney assigned to this matter at 202-523-5071. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,



Charles W. Steele
General Counsel

Enclosure
Complaint
Procedures

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August 6, 1980

The Federal Election Commission
1325 K Street N.W.
Washington, D.C. 20463

The Honorable Commission:

Please accept for filing the enclosed Complaint in
triplicate entitled

LARRYANN C. WILLIS
Complainant

vs.

THE READER'S DIGEST ASSOCIATION, INC.

Thank you.

Larryann C. Willis

Larryann C. Willis
Route 2, Box 69
Vale, Oregon 97918
(503) 473-2133

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GENERAL COUNSEL

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May be reached at (703) 256-8240 until
August 9, 1980

THE FEDERAL ELECTION COMMISSION

LARRYANN C. WILLIS
Route 2, Box 69
Vale, Oregon 97918
(503) 473-2133

COMPLAINANT

vs.

THE READER'S DIGEST ASSOCIATION, INC.
Pleasantville, New York 10570

RESPONDENT

COMPLAINT FOR VIOLATION OF THE FEDERAL CAMPAIGN ACT OF 1971,
AS AMENDED

JURISDICTION

This complaint is filed pursuant to the Federal Election Campaign Act, as amended, ("the act"), 2 u.s.c. s 437g.

Complainant, Larryann C. Willis, not a candidate for any office, is filing this complaint as a concerned citizen of the United States of America and is not filing it on behalf of or at the request or suggestion of a candidate.

This complaint charges that Reader's Digest Association Inc. of Pleasantville, New York, a corporation hereinafter referred to as Reader's Digest Corporation made an illegal corporate expenditure to negatively influence Senator Edward M. Kennedy's federal campaign for the Democratic Party's nomination for President of the United States of America when it purchased the following:

1. A computer study of the speed at which Senator Kennedy's car was traveling in 1969 when it crashed into Poucha Pond resulting in the death of Mary Jo Kopechne. (Attachment B)
2. A study of the tides and currents in the area of the above mentioned accident. (Attachment C)
3. The production and distribution to major media outlets of video tapes of a computer re-enactment of the fatal accident. (Attachments H and I)

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FACTUAL STATEMENT:

I. The freedom of the press exemption of the Federal Election Campaign Act, as amended "the act", does not cover the Reader's Digest expenditures in question. The act allows the corporate press to make expenditures incidental to covering and commenting on federal election campaigns when it is in the normal course of business for the publication. (Attachment O: Summary of allegations 1980 Nashua Telegraph Case) The expenditures in question were not in the normal course of business for the Reader's Digest Corporation.

The complainant conducted an investigation into the information available to the Reader's Digest Corporation prior to the commissioning of the studies. The complainant found that the Reader's Digest Corporation had in its possession an abundance of reliable evidence on the questions it allegedly tried to answer with the commissioning of studies. The evidence in the corporation's possession included the following:

1. The accident reports of the investigating officers Sheriff Domenick Jim Arena and Supervisor of the Department of Motor Vehicles George W. Kennedy. (Attachments F,K,M,P,Q)
2. Official transcripts and exhibits from the "Inquest into the Death of Mary Jo Kopechne". This included sworn expert testimony from several witnesses which supported Senator Kennedy's claim that the car was traveling at about 20 miles per hour at the time of the accident. (Attachments F,G,M,Q)
3. The official transcripts and exhibits of the hearing concerning the possible exhumation of Mary Jo Kopechne's body. This also included expert sworn testimonies regarding evidence which supported Senator Kennedy's claim that the car was traveling about 20 miles per hour. (Attachments F,G,M,Q,)

Each of these documents contained reliable information which was based on timely reports and pictures and were produced shortly after the accident from evidence collected at the scene of the accident. All that was needed to reliably report or comment on the speed of Senator Kennedy's car on the night in question was in the possession of the Reader's Digest Corporation. Nevertheless Reader's Digest Corporation expended funds on a study which mathematically speculated on the speed Senator Kennedy's car was traveling on a certain night 11 years earlier.

It is here that the Reader's Digest Corporation went beyond reporting and commenting on the campaign and expended funds to become a part of it. In essence, the Reader's Digest Corporation purchased a news or media event designed to discredit Senator Kennedy at a strategically crucial time in the 1980 election campaign. By so doing, the Reader's Digest Corporation not only overstepped the meaning of "reporting and commenting", it also departed from the normal course of business for a news gathering and disseminating agency and therefore violated the provisions of 2 USC 441b by expending funds to influence a federal election.

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II. The expenditures in question were made with the intent of negatively influencing Senator Kennedy's federal election campaign for the Democratic Party's nomination for President of the United States of America.

On information and belief the complainant alleges the following which indicate that the Reader's Digest Corporation's intent was to disparage Senator Kennedy's campaign with the studies they purchased with corporate funds:

1. The results of the computer study on the speed of the car were falsely reported in such a way that they exaggerated the speculative speed of the vehicle.(Attachment B)
2. The Reader's Digest Corporation knowingly approved the use of a false distance figure and pond bottom texture which had the effect of exaggerating the speed of Senator Kennedy's car. (Attachment B)
3. The Reader's Digest Corporation purchased and distributed video tapes to all major media outlets. The pictures in the tape depicted the path of the "death car" as determined by the mathematical speculating of the study purchased by Reader's Digest Corporation. These tapes were shown by the major networks just two weeks before the New Hampshire primary election. (Attachments H,I)
4. The article which was based on the purchased studies carried an extreme anti-Kennedy bias. (Attachments A,B,H)
5. The Reader's Digest Corporation commissioned the study on tides and currents and a study on the speed of the car at the very time that Senator Kennedy announced his entry into the presidential race. (Attachment A-23,L)
6. The Reader's Digest Corporation knowingly used the testimony of a discredited witness as the basis of conclusions about the accident which reflected negatively on Senator Kennedy. (Attachments A-31,)
7. The Reader's Digest Corporation assigned or allowed control of the content and timing of the story in question to its chief counsel Melvin R. Laird, a known political foe of Senator Kennedy who served as personal counsellor to former President Richard M. Nixon at the time President Nixon was conducting an anti-Kennedy campaign on the same subject.
8. The Reader's Digest Corporation published the results of these studies and its story about them just prior to the New Hampshire primary, a time in the campaign when (most professional politicians agree) it would leave the maximum negative political impact on Senator Kennedy's campaign. (Attachemnt U)

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PRAYER FOR RELIEF

The citizens of this country and the candidates who serve them have no protection against corporations who also happen to be publishers who abuse the treasured right of freedom of the press in order to influence the results of federal elections to satisfy their own ends except through the Federal Election Commission.

The complainant therefore respectfully requests that the Federal Election Commission investigate this matter as it is obligated to do and impose the maximum fines and penalties as provided by the act to protect the democratic processes of our society from the use of such underhanded political tactics.

Respectfully submitted

Sincerely,

Lantern Willis
Complainant

Dated August 6, 1980

.District of Columbia

Subscribed and Sworn to before me this 6th day of August, 1980.

Robert L. ...
Notary Public, D. C.
Commission expires June 14, 1984

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ANALYSIS OF THE READER'S DIGEST ARTICLE "CHAPPAQUIDDICK:
THE STILL UNANSWERED QUESTIONS" by John Barron February 1980

by

LARRYANN WILLIS
RT 2 BOX 69
VALE, ORE 97918

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A.

My analysis of the Reader's Digest article reveals the following statements of alleged facts are either in conflict with the evidence of record or are based upon no evidence which is a matter of public record.

Those facts which are either in conflict with matters of record or which are founded upon facts which are not in the record are as follows:

WHATEVER INNER TURMOIL Senator Edward M. Kennedy may have suffered early that morning, he hid it well. Freshly groomed and dressed in white trousers, white loafers and a blue polo shirt, he looked fit and untroubled as he strolled from the Shiretown Inn on Martha's Vineyard around 7:30 a.m.

On his walk, the husky 37-year-old Senator met a fellow yachtsman, Ross W. Richards, who had won the first heat of the Edgartown Regatta the afternoon before. They exchanged friendly greetings, and Kennedy accompanied Richards back to the inn where they sat on the porch outside their rooms. Betraying nothing unusual in speech or manner, Kennedy chatted amiably about the weather and races until 8 a.m.

Two of his closest friends, Joseph F. Gargan and Paul F. Markham, then appeared, unkempt and "damp," thought Richards. Kennedy got up at once, went straight to his room with them and shut the door. Kennedy aide Charles C. Tretter passed, and through the window thought he read on the Senator's face an invitation to enter the room. Upon entering, though, he was abashed because his boss

As a reporter with the Washington Star, John Barron won several prestigious awards and gained a national reputation. Since becoming a senior editor of The Reader's Digest, his investigations have produced the best-seller *KGB*, and *Murder of a Gentle Land* (written with Anthony Paul), the first American book to expose the ongoing genocide in Cambodia. Barron's latest book, *MIG Pils*, has just been published.

68 PHOTO OF DYRE SHOES AT NIGHT. PAGE 68: 7

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in effect told him to get out.

About 8:30 a.m. Kennedy emerged in the lobby of the inn, ordered copies of the *Boston Globe* and *New York Times* and borrowed a dime from a clerk to make a telephone call. Minutes later, he, Gargan and Markham walked a few blocks to the ferry which continually crosses the 500-foot-wide Edgartown harbor channel separating Martha's Vineyard from the island of Chappaquiddick.

After the ride, they stood around the ferry landing on Chappaquiddick for 20 minutes or so. Then off the ferry rolled the wrecker from Jon Ahlbum's service station, and a ferry operator shouted to them, "Hey, are you aware of the accident?"

"Yes, we just heard about it," Markham replied calmly.

Now there was no choice. Kennedy finally had to go to the police. Before re-boarding the ferry, Kennedy, a lawyer, gave instructions to Gargan, a lawyer, and Markham, a former U.S. Attorney: "Look, I don't want you people put in the middle on this thing. I'm not going to involve you. As far as you know, you didn't know anything about the accident that night."

"The Young Lady Is Dead." While Kennedy and his confidants conferred, other men three miles away tried to cope with what they perceived to be a life-threatening emergency. At the bottom of a seven-foot-deep pond near a narrow wooden bridge, diver John N. Farrar reconnoitered a submerged, over-

68 POLYGRAM/LIFE MAGAZINE © 1969 TIME INC.

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turned, 1967 Oldsmobile sedan. In the light filtering through the water, he first saw, inside, two human feet. Quickly, he slid in through the car's right rear window, hoping there was still life. But Farrar and the others had come too late. Mary Jo Kopechne's body was rigid, hands like claws clutching the rear seat, head thrust back and upward toward the surface as if in quest of air.

A big man, Edgartown Police Chief Dominick J. Arena sat in the water atop the car and cradled the body in his arms as he waited for a boat. He was struck by how lifelike and lovely Miss Kopechne looked even in death—blond, neatly attired in a long-sleeved white blouse, dark slacks and white sandals. She was of slight build and seemed not much larger than his own 14-year-old daughter.

The rear license plate was visible, and through a radio check Chief Arena ascertained that the car was registered to Edward M. Kennedy, JFK Building, Boston. After returning to shore, Arena hurried to the Dyke House close by the road some 400 feet from the bridge, intending to phone his men to find Kennedy. But his secretary informed him that Kennedy was at the police station, and put the Senator on the line.

"I am sorry, I have some bad news," Arena said. "Your car was in an accident over here, and the young lady is dead."

"I know," Kennedy answered.

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

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"Yes."

"Are they in the water?"

"No."

"Can I talk to you?"

"Yes."

"Would you like to talk to me?"

"I would prefer that you came over here."

At the two-room Edgartown police station in the 141-year-old Town Hall, Arena asked Kennedy for a statement, and the Senator asked if he might submit one in writing. To allow privacy, Arena led Kennedy and Markham into a nearby municipal office where they spent about an hour. Around 11 a.m. Arena read the first Kennedy account, handwritten by Markham, but unsigned:

"On July 18, 1969, at approximately 11:15 p.m. in Chappaquiddick, Martha's Vineyard, Mass., I was driving my car on Main Street on my way to get the ferry back to Edgartown. I was unfamiliar with the road and turned right on to Dyke Road instead of bearing hard left on Main Street. After proceeding for approximately one-half mile on Dyke Road, I descended a hill and came upon a narrow bridge. The car went off the side of the bridge. There was one passenger with me, one Miss Mary _____, a former secretary of my brother, Senator Robert Kennedy. The car turned over and sank into the water and landed with the roof

*The original statement did not contain the complete name of Miss Kopechne because Kennedy was uncertain of its spelling.

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resting on the bottom. I attempted to open the door and the window of the car but have no recollection of how I got out of the car. I came to the surface and then repeatedly dove down to the car in an attempt to see if the passenger was still in the car. I was unsuccessful in the attempt. I was exhausted and in a state of shock. I recall walking back to where my friends were eating. There was a car parked in front of the cottage, and I climbed into the back seat. I then asked for someone to bring me back to Edgartown. I remember walking around for a period of time and then going back to my hotel room. When I fully realized what had happened this morning, I immediately contacted the police."

The statement did not entirely satisfy Supervisor George W. Kennedy of the Massachusetts Registry of Motor Vehicles, which must investigate fatal automobile accidents. Upon reading it at the police station, he said to Kennedy, "I would like to know about something."

"I have no comment," the Senator replied.

The supervisor looked at Markham and Gargan. Later he testified: "They said to me that he would make a further statement later, and he would answer more questions."

A Hail of Questions. Chief Arena, six-foot-four, 225 pounds, former high-school football star, Marine sergeant and state trooper, is an affable, guileless and honest small-town policeman who then was earning \$10,500 a year. He was genuinely

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1. saddened by this, the latest tragedy to afflict the Kennedy family. So when Kennedy said he wished to contact his family lawyer, former Assistant Attorney General Burke Marshall, and promised to communicate with the chief later, Arena permitted him to depart without being interrogated. The Kennedy statement offered no hint that Markham and Gargan might know something about the accident. Thus it did not occur to Arena to seek information from them, and they volunteered none.
2. Markham implored Arena to withhold the statement from the press until after Kennedy consulted Marshall, and the request was repeated by telephone in the afternoon. But, besieged by demands from newsmen, Arena had already released the statement about 3 p.m. Far from mollifying the press, the statement precipitated a hail of questions.

Why had Kennedy not summoned help to rescue Miss Kopechne? Why had he waited ten hours to report the accident? Where had he been and what was he doing all that time? Why did he drive off the bridge? How? Which friends were "eating"? Where? Why didn't "his friends" do something? Where did the investigation stand?
3. Overwhelmed by all these questions, Arena consoled himself with the thought that he could obtain the answers when next he talked to Kennedy. He did not know that he would never have that chance. Neither did he know that there were ten
4. [REDACTED]

1. Arena did question Kennedy to the extent he wished and Kennedy was later voluntarily available for interrogation by the prosecutor. (Inquest p. 484, 487 and inquest-exhumation testimony of Arena)
2. This inference is unsupported by fact. In addition Markham and Gargan were both at the police station and available to Arena for questioning. Markham in fact wrote Kennedy's statement. (Inquest testimony Arena pp. 584-587, 326, 476, 480)
3. Unsubstantiated inference.
4. While it is undisputed that everyone left the island the afternoon of July 19, 1969, it is equally undisputed that all of the involved individuals were available for interrogation or testimony under oath. There is no allegation that any of the individuals refused to voluntarily submit themselves to interrogation. (Inquest 81)

4. other people who could have supplied information but that all had vanished from the island.

Only one Kennedy representative remained on Martha's Vineyard, K. Dunn Gifford, and he could provide no evidence. He had landed in a chartered plane early that afternoon with a single mission—remove the body as quickly as possible. At the funeral home he kept vigil, asking anxiously whether there would be an autopsy or a "hold." There would be neither.

5. Miss Kopechne was buried July 22, 1969, in a country cemetery in Pennsylvania. Her parents, Mr. and Mrs. Joseph Kopechne, a proud couple of modest means, refused a Kennedy offer to pay the funeral expenses. To bury their daughter, they borrowed from a bank and withdrew savings they had put aside to pay someday for her wedding.

Grand Council. During the next six days, Kennedy sequestered himself in silence behind the gates of the family compound at Hyannis Port, Mass., leaving only to fly to Miss Kopechne's funeral and right back. He and those closest to him recognized the crisis. Famous men assembled at the compound to counsel, devise strategy and help draft a second statement, since the first was now being widely questioned.

Among those who traveled to the grand council were former Defense Secretary Robert McNamara; John Culver and John Tunney, then Congressmen and later Senators from Iowa and California; Theodore

4. (Continued) In addition Markham, Gargan, Tretter, and Crimmins were all at the police station on July 19, 1969. Arena testified that he spoke to Rosemary Keough regarding her purse and the spelling of Miss Kopechne's name. (Inquest 202, 326, 476, 486, 584-587, 590)

5. Dunn Gifford was asked by Kennedy to assist the Kopechnes in making arrangements. However, the mortician Eugene Friehe did not recognize Gifford's authority and arrangements were made entirely by Kielty Funeral Home of Plymouth, PA. at the direction of Mrs. Kopechne. In actuality Gifford did nothing more than observe arrangements being made. (Inquest 522)

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- Sorensen and Richard Goodwin, speech-writers for the late President Kennedy; attorneys Burke Marshall and Milton Gwirtzman; Harvard Professor Arthur Schlesinger, Jr.; political adviser Kenneth O'Donnell; and family business manager Stephen Smith. Meanwhile, on Martha's Vineyard, attorneys negotiated in behalf of Kennedy.

Their success enabled the Senator to break silence on July 25. Appropriate arrangements with the prosecution having been consummated, Kennedy returned to Edgartown and pleaded guilty to a misdemeanor charge of leaving the scene of an accident. The judge, with concurrence of the prosecution, imposed the minimum sentence law permitted—a two-month jail term, suspended, and revocation of driver's license for a year.

Announcing that "tonight I am free to tell you what happened," Kennedy that evening delivered "to the people of Massachusetts" (and to an avidly curious national audience) a 17-minute television address which differed significantly from the statement he had handed Chief Arena six days before. Six months later, in January 1970, Kennedy, Markham, Gargan and others testified under oath at a closed inquest into the death of Miss Kopechne.

What actually happened on that fateful night? The account of events as related piecemeal by the Senator and his friends, in the television speech and the inquest transcript (released on April 29, 1970), has not

6. The inference is that underhanded bargaining by Senator Kennedy's attorneys enabled him to plead guilty to a lesser charge. The fact is that the charge of "leaving the scene of the accident", a misdemeanor, was the exact citation issued against Senator Kennedy the afternoon of the accident. (Inquest 589-591)

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been altered by them in the decade since the accident. Here is a summation of their version, followed by an analysis of the critical questions it raises—and some new findings.

A Turn to the Right. For 30 years, Kennedys had sailed in the annual Edgartown Regatta. To uphold this tradition and also to attend a party he had "encouraged and helped sponsor for a group of devoted Kennedy campaign secretaries," Kennedy arrived in Edgartown about 1 p.m. on July 18th. Chauffeured by 63-year-old factotum John B. Crimmins, he rode the ferry to Chappaquiddick to refresh himself with a swim in the Atlantic before the race. To reach the beach, they had to turn from the island's only paved road, go down Dyke Road and cross the 10.5-foot-wide bridge over Poucha Pond. They had to come back the same way. [Thus, Kennedy twice traversed the extremely bumpy, jarring road and the distinctive bridge above the pond where Miss Kopechne was soon to die.]

Having finished ninth in his race, Kennedy checked in at the Shiretown Inn, dressed and had "perhaps a third of a beer" with friends before Crimmins drove him back to Chappaquiddick at 7:30 p.m. Ferry operator Jared Grant, who stayed on duty from 6 p.m. until 1:20 a.m., remembered: "It was a beautiful night, very calm, the water was like glass."

For the party, Gargan had rented a two-bedroom house known as the Lawrence Cottage, which stands some 30 feet off the main, paved road

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leading to the ferry slip three miles away. Among the guests were six unmarried women, all in their 20s, Miss Kopechne at 28 being the oldest. Others present were Kennedy, Crimmins, Gargan, 39, Markham, 39, Tretter, 30, and Raymond LaRosa, 41, a Massachusetts civil-defense official.

Crimmins had stocked the house with three half-gallon bottles of vodka, four fifths of scotch, two bottles of rum and two cases of beer. According to inquest testimony, during the entire evening nobody had more than three drinks, and Kennedy drank his last rum and Coca-Cola at 9 p.m. The friends entertained themselves by dining on steaks, singing, dancing, listening to the radio, reminiscing and walking.

At 11:15 p.m., Kennedy maintains, he decided to return to his hotel for a good night's sleep. Miss Kopechne, who happened to be talking to him, indicated she also wanted to leave and asked if he would be kind enough to drop her off at The Dunes, the motel where she and the other women had rooms, which was several miles from his hotel. (See map, page 221.) Obtaining the car keys from Crimmins, Kennedy drove away with her along the main road toward the ferry.

But instead of continuing on the paved road where it curves sharply leftward, Kennedy mistakenly turned right and proceeded down the bumpy, dirt Dyke Road at 20 miles an hour. Although he was

(Continued on page 219)

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(Continued from page 72)

CHAPPAQUIDDICH THE STILL UNANSWERED QUESTIONS

BY JOHN BARRON

"absolutely sober," concentrating solely on the road ahead and undistracted by anything, he did not realize his error, nor did he see the bridge until "fractions of a second" before he was upon it. The black sedan hurtled off the right side of the bridge, turned over and sank until the top rested on the bottom of the pond.

Water surged into the car through the left front window, which was rolled down, and the two right windows, which were blown out by impact. "I remember thinking as the cold water rushed in around my head that I was, for certain, drowning. But somehow I struggled to the surface alive." [In subsequent public comments, Kennedy never has been able to recall how he escaped from the car underwater. He does recall "the movement of Mary Jo next to me, the struggling, perhaps hitting or kicking me."]

Upon surfacing, Kennedy "was swept away by the tide that was flowing at an extraordinary rate through that narrow cut" and "couldn't swim at that time because of the current." But having waded to,

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the shore and regained his breath, he returned and dove seven or eight times toward the car, whose lights were still shining. The powerful current frustrated his rescue efforts, though, and after 15 to 20 minutes he was too exhausted to keep trying. So he rested on the bank 15 to 20 minutes, then commenced "walking, trotting, jogging, stumbling" back to the Lawrence Cottage.

[En route, Kennedy had to pass within a few feet of a lighted house on his left near the bridge and another lighted house a little farther on the right, each with a telephone. He also had to walk or trot within a few feet of a lighted, open fire station where, by pulling a well-marked alarm, he could have aroused the whole island.]

When he reached the cottage, Kennedy climbed into the back seat of a parked Valiant after calling to LaRosa, standing at the front door to bring Gargan, then Markham. "The car has gone off the bridge down by the beach, and Mary Jo is in it." As they raced toward the bridge about 12:20 a.m., Kennedy offered no details of the accident, nor did his friends ask for any.

"I Will Take Care of It." Gargan drove across the bridge. With the Valiant's lights shining over the pond they could see the overturned Oldsmobile. Markham and Gargan took off their clothes and during the next 45 minutes dove again and again, endeavoring to enter the sunken car. But they too were thwarted by powerful currents. Ken-

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nedy remembers that when Gargan pulled himself out of the pond, "he was scraped all the way from his elbow, underneath his arm was all bruised and bloodied."

Abandoning the rescue attempts as futile, they drove toward the ferry slip with Kennedy sobbing and almost breaking down completely in tears. "This couldn't have happened. I don't know how it happened."

"Well, it did happen, and it has happened," Markham said.

"What am I going to do? What can I do?"

Sitting in the car at the ferry landing, they talked ten minutes or so, and Gargan urged Kennedy to telephone his family, administrative assistant David Burke and attorney Burke Marshall. "You have got to report this thing immediately."

"All right, all right, I will take care of it. You go back, don't upset the girls, don't get them involved; I will take care of it." With that, Kennedy got out of the car, took a few paces to the shore, "impulsively" jumped into the harbor channel and began swimming toward Edgartown.

"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 . . . 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

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me. By this time, I was probably 90 yards off the shore, and I remembered being swept down toward the direction of the Edgartown Light and well out into the darkness. . . . 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. . . ."

