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Rep. Gerald R. Ford (R-Mich.), House Minority Leader, will testify at a Judiciary subcommittee hearing Wednesday, May 26, in Room 2141 Rayburn Building on proposed legislation that would make the assassination, or attempted assassination, of the President and Vice President a federal crime.

Ford is scheduled to begin his testimony at approximately 10:15 a.m.

STATEMENT OF REPRESENTATIVE GERALD R FORD

COMMITTEE ON THE JUDICIARY

Re: Legislation to make the
assassination of the President
a Federal crime

May 26, 1965

Mr. Chairman,

The President's Commission on the Assassination of President Kennedy, on which the previous witness, my good friend Representative Hale Boggs, and I were privileged to serve, found that "there was no Federal criminal jurisdiction over the assassination of President Kennedy." (Report, p. 454.)

This fact was dramatically demonstrated to the Commission when we heard testimony concerning activities at the hospital following the President's death. When it was proposed to transfer his body to Washington, local officials insisted that certain papers be filled out and that an autopsy be performed within the State in which the death occurred.

This would have meant a delay of hours or possibly days at a time when the Presidential party was trying to return as quickly as possible to Washington, both for the safety of President Johnson and for the comfort of Mrs. Kennedy.

Presidential staff members who were present decided that they would proceed to remove the body from the hospital without permission of local or State officials. We were told that as the casket was being wheeled through the hall one of the local officials shouted very loudly, "You can't do that; you can't leave here now." Notwithstanding this insistence, the casket was hurried into an ambulance and driven to the airfield.

This embarrassing and disagreeable scene could have been avoided had the legislation which we are considering today been in effect. It seems to me that this is one, but only one, of the reasons why the assassination, or the attempted assassination, of the President should be made a Federal crime.

In the course of my participation and the extensive investigation by the Warren Commission into the assassination of President Kennedy, it became clear that such legislation was long overdue and would produce several significant advantages.

PRESENT LAW

Under present law, it is a Federal offense to deposit in the mails any letter or other document containing a threat, or otherwise to make any threat, against the President, the Vice-President, or other officer next

in order of succession to the office of the President, the President-elect, or the Vice-President-elect. (18 U.S.C. 871.) It is also a Federal crime to conspire to injure any Federal officer, on account of, or while he is engaged in, the lawful discharge of the duties of his office. (18 U.S.C. 372.) In addition, to advocate the overthrow of the Government by the assassination of its officers is a Federal offense. (18 U.S.C. 2385.) But a direct attack upon the President, or even his murder, has never been as such a crime under Federal law. That is to say, unless there has been a conspiracy, or an advocacy of the overthrow of the Government, there is no Federal jurisdiction, so that, as the Warren Report concluded, "...once it became reasonably clear that the killing was the act of a single person, the State of Texas had exclusive jurisdiction." (Report, p. 454.)

The murder of numerous other Federal officials has long been a Federal crime. Section 1114 of Title 18 of the United States Code makes it a Federal offense to kill Federal Judges, U.S. Attorneys and Marshals, and many other specifically designated officials, while engaged in, or on account of, the performance of their official duties.

It should be noted that in all these cases, there is a Federal offense only if the official has been killed while engaged in, or on account of, the performance of his official duties. This "line of duty" requirement is probably necessary for the exercise of Federal jurisdiction as to such officials, but the courts have been fairly liberal in interpreting what conduct falls within this provision of the statute. There have also been several cases under this and a parallel statute, holding that it is not even necessary for the offender to know that the victim was a Federal officer engaged in the performance of his official duties, but the majority rule and the sounder view, seems to be that such knowledge is essential to show a Federal offense.

BASIS FOR FEDERAL JURISDICTION

The basic reason for making the assassination of the President a Federal crime is that essentially it is an offense against the United States Government, in two important respects. First, grave injury is done to the functioning of the Government, which may threaten the welfare of the entire country. As Senator George F. Hoar put it over 60 years ago in Congressional debate on a similar bill:

"...What this bill means to punish is the crime of interruption of the Government of the United States and the destruction of its

security by striking down the life of the person who is actually in the exercise of the executive power, or of such persons as have been constitutionally and lawfully provided to succeed thereto in case of a vacancy. It is important to this country that the interruption shall not take place for an hour...." (35 Cong. Rec. 2431 (1902), quoted in Report, pp. 455-56.)

