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6. Possible Legislative Changes

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~~GA-1 SECRET SERVICE~~
- A. Whether it would assist the Secret Service in its Presidential protection functions if murder of, or assault upon the President, Vice President, and perhaps other high Government officials should be made a Federal crime?

It is our understanding that murder is a capital offense in all the States and that severe penalties are provided by the States for assault. Thus, the question involves in part the effect of Federal versus State statutes as a deterrent to the commission of a crime. Apart from the deterrent effect, however, existing Federal statutes make it an offense to kill or assault certain Federal officials who hold positions of much less importance than the President, Vice President or other possible successors to the Presidency. It is our view that the reasons which dictated the enactment of the existing provisions as to lesser officials are even more forcefully applicable to the President and his possible successors.

The enactment of Federal legislation would bring the investigation of the crime and the apprehension of the criminals under better Federal control. Such control would appear desirable since the protection of the President, Vice President, or other person next in the order of succession to the Presidency is already a Federal and not a State responsibility. Moreover, any assault against or attempt to take the life of the President may, for example, involve a conspiracy by several persons. The responsibility for Presidential protection requires an investigation of any such assault or attempt in order to assure that

all aspects of the assault or attempt have been thoroughly explored and any further possible threat to the President eliminated by the identification and apprehension of the offenders. In these circumstances, Federal officials should have an unquestioned right to question the individual who made the assault or committed the murder to obtain any possible information as to co-conspirators. Also, Federal officials should have the authority to take other steps they consider necessary to assure the acquisition of satisfactory evidence to bring the culprit to justice. While we do not mean to imply that State or local officials would necessarily be uncooperative, the possibility nevertheless does exist that Federal officials could be hampered by State or local officials from making a complete and thorough investigation as long as the murder or assault of the President remained solely a State offense. This possibility would be ameliorated if murder or assault were made a Federal offense. In addition, the Federal resources that would be available for a complete and thorough investigation could be greater than the resources that may be available to State or local law enforcement agencies.

B. If an assassination or attempted assassination were made a Federal crime, which Federal Law Enforcement agency should be responsible for handling the investigative work?

Annual appropriation acts appropriate funds to the FBI for the "detection and prosecution of crimes against the United States". The

FBI thus has general overall jurisdiction to investigate Federal crimes. On the other hand, 18 U.S.C. 3056 charges the Secret Service with the responsibility for the protection of the President, the Vice President, President-elect, Vice President-elect, or other officer next in the order of succession to the office of the President.

In this connection, 18 U.S.C. 871 presently makes it a Federal offense to deposit in the mails any letter or other document containing a threat, or to otherwise make any threat, against the President, President-elect, the Vice President or other officer next in the order of succession to the Presidency, or the Vice President-elect. As a necessary adjunct of its responsibility to protect the President and the persons next in line to the Presidency under section 3056, supra, the Secret Service conducts investigations of violations of 18 U.S.C. 871 at the present time and has conducted such investigations in the past. If assassination or attempted assassination were made a Federal crime, the position of the Secret Service would be that it had the right similarly to conduct investigations of the new offenses because of its protective responsibility, i.e., adequate protection of the President and any attempts to do him bodily harm are inextricably related. As previously stated, the responsibility for Presidential protection requires such investigation to assure that all aspects of any assault or attempt to take the President's life have been thoroughly explored and the threat eliminated.

Consequently, the FBI would have the authority to investigate such offenses if it so desired because of its overall jurisdiction to investigate Federal crimes. The Secret Service on the other hand, would conduct an investigation because of its responsibility for Presidential protection whether or not one was conducted by the FBI. It is believed that a dual arrangement of this nature is in the public interest in situations where bodily harm has been inflicted or attempted on the President.

C. Would the Secret Service be assisted by a clear statutory expression of its authority on security matters? Particularly with respect to the binding effect of its security advice upon the persons under its protection?

The Secret Service is of the view that a grant of authority to it to give binding security advice to the President would not be practicable. We feel on the basis of past experience and because of the nature of things that the President should, in the last analysis, have the final choice as to whether he should follow Secret Service security advice.

D. Is there any other legislative change that might be of assistance to the Secret Service in its protective functions?

Under 18 U.S.C. 3056, the Secret Service is specifically authorized to arrest without warrant persons committing offenses against the counterfeiting laws and certain other Federal offenses. However, the Secret Service has no specific authority to make arrests without a

warrant for violations of section 871, the present statute relating to threats against the President. If murder of, or assault upon, the President were made a Federal offense, it similarly would have no authority to make arrests without a warrant. Thus, authority of Secret Service agents to make arrests without a warrant as to offenses against the President is limited to the authority an ordinary citizen has to make an arrest. This situation is undesirable and it is recommended that Secret Service agents be given the same authority to make arrests without a warrant as is possessed by FBI agents and marshals under 18 U.S.C. 3052 and 3053.

Problems also arise in the case of threats made by persons who may be mentally ill but who have not committed an overt act in a public place and whose commitment is doubtful for other reasons in the judgment of the local authorities. In such cases it would be helpful for the Secret Service to have legal authority to bring commitment proceedings for observation purposes, based upon probable cause. Treasury counsel have been asked to investigate the feasibility of such legislation.