Kennedy struggled toward the Shiretown Inn, "leaning against a tree for a length of time" to recover his strength. Sometime before 2 a.m. he shed his wet clothes and "collapsed onto the bed." His head throbbed, his neck and back hurt, and he was "conscious" of "the tragedy and loss of a very devoted friend." Because he "wasn't sure whether it was morning or afternoon or nighttime," he put on dry clothes, went downstairs and asked an innkeeper what time it was. It was 2:25 a.m.

"I Didn't Report It." Back on Chappaquiddick, Gargan and Markham, according to their sworn testimony, had watched from the shore until Kennedy swam half or three-quarters of the way across the harbor channel. Satisfied that he was safe and would report the accident as promised, they drove around for a while and returned to Lawrence Cottage between 2 and 2:15 a.m.

There they conveyed the impression that all was well. Gargan told some of Miss Kopechne's friends that she had driven the Oldsmobile to Edgartown alone on the last ferry

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After leaving the party at Lawrence Cottage, Kennedy turned sharply right at (1) and proceeded down the dirt Dyke Road before driving off bridge at (2)

and was in her motel. After they failed to find a boat for the Senator, he elected to swim back to his inn. Instinctively, they dived into the channel after him but then decided to let him swim on home by himself.

When this scene was re-created during testimony at the inquest, the presiding judge, James A. Boyle, became curious. As one of the Kennedy campaign workers, Maryellen Lyons, recounted under oath what Gargan and Markham said, Judge Boyle interjected:

"Didn't you say to them, 'Well, how come Mary Jo takes the car and the Senator swims?'"

"I just assumed that . . .," Miss Lyons started to reply.

"Didn't you have some thoughts

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in your mind that this was most peculiar?"

"Not really. As I say, it didn't come out quite that way."

"You knew they left together in a car?"

"Yes."

"And then you presumed to Edgartown?"

"No. I didn't know where they were going. Nobody had said anything to me when they left."

"Then you learned that the Senator had to swim because there were no boats; that the car, his car in which he had left with Mary Jo, had traveled across that ferry with Mary Jo?"

"Well, I just assumed that for some reason he decided he didn't want to."

"Nothing struck you as unusual about that?"

"No, not really, Your Honor."

In the morning, after finding Kennedy chatting with Richards on the porch, then going with him to his room, Gargan and Markham asked, "What happened?"

"I didn't report it," Kennedy said. During the night, he had "tossed and turned, paced that room," unable to "gain the strength within me, the moral strength to call Mrs. Kopechne." He "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. . . . It was just a nightmare.

*Kennedy finally called Mrs. Kopechne at 10:30 a.m.

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I was not even sure it happened."

"Well, it happened, and you have got to report this thing, and you have got to do it now," Markham said. Gargan then insisted that Kennedy telephone Burke Marshall and David Burke at once. As Kennedy desired privacy in making the calls, Gargan suggested the phone at the ferry landing on Chappaquiddick. Hence, they rode the ferry over to Chappaquiddick to use the phone at the landing where Kennedy began his swim the night before.

THAT IS WHAT Kennedy and his friends swore happened. And that is what Kennedy today claims happened.

The family physician who examined him on July 19 stated that the Senator had sustained "a slight concussion" and that "irrational behavior is not inconsistent with such a condition." However, in his television speech, Kennedy said, "... I do not seek to escape responsibility for my actions by placing the blame either on the physical and emotional trauma brought on by the accident or on anyone else." And subsequently he acknowledged that, in any case, by early morning when he visited with Richards he was "completely in control of my senses."

Kennedy stated that his actions, as he recounted them, "make no sense to me at all"; that his failure to report the accident immediately is "indefensible"; that his various words and deeds were "inexplicable, inconsistent and inconclusive." He told the

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television audience, "I was overcome, I'm frank to say, by a jumble of emotions: grief, fear, doubt, exhaustion, panic, confusion and shock."

Eight Basic Questions. Because Kennedy's ultimate explanation is that his conduct defies explanation, it is perhaps not surprising that the record remains littered with implausibilities and outright contradictions—and raises doubts that Kennedy is telling the truth. These eight basic questions in particular leap from the available evidence:

Where was Kennedy actually taking Miss Kopechne?

This question occurred to Judge Boyle because of a variety of facts adduced at the inquest. Kennedy told no one except Crimmins that he and Miss Kopechne were leaving the party and, though he was the host, he said good-night to none of his guests. Although he ostensibly was departing to be sure of crossing before the last scheduled ferry run at midnight, and although eight of the remaining guests planned to return to Edgartown for the night, he offered none of them a ride.*

Kennedy on this one occasion chose to drive himself, although he rarely drove on any other. Crimmins testified that when Kennedy asked him for the car keys, he explained that he was taking Miss Kopechne to Edgartown because she was ill. Yet

*In fact, none of the guests did return to Edgartown that night; they all stayed on Chappaquiddick.

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Miss Kopechne told no one that she was ill, not even Kennedy, as he subsequently has admitted. She said good-night to none of her friends. Although she did not have a key to her motel room, she did not ask her roommate for a key, and she did not trouble to take her purse with her.

The greatest difficulty with Kennedy's claim that he was headed for the ferry, however, arises from the nature of the roads he traveled. To go from the paved main road leading to the ferry onto the dirt Dyke Road, a driver must consciously slow to a near halt and execute a 90-degree turn. A driver instantly feels the difference in the surfaces. The main road is smooth macadam; Dyke Road is, as countless investigators have said, like a "washboard." Kennedy contends that "the difference between paved and unpaved, for anyone who lives on Cape Cod or visits the island . . . the roads are indistinguishable." But Washington

Star reporter James R. Dickenson summed up the conclusion reached by numerous other journalists over the years when he wrote last November: "However, his contention that he inadvertently took a wrong turn and that he thought he was headed west on the asphalt road to the ferry to Edgartown instead of the dirt road east to Dyke Bridge and the Atlantic beach is, to anyone who has driven it, not just inexplicable—it's incredible. That is the best interpretation that can be put on it."

7. To Judge Boyle, Kennedy's claim also was incredible. During the inquest, the judge was far from hostile to the Senator and, indeed, at times precluded questions or testimony that might have been damaging. Nevertheless, in his final findings, Judge Boyle stated:

"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

7. Drew conclusion first. Then provided inference without stating the facts on which the inference is based.

Edgartown at that time; that Kennedy did not intend to drive to the ferry slip, and his turn onto Dyke Road was intentional. . . .

"A speed of even 20 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 (Main) 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.

"I therefore 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."

Did the accident happen the way Kennedy explains it?

8. In the four decades that Dyke Bridge has stood over Poucha Pond, Kennedy is the only person ever to drive off it.

Five of Kennedy's friends who were at the party swore that both he and Miss Kopechne appeared perfectly sober when they left. Because

8. Unsubstantiated and in fact is untrue. In the early 1970's a car dropped both front wheels off the bridge at the exact place the Kennedy vehicle left the structure. (Jeffers interview)
(Attachment D)

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9. the Senator did not go to the police until many hours after the accident, he was not given blood or Breathalyzer tests. So there is no proof that he was not "absolutely sober," as he says.
10. Yet the manner in which he drove down Dyke Road was not that of a responsible man in control of himself. Kennedy testified at the inquest that he did not realize he had turned onto the wrong road until almost the moment he plunged into the water. Yet, also at the inquest, Markham quoted him as saying that "he took the wrong turn and he couldn't turn around." In fact, there were several places where he could have turned around, including two driveways within 150 yards of the bridge. Kennedy also swore that, although looking straight ahead, he did not see the bridge until "fractions of a second" or "the split second" before driving onto it. But when Markham returned with Kennedy and Gargan later that night "going fast," Markham could see the bridge ahead. An Arthur D. Little Co. study, ordered by Kennedy, reported that it was "essentially impossible to see the roadway over the bridge at night at a distance of much greater than between 60 feet to 90 feet." The most authoritative data show that at 20 m.p.h., a reasonably attentive driver can react and halt a car on dry gravel within at least 60 feet. So even under the most adverse conditions cited by his own study,
11. Kennedy still had time to spot the bridge and completely stop—1/2, as the
9. By the same token there is no evidence what-so-ever that he was not sober and in fact the record is replete with testimony of the negligible amount of alcohol consumed by Kennedy that day.
10. No where is there testimony, expert or otherwise, that Kennedy was driving in an irresponsible manner.
11. In fact Donald L. Sullivan of the Arthur D. Little Co submitted an affidavit to the court stating "The rapid right turn, left turn, and sharp upward deflection are not only distracting but also make it difficult to see the bridge before one is on it." He further stated ". . . it is our opinion that braking only will not prevent a car in this position, traveling at a speed of 20 mph, from going over the rail. (Authur D. Little Report)

Senator swore and his consultants assume, he was going only 20 m.p.h.

Heretofore, the Senator's estimate of his speed has not been challenged, probably because it seemed to be corroborated by the testimony of Supervisor Kennedy. From skid marks "starting at the edge of the bridge on the dirt," the Motor Vehicles Registry investigator calculated the speed at 20 to 22 m.p.h. But it is impossible scientifically to deduce speed solely on the basis of skid marks suddenly interrupted—as were those left by the Oldsmobile when it vaulted off the bridge. No one at the inquest asked Supervisor Kennedy about this technical fact.

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12. And the judge stringently prohibited him from testifying about the possibility that the skid might have started much farther down the road, where by next morning traffic would have obliterated traces.

13. Supervisor Kennedy now is dead. The Massachusetts Registry of Motor Vehicles last October refused to release a copy of his original accident report without written notarized authorization from Senator Kennedy himself.

14. How fast was Kennedy traveling? To find out, The Digest consulted traffic engineers with long experience in evaluating accidents for both the federal government and private clients. The evidence, particularly relating to the trajectory and distance the car sailed from the bridge, convinced them that Kennedy must have been driving much faster than 20 m.p.h.

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12. There was only one question which was asked which the judge limited and the prosecutor did not object to that limitation. Furthermore, Supervisor Kennedy testified that he saw no skid marks in the gravel. (Inquest P. 475)
13. Bill Gunn of the Reader's Digest confirmed that the Reader's Digest had obtained a copy of Police Chief Arena's accident report and that it was essentially the same as Supervisor Kennedy's (7-8-80 interview)(Attachment F) Page 3 of "Results of an investigation of vehicle dynamics in a plunge from the side of a narrow bridge" by Raymond McHenry cites "Accident report prepared by George W. Kennedy" as a reference.(Attachment Q) Bill Gunn stated that they had obtained a copy of George Kennedy's report. However, Gunn said he did not know where it was and did not produce it. (7-10-80 interview)(Attachment K)
14. The evidence reviewed by the experts was supplied to them solely by the Reader's Digest. (7-8-80 Raymond McHenry interview and 7-8-80 Bill Gunn interview) The 35 foot distance used as the distance the car traveled by the McHenry study is in conflict with all evidence of record. (Analysis of materials reviewed for McHenry study.(Attachment B)

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15. The Digest then commissioned an elaborate scientific study by Raymond R. McHenry, one of the nation's foremost experts in automobile-accident analysis. Utilizing sophisticated analytical techniques, validated by the Department of Transportation and accepted in numerous legal cases, McHenry fed masses of data—including the weight and wheel base of the car, the elevation of the road, and the geometric features of the bridge—into an IBM computer. After repeated computer runs, he mathematically re-created the movements of the car. Here are what his final calculations reveal:

- *Driving on the wrong (left) side of the road, Kennedy approached the bridge at approximately 34 m.p.h. (Abiding by rigorous scientific standards, McHenry stipulates that his speed computations could be in error by plus or minus 4 m.p.h. Thus the car was traveling at a minimum of 30 m.p.h.; it could have been going as fast as 38 m.p.h.)*
- *Kennedy saw the bridge when he was at least 50 feet away from it, probably from farther away. At least 17 feet from the bridge, he slammed the brakes down hard—"panic braking," which locked the front wheels. Propelled by the high speed, the car skidded 17 feet along the road, about another 25 feet up the bridge, jumped a 5½-inch-high rub rail and hurtled approximately 35 more feet into the water. Despite Kennedy's braking efforts, the car was still*

15. Indicates the expenditure of corporate funds.

16. Dyke Road is a single lane dirt road leading up to a single lane bridge. There is no center marker dividing the road into right and left halves. Indeed the one lane bridge must be approached from the center of the road. (Photo) The 34 mph speed is based on the assumption that the car traveled 35 feet after leaving the bridge--a distance in conflict with the record.

17. The estimate is in conflict with the record. (Inquest Kennedy testimony) No other witnesses testified that they knew when Kennedy saw the bridge.

18. No witnesses testified that they knew of any panic braking on Kennedy's part.

19. Supervisor George Kennedy testified under oath that there were no skid marks on the gravel leading up to the bridge. (Inquest 475)

20. 35 feet is in conflict with any measurement of record. (Analysis of materials reviewed for McHenry study.) (Attachment B)

21. traveling between 22 m.p.h. and 28 m.p.h. when it shot out over the pond.

Judge Boyle ruled that to travel the jarring Dyke Road even at a speed of 20 m.p.h. was "negligent and possibly reckless." By approaching the hazardous bridge at 30 to 38 m.p.h., Kennedy clearly invited the disaster that in fact ensued.

22. Did Kennedy and/or Markham and Gargan actually attempt to rescue Miss Kopechne as they claim?

There were no witnesses to the diving efforts Kennedy says he made. By his account, an "extraordinary" current was the primary reason he failed.

To ascertain just how strong a current he would have encountered, The Digest last November commissioned a scientific study by Bernard LeMehaute, an internationally renowned oceanographic engineer.

23. Expenditure of corporate funds. Admiralty Lawyer Lawrence Hoch, 160 State St, Boston MA hired by Senator Edward M. Kennedy showed this study to be inaccurate and untrue.

21. Calculation based on 35 foot distance measurement which is in conflict with the record.

22. There is no basis for the conclusion reached because it is based on inaccurate data supplied by the Reader's Digest to the researchers or by the misinterpretation of that data. (Analysis of materials reviewed for McHenry study) (Attachment B)

23. Expenditure of corporate funds. Admiralty Lawyer Lawrence Hoch, 160 State St, Boston MA hired by Senator Edward M. Kennedy showed this study to be inaccurate and untrue.

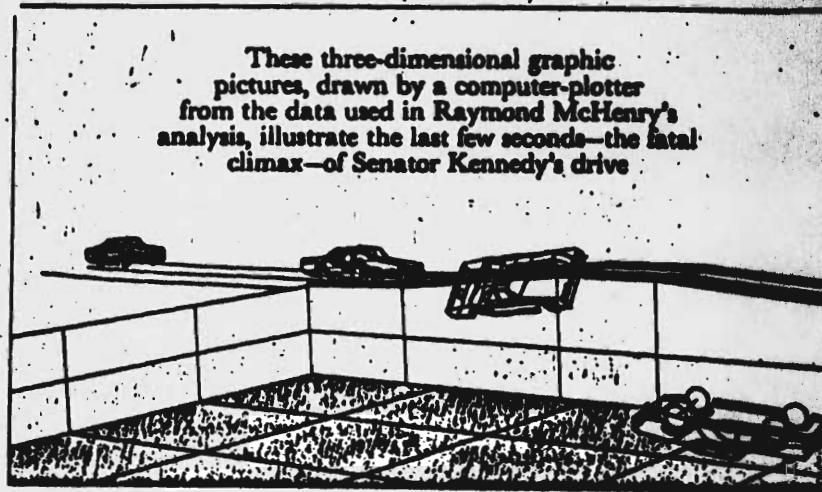
This study was commissioned at the time Senator Edward Kennedy declared his candidacy for president.

His assistant, Ernest Daddio, sampled the current at Poucha Pond throughout the day of November 9, when tidal conditions were nearly the same as they were the night of July 18-19, 1969. Scrupulously following scientific methodology of proven reliability, LeMehaute determined that at the time Kennedy says the accident occurred, the current was flowing at approximately .8 knots* in the center of the pond, 1.2 knots at the eastern edge and probably one knot in the area where the car sank. In the opinion of Navy divers and civilian water-safety experts consulted by The Digest, a current of between .8 and 1.2 knots would constitute a significant impediment to someone trying to swim any appreciable distance against it, especially with clothes on. However,

*A knot is 1.15 m.p.h.

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24.



24. This diagram is not consistent with Police Chief D.J. Arena's diagram or photographs of the scene of the accident which the Reader's Digest had access to. (Bill Gunn interview 7-8-80) It is also in conflict with the manner in which the Authur D. Little Co. described the accident occurring. (Authur D. Little Report) Brian McHenry indicated that the computer study showed the car swinging around so that it was perpendicular to the bridge. (McHenry said that they disregarded the tide in their calculations and it was not a factor considered in the swinging around of the car after landing.) The Reader's Digest chose not to publish the final frame of the film if it does exist.
(Attachments F,H,M)

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given the prevailing conditions, water-safety experts believe that such a current would not have posed an insurmountable obstacle to a poised and experienced swimmer determined to rescue someone.

The car settled less than ten yards from shore, its location conspicuously marked by headlights still shining under water. Tidal data indicate that the maximum depth of the pond at the time was less than seven feet. By stepping into the water a short distance downstream, a rescuer could

25. have waded part of the way from the shore, then swum the few remaining yards with the current at his back.

Upon grabbing the undercarriage of the overturned car he would have had to pull himself down only four feet or so to enter or reach into the passenger compartment through one of the three open windows.

26. "That's the way it could have been done, and the way it should have been done," says Bernard Empleton, executive director of the Council for National Cooperation in Aquatics.

Gargan and Markham also cite the ferocity of the current as a principal cause of their failure to reach Miss Kopechne. By 12:20 a.m., when they supposedly began their dives, the current had increased to 1.3 knots in the middle of the pond and 1.5 knots on the eastern side. Again, in the judgment of expert divers, currents of such velocity would make rescue efforts more difficult but not impossible.

At the inquest, some of Kennedy's

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25. Brian McHenry stated that the current was not considered of any consequence. (Interview with Brian McHenry 7-7-9-80) The record shows the current to be flowing under the bridge toward the car thus making it impossible for a swimmer to approach with the current at his back.

26. There is no indication that Bernard Empleton examined the scene of the accident before making this statement. He was never cross-examined.

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friends were asked whether they noted any injuries to Gargan and Markham when they returned. All said no. In the Edgartown police station the next day, Gargan wore a short-sleeved shirt. Yet neither Arena nor Supervisor Kennedy observed any injury to either of his arms, one of which, according to the Senator, had been "scraped all the way from his elbow . . . all bruised and bloodied."

After 9 a.m. on the 19th, Gargan went back to Lawrence Cottage and finally informed some of Miss Kopechne's friends that there had been an accident and she was missing. "What was done to help her?" the women asked. "Was the Coast Guard called?"

"I don't know," solemnly replied lawyer Gargan, who only a few hours earlier allegedly had repeatedly risked his life to save Miss Kopechne.

Not until a week later, after public criticism of his failure to do more for Miss Kopechne mounted, did Kennedy come forth with the story that he had enlisted Gargan and Markham in a rescue expedition.

Why did Kennedy and his friends not summon help immediately?

Less than three minutes after wading to the shore, Kennedy could have had professional help on the way simply by walking to the lighted house some 400 feet from the bridge. Its occupants, the Pierre Malm family, would have made the calls, and Kennedy would not have wasted time trotting to the cottage

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(15 minutes by his estimate; 25 minutes according to reporters who later walked or jogged the route).

Gargan and Markham had experienced no trauma, and Gargan had drunk only "about four Cokes" because he especially wanted to be clearheaded to cook the steaks. En route to the pond, they could have paused a minute to sound the alarm at the fire station or call from one of the houses. They did not.

District Attorney Edmund Dinis explicitly asked Kennedy why he did not summon outside help after the accident. Requesting and receiving "the court's indulgence," Kennedy responded with a meandering monologue during which he retold the story of his harrowing swim across the channel and recounted his confused thoughts. But he did not answer the question. Minutes later, as the district attorney started to press Kennedy on his delay in reporting to the police, Judge Boyle recessed the inquest for lunch. Afterward, the question was not put again.

27.

Toward the end of his testimony, Kennedy did state that after Gargan and Markham were unable to rescue Miss Kopechne, he was convinced that she was dead, and that therefore it was useless to summon help. However, during the remainder of the evening Kennedy, by his own account, hoped she was alive and acted as if she might be alive.

Regardless, that was not the question. The question was and is: why was assistance not requested soon after the accident at a time when it

27. The record reveals that the same line of questioning was pursued. (Inquest 73-75)

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- conceivably could have meant the difference between life and death? Neither Kennedy nor Markham nor Gargan has ever been compelled to answer that question.
- 28.

Could Miss Kopechne have been saved?

The Arthur D. Little Co. study made for Kennedy concluded that water would have rushed into the car and expelled air from it so quickly that Miss Kopechne could have remained conscious for only one to four minutes. She could have been revived up to ten minutes after she lost consciousness, the study reported. So, according to the analysis made under his auspices, Kennedy could have saved Miss Kopechne had his first efforts succeeded.

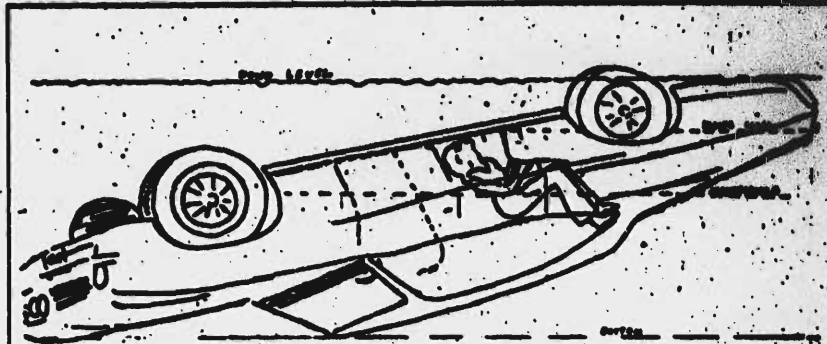
The telephone rang at diver Farrar's Turf and Tackle Shop at 8:25 a.m. on the 19th, and he removed the body from the car at 8:55 a.m. He was delayed five minutes at the ferry landing because the ferry had just departed. Thus, it is reasonable to assume that, had he been summoned after the accident, Farrar could have retrieved Miss Kopechne within 30 minutes, possibly 25. That would not have been soon enough if the Arthur D. Little Co. study is correct.

However, Farrar, who was in the pond when the Oldsmobile was righted, says that large air bubbles emanated from the car then and as it was dragged out of the water. Both he and Jon Ahlbum, who supervised the removal of the car, state that there was no significant amount of water in its trunk. And

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28. **Erroneous.** If asked questions under oath a person is compelled to answer under penalty of perjury. Kennedy, Markham and Gargan all answered when questioned under oath.

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THIS DIAGRAM is a copy of a sketch introduced as Exhibit No. 14 at the inquest into the death of Mary Jo Kopechne. It depicts the position of the body when diver John N. Farrar found it at 8:55 a.m., July 19. The illustration was drawn by an artist on the basis of Farrar's description of what he saw.

The top line represents the water level of the pond at low tide. The depth of water at the time the body was recovered was estimated to be no greater than seven feet; according to one witness, it could have been six feet.

29. The middle line represents the level of water (and the remaining air) inside the car when diver Farrar entered the passenger compartment.

30. The bottom line represents the diver's personal estimate, unsupported by scientific data, of the water level inside the car when it first settled into Poucha Pond. It is known that low tide in the pond on the night of July 18 occurred at 10:30 p.m. The accident took place about an hour later. During the approximate six-hour cycle between low and high tide, the maximum difference in water levels in the pond is two feet.

29. The middle line is also unsupported by scientific data. No where in the record does it show this to have been determined by personal observation or otherwise.

30. According to Bill Gunn and Brian McHenry, the Reader's Digest obtained photos of the accident scene and the vehicle. Brian McHenry said that the car was severely damaged by the fall from the bridge. It was the analysis of damage to the car which enabled them to determine how it landed. The AP wirephoto hmb51800fle clearly shows that the right doors of the vehicle were buckled thus incapable of forming an air lock. Severe damage to the car doors was testified to by Police Chief Arena and John Farrar (Exhumation hearing 17, 49).

(Attachment S)

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the position in which Farrar found Miss Kopechne's body strongly indicates that for an indeterminate time before death she breathed in an air pocket.