That such interruption may cause grave anxiety is amply demonstrated by the tense hours the nation experienced in November of 1963, and also by the concern over the health of President Johnson and Speaker McCormack until the office of Vice-President was filled again.

Secondly, in most cases, the reason for such attacks is anger at the manner in which the President performs his official functions, or hostility toward the office of President or the United States Government or the American system of democracy. It is certainly the concern of the Federal Government to try to prevent, to guard against, and to punish criminal conduct performed out of such motivation.

ADVANTAGES

The change in the present law that would be affected by the proposed legislation would produce several significant advantages.

Primary responsibility and final authority for the investigation and prosecution of any attacks on the life of the President would be placed in the hands of Federal authorities. The actual investigation of offenses covered by the statute would be conducted by Federal law enforcement officials; particularly the FBI, with the assistance of the Secret Service. Where the assistance of State or local agencies proved necessary or desirable, it would be under the direction of the Federal agencies involved. This would ensure that resources and facilities of the Federal agencies would be immediately available for a complete and thorough investigation. "At present, Federal agencies participate only upon the sufferance of the local authorities." (Report, p. 456.) In addition, clear Federal jurisdiction would minimize the possibility of embarrassment or conflict in dealing with local authorities, FBI Director J. Edgar Hoover testified before the Warren Commission that, at the time of President Kennedy's assassination, "...the failure to have jurisdiction was extremely embarrassing," (V Hearings, 115) and led to confusion in the subsequent investigation by Federal and local authorities. (Report, p. 546.) In addition, the Commission itself experienced some difficulty in its work, for example, the

unauthorized and premature release of documents and information, which might have been prevented, had Federal authorities been in control.

The threat to the national security of the United States, when the President has been assassinated, may be very serious. The careful assessment of this danger, and taking of whatever steps may be necessary, will be greatly facilitated by allowing the Federal Government to supervise all stages of the investigation and handling of the case. In particular, as Secret Service Chief James J. Rowley pointed out (Comm. Ex. 1030; vol. XVIII, pp. 830-31), the possibility of a conspiracy and any further threat to the President should be explored and eliminated as quickly as possible. This is the particular concern of the Federal agencies which have general responsibility for the President's protection. If it should ever become necessary, the Federal Government could exercise exclusive jurisdiction over the entire investigation, so that information obtained could be kept confidential until its reliability and significance could be fully determined, thus preventing unfounded rumors and unnecessary public confusion.

The detention and protection of any suspects would, under the proposed legislation, be the responsibility of Federal law enforcement officers. Mr. Hoover testified before the Commission that "If we had had jurisdiction, we would have taken custody of him (Oswald) and I do not believe he would have been killed by Rubenstein." (V Hearings, 115.) As he stated, "...the killing of Oswald has created a great fog of speculation that will go on for years, because of the things that Oswald might have been able to tell which would have been of assistance in pinning down various phases of this matter." As one of our most capable law enforcement agencies, the FBI could do much to ensure the safety of possible defendants.

Furthermore, the fact of Federal custody would ensure that the questioning of the suspect would be under the direction of Federal authorities. In Dallas, FBI and Secret Service agents did not have control over the questioning of Oswald, and at times were merely observers; they were not even present when the interrogation of Oswald began. As Chief Curry admitted, the conditions in the Dallas jail were hardly conducive to effective questioning. (Report, p. 200.) In addition, J. Edgar Hoover pointed out that if some of the evidence had been kept secret and Oswald had been confronted with it in his interrogation, he might have broken and confessed. (V Hearings, 116.) Finally, the

facilities of the FBI would have made it more likely that recordings or transcripts of the interrogation sessions would have been made.