Associate Medical Examiner Donald R. Mills, who is a respected physician but not a pathologist, concluded after a ten-minute examination, during which he did not completely disrobe the body or look at all parts of it, that Miss Kopechne

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31.

drowned. However, mortician Eugene Frie, upon applying standard procedures to empty water from a drowning victim, was surprised that the body emitted "very little moisture." He told reporters the paucity of water indicated that death was due to suffocation rather than drowning. Because the body was so buoyant, Farrar also is persuaded she did not drown.

Only an autopsy—never per-

31.

The Reader's Digest cited Eugene Frie and John Farrar neither of whom are medical experts and whose statements that Mary Jo Kopechne had suffocated were not testified to under oath in court. The Reader's Digest failed to report the sworn testimony of Dr. Werner Spitz, Deputy Chief Medical Examiner of the State of Maryland, an expert in pathology at the University of Maryland, and holder of many local and foreign credentials in his field as well. Dr. Spitz testified under oath ". . . my opinion within reasonable medical certainty is that she drowned." (Exhumation 247)

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32. formed—could have established the cause and time of death with certainty.⁶ There is, though, one certainty. Whatever chance Miss Kopechne may have had to live was forfeited by Kennedy's failure to call those competent to save her.
33. Is Kennedy telling the truth about his swim across the harbor channel?

The most recent scientific findings show that he is not.

Of all the episodes Kennedy has narrated, the channel swim is among the most melodramatic. He knew again that he was "going to drown."

Three times he mentions the ferocious tide that almost pulled him down and swept him northward "toward the direction of the Edgartown Light and well out into the darkness" as his strength ebbed perilously.

Storms and shifting sands have changed the topography of Edgartown harbor in the years since 1969. So it is impossible today to take measurements in the channel that

⁶The issue of why there was no autopsy remains confused: District Attorney Dinis vows that at ten o'clock Sunday morning, July 30, he telephoned state police to order an autopsy. "I was informed by Lt. [George E.] Killen that the body had already been flown off the island by the Kennedy people," Dinis said. Actually, bad weather had caused delays which prevented a chartered plane from taking off with the body until 12:30 p.m. that day.

In August, Dinis petitioned a Pennsylvania court to order exhumation and an autopsy. Tormented by the prospect of their daughter's body being removed from the grave and dissected, Miss Kopechne's grief-stricken parents opposed the autopsy and the court rejected the petition.

At the Pennsylvania hearing, Associate Medical Examiner Mills testified that, during the week after the accident, Dinis told him he felt there was no need for an autopsy.

32. Throughout the exhumation hearing medical experts testified that an autopsy would not have been conclusive as to either cause or time of death.

33. The unsubstantiated inference is that Kennedy did not summon help because he had something to hide and that Miss Kopechne died because of this purposeful act. No where is this substantiated in testimony or otherwise.

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would scientifically ascertain the precise velocity of the current between 1:35 and 1:45 a.m., July 19, 1969, the time Kennedy and his friends claim he made his swim. But other data, including tidal elevation differences, did enable Bernard Le-Mehaute to calculate the relative strength and direction of the current. "Around 1:30 a.m., the current was weak to zero," he reports. "After about 1:30 a.m., the current flowed southward toward Katama Bay at an increasing velocity until approximately 4 a.m." Thus, had Kennedy encountered any current at all, it would have swept him not northward toward the lighthouse, as he says, but *southward*, in exactly the opposite direction.

Furthermore, an analysis of the inquest transcript discloses that Kennedy's account of his swim is contradicted by the separate, sworn testimony of his two loyal allies, Gargan and Markham.

From the ferry landing on Chappaquiddick, they watched three or four minutes until Kennedy was half to three-quarters of the way across the channel—well past the area where he claims the awful tides beset him. He was not being swept away. On the contrary, Markham testified that he was swimming toward the landing at Edgartown. Neither Markham nor Gargan observed him experiencing any difficulty; neither saw any cause for alarm.

"Weren't you concerned about his ability to make it?" Judge Boyle asked.

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"No, not at all," Gargan replied. "The Senator can swim that five or six times both ways."

Why did Kennedy wait ten hours to report the accident?

To this question, Kennedy several times has replied by saying that he simply could not bear to call Mrs. Kopechne in the middle of the night. The question, though, is why did he not notify the police?

Asked by Boston *Globe* reporters in 1974, Kennedy said that while swimming the channel he thought to himself, *I just can't do it. I just can't do it. I just can't do it.*

By 7:30 a.m., he was sufficiently composed to dress neatly, take a walk and talk with Richards casually about the weather. Why did he not go to the police then? Because, Kennedy says, he still hoped that the accident had not occurred and that

Miss Kopechne was alive. That is what he "willed."

Markham says that he and Gargan assured Kennedy that the accident had indeed occurred and advised that he must report it at once. But the Senator and his two friends did not report it then by walking a few blocks to the police station. Instead, they rode the ferry back to Chappaquiddick and stood around until suddenly confronted with evidence that the car had been discovered in the pond. Only then did they hurry to report the accident.

In its series of articles about Chappaquiddick, the *Boston Globe* on October 29, 1974, reported:

"Further, a highly knowledgeable source has told the *Globe* that Kennedy's own narrative contains significant inaccuracies, and a true account would contradict material elements

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of his public statements and a word testimony at the inquest into Miss Kopechne's death.

"In particular, Kennedy's cousin Joseph Gargan agreed at one point to take responsibility for the accident, the source said, but that plan was abandoned shortly before Kennedy reported the mishap to police.

"The source, who was not associated with prosecutors of the automobile charge against Kennedy, vigorously disputed other aspects of Kennedy's account, including a purported rescue attempt an hour after the accident."

34. Uncorroborated statements by an unidentified source who does not feel at liberty to speak and be interrogated openly obviously do not constitute proof of anything. But the

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three reporters who prepared the *Globe* series are reputable journalists, and in other respects that Digest researchers could check, their articles were accurate.

Was there a cover-up?

Kennedy contends that from the outset he fully and honestly has answered all questions about Chappaquiddick and that he will continue to do so. People who have doubts, he says, can look at the public record and judge for themselves.

35. Yet the inquest record of what Kennedy said to Markham and Gargan minutes before reporting to the police—"As far as you know, you didn't know anything about the accident that night"—clearly demonstrates that, at least in the beginning,

34. In view of the Reader's Digest's own interpretation of the validity of the above statement which is extremely damaging to Senator Kennedy, the question is raised as to why it was included in the article at all.

35. Inference.

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- he intended to tell the authorities less than the complete truth.
36. And the carefully crafted report to Chief Arena did hide the fact that there were ten witnesses to events preceding and following the accident, two of whom possessed detailed knowledge. By omitting these facts, Kennedy enabled all the witnesses to leave the island before nightfall on July 19th, and avoid interrogation at a time when their memories were fresh and before they could be coached.
37. When a state official, Supervisor Kennedy, in pursuit of his duty, sought to question him, the Senator replied tersely, "I have no comment," and walked away. He never made himself available to Chief Arena as he had promised, or to Super-
36. In fact Kennedy stated in the report referred to here, "I recall walking back to where my friends were eating."
37. Omitting the details of the barbecue did not enable anyone to leave. In fact Kennedy, Gargan, Markham, Tretter and Crimmins all appeared at the police station July 19, 1969. Police Chief Jim Arena spoke to Rosemary Keough by phone at the Katama Shores Motel. No one ever refused to talk to Police Chief Arena, all were readily available and all appeared voluntarily when summoned.
38. It was Kennedy's right to remain silent as provided by law.
39. There is no evidence that Chief Arena ever asked to see him. Kennedy appeared when summoned thus he did make himself available.

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visor Kennedy, as his friends had promised.

40. Contrary to the impression he has promulgated, Kennedy never submitted to examination or cross-examination in open court. His lawyers successfully bargained with the local prosecutor, Walter E. Steele, who, rather than prosecute Kennedy on the more serious charge of negligence, allowed him to plead guilty to a misdemeanor in return for a suspended sentence. Kennedy thus avoided the kind of searching, adversary interrogation a trial would have entailed.

"No matter how you cut it," Steele later said, "you simply don't treat a United States Senator who is a criminal defendant the same way you treat a stockbroker. It's just one

40. Untrue. The prosecutor cross-examined Kennedy at the inquest which was a court of law before a judge.
41. The inference is that underhanded bargaining by Senator Kennedy's attorneys enabled him to plead guilty to a lesser charge. The fact of the matter is that the charge of "leaving the scene of the accident", a misdemeanor, was the exact citation issued against Senator Kennedy the afternoon of the accident. (Inquest 589-591) (Exhumation 14)
42. The juxtaposition of these sentences misleads the layman in interpreting the actual legal proceedings. Kennedy pleaded guilty to a misdemeanor and received a suspended sentence. Subsequently he was cross-examined during the course of the inquest convened to determine whether there was probably cause to believe that a negligent homicide had occurred.

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of the failings of human nature."

Responding to public clamor and criticism, District Attorney Dinis requested an inquest and Judge Boyle scheduled one for September 3, stipulating that it would be open to the press. Kennedy lawyers then appealed to the Massachusetts Supreme Court, which on September 2 postponed the inquest indefinitely.

None of the young women at the party were ever suspected of wrongdoing. But Kennedy spent "some-

thing less than \$32,000" of his own money to pay lawyers for them as well as for Crimmins, La Rosa and Tretter. These lawyers and his own filed suits demanding that the State Supreme Court order the inquest closed to the press and public, and the court ultimately obliged.

The inquest finally began on January 5, 1970. Its conduct in secrecy had significant effects. Had reporters been present to describe the

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43. glaring gaps and contradictions that the collective testimony yields, then public pressure for a serious investigation probably would have been irresistible.

Barred from the inquest, the press found little to report other than Kennedy's confident assertion: "I expect to be vindicated and vindicated fully when the transcripts are made public and I am then allowed to answer questions." But the transcripts were not soon to be made public, for the State

44. Supreme Court ordered them withheld until any possibility of further legal action against Kennedy had passed.

The Dukes County grand jury had been eager to investigate the death of Miss Kopechne, but agreed

43. The Reader's Digest drew negative inferences and drew damaging conclusions when in fact there was a legal right to appeal that decision. No appeal was taken and therefore it must be presumed that the public well-fair had been served in the absence of any influence or malfeasance on the part of the prosecution.

44. Implies a significantly long period of time passed when in actuality the inquest transcripts were released June 7, 1980--exactly 6 months after the inquest was held and only 8 weeks after the grand jury investigation.

to wait until after the inquest, persuaded that the transcript would facilitate its inquiry. In March 1970, foreman Leslie H. Leland, an idealistic young druggist, formally asked District Attorney Dinis to convene the grand jury in special session. "Everyone feels that a great injustice has been done to the democratic process, that there's been a white-wash, a cover-up, and that things have been swept under the rug," he declared. "I just feel we have certain duties and responsibilities as jury members to fulfill. A great deal of time has passed since the girl died, and it's time the public found out what happened."

Presiding over the special session was 67-year-old Judge Wilfred J. Paquet, a Democratic Party stalwart.

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As he harangued the jurors for 90 minutes about the limitations of their responsibilities, Paquet had sitting beside him a priest who, before the deliberations, had prayed that the jury would exercise "justice and charity." The aging judge warned the jurors that they could consider only information provided by the court or Dinis, or information of which they had personal knowledge. To their astonishment, they were not allowed to read the inquest transcript or Judge Boyle's findings (in which the judge concluded that Kennedy probably was guilty of "criminal conduct").

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45. Hamstrung by these restrictions and given little data by Dinis, the jury could do nothing. They soon disbanded in frustration without
45. The fact is that a grand jury has more power than any single entity under our constitution. They can do almost anything they want to.

returning an indictment. Kennedy was free.

ON APRIL 29, 1970, the inquest testimony was released. Later that day, Kennedy issued a statement: "In my personal view, the inference and ultimate finding of the judge's report are not justified and I reject them. The facts of this incident are now fully public, and eventual judgment and understanding rests where it belongs. For myself, I plan no further statement on this tragic matter."

"That's the Way It Was." For years, Kennedy and the ten others who were on the island with him have maintained a stonewall of silence around the mystery of Chappaquiddick. "I see no prospect of

talking about it. Not today, not tomorrow, and not the next day. I see no necessity of talking about it ever," said Markham. Gargan, Tretter and Crimmins, along with four of the women, have also remained mute.

In 1974, *Boston Globe* reporters did elicit a few words from the fifth woman, Miss Esther Newberg: "... these are questions that should have been asked at the inquest and were not. [The answers] could result in national stories and I'm not about to subject myself to that kind of publicity again. . . . Like everyone else, I'm mystified as to what went on. I can't believe everything that's been said in his [Kennedy's] favor. There are so many conflicts."

Ray LaRosa also said a few words:

"The lawyers coached us pretty good. We knew what to expect."

Last fall, with the approach of his entry into the Presidential campaign, Kennedy began to grant a few interviews. But he has yet to deviate from the story he told some ten years ago. In a CBS telecast last November, correspondent Roger Mudd asked, "Do you think, Senator, that anybody really will ever fully believe your explanation of the Chappaquiddick . . . ?"

The reply of Senator Kennedy, verbatim, was:

"Oh, there's . . . the problem is . . . from that night . . . I found the . . . the . . . the . . . the . . . the . . . conduct and behavior almost a sort of . . . beyond belief myself.

"That's why it's been . . . but I

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think that that's, that's the way it was.

"That's, that's, that happens to be the way it was."

"Now . . . I find it as I've stated, that . . . I've found that the conduct, that . . . that evening, in, in, in, in the . . . as a result of the impact, of the accident, and the . . . and the the sense of loss, the sense of hope, and the, and the sense of tragedy and the whole set of certain circumstances, that . . . the, the behavior was inexplicable.

"So I find that those, those . . . those types of questions as they apply to that . . . they're questions in my own . . . soul, as well.

"But, that, that happens to be the way it was."

SHORTLY AFTER OFFERING this explanation, Senator Kennedy declared on NBC's "Meet the Press": "There is not going to be any new information that is going to challenge my testimony. . . . If there was ever going to be any new information that was going to be different or

challenge the sworn testimony that I gave, there would be absolutely no reason that I should consider either, one, remaining in public life, let alone run for the Presidency of the United States. Absolutely none."

Recent scientific findings by oceanographic engineer Bernard Le-Mehaute show that the main part of Kennedy's sworn account of his swim across the Edgartown harbor channel is false. Recent scientific findings by the eminent accident analyst Raymond McHenry show that Kennedy's sworn account of how he drove down Dyke Road is false. Thorough analysis of the inquest testimony shows that Kennedy's often repeated claim that he cooperated wholeheartedly with investigators is false.

Despite all this "new information," Senator Kennedy adheres to his ten-year-old story and insists: "That happens to be the way it was." So now, as Senator Kennedy himself states: "People will have to form their opinion."

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ATTACHMENT B

ANALYSIS OF THE RAYMOND MCHENRY SPEED STUDY COMMISSIONED BY THE
READER'S DIGEST CORPORATION.

I. The Speed the Car was Traveling when the Accident Occurred.

On January 7, 1970, Police Chief Jim Arena testified that Senator Edward M. Kennedy listed the speed he was traveling at the time of the accident in the accident report as 20 mph. (Inquest 599)

This speed estimate was supported by the January 7, 1970 inquest testimony of the supervisor of the Registry of Motor Vehicles, George W. Kennedy who investigated the case and was considered an accident expert. George Kennedy testified that in his opinion the speed of the car was "approximately around 20 to 22 mph." (Inquest 471)

Nowhere in the official transcripts of either the exhumation or inquest hearings was the official speed estimate of 20 to 22 mph questioned.

II. Distance the Car Traveled after Leaving the Dike Bridge.

At the exhumation hearing Police Chief Domenick Jim Arena presented an accident report which was drawn at the scene of the accident. Police Chief Arena's measurements were compared with those of the Department of Motor Vehicles supervisor's George W. Kennedy and his assistant inspector Robert Molla. (Inquest 583)

Police Chief Arena's accident report is a part of the exhumation transcripts and is readily available to the public. The report clearly shows that the car was resting 23 feet 4 inches farther along the bridge from where it left the structure. (Attachment P)

At the exhumation hearing Police Chief Arena testified, "it landed in the water about 23 feet up and about 5 feet out." (Exhumation 18) These measurements compared favorably with those of the registry inspectors (Exhumation 27)

On October 20, 1969 at the exhumation hearing, John Farrar supported Police Chief Arena's testimony (Exhumation 41) and also stated that he did not make any measurements himself at the scene of the accident until a week later (Exhumation 41) However, on January 7, 1970, John Farrar testified before a different judge "I found to be a projectory or a distance from the point of impact to the car of approximately 36 feet and a drop of eight feet." (Inquest 546) Farrar also stated, "The measurement as to the footages on the bridge were within two hours after the accident." (Inquest 545)

John Farrar's sworn testimonies before two different judges with regard to material statements which could have had a significant impact on the outcome of the proceedings are clearly in serious conflict with each other and seem to imply that John Farrar could possibly have been guilty of perjury before one of the two judges. In any event, he cannot be regarded as a reliable witness.

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Ray McHenry cites both John Farrar's inquest and exhumation testimonies in his list of materials reviewed. Bill Gunn verified that both documents were studied. Since the error in John Farrar's testimony is prominent it must be assumed that both Ray McHenry and the Reader's Digest was aware of the fact that John Farrar was not a reliable witness and certainly his testimony should not be taken over the two investigating officers who gave the distance as 23 feet 4 inches.

In their February 1980 article the Reader's Digest stated that the car "hurtled approximately 35 more feet into the water." Nowhere in the official testimony is a distance of 35 feet mentioned. However it must be noted that the 35 foot distance mentioned is much closer to John Farrar's 36 foot measurement than that of the investigating officers measurement of 23 feet 4 inches.

Nowhere in the testimony was the car described as "hurtling" through the air, wich implies high speed. To the contrary, the Authur D. Little Report cited at the inquest states, "Since the wheels on the passenger side went over the curb first, the car would tend to rotate with the passenger side falling first. As the center of gravity goes over the curb the car would also tend to flip, end over end, onto the roof." (Attachment R p. 93)

From measurements made at Dike Bridge in February of 1980 by the complainant, the complainant is absolutely convinced that Mr. John Farrar's 36 foot measurement is greatly in error and that Police Chief Jim Arena's is accurate. The complainant believes that anyone studying the case could not conclude otherwise.

The complainant conducted several interviews with Bill Gunn of the Reader's Digest and with Brian and Raymond McHenry in an attempt to verify where they arrived at the 35 foot distance which was the vital distance used in the study they conducted.

In the complainant's opinion this 35 foot distance was of the greatest importance because it was the distance on which the entire speed study was based. Yet in the following interviews the respondents either would not or could not say where the distance came from.

July 8, 1980 Bill Gunn (Attachment F)
July 8, 1980 Ray McHenry (Attachment G)
July 9, 1980 Brian McHenry (Attachment H)
July 10, 1980 Bill Gunn (Attachment K)
July 14, 1980 Mrs. Ray McHenry (Attachment L)

Finally on July 16, 1980--his memory remarkably clear-- Mr. Ray McHenry had a long telephone conversation with the complainant in which he carefully detailed the mathematical calculations he used in determining the 35 foot distance on which he based his study. (Attachment M)

The complainant followed Ray McHenry's mathematical instructions carefully and was still unable to arrive at a distance measurement of 35 feet (Attachment N)

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The complainant also noted that Ray McHenry's distance figure was based on rough estimates made from photographs, widely varying measurements reported by the investigating officers and the Authur D. Little Co., and that Ray McHenry himself stated that the sketches presented to the court were rough and not dependable and that he himself had never inspected the scene of the accident. (Attachment M)

From personal experience, the complainant believes it is impossible to determine the exact center of gravity of the car from the available information 11 years after the accident occurred, especially in view of the fact that the bridge has been rebuilt and is not exactly as it was. The complainant also believes that even if the longest roughly estimated distances acceptable are used, they still will not yeild a distance measurement as great as the 35 foot distance which was used in the Ray McHenry study. (Attachment N)

The complainant believes that the 35 foot distance on which the study was based was purposely exaggerated in order to manipulate the outcome of the speed study with the intention of negatively influencing the federal election campaign of Senator Edward Kennedy. This belief is supported by the fact that not only is the method of arriving at the 35 foot distance figure questionable but also by the obvious bias against Senator Kennedy exhibited by Brian McHenry. (Attachemnt H) The complainant also questions the sincerity of Mr. Ray McHenry, who was in charge of the study, because he declined an invitation to personally inspect the scene of the accident even though he himself stated that the condition of the pond's bottom had a huge impact on the outcome of the study. Failure on Mr. McHenry's part to ascertain that the pond bottom was hard packed instead of soft caused him to figure an 8 mph variance (27%) which had the effect of greatly exaggerating the speed the car could have been traveling. (Attachment M)

Mr. Ray McHenry stated that he did not know if the pond had a hard of soft bottom yet he cites John Farrar's exhumation testimony as a reference in which Mr. Farrar testified that the bottom "was hard packed sand." (Exhumation 50) The texture of the pond bottom could also have been determined by the trip to the scene which was declined dispite the fact that Mr. McHenry had to have been aware of the importance of the accuracy of the study he was about to undertake .

Instead of ascertaining the consistency of the pond bottom, Ray McHenry figured the speed the car would have been traveling if it landed 35 feet out on a soft bottom (which was 8 mph greater than on a hard bottom like the pond did have) and reported his findings as 34 mph + 4 mph. The effect of ignoring the true consistency of the pond bottom and reporting it as two different possibilities was to increase the possible speed. Thus in the eyes of the reader it appeared that the car must have been traveling at an excessively high rate of speed..almost 40 mph...which McHenry himself admitted is in serious error because the pond bottom was hard packed sand. (Attachment M)

The complainant believes the Reader's Digest Corporation purposely reported the results of a soft bottom landing with the figures for a hard bottom landing in order to increase the negative impact the study would have on Senator Edward Kennedy's federal election campaign.

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The complainant believes that the Reader's Digest reported to its readers that Kennedy's car "hurtled approximately 35 more feet into the water" (Attachment A-20) to give the reader the impression that the car sailed a great distance from the bridge when--by their own admission--the 35 foot measurement was a manipulated mathematical calculation. In reality the car was resting only 5 to 6 feet from the bridge itself and only 23 feet 4 inches from where it left the structure which is only 5 feet farther than the length of the car itself which must be accounted for since the Authur D. Little Co determined the car flipped end over end off the bridge.

III Skid Marks Leading up to the Bridge.

Police Chief Jim Arena's accident report clearly shows that the 2 skid marks began at the start of the bridge. The right skid was 18 feet long and the left was 33 feet 2 inches long. These measurements were supported by the testimony of George W. Kennedy (Inquest 458). Police Chief Arena described the skid marks under oath. (Exhumation 27).

On January 7, 1970 George W. Kennedy testified "I had noticed the skid marks on the bridge starting at the edge of the bridge on the dirt and continuing straight to the right and over." (Inquest 455) Throughout his testimony George Kennedy specifically stated the skid marks began at the bridge. (Inquest 455, 456, 457, 458, 459, 475) When pointedly asked if he had observed any skid marks on the road leading up to the bridge, Motor Vehicle Inspector George Kennedy clearly stated under oath that he did not see any. (Inquest 475)

The complainant tested the road surface for its ability to show a skid mark. The Dyke Road is a soft mixture of sand and pea gravel. In February 1980 the complainant, driving directly toward Dike Bridge in the middle of Dyke Road at a speed of 17 mph, slammed on the brakes. The resulting skid was very deep and highly visible. (Attachment T) It was not obliterated by driving over it. It is the complainant's opinion that had there been skid marks leading up to Dike Bridge when the Department of Motor Vehicles supervisor inspected the scene, they would have been obvious.

In February 1980 the Reader's Digest reported "At least 17 feet from the bridge, he (Kennedy) slammed the brakes down hard--"panic braking", which locked the front wheels. Propelled by the high speed, the car skidded 17 feet along the road about another 25 feet up the bridge...." (Attachment A-19)

When asked how he determined that the car skidded 17 feet up to the bridge 10 years after the accident occurred and despite the fact the Motor Vehicle Supervisor testified that there were no skid marks on the dirt road, Ray McHenry said that he followed the angle of the skid marks drawn on the police accident reports back to the curve in the road. He said that he assumed that the car's brakes had been applied where it left the curve of the road and traveled in a straight line to where the marks on the bridge began. (Attachment M)

The complainant notes that earlier in the very same interview when discussing the official police and Department of Motor Vehicles Accident reports, Ray McHenry himself stated that the diagrams were not accurate and were not to be depended on because they were roughly drawn--particularly in regard to the angle the road was to the bridge. (Attachments M,E) This was also supported by Bill Gunn of the Reader's Digest. Yet Mr. McHenry freely stated that he based the idea that the car skidded 17 feet along the road on the very diagrams he said were too inaccurate to be depended on.

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The complainant believes that the reliance on the "inaccurate" diagrams when they could be used to negatively impact Senator Edward Kennedy's federal election campaign but the failure to utilize them when they were in conflict with the excessive 35 foot distance measurement used to disparage Senator Edward Kennedy clearly shows the intent of the respondents was not to accurately report a news event, but rather to create an incident with the intention of negatively influencing Senator Edward Kennedy's federal election campaign.

The obvious bias exhibited by Brian McHenry (Attachment H) and the failure of Ray McHenry to inspect the accident scene when invited to do so supports the suspicion that the results of the study were purposely manipulated to disparage a candidate for federal office.

IV. Manipulation of the Results of the Raymond McHenry Study by the Reader's Digest Corporation.

In the July 16, 1980 interview, Ray McHenry stated that the Reader's Digest added their own emphasis to his report and they "certainly punched-up the language." He elaborated on how they had changed "left" side of the road to read "wrong" side of the road and stated that if it wasn't in his report the Reader's Digest had changed the wording--not him. (Attachment M-18)

The complainant cites the following changes in wording between the part of the Ray McHenry report supplied to her (Attachment Q) and the Reader's Digest article:

1. McHenry: "The approach to the bridge was made in the left lane of the approach road." (McHenry also noted in the interview that he was well aware of the fact that Dyke Rd was a single lane)

(Attachment V)

Reader's Digest: "Driving on the wrong (left) side of the road..."

2. McHenry: "... a hard application of the brakes occurred at a point at least 17 feet before contact with the bridge."

Reader's Digest: "At least 17 feet from the bridge he slammed the brakes down hard--"panick braking" which locked the front wheels."

3. McHenry: "The direction of motion and the distance traveled from the edge of the bridge to the reported landing area on the channel bottom (approximately 35 feet of travel by the center of gravity) are the primary items of evidence...."

Reader's Digest: The car "hurtled approximately 35 more feet into the water."

Ray McHenry never made a value judgement on the basis of his study. Yet despite the failabilities and manipulations of their study--of which the Reader's Digest must have been aware--the Reader's Digest made a very serious accusation against a candidate for federal office. The Reader's Digest stated "By approaching the hazardous bridge at 30 to 38 m.p.h. Kennedy clearly invited the disaster that in fact insued." (Attachment A-22)

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The seriousness of the Reader's Digest's accusation must not be underrated. In paying for this manipulated study the Reader's Digest expended corporate funds for a study designed to create false evidence which could be used to accuse a candidate for a federal office of negligent homicide. They then expended corporate funds to provide video tapes of their purchased study to the major media networks. They not only provided the results of their manipulated study to many newspapers they also wrote an article published in the Reader's Digest which was distributed to 18 ½ million subscribers and which has a readership of 60 million.

This is a flagrant misuse of corporate funds for the purpose of influencing a federal election.

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ATTACHMENT C

STUDY OF THE TIDES AND CURRENTS COMMISSIONED BY THE READER'S DIGEST CORPORATION.

Page 227 Column 1 of the February 1980 Reader's Digest states, "The Digest last November commissioned a scientific study by Bernard Le Mahaute."

The complainant charges that the above sentence shows that the Reader's Digest not only expended corporate funds for the study but chose to expend those funds at the very time that Senator Edward M. Kennedy declared his candidacy for President of the United States.

The complainant believes that this study was purposely controlled to disparage Senator Edward M. Kennedy. The findings of Bernard Le Mahaute have been demonstrated to be inaccurate and untrue by Admiralty Lawyer Lawrence Hoch, 160 State St. Boston, MA.

The complainant visited Martha's Vineyard shortly after the Reader's Digest article came out and found many of the island residents to be very upset by what they considered untrue allegations by the Reader's Digest particularly regarding the tides. In fact, Robert T. Morgan, Edgartown Harbormaster, called a press conference to refute the Reader's Digest's allegations concerning the tides.

It is the complainant's belief that the Bernard LeMahaute tide study was paid for by corporate funds and the findings manipulated to negatively influence the federal election campaign of Senator Edward M. Kennedy for the Democratic presidential nomination. The complainant does not believe the study was a legitimate expense incurred covering a news event but rather was incurred to "invent" news for the purpose of disparaging a candidate for federal office.

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Register Journal
Jan 29, 1980

On Chappaquiddick tides

Harbormaster backs Kennedy's testimony

EDGARTOWN, Mass. (UPI) — Sen. Edward M. Kennedy's sworn testimony about events surrounding the rowing of Mary Jo Kopechne are supported by the Chappaquiddick harbormaster in a copyright story in the Vineyard Gazette.

The account given by harbormaster Robert T. Morgan of Edgartown to general manager Richard Reston for the first time strongly disputes recent published reports.

Morgan told the Gazette he chose to make his version public at this time to set the record straight. He described the recent reports as blatantly erroneous.

His account comes a little more than 10 years after the tragedy and in the midst of Kennedy's faltering campaign against President Carter for the Democratic presidential nomination.

Morgan labeled as "wildly inaccurate" and "utterly ridiculous" accounts about the direction of tidal currents in Edgartown Harbor the night of the tragedy.

He told the Vineyard Gazette that reports claiming currents in the early morning hours of July 19, 1969, would have carried Kennedy into the harbor instead of out of it as the senator testified are "stupid and asinine."

"The tide that night," he told the Gazette, "could not have been other than what Mr. Kennedy testified and said it was."

"I know the tide facts and I know the facts are contrary to everything they are writing about."

Morgan said as harbormaster he was patrolling Edgartown waters late July 18, 1969, as he always did during

race and regatta week on Martha's Vineyard.

He told the Gazette he remained at water's edge until about 12:20 a.m. July 19 — roughly an hour before Kennedy testified he swam the channel dividing Chappaquiddick Island from Edgartown on the Vineyard side. Kennedy told the inquest panel he crossed the channel at approximately 1:30 a.m.

Morgan said he knew without a doubt the direction of tide and current that night because he was forced to answer a distress call from a nearby, 40-foot sailboat shortly before midnight.

"I remember the boat in distress because my routine patrols of the harbor would not normally have taken me out there. I remember going alongside and hailing the crippled boat," Morgan told the newspaper.

"The key is that the tide was of no consequence during

the tow. It was just absolutely calm and the tide was slack and quite high and ready to change," the harbor-master said.

He said that "because of the slack tide, I didn't have to worry about current and whether I approached the dock from the east or west. I know in my mind the tide at that moment made no difference how I approached the dock."

"I didn't feel at any time up to now — until the reports in the (Washington) Star and the Reader's Digest — that it was ever necessary for me to speak out after Ted Kennedy said he drifted toward the lighthouse," Morgan said.

"This was the way somebody would drift. That was the direction somebody would go. . . . The tide couldn't be otherwise. That was what Mr. Kennedy testified and said," he said.

obituaries

Last rites slated for Mel Lienard

Gifts may be made the American Cancer Society.

JUNE CORNELIUS

Funeral services were Monday at the Gateway Little Chapel of the Chimes for June Cornelius, 79, a former member of the vaudevillian team "The Four Gibson Girls," which played the Portland circuit in the early 1900s.

Mrs. Cornelius born in San Jose, Calif., was among

February 24, 1980 personal conversation with Mr. Jerry Jeffers
a resident of Chappaquiddick Island who operates a tow truck
Jerry Jeffers Box 365 Edgartown, Ma 02359 (617) 627-5406

1. Mr. Jeffers asked that his name be kept confidential.
2. Mr. Jeffers stated that he thought in 1971 he received a call from Mrs. Malm who lives in Dike House next to Dike Bridge that a car had gone part way off the bridge and to come quick before it toppled into the water. Jeffers arrived to find that the vehicle had one occupant who appeared thoroughly scared who could not get out of the car because every time he moved the car tilted and it looked like it would fall in at any moment. Both front wheels had gone off the structure at the exact place Kennedy's car had gone off. They managed to attach ropes to the car and pull it back onto the bridge before it fell into Poucha Pond.
3. Mr. Jeffers stated that a few years ago they had completely rebuilt the bridge putting in new pilings and new planks. I was concerned about the accuracy of my measurements but Jeffers assured me the beginning and ending of the bridge were in the same place. It has approximately the same hump to it but that might vary slightly.

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March 1980 telephone conversation with Police Chief
Jim Arena, currently Police Chief of Lincoln, Massachusetts.
(617) 259-8113.

I advised Mr. Arena that I would be filing a complaint with the Federal Election Commission regarding the Reader's Digest article, specifically the speed study in it and asked if he would confirm to me the accuracy of his police report.

Mr. Arena was adamant that his measurements submitted to the court were accurate and that they were compared to Supervisor George Kennedy's figures and that they were correct and that he would be happy to testify to that. When asked specifically if he remembered the 23 foot 4 inch distance in question he said he remembered it was something like that-- it wasn't very far.

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July 8, 1980 interview with Bill Gunn of the Reader's Digest Washington D.C. office. Mr. Gunn was reached by telephone. After a conversation which lasted several minutes arrangements were made for me to pick up the Authur D. Little Co study at his office where we engaged in a lengthy conversation that lasted at least 30 minutes. Notes were take during the telephone conversation. No notes were taken during the personal interview, however within 30 minutes of the personal interview this report was written.

1. Mr. Bill Gunn verified that he collected the majority of the material on the Chappaquiddick accident and that it was he who supplied the relevant information to Ray and Brian McHenry.
2. Mr. Gunn stated that the Reader's Digest used the inquest, exhumation hearing (specifically Police Chief Jim Arena's accident report) portions of the Authur D. Little Co Report available through Dukes County Court Clerk Joe Sollitto and photos of the accident scene. He stressed that those were the only references they used for the distance measurements used in the McHenry study.
3. Mr. Gunn explained that since they were not accident analysis experts themselves, upon gathering all of the information they could find on the accident, they turned it over to experts to make an accident study.
4. Mr. Gunn went out of his way to declare that they approached the entire article with an open mind. It was entirely based on facts which speak for themselves.
5. Mr. Gunn stated that part of the calculations were based on photos of the scene of the accident but he did not have them available for me to see. However, he emphasized that the computer print out accurately depicted what the photos showed.
6. Several times Mr. Gunn verified that they had obtained a copy of Police Chief Jim Arena's accident report
7. Several times he became confused and referred to Arena's report as George Kennedy's accident report. When I pointed out that George Kennedy's report was not available according to their own article, Mr. Gunn said that Arena's and Kennedy's reports were made at the same time and they they compared measurements which was mentioned in the testimony so the two reports were actually the same and it really didn't make any difference which one was used. He also stated that George Kennedy is now dead so it was impossible to talk to him about his testimony or report. He did not indicate if they had tried to contact Jim Arena.

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(July 8, 1980 Bill Gunn interview continued.)

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8. Mr. Gunn emphasized that neither George Kennedy nor Jim Arena were trained in mechanical drawing, therefore the police accident diagram was rough and did not accurately show the structure of the bridge and was not even drawn to scale so it could not be used in their computer study and they had to start over.
 9. When asked if he thought Arena's measurements were accurate Gunn said that he thought they probably were because both he and G. Kennedy had taken measurements and compared them.
 10. When asked why the Reader's Digest didn't use Police Chief Jim Arena's 23 foot 4 inch measurement when computing how fast the car left the bridge, Gunn became very vague. He said that the 23 foot 4 inch measurement was not a useable distance because it did not show where the car's center of gravity was. When asked where they came up with the 35 foot distance that they did use Gunn never answered but said that he really did not understand all of the detailed calculations used by the experts and it was about impossible for someone not trained in accident studies to understand. But he thought it was all based on where the car's center of gravity was. He suggested I contact McHenry again or another accident consultant because he just couldn't help me on that.
 11. Gunn stated that while it was he that did most of the research for the article it was Mr. Barron that actually wrote it.
 12. I asked if they had ever had any difficulty with Kennedy or his lawyers over the article and they said that they hadn't heard anything from Kennedy or anyone representing him.
 13. Mr. Gunn gave me a zerox copy of the Authur D. Little Co report which he had obtained from Joe Sollitto. I noted the 5 1/2 inch measurement was there as Ray McHenry indicated but not the 35 foot distance measurement on which the speed study was based. I suggested that the 35 foot measurement might have been derived from John Farrar's testimony. Gunn was non-committal saying that it had been so long since he worked on the study his memory was not clear and again he suggested I speak to an expert on auto accidents.
 14. Mr. Gunn went out of his way to talk about how far away from the bridge the structure is visable to an on coming car and indicated that a photo he had seen of the approach to the bridge convinced him Kennedy had to have seen it much earlier than he testified to in court. He also said that since the Authur D. Little study had been commissioned by Kennedy its conclusions could not be considered absolutely reliable.

July 8, 1980 telephone interview with Raymond McHenry,
Project Director, speed study, Research Engineers, Inc., PO
Box 12072, Research Triangle Park, North Carolina 27709.
Retired reached at home (919) 467-7338

Notes were taken during the telephone conversation and
this report was written immediately following the conversation.

1. Mr. McHenry stated that the information he used to make the study for the Reader's Digest was provided to him by Mr. Bill Gunn and Mr. John Barron of the Reader's Digest Washington D.C. office. This was the only information he reviewed when doing his study.
2. McHenry said that the two measurements I was interested in (5 1/2 inch rubrail height and 35 feet the car traveled after leaving the bridge.) came out of the Authur D. Little Co. study done for Senator Kennedy which was part of the inquest transcripts provided to him by the Reader's Digest. He thought that it was part of Mr. Jone's testimony.
3. When I informed him that the Authur D. Little Co study was not included in the inquest transcripts provided to me by the court, Mr, McHenry stated that the people who did the work up had obtained it in Pennsylvania where the inquest was held. When I informed him that the inquest was held in Edgartown, MA not in Pennsylvannia but that the exhumation hearing was in Pennsylvannia, he said that it might have come out of the exhumation hearing then because he was certain that the people who had done the research said that they had gotten much of the matterial in Pennsylvania.
4. McHenry clarified that he had not been provided the entire Authur D. Little report because not all of it was part of the record but he had been provide what was available and it delt directly with the measurements he was interested in.
5. When asked specifically if he had seen a copy of Police Chief Jim Arena's accident report which contained a distance measurement of 23 feet 4 inches, McHenry said that he could not remember ever having seen Arena's accident report but that it had been several months since he had done the study and it was possible that he had forgotten.

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July 9, 1980 telephone interview with Brian McHenry,
Project Assistant for commissioned study on auto speed---
Research Engineers, Inc., P.O. 12072, Research Triangle
Park, North Carolina 27709. (919) 549-8346, (919) 469-3310
(919) 469-3259.

1. Brian McHenry confirmed his participation in the study.
2. He explained that the speed the car was traveling when it left the bridge was determined by assuming the car went a certain distance after leaving the bridge. In this case they used the given distance of 35 feet. They then determined the position in which the car came to rest through photographs. Into the computer they fed data on the car (wheel base, weight etc.) the road, the bridge. They then programed the computer to make numerous runs off the bridge at different speeds with different approaches until certain speeds and approaches were used which resulted in the computer car ending up in approximately the same position as the photos show the Kennedy car and 35 feet from where it left the bridge.
3. Since none of the computer cars landed exactly in the same place as the Kennedy car (some overshot and some undershot) the researchers averaged those that came close to the Kennedy car position 35 feet out and concluded the speed to be that which was reported [34 mph + 4 mph] with a margin of error to take into account the variance between tests run.
4. Brian McHenry said that he could not remember where the 35 foot distance measurement they based their study on came from. He could not remember having heard about John Farrar's testimony nor could he remember having seen Police Chief Jim Arena's accident report. He said that he had not been involved in the research but that those facts had been provided to him by others.
5. Brian McHenry said that his job was to put together 9 video tapes of an antimation of the computer printout. This he did. He then gave the video tapes to the Reader's Digest Public Relations man in Pleasantville, New York. (Prichart or Penshort he thought) He was told that the videos were given to all of the major television networks in New York for broadcast and thought that I might be able to obtain one through them.

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(July 9, 1980 Brian McHenry interview)

6. Brain McHenry said that according to their study the car landed as shown in the Reader's Digest chart. He stated that the way it landed was determined by examining photographs which showed the damage to the car. He said that after hitting the water their study showed that the car then swung around in a position comparable to the photographs of the car in the water (perpendicular to the bridge.)
7. He said that as he remembered they did not consider the tide and current under the bridge as a significant factor and he did not think it was included in their calculations.
8. He said that since it had been several months since he did the study his memory was not clear on it but that he would have a copy of their study sent to me.
9. Brain McHenry then stated that Kennedy is going to realize one of these days that he should have just gone to jail for a year like the Watergate criminals because people are not going to leave him alone until he get what he deserves. [the preceding was almost verbatim from the notes I wrote when he said it. I then got behind in the conversation with my notes and the rest is what I recall McHenry said which was written down immediately following the conversation.]
I said that Kennedy probably would have spent more than a year in jail but it would have been time well spent because he could have written a best seller about the accident and made a lot of money like the Watergate criminals did. McHenry thought that was entertaining especially when I added that Kennedy probably didn't do it because he didn't need the money. Then the conversation became serious again and McHenry indicated that he was pleased that his study was making Kennedy so uncomfortable because he had gotten away without being punished for his crime and he was glad that he was able to attract the public's attention to that fact.

(The report on the above interview was written immediately following the conversation from notes taken during the call.)

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July 10, 1980 conversation with the secretary to Mr. Pinchman of the Public Relations Department of the Reader's Digest Pleasantville office.

The secretary confirmed that Mr. Pinchman was the person who was in charge of the video tapes regarding the Chappaquiddick accident. She said that the videos they received from the research engineers were sent to all of the news stations in the New York area for broadcast. She was not sure if they still had the original but she was positive that they had video tapes of the news broadcasts on which they were shown. She indicated that there were several.

She said that they would be happy to let me review them.

I should take the train from Grand Central Station New York to Chappaqua then a taxi or they'd send a car to pick me up.

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July 10, 1980 conversation with the secretary in the Reader's Digest Washington D.C. office while I was waiting to see Mr. Gunn.

The secretary said that the circulation of the Reader's Digest was over 18 million subscribers in the U.S. The readership she knew was much larger--probably 60 million would not be out of line. Not only that but the Reader's Digest is printed in many different languages. It circulates 30 million copies in all languages so the readership is huge.

She said that sometimes they reproduce the same articles and sometimes they don't depending on how they think they will be received in different countries. While I was waiting I saw an April 1980 Reader's Digest in a foreign language with the Chappaquiddick article in it.

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July 10, 1980 meeting with Bill Gunn. This report was written within 30 minutes of the meeting but no notes were taken during the meeting.

1. Mr. Gunn was very cooperative and provided me with a 13 page zerox copy of Mr. Raymond R. McHenry's "Investigation Conducted for the Reader's Digest, Washington D.C."
2. I asked if he had gone to Chappaquiddick and talked to the people involved. He said he had talked to Joe Sollitto and John Ahlbum. He had tried to talk to Christopher Look but that Look's father was seriously ill so Look was unavailable. He never said that he had actually gone to Chappaquiddick but he also did not say he had not done so.
3. He said that Gargan and Markham were totally unavailable and they had not contacted any of the women who had attended the party. He understood that they didn't talk to anyone, but that it didn't really matter because they didn't know what took place at Dike Bridge.
4. When I pointed out that Ray McHenry cites George Kennedy's accident report as a reference and that I thought they said it wasn't available, Gunn said he thought that they had been able to obtain a copy of it after all but that he did not know right off-hand where it was so he couldn't show it to me.
5. Mr. Gunn showed me the Le Mehaute study of the tides. I did not have time to go over it carefully and he did not have a zerox for me. He emphasized that it was difficult to understand scientific data--he really didn't and it took an expert to know what it says.
6. He said that he was very interested in seeing my book when it is out.

July 14, 1980 interview (phone) with Mrs. Raymond McHenry. Notes taken during conversation and this report was written immediately following the interview.

Ray McHenry is in Detroit working on a case. I called yesterday asking about the 35 foot distance and she had her son Brian McHenry ask Ray McHenry about it when he spoke to him. Brian McHenry asked Ray McHenry where he got the 35 foot distance measurement he used in his study. She said that Brian told her that Ray could not remember all of the distances off the top of his head and that he had sent all of the material back to the Reader's Digest so he wouldn't be able to look it up either.

Mrs. McHenry stated, "All he did was take what they gave him and did an investigation. He is very thorough and he would not use anything that was not based on absolute fact. . . He doesn't give two hoots about politics and only made a factual study for a client. . . the study was done last January and it was done in a hurry."

I told her that my problem was that I was reproducing Police Chief Jim Arena's accident report in my book which shows the distance to be 23 feet 4 inches. I was assuming that he used John Farrar's 36 foot measurement of the distance provided in the inquest. I needed to ascertain how he made the determination that Mr. Farrar's measurement was the accurate one. Was it from photographs? I did not want to make any inaccurate statements regarding how Ray McHenry did his study and was hoping that he could explain it to me so that I would be sure to have my facts right.

Mrs. McHenry said that she would run this by him and perhaps with this information he would be able to remember. If not he would have to redo the study which would take quite a bit of time and he is a very busy man. If I provided him with the material and was willing to pay his \$75.00 / Hr. consulting fee he'd probably be willing to take another look at it. I said that I might be willing to bring my material down to N.Carolina for him to see and pay the fee because I really wanted to be certain of my facts.

She said that she would talk to him.

July 16, 1980 Telephone conversation with Raymund McHenry.
This report was written from notes taken during the
interview and was done immediately following the discussion.

1. Mr. McHenry stated that he determined the 35 foot distance the car traveled after leaving the bridge by drawing a series of right angle diagrams based on the police accident report and George Kennedy's accident report. He said that he used the 23 foot 4 inch measurement along the bridge then drew a right angle out to the car's center of gravity (about the middle of the wheel base but slightly forward 48% closer to the front). He figured the distance from the gouge.
2. McHenry said that he compared both Arian's and Kennedy's drawings and that they were quite crude. He particularly had problems with the bridge being at a 17° angle to the bridge for the sketches were in error.
3. He had to rely on photographs and Mr. Jone's survey done for the Authur D. Little Co. He was invited to go to Chappaquiddick and look at the bridge but was unable to do so because he had other business obligations so he had never seen the accident site.
4. McHenry said that he would stand behind his 35 foot distance measurement. He added however that he thought that he might have made the measurements on a plane. He then said that he thought he calculated to the top of the water but it might have been to the bottom of the pond then he said, no, he was quite certain he calculated to the pond surface.
5. McHenry stated that he had a problem with two different interpretations of data based on the texture of the pond bottom, which would have had a very significant impact on the speed calculations. He said that if the pond bottom was soft and muddy the car would have stuck where it landed. If the bottom was hard packed sand the car would have slid along the bottom. Thus the speed calculation was run for both situations which is why there was such a wide variation in results. The 30 mph estimate was for hard bottom; the 38 mph estimate was for soft bottom. Since he didn't know the texture of the bottom he reported his findings as 34 mph \pm 4 mph
6. He said he did a ballistic trajectory study which took into consideration damage done to the car and the drag as the car slid along the bottom.