The procedures and practice of the Federal agencies would also be well calculated to protect the legal rights of any suspect. It is the practice of the FBI, Mr. Hoover testified, to inform every prisoner of his right to remain silent and to have an attorney; he is also examined by a reputable local physician both before and after his questioning. (V Hearings, 116.) Federal law requires that when a person is arrested he be brought before a commissioner promptly; "...in a case like Oswald's, (this) would probably have been done within 4 or 5 hours." (V Hearings, 116.) In addition, it is highly unlikely under Federal procedures that a suspect's right to a fair trial would be prejudiced by the release of incorrect or inadmissible information. Last April, the Attorney General issued a statement of policy concerning the release of information by personnel of the Department of Justice relating to criminal proceedings. (28 C.F.R. 50.2.) Under the guidelines there established, much of the information which might have unfairly prejudiced a jury against Oswald would never have been released. As it was, much unreliable and actually false information was announced by local officials in frequent press conferences. Mr. Hoover testified that he was so concerned that he asked his agent in charge in Dallas to personally go to Chief Curry and insist that he not go on the air any more until the case was resolved. (V Hearings, 115.) As he explained, "We have always adopted the policy in the Bureau of no comment until we have the warrant and make the arrest. Then a release is prepared briefly stating what the facts are, what the written complaint says,....and that ends it." (Ibid.) Finally, the Federal courts may take measures to protect the defendant from undue publicity. Under Rule 21 (a) of the Federal Rules of Criminal Procedure, "if the court is satisfied that there exists in the district or division where the prosecution is pending so great a prejudice against the defendant that he cannot obtain a fair and impartial trial in that district or division," the court must transfer the proceeding to another district or division. The court is also empowered, within its discretion, to grant a continuance of the trial or to impanel a new set of jurors.

SUPPORT FOR THE LEGISLATION

The Report of the President's Commission on the Assassination of President Kennedy recommended that Congress adopt legislation which would

make the assassination of the President, the Vice-President or other person next in order of succession, the President-elect, or the Vice-President-elect, a Federal crime. (Report, p. 26; cf. p. 455.) The Director of the FBI, J. Edgar Hoover, strongly supports such legislation. (Report, p.456; V Hearings 115; Comm. Ex. 866, vol. XVII, p. 860.) The Chief of the Secret Service, James J. Rowley, equally favors this recommendation. (V Hearings, p. 483; Comm. Ex. 1030, vol. XVIII, p. 830.)

FORM OF THE LEGISLATION

Without going into the particular provisions of the bills before the committee, I would like to indicate the areas I think the legislation should cover. The precise form of the final bill will depend on the extent to which these purposes require modification of the existing laws.

The bill should cover the President, Vice-President or other person next in order of succession, the President-elect, the Vice-President-elect, and any person lawfully acting as President. This would eliminate the need for any "line of duty" restriction, since "the activities of the victim at the time an assassination occurs and the motive for the assassination bear no relationship to the injury to the United States which follows from the act." (Report, p. 455.) (In the Senate-House conference on the 1902 bill, which was not passed, it was agreed no such restriction was needed for the President or Vice-President. (36 Cong. Rec. 2407 (1902), cited in Report, p. 852, n. 222.) The same reasoning should eliminate any requirement that the offender know that his victim is one of the officers within the bill: the harm to the United States is the same; also, it may be impossible to tell for some time whether the attacker knew the identity of his victim, and Federal jurisdiction should not be questioned because of this uncertainty.

The legislation should cover not only premeditated murder, but also any killing or assault or kidnaping, or any attempt or conspiracy to commit any of these acts, since they also present serious danger to the functioning of the Government and the welfare of the country.

The punishment provided for offenses under this statute should be modeled on the general Federal murder and manslaughter penalties (18 U.S.C. 1111, 1112), which are also applicable to the present statute protecting Federal officers (18 U.S.C. 1114). For kidnaping, it would be desirable to provide an optional death penalty if the victim is not returned alive. For assault, of course, the penalty need not be so severe; it could be

modeled on the general statute against assault on Federal officers (18 U.S.C. 111), and should provide a more serious penalty for the use of a dangerous weapon, as does that statute.

There is already a general provision whereby the Attorney General may grant rewards of up to \$25,000 for information leading to the arrest or conviction (or death in course of apprehension) of persons violating the laws of the United States or any State. (18 U.S.C. 3059.) The committee may wish to authorize larger rewards for the present legislation, but it seems unnecessary to make the Attorney General's discretion in this matter unreviewable. It may also be advisable to make local, State and Federal officers and employees eligible for such rewards, so that they may be compensated in appropriate cases.

The legislation should also provide authority for the Federal Government to exercise exclusive jurisdiction for offenses under this statute, wherever it decides this is advisable, at the discretion of the President or his successor, or the Attorney General.

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