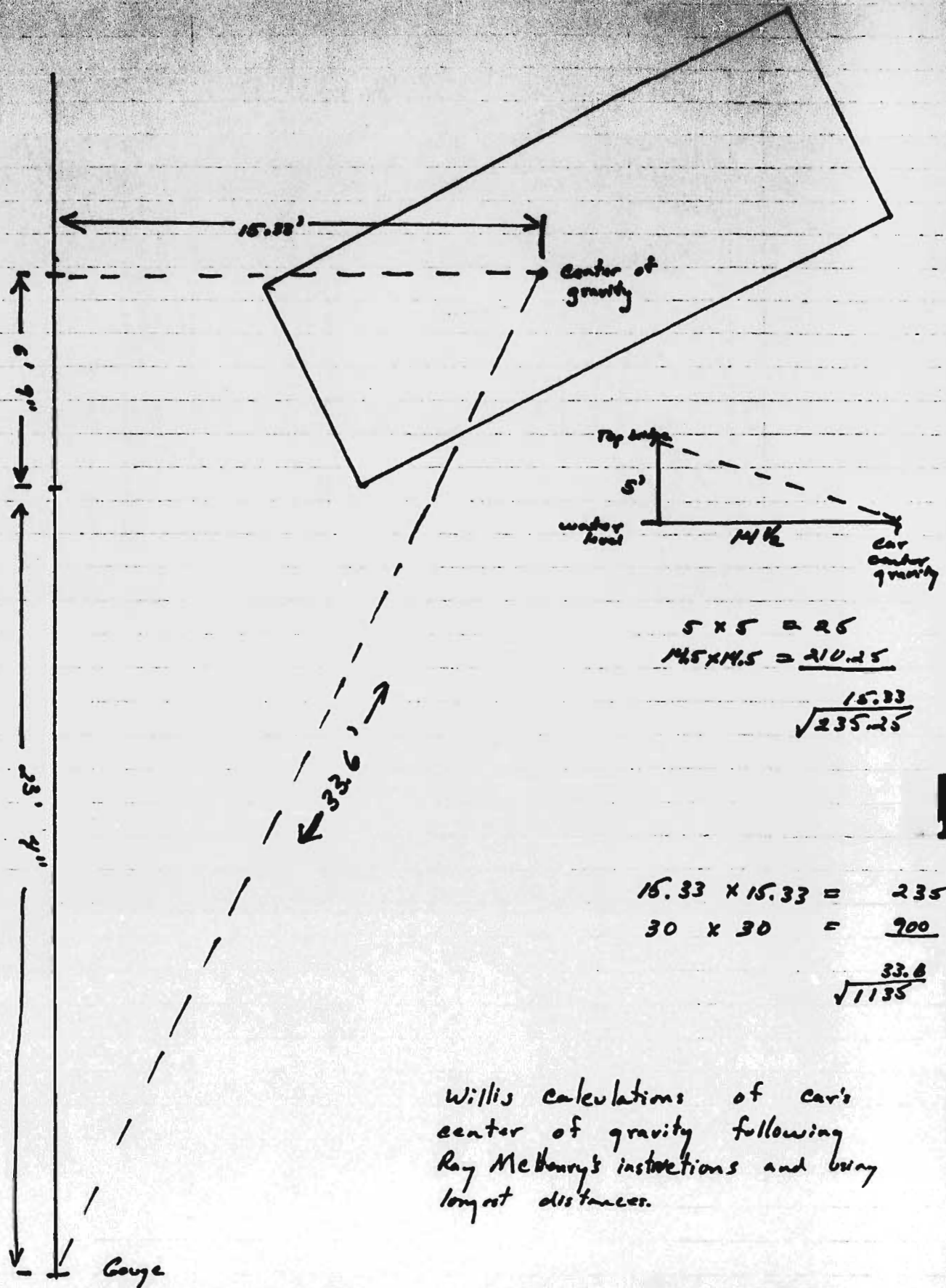
(July 16, 1980 Raymond McHenry interview)

7. He did not consider the current important because the heavy car would not have been noticeably affected by the current unless it was tremendously strong. He was not even aware of the direction the current had been flowing under the bridge at the time of the accident. He stated that the current was not considered at all.
8. The weight of the engine in the car is what caused it to come to rest on the hood ornament with the rear elevated.
9. He again mentioned that he determined the 35 foot distance through the use of X and Y coordinates.
10. McHenry said that he is an expert in the spiral roll (He designed the spiral roll the car did in the James Bond movie) In his opinion Kennedy's car landed on its side and rolled up on to its roof. He did not think the Authur D. Little study was right with its interpretation of how the car left the bridge.
11. When doing his study he did a large number of runs and slid it through many 35 foot distances taking into consideration various possible landing places to account for different bottom conditions. He made many different runs using different tolerances.
12. McHenry said that he thought the easiest, cheapest and perhaps the most convincing way to settle wheather or not the study is correct is to simply drive a car off the bridge and see what it does.
13. Before he had been asked to make his determination the Reader's Digest had had someone else work on the case but the other person was , in McHenry's opinion, politically motivated and made some fundamental errors in calculations. However, the one thing he was right about was that at 20 mph Kennedy's car wouldn't have landed anywhere near where it did.
14. When I told him that we had run our own test by building a scale model and running a replica car off the model bridge and that in 9 cases out of 10 our model landed the way the Authur D. Little Co study described...front end frist then a somersault, McHenry said that using a replica won't work because the way each of the 4 wheels left the bridge is important as is the approach angle. It was this set of factors which he said resulted in the spiral roll.
15. McHenry stated that the 17 foot skid mark was determined by following the angle of the skid marks drawn on the accident diagrams back. He determined where the brakes were applied by finding where the car left the normal curve of the road. He reasoned that when the driver applied

(July 16 1980 Raymond McHenry interview)

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15. (cont.) the brakes they locked up causing the car to continue to travel in a straight line, thus it left the normal curve of the road. McHenry said that where his calculations show the car left the curve of the road also correlates with other studies as to where the bridge becomes visible which is in conflict with the A D Little report.
 16. In his opinion if the car had been equipped with non locking brakes it probably would have made the turn onto the bridge and perhaps all the way across without mishap. He knows Kennedy's car didn't have them because they weren't putting them on cars back then and they still aren't as a normal feature.
 17. I pointed out that Arena described the tire skids as scuff marks going sideways on the bridge and McHenry indicated that that would be consistent with the wheels being locked. Since the wheels were not turning the car went the direction it had been traveling.
 18. In McHenry's opinion, the Reader's Digest fairly accurately reported his findings. . . But they had a tendency to add their own emphasis and they "certainly punched up the language." I asked him what he meant by that. And he indicated that the Reader's Digest used descriptions and words that were not in the report with the obvious intention of slanting the findings against Kennedy even more than they already were. Specifically McHenry said that he had never said that Kennedy approached the bridge on the "wrong" side of the road. McHenry was aware of the fact that the road was a single lane dirt road leading up to a single lane bridge and that people normally drive down the center of the road. He had said that Kennedy approached the bridge from the left side of the road. The Reader's Digest changed it to the wrong (left) side of the road. There were many other examples but he didn't have a copy of the article to refer to but if it wasn't in the report that I had the Reader's Digest had changed the language.
 19. McHenry said that he had given quite a bit of thought about what to do if his findings were challenged and he said he thought a good test of the study would be to drive a car off the bridge. He thought it would be much cheaper to hire someone to drive off the bridge than to redo the study. He said we could probably buy an old Olds for under \$1000.00 and get a stunt man to drive it off. He suggested we use American Thrill Show in Orchard Park just outside of Buffalo NY (J. Milligan) or perhaps Joey Chitwood of Tampa. He thought the best way to do it was to go off at 20 m-h to show Kennedy car would not have traveled so far because the chances were at a greater speed the car wouldn't end up exactly as his study showed it.

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$$\begin{aligned}
 5 \times 5 &= 25 \\
 14.5 \times 14.5 &= 210.25 \\
 \sqrt{235.25} &= 15.33 \\
 15.33 \times 15.33 &= 235 \\
 30 \times 30 &= 900 \\
 \sqrt{1135} &= 33.6
 \end{aligned}$$

Willis calculations of car's center of gravity following Ray McHenry's instructions and using longest distances.

FEDERAL ELECTION COMMISSION
1325 K Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

DATE AND TIME OF TRANSMITTAL
TO THE COMMISSION FEB 23 1980

MUR # 1167, 1168, 1170
DATE COMPLAINT RECEIVED
BY 2/19/80

STATE MEMBER Oliphant

COMPLAINANT'S NAME: #1167 - Arthur B. Culvahouse, Gen. Counsel, The Baker Comm.
#1168 - Joann McSorley, Asst. Treas., Dole for Pres. Comm.
#1170 - Daniel V. Swillinger, Gen. Counsel, Anderson for
Pres. Comm.

DEFENDENT'S NAME: Telegraph Publishing Company
Nashua Telegraph
Nashua, New Hampshire

RELEVANT STATUTE: 2 U.S.C. § 441b

PERIODICAL REPORTS CHECKED: Presidential candidate allocations to New Hampshire

FEDERAL AGENCIES CHECKED: None

SUMMARY OF ALLEGATIONS

On February 19, 1980, complaints were filed by the Baker Committee (MUR 1167), the Dole for President Committee (MUR 1168), and the Anderson for President Committee (MUR 1170) against the Telegraph Publishing Company which publishes the Nashua Telegraph, Nashua, New Hampshire. All three complaints allege that the Nashua Telegraph is staging a debate between Ronald Reagan and George Bush on February 23, 1980, that the debate will be partisan in that it will promote the candidacies of those two candidates over other major Republican contenders, and that expenditures in connection with the debate are, therefore, prohibited corporate contributions under 2 U.S.C. § 441b. The Baker and Dole complaints allege that

the respective candidates requested inclusion in the Nashua Telegraph debate and were refused.

The Baker Committee requests that the Commission immediately seek injunctive relief to prevent a violation of the Act. The Dole for President Committee requests that the Commission immediately find probable cause to believe a violation is about to occur and file a civil action for injunctive and declaratory relief, without following the enforcement procedures set forth in 2 U.S.C. § 437g, on the grounds that irreparable harm will occur if the Commission does not act immediately. The Anderson for President Committee asks that an expedited proceeding be held and that the Commission seek an injunction under 2 U.S.C. § 437g to bar the debate if the Commission concludes that staging of the debate violates 2 U.S.C. § 441b.

FACTUAL AND LEGAL ANALYSIS

1. 2 U.S.C. § 441b prohibits the corporate press from making expenditures to stage candidate debates.

The initial question presented by the complaints is whether the expenditure of funds by a newspaper to stage a debate violates 2 U.S.C. § 441b.

In 1974, section 102(c) of H.R. 16090 (the House version of the FECA amendments) included an amendment to 18 U.S.C. § 591(f) relating to the definition of expenditure, adding several exceptions to that definition, including the news story exemption as it currently reads in 2 U.S.C. § 431(f)(4)(A). The House Report, No. 943, 93d Cong., 2d Sess. at 4 (1974) stated:

Clauses (A), (B) and (C) of subparagraph (4) underscore and reaffirm the principles stated in the amendment to section 610 of title 18, United States Code, proposed by Representative Orval Hansen, and passed by the Congress as part of the Act. Those clauses make it plain that it is not the intent of the Congress in the present legislation to limit or burden in any way the first amendment freedoms of the press and of association. Thus, clause (A) assures the unfettered right of the newspapers, TV networks, and other media to cover and comment on political campaigns. (emphasis added)

The exemption itself refers specifically to news stories, commentaries and editorials, and as the explanation contained in the House Report makes clear, it is the right of the media to cover and comment on election campaigns which is protected. Thus, although expenditures incidental to carrying on the ordinary functions of the media are not "expenditures" within the meaning of the Act, the exemption does not exclude the media itself wholly from the provisions of the Act, including those prohibitions contained in 2 U.S.C. § 441b. Accordingly 2 U.S.C. § 431(f)(4)(A) and 2 U.S.C. § 441b, read in conjunction, permit the media to expend funds to cover stories concerning an election, publish a newspaper or make a broadcast concerning an election, publish or broadcast commentaries on the election or on specific candidates, and editorialize about or endorse candidates for election without violating 2 U.S.C. § 441b.

Review of the legislative history of the predecessor statutes to 2 U.S.C. § 441b makes clear that the general prohibition on corporate political contributions and expenditures was intended to apply to the corporate press, except insofar as their activities were protected from governmental regulation by the first amendment (and is codified in 2 U.S.C. § 431(f)(4)(A)).

The legislative history of the Taft Hartley Act (Labor Management Relations Act of 1947 (61 Stat. 159), which amended Section 313 of the Federal Corrupt Practices Act adding prohibitions on labor union political activity to parallel the corporate prohibitions originally enacted in the Tillman Act of 1907, sheds some light on the extent of the news story exemption of § 431(f)(4)(A). During the Senate debates on the amendment, there was discussion concerning the scope of its applicability and its effect on freedom of the press. It is clear from the debate that Congress believed that § 441b (then § 313 of the Federal Corrupt Practices Act, and later 18 U.S.C. § 610) did not prohibit the institutional press only insofar as they were operating normally as newspapers. ^{1/}

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"If the paper...is operated independently, if it derives its money from its subscribers, then of course there would be no violation.. They could not publish a special newspaper [in support of one candidate over another]...None of us have ever assumed that the Corrupt Practices Act prevented a newspaper from writing editorials for or against any candidate....If they are sold to subscribers and if the newspaper is supported by subscriptions, then I would not say that constituted such an expenditures. But if the newspaper were given away--even an ordinary newspaper--I think that would violate the Corrupt Practices Act. That act would be violated, it seems to me, if such a newspaper were given away as a political document in favor of a certain candidate." 93 Cong. Rec. 6436, 6437, 6438. (remarks of Sens. Taft and Barkley) (June 5, 1947).

Thus, it is the ordinary "operation of the newspaper itself" (93 Cong. Rec. 6437) which is outside the prohibition now contained in 2 U.S.C. § 441b.

The first amendment protects the media from governmental restrictions on those functions crucial to a free press. The news

^{1/} There was no comparable news story exemption at that time.

story exemption in 2 U.S.C. § 431(f)(4)(A), itself very narrowly drawn, refers only to news stories, commentaries and editorials. It provides that funds incidental to the publishing of news stories, commentaries or editorials are not "expenses" within the meaning of the Act.

However, to the extent that broadcasters, newspapers and periodicals function as do other business corporations, they are subject to the provisions of § 441b. In labor relations, anti-trust activities, etc., they are subject to the same restrictions as any corporation.^{2/} For example, § 441b prohibits a newspaper from taking general treasury funds and making contributions to a campaign -- even though the newspaper may endorse that same candidate. Nor may a newspaper rent a billboard to display its editorial endorsement or charter an airplane to fly over the city displaying a message notifying the city of its endorsement. There is no absolute constitutional protection for press corporations to be freed from all government regulation.

Even where political activity is nonpartisan in nature, Congress has determined that the danger of undue corporate or labor influence in the political process is sufficient to warrant restrictions on such activity. For example, although corporations and labor organizations may sponsor nonpartisan registration and get-out-the-vote

2/ The corporate press has been found subject, inter alia, to the jurisdiction of the NLRB (Associated Press v. NLRB, 301 U.S. 103 (1937)), to ordinary forms of taxation (Grosjean v. American Press Co., 297 U.S. 233, 250 (1936)), to antitrust regulation (Associated Press v. U.S., U.S. 1 (1945)), and to certain restrictions on presentation of paid advertising (Pittsburgh Press Co. v. Human Relations Commission, 413 U.S. 376 (1973)).

drives, they may only direct those efforts at the general public if the drive is jointly sponsored with a civic or nonprofit organization which does not support or endorse candidates. 2 U.S.C. § 431(f)(4)(B); 1. C.R § 114.4(d). Thus, while recognizing the educational and civic value of such nonpartisan activities, Congress did not intend to give corporations and labor organizations free reign to engage therein without the additional protection of sponsorship by a bona fide nonpartisan group.

It is, therefore, clear that the expenditure of funds by a news media corporation to stage a candidate debate is a corporate contribution prohibited by 2 U.S.C. § 441b. All three complaints allege that the Nashua Telegraph will expend funds to stage a debate and, therefore, without regulations in effect governing the conduct of candidate debates, both complaints set forth facts which give reason to believe a violation of 2 U.S.C. § 441b is about to be committed.

The prohibition of 2 U.S.C. § 441b is against the expenditure of funds in connection with an election. None of the complaints allege how much money the Nashua Telegraph is expending to stage the debate, but the figure would at least include any sums spent organizing and planning, including staff time, direct expenditures for the purpose of hiring the hall, publicity costs to advertise the debate, and any payments for costs incurred by persons participating therein, including candidates and questioners. If the Commission finds reason to believe or otherwise intends to seek relief, the notifica-

tion of such action should be accompanied by questions to ascertain the amount of money involved. Of course, the value of the in-kind provision of such a forum as a candidate debate which will receive national or state-wide television coverage may exceed the actual dollars spent.

2. Even if applicable, the Commission's debate regulations which, when approved, will create an exemption from 2 U.S.C. § 441b for media sponsorship of nonpartisan candidate debates, would not permit news media corporations to make expenditures for partisan debates which promote the candidacies of some candidates over others.

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The Commission's debate regulations have not been before Congress for the requisite thirty legislative days, and are therefore not applicable to the debate scheduled by the Nashua Telegraph on February 23, 1980. These regulations when effective will permit news media corporations to make expenditures to stage candidate debates provided that the debates are nonpartisan in that they do not promote or advance one candidate over another. The explanation and justification of the Commission's proposed debate regulations states in pertinent part as follows:

Under subsection (b) the precise structure of candidate debates is left to the discretion of the staging organization. Such debates must, however, be nonpartisan in nature and they must provide fair and impartial treatment of candidates and parties. The primary question in determining nonpartisanship is the selection of candidates to participate in such debates.

Although the section does not prescribe specific requirements for selection of candidates to participate, a general election debate may not be structured so as to

promote one candidate over another. An organization staging a debate may invite candidates to participate in a debate on the basis of party affiliation. Hence, such an organization could stage a general election debate to which only major party candidates are invited.

For debates at the primary, caucus or convention level, a staging organization may restrict participation to candidates seeking the nomination of one party. Moreover, if a sponsor restricts participation to candidates seeking the nomination of one party, there would be no requirement to stage a debate for candidates seeking the nomination of any other party. However, any debate held for primary, caucus or convention candidates may not promote one candidate over another.

A debate is nonpartisan if it is for the purpose of educating and informing the voters, provides fair and impartial treatment of candidates, and does not promote or advance one candidate over another.

Even though these regulations are not yet in effect, if a news media corporation staged a debate which would be permissible under the regulations, the Commission should permit such a corporation to now take advantage of the exemption which will be created in the regulations. Therefore, even though the regulations are inapplicable, the structure of this proposed debate should be examined in light of the standard set forth therein.

The Nashua Telegraph invited only Ronald Reagan and George Bush to participate in the February 23 debate, and based upon the allegations in the complaints, has refused requests to permit Senator Robert Dole and Senator Howard Baker to participate, and has failed to invite any other candidate to appear. Dole, Baker and Anderson are qualified to be on the ballot for the February 6 New Hampshire primary, ^{3/} are receiving and expending primary

There are seven Republicans qualified to be on the ballot in New Hampshire on February 26.

matching funds in the State of New Hampshire, are actively campaigning in the State of New Hampshire, and desire to participate in the February 23 debate. The exclusion of at least these three candidates is evidence that the newspaper is not providing fair and impartial treatment of candidates, and that the debate will result in the promotion or advancement of the included candidates over Senators Baker and Dole, and Representative Anderson. Thus, even if the regulations were applicable, and news media corporations could stage candidate debates, all three complaints give the Commission reason to believe that the February 23 debate as planned by the Nashua Telegraph would not be nonpartisan and would be in violation of 2 U.S.C. § 441b.

3. Relief Sought.

All three complaints seek to have the Commission expedite its enforcement procedures and to file suit for injunctive relief. Thus, the Commission must consider whether or not, consistent with the Act, its compliance procedures can be expedited in a case immediately prior to an election where irreparable harm will occur absent Commission action. In addition, the Commission must consider whether or not it should seek injunctive relief, either after a finding of reason to believe or under its 437d powers without such a finding.

A. Expedited Compliance Procedures.

Since the Amendments of P.L. 96-187, the Commission has not adopted revised expedited enforcement procedures. One 1979 amend-

2
4
1
5
2
0
4
0
2
0

SEND ONE COPY TO:
REGISTRAR OF MOTOR VEHICLES
100 WASHINGTON STREET
BOSTON, MASS. 02114

COMMONWEALTH OF MASSACHUSETTS
POLICE REPORT
OF MOTOR VEHICLE ACCIDENT

2-7

8-10

POLICE DEPT. SUBMITTING REPORT

EDGARD

18 Did you notice any indication that an operator was under medication or had been using drugs? (explain on reverse) Check one YES NO 1 2
To your knowledge has any operator had a history of epilepsy, heart disease, fainting, spells? (explain on reverse) YES NO 3 4

19 Was this Accident Investigated by an Officer? If Yes, Check One Box Below
1 Registry 4 State Police
2 MDC 5 Local Police
3 Other

11-15 Date of Accident: Mo. 7, Day 20, Yr. 69
16 Day of the Week: 1 2 3 4 5 6 7
17 Hour: A.M. P.M. 12-1

VEHICLE 1

VEHICLE 2

VEHICLE 3

OTHER

Name of Operator: KENNEDY, Edward M.
Street Address: 3 Charles St., Boston, Mass.
Owners Name and Address (if same, write "same"): Same, Room 2400, JFK Bldg, Government Center, Boston, Mass.
Describe Damage to Vehicle: Front windshield smashed, dent in roof and on hood

20 Number of Vehicles Involved: 1
21-26 Date of Birth: MO. 2, DAY 22, YR. 22
27 Sex: 1 M, 2 F
License Number and State: 28-29 040221W Mass.
Registration Number & State: L78-207 Mass.
Approximate Cost to Repair: Over \$200
Parked Car YES NO

Name of Operator:
Street Address: City/Town: State:
Owners Name and Address (if same, write "same"):
Describe Damage to Vehicle:

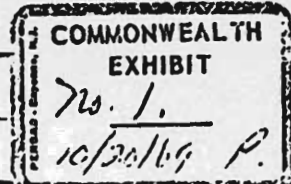
30-35 Date of Birth: MO. DAY YR. Sex: 1 M, 2 F
36 License Number and State: 37-38
Registration Number & State:
Approximate Cost to Repair: \$
Parked Car YES NO

Name of Operator:
Street Address: City/Town: State:
Owners Name and Address (if same, write "same"):
Describe Damage to Vehicle:

40-45 Date of Birth: MO. DAY YR. Sex: 1 M, 2 F
46 License Number and State: 47-48
Registration Number & State:
Approximate Cost to Repair: \$
Parked Car YES NO

Describe Other Property Damage:
Name of Property Owner:
Address:

Approximate Cost to Repair: \$
39 Number Injured:



INJURED 1

INJURED 2

INJURED 3

Name of Injured: KOPECHNE, Mary Jo
Street: 2912 Olive St. NW
City/Town: Washington, D.C.
40-42 Age: 28, Sex: 1 M, 2 F
43 Check if wearing Seat Belt: 1
44 Check if Wearing Helmet: 1
45 Severity: Killed 1 2 3 4
Visible signs of injury, as bleeding wound, or distorted member; or had to be carried from scene: 2
Other visible injury, as bruises, abrasions, swelling, limping, etc.: 3
No visible injury but complaints of pain or momentary unconsciousness: 4
46 Person Injured: 1 Operator } In vehicle 6
2 Passenger } No. 1 7
3 Passenger in train, bus, etc. 7
4 Operator } On Motorcycle 8
5 Passenger

Name of Injured:
Street: City/Town: State:
47-49 Age: 50, Sex: M, F
50 Check if wearing Seat Belt: 1
51 Check if Wearing Helmet: 1
52 Severity: Killed 1 2 3 4
Visible signs of injury, as bleeding wound, or distorted member; or had to be carried from scene: 2
Other visible injury, as bruises, abrasions, swelling, limping, etc.: 3
No visible injury but complaints of pain or momentary unconsciousness: 4
53 Person Injured: 1 Operator } In vehicle 6
2 Passenger } No. 7
3 Passenger in train, bus, etc. 7
4 Operator } On Motorcycle 8
5 Passenger

Name of Injured:
Street: City/Town: State:
40-42 Age: 43, Sex: M, F
43 Check if wearing Seat Belt: 1
44 Check if Wearing Helmet: 1
45 Severity: Killed 1 2 3 4
Visible signs of injury, as bleeding wound, or distorted member; or had to be carried from scene: 2
Other visible injury, as bruises, abrasions, swelling, limping, etc.: 3
No visible injury but complaints of pain or momentary unconsciousness: 4
46 Person Injured: 1 Operator } In vehicle 6
2 Passenger } No. 7
3 Passenger in train, bus, etc. 7
4 Operator } On Motorcycle 8
5 Passenger

BE SURE TO COMPLETE AND SIGN REPORT ON REVERSE SIDE

A. H. [Signature]

NOT: Make entries which apply. The diagrams and descriptions of what happened need not be completed if separate #1, 11 size ... with some detailed description is attached. Please sign report in ...

City of Town where Accident Occurred _____ Nearest Mile Marker _____ Reserved for Registry _____

Name of Road **Dike Road**

at intersection with _____ N. S. E. W. Of nearest intersection, bridge, mile marker, railroad.

Other Landmarks: **On bridge at Dike**

54 On ramp from route _____
 Off ramp from route _____
 At rotary

55 Area _____
 Area n.1 _____

56 Accident Involved Collision With:

1 Pedestrian 4 Railroad train
 2 Motor Vehicle in Traffic 5 Ran off roadway hit fixed object _____ feet from road
 3 Motor Vehicle Parked 6 Bicycle

7 Overturned in road
 8 Ran off roadway — non-collision
 9 Fixed object on shoulder, sidewalk or island
 A Other

57 If collision involved two or more vehicles mark one of the following:
 1 Rear end 2 Angle 3 Head on

What were vehicles doing prior to accident? Mark appropriate box.

Vehicle	1	2	3	Vehicle	1	2	3
1	<input checked="" type="checkbox"/>			8			
2				9			
3				A			
4				B			
5				C			
6				D			
7				E			

Where was pedestrian located at time of accident? Mark appropriate box.

1	X	61	X
1		7	
2		8	
3		9	
4		A	
5		B	
6		C	

62 Light Conditions

1	X
1	<input checked="" type="checkbox"/>
2	
3	
4	<input checked="" type="checkbox"/>

63 Traffic Controls

1	X	6	X
1		6	
2		7	
3		8	
4		9	<input checked="" type="checkbox"/>
5			

64 Weather Conditions

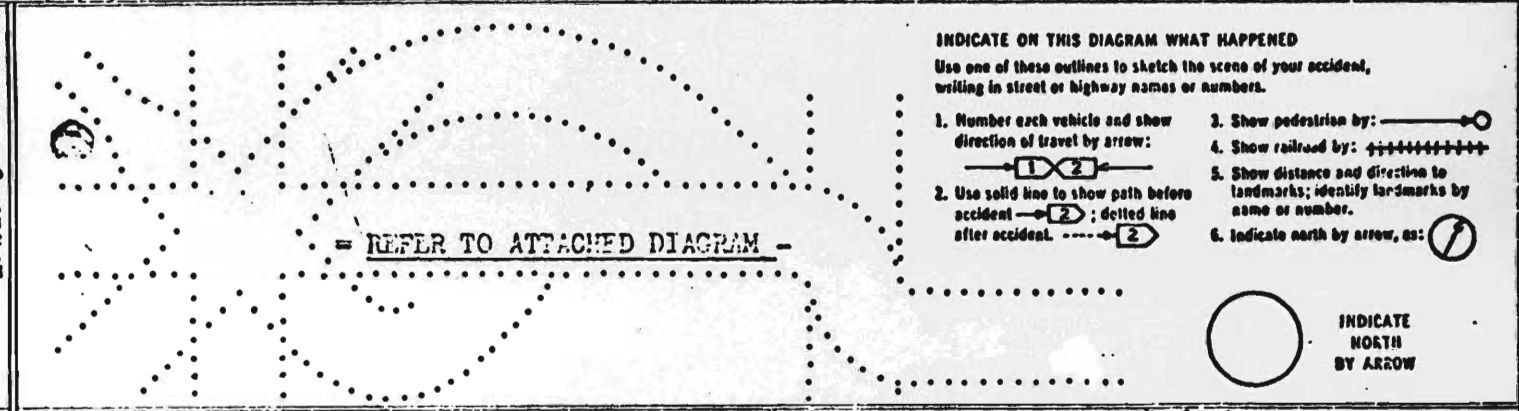
1	X
1	<input checked="" type="checkbox"/>
2	
3	
4	
5	
6	

65 Road Conditions

1	X
1	<input checked="" type="checkbox"/>
2	
3	
4	
5	

66

1	X	4	X	7	X	A	X	D	X
1		4		7		A		D	
2		5		8		B		E	
3		6		9		C		F	



Operator (mark one or more)

1	2	3	67-75
1			Operating Under Influence
2			Operating After Drinking
3			Exceeding Lawful Speed
4			Failed to Grant Right of Way to Other Vehicle
5			Failed to Grant Right of Way to Pedestrian

Operator	1	2	3
6			
7			
8			
9			
A			

Operator	1	2	3
B			
C			
D			
E			
F			

Operator	1	2	3
G	<input checked="" type="checkbox"/>		
H			
J			
K			
L			

Describe What Happened: (Refer to Vehicles by Number) Citation Number if issued **3022015**

Car #1 being operated East on Dike Road at unknown rate of speed - over stated he had taken wrong turn (refer to attached placement) and was operating on an unimproved road - this roadway is a dirt road approx. 2 car widths wide - Oper descended a bit on roadway and came to a narrow (10'6" wide) bridge which went off to the left from the roadway at about

Signature **Dominick J. Arancy, Chief, TigarTown PD** Date **7-21-69**

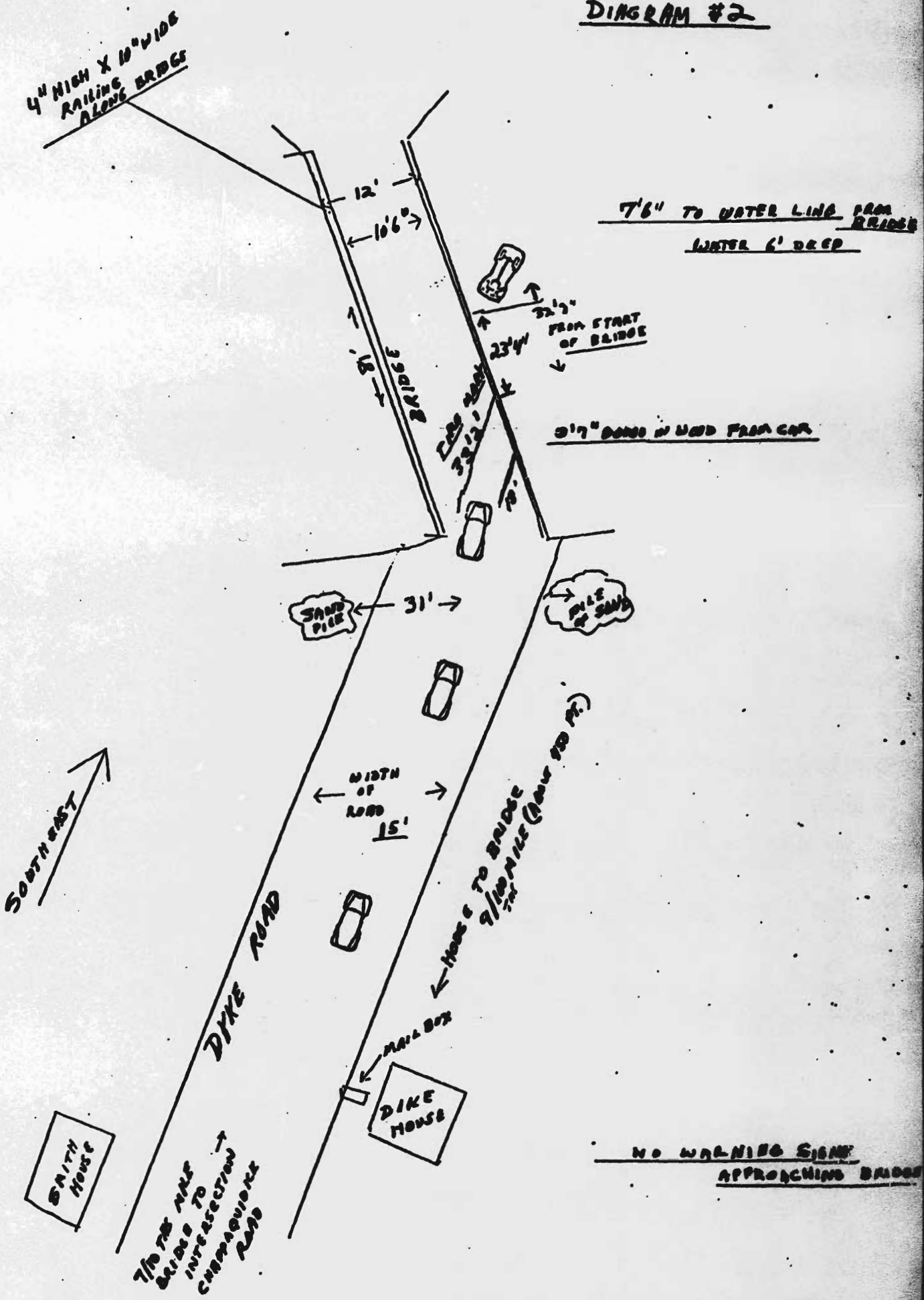
P

a 25-30 degree angle. Car 1 was unable to stop upon entering the bridge and hit the small running rail (approx. 4" high x 10" wide) which ran along sides of the bridge. The car went off the bridge and turned over landing in the water. There were no lights in the area of the bridge, no guard rails on the sides, no warning signals approaching the bridge. This bridge is usually used for foot traffic. The operator stated that he was able to get out of the car and then made return trips into the water in an attempt to rescue the girl passenger but was unsuccessful. The operator stated that he had been in a state of shock and exhaustion after the accident and when he fully realized what had happened came to the police station to report same. At the station the invest. officer received the following statement from the operator:

"On July 18, at approx. 11:15 PM on Chappaquidick Island, Martha's Vineyard, I was driving my car on Main St. on my way back to get the ferry to Edgartown. I was unfamiliar with the road and turned right on Dike Road instead of bearing hard left on Main St. After proceeding for approx. 1/2 mile on Dike Road I descended a hill and came upon a narrow bridge. The car went off the side of the bridge. There was one passenger with me, one Miss Mary Jo Kopechne former secretary of my brother Robert Kennedy. The car turned over and sank into the water and landed with the roof resting on the bottom. I attempted to open the door and window of the car but have no recollection of how I got out of the car. I came to the surface and then repeatedly dove down to the car in an attempt to see if the passenger was still in the car. I was unsuccessful in the attempt. I was exhausted and in a state of shock. I recall walking back to where my friends were eating. There was a car parked in front of the cottage and I climbed in the back seat. I then asked for someone to bring me back to Edgartown. I remember walking around for a period of time and then going back to my hotel room. When I fully realized what had happened this morning I immediately went to the police."

Chief Arena first received word of the accident at approx. 8:20 AM when a call from a Mrs. Sylvia Malm was made to the Edgartown Police Station concerning a report received by her at her home from 2 boys who had been fishing on the Dike Road Bridge that they had spotted a car in the water upside down. The invest. officer arrived at the scene and upon observing the car for the first time found it almost completely submerged, part of the left rear tire was above water - the invest officer entered the water and swam to the car but because of the strong tide each time he went under he was unable to determine whether or not anyone was in the car. Assistance was then requested from the Edgartown Fire Dept. scuba squad and one John Farrar came to the scene and was able to enter the car and with the assistance of the invest. officer remove the body from the car. The victim was a young lady, dressed in white blouse, black slacks, and sandals; she was dead when removed. Dr. Donald Mills, MD, of Edgartown, an associate Medical Examiner was notified and came to the scene and pronounced the victim (Miss Mary Jo Kopechne, 28, of 2912 Olive St., Washington, D.C.) dead of accidental drowning. Her body had been found in the rear of the car. Her body was ordered removed to the Martha's Vineyard Funeral Home. Also at the scene of the invest. were Registry Inspectors George Kennedy and Robert Molla. The car was found to be registered to Sen. Edward Kennedy, U.S. Bldg., Boston. and a radio alert was put out to locate the Senator as at the time of the accident the girl's identify had not yet been established. In the course of this Chief Arena called his office regarding this alert and at this time was notified that the Sen. was at the police office. Chief talked with him and Sen. advised that he would like to see the Chief at Police Station - Chief went there and at this time the Sen. advised that he had been the operator of the vehicle, and gave the above statement in regards to the accident. This was at about 9-10 A.M. and the accident was believed to have happened sometime between 12 Mid and 1 A.M. The whereabouts of the senator in the meantime was covered only in the above statement. It was felt that because of the evidence at the scene, condition of the roadway and accident scene that there was no negligence on the part of the operator in the accident. However due to the span of time involved between the time of the accident and the report of same by the operator a citation was issued to the operator citing violation of Chap. 90-24, leaving the scene. The complaint application was made on Monday, July 21, 1969 at 10:00 AM and at this time the complaining officer was advised that the defendant had requested a hearing before the complaint would issue and the hearing was schedule for July 28, 1969 in the early afternoon.

KENNEDY ACCIDENT
DIAGRAM #2





Research Engineers, Inc. CONSULTING ENGINEERS

REI FILE NO. 79-2188

**RESULTS OF AN INVESTIGATION OF VEHICLE DYNAMICS IN A PLUNGE
FROM THE SIDE OF A NARROW BRIDGE**

Investigation Conducted

for

Reader's Digest
Washington, D. C.

By

Raymond R. McHenry
Raymond R. McHenry
Staff Scientist

December 1979

P.O. Box 12072 Research Triangle Park, North Carolina 27709 (919) 549-8346

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1.0 SUMMARY

In the subject accident, the path of the vehicle across the Dike Bridge was produced by a tangential departure from the 150-foot radius left turn preceding the bridge. The alignment of the reported tire marks in relation to the centerline of the approach road clearly indicates that the approach to the bridge was made in the left lane of the approach road and, further, that a hard application of the brakes occurred at a point at least 17 feet before contact with the bridge. Locked front wheels prevented steering control as the vehicle skidded approximately 25 feet along and across the wooden bridge prior to vaulting from the right side of the bridge.

At entry to the final left turn leading to the bridge, the speed of the accident vehicle was approximately 34 ± 4 miles/hour. The hard brake application that preceded contact with the bridge reduced its speed at the point of departure from the bridge to approximately 25 ± 3 miles/hour.

The cited findings are based on an analysis of the reported physical evidence from the accident, which has included the use of a computer simulation program (see Appendix). The direction of motion and the distance traveled from the edge of the bridge to the reported landing area on the channel bottom (approximately 35 feet of travel by the center of gravity) are the primary items of evidence upon which the speed estimates are based. The contacted portion of the bridge includes

surfaces that are inclined upward and also a 5 1/2" high rub-rail that was mounted by the vehicle. The computer program which was applied includes approximations of effects produced by the cited bridge features on the upward launch angle of the vehicle center of gravity.

The indicated ranges in the speed estimates reflect an allowance for a corresponding lack of precision in some of the reported evidence. They also reflect allowances for omission of effects on the final landing position that were produced by travel through the approximately 6-foot depth of water and for use of a simplified analytical treatment of friction and plowing forces produced by contact with the channel bottom.

As part of the analysis, a computer line drawing film was prepared. It graphically illustrates the reconstructed sequence of events (see Appendix).

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2.0 MATERIALS REVIEWED

Police report prepared by D. J. Arena.

Inquest testimony related to scientific studies and analyses
(A. D. Little study).

Inquest testimony of scuba diver and investigating officers.

Accident report prepared by George W. Kennedy.

Testimony of D. J. Arena and John N. Farrar in Petition for
Exhumation and Autopsy.

Scene sketches prepared by George W. Kennedy and D. J. Arena.

Photographs of accident vehicle and accident scene.

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APPENDIX3.0 DESCRIPTION OF METHODOLOGY APPLIED IN THE ACCIDENT RECONSTRUCTION

Computer simulation is a process whereby mathematical equations that define relationships and interactions among the various parts of a complicated system are solved simultaneously to predict the behavior of the system. In some forms of systems that are simulated, the equations are purely empirical or are based on hypothesis. However, for mechanical systems, the governing relationships are based on fundamental physical laws (i.e., Newtonian dynamics of rigid bodies) and on measured experimental data (e.g., the force-generating properties of components).

The Highway Vehicle Object Simulation Model (HVOSM) computer program that has been applied in this accident study was originally developed in 1968 for the purpose of supplementing test procedures in highway safety research (Ref. 1). Development of the computer program was sponsored by the Federal Highway Administration, U. S. Department of Transportation.

In view of the requirement for generality of motions in realistic near-accident and accident situations, the HVOSM program was designed to permit the simulation of general, three-dimensional vehicle motions. The analytical approach is similar to that used for aerospace vehicles. However, the force-generating properties of tires, in contact with either

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smooth or irregular terrain surfaces, required the development of a detailed analytical representation of the tires and the use of tables to define the terrain surface. The computer program was developed in digital form, in the Fortran IV language. In this form, the relative ease of adaptation to a variety of computers has led to the distribution, by the sponsor, to a large number of research organizations in the time period since 1968.

During the past ten years, the validity and accuracy of the HVOSM vehicle simulation have been rigorously established by comparisons of response predictions with test results in a variety of applications. In particular, the applications have included impacts with curbs and concrete median barriers, violent skidding maneuvers and even thrill show ramp jumps (Ref. 2).

In applications, the equations defining three-dimensional motions of the vehicle in response to steering and throttle or braking control inputs and to terrain irregularities (e.g., bumps, curbs, etc.) are solved at closely spaced intervals of time throughout the duration of the maneuver. The solution time intervals typically range between 0.001 and 0.010 seconds, depending on the event being simulated. The detailed motion predictions are printed out in a tabular format.

The application procedure may be viewed as being equivalent to the performance of experiments with a fully instrumented vehicle. It permits variation of a single item in the vehicle or terrain definitions while

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identically repeating everything else in a given application run. In vehicle experiments, it is generally not possible to achieve identical repetition of all test conditions. Thus, an experimental measurement of the effects of changing a single item of the overall vehicle-terrain system requires that a series of test runs be performed both before and after the change to isolate response differences related to the change.

In applications to accident reconstruction, the computer simulation program permits an investigation of the initial direction of motion, the vehicle speed and control inputs by means of comparisons of the predicted rest position, trajectory, tire marks and contact points with corresponding items of physical evidence.

A computer graphics display of the predicted vehicle behavior has been developed to ease the task of interpreting the extensive output information. The display produces detailed perspective drawings of the vehicle and terrain, or obstacles, as seen from selected viewing positions and at selected intervals of time during a simulated maneuver or collision. Such a display has been found to be extremely valuable as an aid for program development, for understanding complex motions and for presenting results.

The primary benefit provided by the computer simulation technique in reconstructing the subject accident has been in approximating the effective elevation angle of the launch from the side of the inclined

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bridge surface. In the manner of a simple ballistic trajectory, the horizontal distance traveled to the landing area at a given vehicle speed is determined by the launch angle and by the change in height between the launch point and the landing area. The separate times of departure of the four wheels from the inclined right-side rub-rail and the contact of the vehicle underside with the rub-rail prolong and complicate the launch process from the viewpoint of an application of simple ballistic calculations.

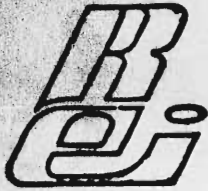
Horizontal movement of the vehicle subsequent to contact with the channel bottom was resisted both by drag created by motion through the water and by friction and plowing forces produced by the side, roof and hood contacts that stopped the vertical motion and then supported the vehicle weight. The applied simulation in its present form does not include the drag effects of the water. Also, the resistance to movement produced by contact with the channel bottom was approximated by means of a simple friction coefficient on a flat, horizontal surface. Thus, the predicted extent of horizontal movement subsequent to contact with the channel bottom tends to be greater than actual. Variations in the predicted rest position that are introduced by the cited motion-resisting factors are reflected in the range of the speed estimate at point of brake application.

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4.0 REFERENCES

1. McHenry, Raymond R., "An Analysis of the Dynamics of Automobiles During Simultaneous Cornering and Ride Motions," Proceedings of the Symposium on Handling of Vehicles Under Emergency Conditions, Institution of Mechanical Engineers (London), Loughborough University of Technology, 8 January 1969.
2. McHenry, Raymond R., "The Astro Spiral Jump - An Automobile Stunt Designed via Simulation," Society of Automotive Engineers Transactions, 1976.

8 1 0 4 0 2 5 1 5 5



Research Engineers, Inc. CONSULTING ENGINEERS

Resume
of
Raymond R. McHenry

July 1978

Professional Experience

1978 to date. Staff Scientist, Research Engineers, Inc., Research Triangle Park, North Carolina. Technical duties: Application of analytical and experimental techniques to the reconstruction of vehicle and occupant dynamics in highway collisions. Evaluation and analysis of vehicle defects and failure modes. Performance of research related to highway safety.

1961 to 1978. Staff Scientist, Calspan (Formerly Cornell Aeronautical Laboratory, Inc.), Buffalo, New York. Technical duties: As a Staff Scientist with Calspan Field Services, Inc., and previously with Calspan Corporation, Mr. McHenry was responsible for the technical direction of a variety of research projects related to the improvement of highway safety. He has been involved in the application of analytical and experimental techniques to the problems of occupant protection in collisions and has analyzed automobile dynamics in single vehicle accidents and in violent evasive maneuvers. He also served as the Principal Investigator on the development of techniques for analytical reconstruction of highway accidents (Simulation Model of Automobile Collisions (SMAC) and Calspan Reconstruction of Accident Speeds on the Highway (CRASH)).

Mr. McHenry developed techniques for study of physical criteria for roadside structures and cross-section designs by mathematically modeling the dynamics of single vehicle accidents (Highway Vehicle Object Simulation Model (HVOSM)). He has performed analyses and developed computer simulations of the dynamics of automobile braking and of the ride and steering dynamics of the Westinghouse Transit Expressway Vehicle. He has studied advanced technology applicable to highway transportation in the Boston-Washington Corridor in 1980. He has developed a nonlinear mathematical model of the automobile crash victim and mathematical models of highway guardrails and test vehicles for simulation of impact.

1960 to 1961. Technical Advisor, American Machine & Foundry Company, Greenwich, Connecticut. Technical duties: Mr. McHenry was technical advisor on the design of vehicles for aircraft cargo loading (Air Force 463L System).

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1956 to 1960. Senior Design Engineer, Ford Motor Company, Dearborn, Michigan. Technical duties: Senior Design Engineer and project engineer on programs involving experimental hydropneumatic suspension vehicles, air suspension vehicles, and stroke-sensitive shock absorber design and development. Member of the Ford Advanced Ride and Handling Committee.

1953 to 1956. Chrysler Corporation, Highland Park, Michigan. Technical duties: Participated in various experimental suspension and chassis component design and development programs. He also served as a mathematics instructor in calculus, analytic geometry and algebra (Lawrence Institute of Technology, Chrysler Institute, Detroit).

Education

Graduate Studies, State University of New York, 1962, 1964.

Graduate Studies, Cornell University, 1961.

Master of Science Degree, Automotive Engineering, Chrysler Institute, 1955.

Bachelor of Science Degree, Engineering Physics, University of Maine, 1953.

Professional Activities and Honors

Registered Professional Engineer, Connecticut, No. 5207

Sigma Xi

Tau Beta Pi

Crompton-Lanchester Medal of the Automobile Division, The Institution of Mechanical Engineers (London), 1968-1969.

The Safety Award in Mechanical Engineering, The Institution of Mechanical Engineers (London), 1969.

"Man of the Year" Award, 1967, from Science & Technology on the Niagara Frontier, official publication of the Technical Societies Council.

American Men and Women of Science, 12th Edition, The Physical and Biological Sciences.

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Selected Publications (from a total of 33 technical papers and 39 technical reports)

1. "Analysis of Spring Installations for Low-Frequency Suspension of Vehicles" Industrial Mathematics, Vol. 10, Part I, 1960, Industrial Mathematics Society, Detroit, Michigan.
2. "Research for Better Barriers - Analytical Prediction of Highway Barrier Performance Confirmed by Crash Testing," Research Trends, Vol. X, No. 3, 1962, Calspan Corporation.
3. "Analysis of the Dynamics of Automobile Passenger-Restraint Systems" Seventh Stapp Car Crash Conference, University of California and University of Minnesota, Playa del Rey, California, 11-13 November 1963.
4. "Highway Guardrails - A Review of Current Practice," National Cooperative Highway Research Program Report 36, Transportation Research Board, Washington, D.C., 1967 (with N. J. DeLeys).
5. "Computer Simulation of Single Vehicle Accidents," Society of Automotive Engineers Transactions, 1968 (with D. J. Segal and N. J. DeLeys).
6. "An Analysis of the Dynamics of Automobiles During Simultaneous Cornering and Ride Motions," Proceedings of the Symposium on Handling of Vehicles Under Emergency Conditions, Institution of Mechanical Engineers (London), Loughborough University of Technology, 8 January 1969.
7. "Mathematical Models for Injury Prediction," Impact Injury and Crash Protection (Charles C. Thomas, publisher), Springfield, Illinois, 1970.
8. "A Review of the Current State of the Art of Automobile Structural Crashworthiness," 1970 International Automobile Safety Conference Compendium, Society of Automotive Engineers, 1970 (with P. M. Miller).
9. "Multidegree, Nonlinear Mathematical Models of the Human Body and Restraint Systems: Applications in the Engineering Design of Protective Systems," Symposium on Biodynamic Models and Their Applications, Wright-Patterson Air Force Base, Dayton, Ohio, 26-28 October 1970.
10. "An Analytical Aid for Evaluating Highway and Roadside Geometrics," Highway Research Record Number 371, National Research Council, National Academy of Sciences, Washington, D.C., 1971 (with N. J. DeLeys and J. P. Eicher).

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11. "Research in Automobile Dynamics - A Computer Simulation of General Three-Dimensional Motions," Society of Automotive Engineers Transactions, 1971.
12. "Approximation of Impact Conditions Via Computer Simulation," Paper presented at the NATO Conference on Accident Investigation, Brussels, Belgium, June 28-29, 1973.
13. "A Computer Program for Reconstruction of Highway Accidents," Proceedings of the Seventeenth Stapp Car Crash Conference, Oklahoma City, Oklahoma, November 12-13, 1973.
14. "A Comparison of Results Obtained With Different Analytical Techniques for Reconstruction of Highway Accidents," Society of Automotive Engineers, International Automobile Engineering and Manufacturing Meeting, Detroit, Michigan, October 13-17, 1975.
15. "The CRASH Program: A Simplified Collision Reconstruction Program," presented at the Motor Vehicle Collision Investigation Symposium, October 6-10, 1975, at Calspan Corporation, Buffalo, New York.
16. "The Astro Spiral Jump - An Automobile Stunt Designed via Simulation," SAE Paper No. 760339, Automotive Engineering Congress & Exposition, Detroit, Michigan, February 23-27, 1976.
17. "Computer Aids for Accident Reconstruction," Society of Automotive Engineers No. 760776, 1976 SAE Automobile Engineering and Manufacturing Meeting, October 18-22, 1976.

8104025159

**FOURTH DAY
INDEX AND OPENING COLLOQUY**

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.

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

Edgartown, Massachusetts.
Thursday, January 8, 1970.

OPENING COLLOQUY

THE COURT: Mr. Stenographer, we will accept Exhibit No. 26 entitled Offer of Proof on behalf of Edward M. Kennedy.

(offer of Proof marked Exhibit No. 26.)
THE COURT: You note Exhibit No. 27, Affidavit of Dr. Robert T. Watts is accepted as testimony and made part of the record hereof.

(Affidavit of Dr. Robert T. Watts marked Exhibit No. 27.)
THE COURT: Exhibit No. 28, Affidavit of Donald L. Sullivan is accepted as testimony and made a part of the record hereof.

(Affidavit of Donald L. Sullivan marked Exhibit No. 28.)
THE COURT: Exhibit No. 29, Affidavit of Eugene D. Jones is accepted as testimony and made a part of the record hereof.

(Affidavit of Eugene D. Jones marked Exhibit No. 29.)
THE COURT: Exhibit No. 30, being a plan of Dyke Road.

(Plan of Dyke Road marked Exhibit No. 30.)
THE COURT: Exhibit 31, Attested Record of Proceedings in the Court of Common Pleas, Lucerne County, Pennsylvania.

(Attested Record of Proceedings, Court of Common Pleas, Lucerne County, Pennsylvania, marked Exhibit No. 31.)
THE COURT: I see no need, Mr. Hanify, for the books.

They refer to abstracts in the affidavits and so I return these to you.

MR. HANIFY: Thank you, your Honor.

THE COURT: Now, it will be helpful to me and to the record if we had a description of the Oldsmobile with particular reference to its width and its length. To my memory it does not appear anywhere in the testimony and I will accept an affidavit as to that.

I will ask for a better understanding of the record and there be submitted by somebody some kind of a plan or map of the island of Chappaquiddick. I just have a memory that there are some plans.

MR. DINIS: Well, perhaps the department of the Town of Edgartown has maps which show the roads and the beaches rather in detail. We can either obtain them locally from the town or the Commonwealth.

THE COURT: There is an excellent map right now in the so-called jury room, several on the wall as a matter of fact, which has something to do with the planned development of Dukes County, something to do with the Economic Commission. Unfortunately, they are large, but it contains the general idea of the shape of the island, size of the island, the ferry, the road to the ferry running all the way by this cottage, the so-called Dyke Road, the bridge, the so-called East Beach.

MR. DINIS: I will assume that responsibility, your Honor. I will obtain one for your Honor, which will probably be one prepared by the Engineering Department of the Department of Public Works concerning Chappaquiddick Island.

THE COURT: Anything that may be helpful in that respect I would make a part of the record.

MR. DINIS: Does your Honor wish to give it a number at this time as an exhibit, or will it just be marked when you receive it?

THE COURT: Well, I can give it a number on your assurance that you get it.

MR. DINIS: You have my assurance, your Honor.

THE COURT: Give it the next number.
(Map of Chappaquiddick Island marked Exhibit No. 32.)

MR. HANIFY: I assure your Honor I will endeavor to get a description of the Oldsmobile along the lines you suggested, length and width and perhaps that can be given a number.

THE COURT: All right. Give it the next number.
(Description of Oldsmobile marked Exhibit no. 33.)

THE COURT: I think that is all we require of Mr. Hanify and Judge Clark.

MR. HANIFY: Thank you, your Honor.

MR. CLARK: Thank you, your Honor.

THE COURT: At the moment.

COMMONWEALTH OF MASSACHUSETTS

Dukes, ss. District Court of
No. 15220 Dukes County

AFFIDAVIT OF DOCTOR ROBERT D. WATT

Now comes Robert D. Watt, of Hyannis, Massachusetts and on oath deposes and says as follows:

I am a physician duly licensed and qualified to practice medicine in the Commonwealth of Massachusetts, with offices at Cape Cod Medical Center, Hyannis.

I graduated from Tufts University with a BS in Biochemistry in 1943, graduated thereafter from Tufts Medical School in 1947. I interned at the Bridgeport Hospital in Bridgeport, Connecticut and at the Cape Cod Hospital in Hyannis. From 1951 through 1953 I served in the United States Air Force, as Wing Surgeon of the 103rd Fighter-Bomber Wing (Suffolk, R.I.) and was the Commanding Officer of the Medical Detachment at Fifth Air Force Headquarters, Seoul, Korea. I am a graduate of the School of Aviation Medicine, Randolph Field, Texas. I attended the Cook County Graduate School of Medicine in Chicago, Illinois, where I took specialized training in trauma and traumatic surgery. Thereafter, I was the Associate Chief of Trauma, Cape Cod Hospital. I have been in practice for 21 years in Hyannis in the field of general medicine.

I am a Diplomate of the National Boards. I am also a Fellow of the American Geriatric Society.

On July 19, 1969, I was called to see Edward M. Kennedy at his home. His chief complaints were headache, neck pain, generalized stiffness and soreness.

The history of the present illness was as follows: He stated that he had been in an auto accident last night on Martha's Vineyard. The car went off a bridge. There is a lapse in his memory between hitting the bridge and coming to under water and struggling to get out. There was a loss of orientation - at the last moment he grabbed the side of an open window and pulled himself out. He was not clear on the events following but he remembered diving repeatedly to check for a passenger - without success. He went for help and returned. Again, effort to rescue passenger was without success. He was driven to the ferry slip and swam to the main body of land. He went to his hotel where he slept fitfully until 7:00 a.m.

Physical examination revealed his vital signs and neurological examination to be within normal limits. Positive findings included a one-half inch abrasion and hematoma over the right mastoid, a contusion of the vertex, spasm of the posterior cervical musculature with tenderness over the fifth and sixth cervical vertebrae (the area just above the nape of the neck), motion of his head was limited and was accomplished with difficulty, tenderness and soreness of the lumbar area without radiation.

Diagnosis: Concussion, contusions and abrasions of the scalp, acute cervical strain. The contusion of the vertex was demonstrated by tenderness and a spongy swelling at the top of his head. The abrasion over the right mastoid was obvious. The acute cervical strain was substantiated by X-ray studies which showed a loss of the normal cervical

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lordosis, which was due to spasm of the cervical musculature. The diagnosis of concussion was predicated on the foregoing objective evidence of injury and the history of the temporary loss of consciousness and retrograde amnesia. Impairment of judgment, and confused behavior are symptoms consistent with an injury of the character sustained by the patient.

Therapy: Bed rest and a muscle relaxant.

July 20, 1969, I was in contact with Senator Kennedy by telephone on this day, and as there was no change in his symptoms, I advised him to continue bed rest and planned to see him on the following day.

July 21, 1969, I went to the home of Senator Kennedy and found his physical condition to be unchanged. I recommended at that time that we X-ray his skull and cervical spine, and this was accomplished later at the Cape Cod Medical Center.

After reviewing the X-rays, in which there was obvious evidence of an acute cervical strain, I fitted him to a cervical collar. The reports of the roentgenologist are attached hereto and made a part hereof as Exhibit A.

Because of these findings, I felt that neurosurgical consultation was indicated and then contacted Dr. Milton F. Brougham. Dr. Brougham is the Chief of Neurosurgery at the Faulkner Hospital, the Carney Hospital, the Jordan Hospital and the Cape Cod Hospital.

On July 22, 1969, Dr. Brougham and I visited the Senator at his home, and a complete neurosurgical consultation was accomplished. A copy of Dr. Brougham's consultation note, which is a part of my record, is attached hereto and made a part hereof as Exhibit B.

As a result of his examination, Doctor Brougham felt that further studies were indicated.

Accordingly, on July 23, 1969, a technician and I went to the home of Senator Kennedy and did an electroencephalogram. A copy of this report is attached hereto, made a part hereof and marked Exhibit C.

In the afternoon of the same day, Doctor Brougham and I went to the Senator's home, where a lumbar puncture was attempted but was unsuccessful. There were technical difficulties here due to an old injury to the Senator's lumbar spine.

This was the last time that I examined Senator Kennedy but I was in contact with him later and found that the stiffness of his neck continued well over a month.

Robert D. Watt

Then personally appeared before me the above named Robert D. Watt and made oath that the foregoing statement subscribed to by him is true to the best of his knowledge and belief.

Robert G. Clark, Jr.
Notary Public

My commission expires Feb. 26, 1976

EXHIBIT A
CAPE COD MEDICAL CENTER
Incorporated
Hyannis, Massachusetts

X-Ray
775-8491

X-ray Report

Kennedy, Senator Edward

7/22/69
Dr. Watt

Skull studies were made in the usual four positions as well as an exposure for the base.

I saw no definite evidence of fracture or depression.

Incidentally, the squamous suture was rather prominent on the right side.

In general, the paranasal sinuses as well as both mastoids were clear, the sella turcica was normal in size and contour and there were no intracranial calcifications.

CONCLUSION: Negative skull

E. W. Benjamin, M.D.
Radiologist

CAPE COD MEDICAL CENTER

Incorporated
Hyannis, Massachusetts

X-Ray Report

X-Ray
775-8491

Kennedy, Senator Edward M.

7/22/69
Dr. Watt

Cervical Spine Studies from the first to the seventh were negative for fracture, compression or spondylolisthesis.

The only finding of note was marked straightening of the spine in the lateral projection.

CONCLUSIONS: The studies of the cervical spine were negative for fracture.

The only finding of interest was the straightening of the spine in the lateral projection, indicative of rather marked muscle spasm.

E. W. Benjamin, M.D.
Radiologist

EXHIBIT B

July 22, 1969

KENNEDY, Senator Edward

This patient was given a neurological examination in the presence of Dr. Robert Watt as a result of injuries which he sustained in an automobile accident which occurred on July 18, 1969. In describing his recollection of the events occurring at this time, he states that he can recall driving down a road and onto a bridge, and has some recollection of the car starting off the bridge which he thinks was a realization that the car had struck a beam along the side of the bridge; however, he remembers nothing immediately following this, has no recollection of the car turning over, or of any impact of the car against water or any solid object. There is a gap in his memory of indeterminable length, but presumably brief and his next recollection is of being in the front seat of his car which was filling with water. He somehow escaped from the car, but does not know how he did this. He states further that he can recall making repeated efforts to get back to the car by diving. Subsequent events are recalled in a somewhat fragmentary fashion with an impaired recall of their exact time relationships.

On awakening the following morning he was aware of pain in his neck which extended up both sides of the neck, but was more pronounced on the right side extending up into the sub-occipital area. There was also stiffness and pain in his neck, the pain radiating down into the trapezius area bilaterally, and into the scapulae, but without any radiation of pain into his arms. On several occasions he had intermittent numbness in both hands, but this cleared within the first twenty-four hours. He had a generalized headache, but with local tenderness and swelling over the top of his head, and over the right occipito-parietal region.

He also had a strange sensation in both ears which was difficult to describe, but which was not acutely painful and which cleared after about twenty-four hours. His headache cleared rapidly, but he continues to have pain and stiffness in his neck aggravated by activity and turning his head, and at times when the neck pain becomes more pronounced he will experience the headache. He has worn a cervical collar on the advice of Dr. Watt, and has obtained some relief from this. He has noted a tendency to fatigue easily; however, he has had no nausea or vomiting; no vertigo; no syncopal attacks. He also had increased low back pain, but there is no radiation of pain into his legs. There is no disturbance of vision.

The past history is non-contributory. There is a previous history of a severe back injury for which he has worn a back brace for a number of years, and he was wearing it at the time of the examination.

Neurological examination: At the time of this examination the patient is alert and fully oriented. Speech is normal. Examination of the scalp reveals a zone of tenderness approximately 3 cm. in diameter over the mid point of the vertex of the skull with slight elevation of the scalp

over the surrounding tissue in this zone. There is also an area of swelling and discoloration of the skin behind the right mastoid extending upward and medially from the tip of the mastoid, a distance of about 3 to 4 cm. Over the top of this zone which is quite sensitive to pressure there is a linear excoriation of the skin which is 2 cm. in length. Light pressure in this area causes pain extending up into the occipital area as well as down the right side of the neck. There is no occipital tenderness on the left side. There is limitation of extension of the neck to approximately one-half the normal range. Flexion is carried out through an essentially normal range, and there is moderate limitation of lateral rotation to either side somewhat more to the right than to the left. There is tenderness over the posterior cervical region maximal at the level of the C5-6 and C6-7 interspaces in the midline. There is no scapular tenderness. There is good strength in all extremities. Deep tendon reflexes are brisk and symmetrically active, except that the knee jerks are not obtained. Plantar responses were flexor bilaterally. There is limitation of flexion and extension of the low back, although detailed testing of these movements is not carried out. There is a deformity in the mid lumbar region with offsetting of the spinous processes secondary to his old back injury. No gross sensory deficit. No cerebellar signs. Gait is normal. There is slight swaying on the Romberg test. The cranial nerves are completely intact. The fundi are negative. There is no nystegmus.

X-rays of the cervical spine and skull were reviewed. The skull films were negative for fracture. Cervical spine films showed straightening of the cervical column with absence of cervical lordosis consistent with acute spasm of the cervical musculature.

Diagnosis: Cerebral Concussion. Contusions and Abrasion of Scalp. Acute Cervical Strain.

Comment: This patient gives a history of loss of consciousness and retrograde amnesia sustained at the time of his accident, and the occurrence of the head injury is corroborated by the contusions of the scalp over the vertex and in the right mastoid area. There is also still evidence on examination of an acute cervical strain. I would advise that an electroencephalogram be obtained, and, also, if feasible, a lumbar puncture should be obtained to rule out any elevation of spinal fluid pressure, or evidence of previous bleeding in the subarachnoid space which may still be present.

Milton F. Brougham, M.D.

EXHIBIT C
THE BOSTON NEUROLOGICAL LABORATORY, Inc.
264 Beacon Street
Boston, Massachusetts 02116

Kennedy, Senator Edward M.	25325
None	37 years
Fair/Tense	July 23, 1969
Awake	12:00 p.m.
Breakfast	Right
Dr. R. Watt, Dr. R.C. Feldman, Dr. M. F. Brougham.	
Auto Accident 7/21/69, Brace on neck. Headaches. Contusion behind right ear.	

This Electroencephalogram is taken with the patient in a tense and waking state. It contains 8-9 cps. Alpha waves intermixed with 4-7 cps. Theta waves without amplitude or frequency asymmetries. A great deal of eye movement and muscle artifact is seen, especially in the anterior leads. Electrode resistance artifact is recognized. Hyperventilation produced no abnormal responses. Slight increase in the amount of slowing (4-7 cps.) in scattered fashion in temporal leads was observed.

IMPRESSION:

Within normal limits.

Robert G. Feldman, M.D.

C: Milton F. Brougham, M.D.
CC: Robert G. Feldman, M.D.
Robert Watt M.D.

AFFIDAVIT OF DONALD L. SULLIVAN

I, Donald L. Sullivan, being duly sworn, depose and say:
1. I am a resident of Massachusetts, living at 17 The Valley Road, Concord, Massachusetts and am a physicist by occupation, employed by Arthur D. Little, Inc., Acorn Park, Cambridge, Massachusetts.

I have received the Bachelor of Science and Master of Science degrees in Electrical Engineering from MIT in 1953 and Master of Science in Applied Physics from Harvard University in 1963.

I have been employed at Arthur D. Little, Inc. from October of 1961 to the present date.

I have worked as a part of a group in the preparation of a study which is described in a report entitled "Physical Factors Involved in the July 18, 1969 Accident on Dyke Bridge, Chappaquiddick Island, Edgartown, Martha's Vineyard, Massachusetts" prepared for Mr. Robert G. Clark, Jr., dated October 10, 1969. While engaged in working on the aforesaid study, I personally participated in the gathering, evaluation and presentation of the data found on page 4 and pages 49 through 55 of the aforesaid Report, copies of which are attached hereto and incorporated herein by reference.

The facts stated on page 4 and pages 49 through 55 of the aforesaid Report are true and correct to the best of my knowledge and belief, and the judgments and conclusions contained in that part of the Report represent my best professional opinion and judgment.

The entire Report was prepared under the direct supervision and control of Doctor Richard S. Stone, who has a BS degree in Physics from Rensselaer Polytechnic Institute, an MS degree in Physics from Rensselaer Polytechnic Institute in 1950 and a Ph.D. in Physics from Rensselaer Polytechnic Institute in 1952.

Donald L. Sullivan

COMMONWEALTH OF MASSACHUSETTS-
COUNTY OF DUKES: ss

Subscribed and sworn to before me on this 5th day of January, 1970.

Robert G. Clark, Jr.
My Commission expires on Feb. 26, 1976.

CONFIDENTIAL TO COUNSEL

PHYSICAL FACTORS INVOLVED IN THE JULY 18, 1969 ACCIDENT ON DYKE BRIDGE, CHAPPAQUIDDICK ISLAND, EDGARTOWN, MARTHA'S VINEYARD, MASSACHUSETTS.

Prepared for

MR. ROBERT G. CLARK, JR.

Page 4

Approaching the bridge, the road is straight for at least 3/10 of a mile except for the last 150 feet. A 1% downgrade extends from 630 feet to within 100 feet of the bridge. Vegetation on the right at a distance of about 120 feet from the bridge forces one to turn to the left, so that high-beam headlights do not illuminate the bridge at this point. Just as one turns back to the right at between 90' and 30' from the bridge, one's lights are deflected sharply upward so that again the bridge is not illuminated. The rapid right turn, left turn, and sharp upward deflection are not only distracting but also make it difficult to see the bridge before one is on it.

VI. INVESTIGATION OF THE TIME AND DISTANCE, TERRAIN AND VISUAL FACTORS BEARING ON THE KENNEDY ACCIDENT

During the night of July 18, 1969, we have assumed that the weather was clear and we have been unable to find anyone who can tell us whether or not there was a ground or haze in the vicinity of the bridge on this particular evening. There was a Crescent moon. A calculation of moonset for the latitude and longitude of Chappaquiddick based on data from the nautical almanac shows that the moon was below the horizon at 10:22 PM that evening.

At the time of our inspection of the Kennedy vehicle on September 10, 1969 vandals had destroyed the wiring in the car. We did find the head lamp switch on and severely bent to the point where it could not be operated. It was not possible to light the lights by replacing the battery. However, when we put a batter directly on the low beam light, the high beam light also lighted, indicating that the dimmer switch was in the high-beam position at the time of our inspection.

On the basis of the above information, we conducted our investigation of the visual factors bearing on the accident using the following assumption:

- The weather was clear with no ground fog or haze.
- Prior to the accident the vehicle headlights were on high beam and were properly adjusted.
- The approach to the bridge was made at approximately 20 mph, which corresponds to a speed of 29.4 feet per second.

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The data for this investigation consist of the following:

- A motion picture taken on a clear night using high-beam head lamp illumination only. (Exhibit VI.1.)
- An especially fast film was used in an attempt to match the picture to what the human eye could see. The test vehicle had the same headlight configuration as did the Kennedy car. They were tested for proper adjustment by Mr. Pat Jenkins of the Old Colony Garage in Edgartown. Chief Arena clocked this car at a speed of 20 miles per hour. Its speedometer indicated correctly.
- A series of still pictures taken at various distances from the bridge on a clear night using high-beam headlight illumination only. Here again a special fast film was used so that the photographs match what the driver could see. (Figure VI.1)
- Data on the vertical and horizontal high-beam headlight intensity pattern.
- A plan and elevation of the approach road to the bridge obtained from aerial photographs and by direct survey. (Figure VI.2.)

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- Data on a test performed in the presence of Mr. George Kennedy of the Massachusetts Division of Motor Vehicles in which a 1969 Chevrolet approached the bridge at 20 mph. The brakes were applied at the instant the front wheels touched the bridge. The car came to a stop with the front wheels at a distance of 33 feet from the beginning of the bridge. The test was performed on a dry bridge but with a slightly sandy surface.

Our findings are as follows:

- The motion picture shows that the bridge is visible for a period of less than three seconds prior to the accident if the car approached the bridge at 20 miles per hour.
- The series of still pictures shows that at distances in excess of 100 feet from the bridge that the high-beam headlights strike the ground for a long period of time well in front of and to the left of the bridge. Just as the headlights come right, toward the bridge, at a distance of between 100 feet and 50 feet, the headlights are tipped up sharply by the rising terrain. The bridge is minimally illuminated. Just as the front of the car comes on to the bridge at an angle of 16° to the right, the headlights come down and illuminate the right bridge rail. It is at

Page

this time that one realizes that the road over the bridge angles left. In view of the braking test on a dry bridge, and allowing for a reasonable reaction time, it is our opinion that braking only will not prevent a car in this position, traveling at a speed of 20 mph, from going over the rail.

- When the scaled headlight intensity pattern is overlaid on the plan and elevation diagram of the approach road, the reason for sequence of events outlined above becomes clear.

In the diagram, we can see that between 530' and 90' before the bridge, there is a 1% downgrade. In addition, in the last 60 feet before the bridge there is a two-foot rise in the roadway. At a distance of between 60 feet and 120 feet from the bridge, the vegetation on the right extends well out past the point where it would be in the center of the approach road if one did not turn to the left to avoid it. These two factors, the long grade and sharp rise just before coming on to the bridge, coupled with the necessity of turning to avoid the vegetation, make it essentially impossible to see the roadway over the bridge at night at a distance of much greater than between 60 feet to 90 feet. Initially, the high-beam lights illuminate only the rising road in front of the bridge; just as the terrain levels out sufficiently so that they might illuminate the bridge, one is forced to turn to the left and the lights don't strike the bridge. Just

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as one turns back to the right at a distance of approximately 60 feet to 90 feet from the bridge, the road begins to rise rapidly and the car's lights are deflected upward. This rise is sufficiently sharp so that the vertical headlight beams illuminate the bridge only slightly. On a clear night it is almost as though one's headlights have been turned out. If a driver were not previously distracted he could well be distracted at this point by the abrupt change in reflected light intensity as the light beams are deflected sharply upwards. At some point at a distance of approximately 30 feet from the start of the bridge (approximately 1 second at 20 mph) the road levels slightly and the headlights illuminate a point on the right curb of the bridge at a point 30 feet to 40 feet out on the bridge. When traveling at a speed of 20 mph and with the brakes applied just as the front wheels came onto the bridge, a Chevrolet test car stopped in 33 feet on the dry but somewhat sandy bridge. If the bridge or tires had been damp and sandy this distance would have been greater. The front wheel on the passenger side of the Kennedy car went over the curb at a distance of 18 feet from the start of the bridge.

The center of gravity of the car went over the curb at a distance of 24 feet from the start of the bridge. Once the center of gravity of the car was over the curb, the car had to fall into the water. Since the wheels on the passenger side went over the curb first, the car would tend to rotate with the passenger side falling first. As the center of gravity goes over the curb the car would also tend to flip, end over end, onto the roof.

Publisher's Note: Pages 54 and 55, are unreproducible Photo Copies.

AFFIDAVIT OF EUGENE D. JONES

I, EUGENE D. JONES, being duly sworn, depose and say:

1) I am a professional engineer duly licensed in the States of Connecticut and New York. Since 1966, I have been Vice President in charge of the New England Division of Frederic R. Harris Inc., Consulting Engineers. My duties include the administration of all work performed in the Stamford, Connecticut, Hartford, Connecticut and Boston, Massachusetts offices of the Harris organization. My qualifications as an engineer are attached as Exhibit "A".

2) At the request of Ropes & Gray, Attorneys at Law, I made an inspection of a portion of Dyke Road and the timber bridge which is located at the eastern end of Chappaquiddick Island, Martha's Vineyard. This inspection was made on December 29 and 30, 1969.

The roadway for approximately 1,000' before the bridge has a width which varies between 17' and 19' and has no usable shoulders. The surface material for the roadway consists of gravel and dirt. Erosion of the embankment on the right side of the roadway has occurred approximately 150' before the bridge.

The bridge itself is a timber structure approximately 85' long and 10'-6" wide. On either side of the structure is a timber curb 9" wide and 5 1/2" high. The bridge deck consists of 10"x3" timber planking and is supported by longitudinal timber beams of varying sizes. The beams are supported by timber pile bents with a center span 11'-9" long. The clearance under this span varies from 3' to 5' above the water surface.

At both abutments, the approach roadway embankment is retained by timber wingwalls on both sides. At the west abutment, the north wingwall is 20' long and the end is offset approximately 12' from the edge of the bridge. The south wingwall is also 20' long and the end is offset approximately 8' from the edge of the bridge. Erosion has occurred at both of the west wingwalls and repairs were being made by the Edgartown Highway Department during the time of the inspection.

There are no warning signs along the approach roadway nor were there any lights or reflectorized surfaces indicating that a structure is there.

On December 30, 1969, I directed a survey party consisting of James E. Schofield, LS & PE, Hollis A. Smith, LS and C. Edwin Carlson in the preparation of a plan and profile of a portion of Dyke Road and the bridge. The results of this survey is attached as Exhibit "B".

3) Based on the field survey as indicated on Exhibit "B", a centerline for the roadway and bridge was established and horizontal and vertical curve data added. The centerline and curve information has been marked in red directly on a print of the field survey and is shown as Exhibit "C".

Starting at Station 0+00 and proceeding in a south-easterly direction, the roadway is on tangent for approximately 225'. The roadway then curves to the right on a radius of 900' for approximately 51'. From the end of this curve, the roadway continues on tangent for approximately 263' to Station 5+40. From this point, the alignment of the roadway is a series of three (3) closely connected curves as it approaches the bridge. Starting at Station 5+40 the roadway curves to the left on a radius of 1500' for approximately 249' then curves to the right on a radius of 180' for approximately 41'. After a short tangent, the roadway curves to the left on a radius of 150' for approximately 47'. This last curve ends on the bridge structure approximately 18' from the west abutment. The remainder of the traveled way over the bridge is on tangent.

The vertical alignment of the roadway as shown on Exhibit "C" starts with a 1.95% upward grade at Station 0+00. At Station 1+88, the grade of the roadway is downward to Station 7+00 with varying grades ranging from 0.50% to 1.75%. From Station 7+00 to Station 8+50 the grade of the roadway is upward with varying grades ranging from 0.30% to 2.85%. The roadway is level just before the bridge. The vertical alignment over the bridge is made up of a series of short straight grades without connecting curves. These short sections include an upward grade of 2.43% to Station 8+85 where the grade changes to another upward grade of 8.80%. The grade is then level from Station 9+08 to Station 9+21 at which point there is a downward grade of 9.50% to the end of the bridge.

4) After the field inspection and examining the data contained in Exhibits "B" and "C", I then referred to Standard Plans for Highway Bridges, Volume III, Timber Bridges as prepared by the U.S. Department of Transportation, Federal Highway Administration, Bureau of Public Roads dated May 1969. These standard plans are shown as Exhibit "D". The introduction of the Standard Plans for Highway Bridges Volume III states the following:

"—These plans are intended to serve as a useful guide to State, County and local highway departments in the development of suitable and economical bridge designs. The plans should be particularly valuable to the smaller highway departments with limited engineering staffs—"

The specifications for design materials and construction

are included in Standard Specifications for Highway Bridges (1965 Edition) as adopted by the American Association of State Highway Officials. This publication is shown as Exhibit "E".

Sheet No. 101 of the Standard Bridge Plans indicates that a minimum height of 2'-4" for a timber curb (parapet) is recommended for timber bridges of spans between 11'-0" to 21'-0" and that the timber curb be bolted down to the bridge deck by 7/8" bolts with 4"x4"x1/2" steel plate washers.

The Dyke Road Bridge has a center span of 11'-9", therefore the Standard Bridge plans apply to this structure. The timber curb on the Dyke Road Bridge is inadequate both in height and strength. It is only 5" to 5 1/2" high and is nailed down to the bridge deck except for a short length of 13' on the north curb over the center span which is bolted to the bridge deck.

Timber curbs are the most important safety feature on a bridge deck without handrailing. Proper height and adequate strength are essential in the design of such a timber or safety curb.

Sheet No. 101 of the Standard Bridge Plan indicates that a minimum deck width of 24'-0" (between curbs) is required for timber bridges having spans between 11'-0" to 21'-0".

The Dyke Road Bridge is only 10'-6" wide between curbs. Since this structure serves two-way traffic, the bridge width should have conformed to the minimum requirements as indicated on the Standard Bridge Plans.

Appendix "A" of the Standard Bridge Plans indicate that guardrails are required along both sides of the approach roadway. A minimum length of 100' is recommended for this guardrail and the approach end should be offset 5' to the outside edge of roadway.

No approach guardrail is provided at the Dyke Road Bridge. Guardrails are necessary to guide and direct motorists to a structure which is narrower than the approach roadway.

5) I then referred to the Manual on Uniform Traffic Control Devices for Streets and Highways (June 1961 Edition) as prepared by the Bureau of Public Roads. This publication is shown as Exhibit "F". Paragraph 1C-21, page 64 of the Manual states:

"—The ONE LANE BRIDGE sign shall be used to mark all two-way bridges having a clear roadway width of less than 16 feet.—"

"—Additional protection may be provided by the erection of reflector markings.—"

In addition Paragraph 2D-2 page 149 of the Manual states:

"—Reflector markers may be mounted on or immediately in front of obstructions, or at sharp changes in alignment, to indicate the presence of hazards. Hazard markers should be of such design and should be so placed as to be clearly visible to approaching drivers under ordinary atmospheric conditions from a distance of 1,000 feet when illuminated by the upper beam of standard automobile headlamps—"

"They should be mounted at a height of approximately 4 feet above the pavement, except when they are applied directly to a hazardous object which by its nature requires higher or lower mounting, such as a low culvert headwall—"

There are no signs or reflector markings on the Dyke Road Bridge or on the approach road. Since the subject bridge did not meet the minimum requirements as outlined in the Standard Bridge Plans, appropriate warning signs should have been installed along the approaches and at the bridge itself.

A ONE LANE BRIDGE sign and reflector markers are required to warn motorists of danger ahead.

6) I then referred to A Policy on Geometric Design of Rural Highways (1965 Edition) as prepared by The American Association of State Highway Officials. In the highway engineering field, this publication is commonly referred to as "AASHO" or "The Bible". This publication is shown as Exhibit "G". Paragraph 7, page 191 of "The Bible" states the following:

"—Any abrupt reversal in alignment should be avoided. Such a change makes it difficult for a driver to keep

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within his own lane —"

Between Station 7+87 and the bridge as indicated on Exhibit "C" the roadway traveled way is made up of a short reverse curve having radii of 180' and 150' respectively. This reverse curve coupled with an upgrade toward the bridge directs the drivers projected view above the structure. Since there are no lights, signs, or reflectorized markers to delineate the approach road and the structure, the condition is especially dangerous at night when the driver's vision is dependent on the direction of the headlight beam. Therefore, in the area of the reverse curve, the headlight beam is directed above the approach roadway and the structure.

7) Based on my field inspection of the site and a study of the existing conditions, I conclude the following:

1. As a public facility the existing bridge and approach roadways are well below the minimum standards set by commonly used engineering criteria.
- 2 The absence of warning signs, guardrails, lighting and reflectorized markers makes this site particularly hazardous at night.

EUGENE D. JONES

STATE OF CONNECTICUT
CITY OF STAMFORD
COUNTY OF FAIRFIELD

Personally appear Eugene D. Jones signed and sealed of the foregoing instrument and acknowledge the same to be the free act and deed, before me,

17

Notary Public Sworn to and Subscribed before me this
Jan. day of 2nd, 1970

NOTARY PUBLIC

My Commission Expires April 1, 1972

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EXHIBIT "A"
PERSONAL HISTORY STATEMENT

Name: Eugene D. Jones
PRESENT ADDRESS: 146 Westport Road, Wilton, Conn.
DATE OF BIRTH: January 6, 1925
DEPENDENTS: Three
MARITAL STATUS: Married
CITIZENSHIP: U.S.A.
SECURITY CLEARANCE: Secret

NAME & LOCATION
HIGH SCHOOL & COLLEGE
East Orange N.J. High School (1938-1942)
College of Engineering
New York University (1943-1944)
University Heights, New York (1946-1950) B.C.E.

PROFESSIONAL SOCIETIES:
American Society of Civil Engineers
New York State Society of Professional Engineers
Tau Beta Pi

LICENSES:
P.E. (N.Y.) 31229
P.E. (Conn.) 3839

OTHER:
U.S. Bureau of Public Roads Executive Reserve
Expert Witness in Highway Accident Cases,
New York State Department of Law
Board of Associate Directors,
State National Bank of Connecticut

EXPERIENCE RECORD

966-Present Frederic R. Harris, Inc., N.Y.
Consulting Engineers
Vice President

In complete charge of New England Division which includes Stamford, Hartford and Boston offices of Frederic R. Harris, Inc. Duties include the development of new client contacts and the administration of all work including relocation of Relocated Route 7 in Connecticut (\$5,000,000.), Relocated Route 190 including a new high level crossing of the Connecticut River (\$6,500,000.), a portion of Interstate 91 through New Haven

(\$11,600,000.), the Wantagh-Oyster Bay Expressway (\$7,500,000.); Route 33 in Chicopee, Massachusetts (\$6,000,000.); the development of a new water supply system for the University of Connecticut, plus many other assorted projects.

1961-1965

Frederic R. Harris, Inc., N.Y.
Consulting Engineers
Assistant Vice President

In charge of Stamford, Connecticut office and Project Manager for Stamford's \$88,000,000. Urban Renewal program which envisions a complete new central business district for Stamford covering 130 acres. Work includes general consulting services, design of new streets, storm drains, sanitary sewers, utilities and inspection of construction.

1958-1961

Arnold H. Vollmer Assoc., N.Y.
Consulting Engineers
Project Manager

In charge of design and supervision of construction of various large scale recreational developments including the Lake Welch Recreational Area for the Palisades Interstate Park Commission; Belleayre Mountain Ski Center and John Boyd Thatcher State Park for the New York State Department of Conservation; Cummings Beach and Rosa Hartman Park for the City of Stamford, Connecticut, and many others. These areas generally require roads, bridges, piers, water supply, sewage treatment, drainage and utilities. Traffic Consultant to the Committee for Slum Clearance for the City of New York on all Title 1 Projects within the City of New York. Preliminary design of City of Louisville Expressway System including North-South Expressway, (Interstate 65); Henry Watterson Expressway (Interstate 264); Eastern Expressway (Interstate 64); and Riverside Expressway (Interstate 71).

1956-1958

Brown & Blauvelt, New York
Consulting Engineers
Project Manager

In complete charge of Liberia, West Africa, Office. Supervised 25 American and 100 Liberian engineers and technicians in the survey, design, and supervision of construction of 150 mile Western Province Road including 60 structures for the Republic of Liberia. Responsible for the design and supervision of construction of the City of Monrovia (45,000 population) Water Supply System including a pumping station, filtration plant, 12 mile pipeline and one million gallon reservoir.

1956

Deleuw, Cather & Brill, N.Y.
Architects - Engineers
Project Engineer

In complete charge of design and preparation of contract plans of the Richmond-Petersburg Turnpike through the City of Richmond, Virginia. Total construction cost - \$6,100,000.

1952-1956

Frederic R. Harris, Inc., N.Y.
Consulting Engineers
Highway Designer

In charge of design of all highway drainage systems. Made complete drainage study for proposed Wantagh-Oyster Bay Expressway and Deer Park Avenue Improvement. This study was coordinated with state, county and local township officials. Designed complete storm drain system, including structures, for the Mohawk Section of the New York Thruway and for reconstruction of State Highway 641 (Route 5S). In charge of design of complete sanitary facilities for an Army Airfield including water supply, sewerage, airfield lighting, power plant, buildings, drainage and grading for presentation to Air Force. Made additional studies for proposed Oyster Bay - Stamford Ferry and wrote preliminary report. Resident engineer in complete charge of supervision of construction of Garden State Parkway (New Jersey) Contract, "Miscellaneous Grading, Drainage and Paving at the Route 35 Interchange". (Construction cost - \$60,000). Office Engineer in charge of all survey work, made design changes, prepared contractor's estimates, wrote special reports and ran general field office of consulting engineers, supervising eight (8) construction contracts totaling \$4,000,000.

1950-1952

Edwards & Kelcey,
Frederic R. Harris, Inc.
O.J. Porter Inc.
Newark, New Jersey

Highway Designer
Assisted highway designer in layout and design of complete storm drain system for the northern section of the New Jersey Turnpike. Computed run-off quantities, designed special structures, made field inspections, prepared drainage tables and made engineers estimates.
1949-1950

U.S. Bureau of Reclamation
Coulee Dam, Washington

Engineer trainee and construction engineer - rodman, levelman and acting chief of party in a construction survey party. Engineer-Inspector in charge of construction of a section of new pumping station, Grand Coulee Dam. Computed concrete and earthwork volumes, steel weights and other miscellaneous work into pay items.

END OF AFFIDAVITS

TESTIMONY
OF
ESTHER NEWBURGH (Recalled)

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.

Daniel Daley, Sr., Esq.
Paul Redmond, Esq.,

for Esther Newburgh.

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

Edgartown, Massachusetts
Thursday, January 8, 1970

ESTHER NEWBURGH, Recalled

FURTHER EXAMINATION:

Mr. TELLER: I will remind you you are still under oath.
THE WITNESS: Right.
THE COURT: How long had you known Miss Kopechne?
THE WITNESS: Since 1967.
THE COURT: Had you worked with her in Washington?
THE WITNESS: Yes, in Senator Kennedy's Senate Office and then later in the campaign.
THE COURT: Do you know what her residence was at the time of her death?
THE WITNESS: Yes.
THE COURT: What was it?
THE WITNESS: Olive Street.
THE COURT: Olive Street, Washington, D.C.?
THE WITNESS: Yes.
THE COURT: Do you know what her employment was then?
THE WITNESS: Yes; she was working for Matt Reese Associates.
THE COURT: Had she lived in Washington for some time?
THE WITNESS: Yes.
THE COURT: How long?
THE WITNESS: Since 1964, '63 or '64.
THE COURT: Did she have a roommate that she lived with?
THE WITNESS: She had three.
THE COURT: And who were they?
THE WITNESS: Nance Lyons, Carol Littlejohn and Margaret Carroll.
THE COURT: Of you young ladies that are present here for this inquest, who would be the friendlier and closest to her?
THE WITNESS: Nance Lyons was her roommate and I

was the next friend.
THE COURT: Yes and Nance would probably be her closest friends?
THE WITNESS: In this group, yes.
THE COURT: When did you last work in Washington?
THE WITNESS: I still work in Washington.
THE COURT: Oh, you do?
THE WITNESS: Yes.
THE COURT: Did you ever know an acquaintance of Mary Jo's by the name of Vincent?
THE WITNESS: No. First name or last name?
THE COURT: First name.
THE WITNESS: No.
THE COURT: Or last name.
THE WITNESS: No, neither.
THE COURT: At no time during the last two years did you know of any male friend she had whose first or last name was Vincent?
THE WITNESS: No. I think I know what you are referring to, because it is only because I read it in the newspaper.
THE COURT: But you say you don't know who it was?
THE WITNESS: No.
THE COURT: Now, I am going to just read to you to refresh your recollection the sworn testimony you gave the last time you were on the witness stand. You replied to the question, "How was it that you found out about what happened to Mary Jo?"
THE WITNESS: Yes.
THE COURT: You said, "I think it was the white car came up on the road and Mr. Gargan was driving and told us to get in. He said something had happened, and my first reaction was the Senator and we drove back to the cottage and he wouldn't say anything until we got inside. We got inside the cottage and he told us that Mary Jo was missing, and that was all."
"When did you find out she had drowned?"
"After 10:00 o'clock that morning."
"Where?"
"In the motel room at the hotel at Katama."
That was your testimony the last time on the stand?
THE WITNESS: That is true.
THE COURT: Do you desire to change that in any respect?
THE WITNESS: In no way.
THE COURT: Now, did you at any time have an interview or conversation with any reporter?
THE WITNESS: Several, or many.
THE COURT: When I say conversation, I mean that they asked you questions and you gave them answers.
THE WITNESS: Correct.
THE COURT: When was the last time?
THE WITNESS: The last time was the week of the accident.
THE COURT: When was the first time?
THE WITNESS: The day after the funeral. Midnight, the night after the funeral, I believe.
THE COURT: Then I am confused.
THE WITNESS: Why? All of the talking I did to the press was in July, if that makes it clearer for you.
THE COURT: You have had no conversation with any reporter since that time?
THE WITNESS: No.
THE COURT: Do you remember any of the names of those reporters?
THE WITNESS: Yes.
THE COURT: Do you remember one called Jack Neumann?
THE WITNESS: No. Who was he with?
THE COURT: I ask the questions, Miss Newburgh.
THE WITNESS: I am sorry. I wondered who he was with.
THE COURT: Did they all identify themselves to you?
THE WITNESS: I was in a state of extreme duress and some of them said their names, some of them said the news service and some of them said the paper, and I was very unclear. It was the week right after the funeral.
THE COURT: But you in December, that was last month, did you give a statement to any reporter?
THE WITNESS: No. I'm sorry, I can see what you are

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(NY39-April 29) CAR IN WHICH MISS KOPECHNE DIED-Curious residents of Chappaquiddick Island inspect car in which Mary Jo Kopechne died last July when the car, driven by Sen. Edward Kennedy, plunged off Dike Bridge, and landed upside down in eight feet of water. The car was hauled from the water July 19, a day after the accident. In the inquest report, released Wednesday, Judge James A. Boyle expressed disbelief in a public account the senator gave in a television broadcast about the accident. (AP Wirephoto) (hmb51900fle) 1970 See AP Wire Story

Attachment 5



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Attachment T



Attachment U

Front Page Wall Street Journal Monday June 2, 1980

...dured down his sixth drink, to figure out whether he was worth \$5 million or \$8 million.

Others sought anonymity. A 30-year veteran of the club's staff recalls that Andrew Mellon was a "very reserved man" who "didn't want to show off" his wealth. Mr. Mellon, the employe says, "always walked the club from the corner because he didn't want anyone to see him climbing out of his limousine."

Some Earlier Changes

There have been some changes since those days. The membership rolls include a sprinkling of Democrats, a few people whose last names end in vowels and about 20 Jews. (Although there isn't any rule banning black members, the club hasn't ever had any, however, one application from a black man is being considered now.) But while there isn't as much old money in today's Duquesne Club, there's still clan: During a three-alarm fire that began in the club's kitchen last October, many members chose to stay in the club and, cocktails in hand, watch the firemen struggle to contain the \$750,000 blaze.

How is it easy to join the club, which charges \$1,000 in initiation fees and \$700 a year in dues for active members. (Members who live at a distance, meet some age and membership-longevity requirements or are retired pay half as much annually.) The rules call for aspiring members to be nominated and seconded by active members, obtain three letters of recommendation and then submit to an interview with the admissions committee. In practice, most corporate employes don't get nominated until they achieve at least a vice presidency. Even then, entry isn't immediate, with membership fixed at 2,500, the waiting list of qualified applicants now stretches for 30 months.

Those who do get in say the wait is worth

economic system. The model most often cited is the "state capitalism" of Britain, where the government owns the biggest auto, steel and other basic companies. The results have included politically dictated overstaffing, muddled priorities and chronic subsidization.

Another drawback cited by Mr. Kaufman is that "in order to get big, you gotta be big, you can't be small." That appears inescapably logical, because Washington scarcely could decide that the national interest requires the survival of every snack bar and boutique. Yet, concentrating assistance on the largest lame ducks—even if it does eventually restore their ability—may be the most dangerous drawback of all in that it's socially divisive.

Random grassroots soundings suggest that the scene is widely perceived as little as mutual back-scratching among fat cats and a rip-off of everyone else. Small business people in particular voice resentment, railing that all they can expect from the government is harassment. And the example of the squeaky wheel being greased can only incite claims on the budget (or for favoritism in credit) by other anxious companies and reliable communities.

The scale of any precedent-setting problem remains to be seen. But the one argument that elicits sympathy for Chrysler—that business federal regulatory demands were doing it—is to one that many others can fairly muster, too. The banks, the savings banks, the stock markets, this city, all can cite federal policies which deeply complicate their economic lives. With federal power as pervasive as it is, it's hard to think of anyone who couldn't claim that Uncle Sam is morally obligated to make up for what he's been doing to him.

Just like in real life, a federal rescue isn't the end of the story.

—RICHARD F. LAYMAN

about what he'd do specifically about curing unemployment and inflation," asserts Julia Jenkins, a press operator at Packard Electric who wears a "Free the 10 Hostages" button on her blouse. Norma Dawson, a 28-year Packard employe, says, "I liked his brother, but too many things have happened to Jimmy. I read the Boston Globe article about Chappquidick and that did it for me."

Thus, in the final wave of primary contests tomorrow—in delegate-rich California and New Jersey as well as Ohio—Mr. Carter again may capture Sen. Kennedy, sweeping up the Democratic nomination with several hundred delegates to spare.

Looking to November

During a reporter's recent visit here, two out of three blue-collar workers interviewed said they already have turned their attention to the fall election. Many added that they have become disillusioned with the expected choices—Senators Carter, Plessman and Anderson. "I'm thinking about not voting for the first time since 1954," says Charles Peacock, a parts coordinator at the Packard plant.

The disaffection with President Carter is easiest to understand. Rampant inflation and rising joblessness have caused workers here all the President's economic policies. Many view him as a weak, vacillating leader, especially in foreign affairs. They cite broken campaign promises, such as failure to press for enactment of universal health insurance and a major tax overhaul.

Basically, it's a feeling he lacks the qualities to be an effective President, even though I know he's very bright," says steelworker Sgarbo. He doesn't blame all the country's ills on the President, snarving a good share of his criticism for Congress. "On a scale of 10, I'd give Carter a six and Congress a two," he says. But he quickly adds that he believes a President should

—CHUCK FLEMING

Please Turn to Page 21, Column 1

Attachment

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8104025170



LARRYANN C. WILLIS
Route 2, Box 69
Vale, Oregon 97918
(503) 473-2133

COMPLAINANT

vs.

THE READER'S DIGEST ASSOCIATION, INC.
Pleasantville, New York 10570

RESPONDENT

COMPLAINT FOR VIOLATION OF THE
FEDERAL CAMPAIGN ACT OF 1971,
AS AMENDED.

MUR 1271 Original Complaint
File #1

810402917



FEDERAL ELECTION COMMISSION

1125 K STREET N.W.
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 1271

Date Filmed 9/28/81 Camera No. --- 2

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