

4 FEB 27 1962

cc - Mr. Katzenbach  
Mrs. Copeland  
Miss Lawton

4 MEMORANDUM TO LEE C. WHITE  
4 Assistant Special Counsel to the President Files

4 Re: Liability of President or Mrs.  
Kennedy to Prosecution for Leav-  
ing the Scene of an Automobile  
Accident.

This is in response to your memorandum of February 9, 1962 inquiring whether President or Mrs. Kennedy could be prosecuted for leaving the scene of an accident, in the event of a mishap while either of them was driving. You indicated that present plans are for a Secret Serviceman to remain at the scene, with the vehicle, and provide the necessary information to the other party or the police. There are few precedents in this area but an examination of these precedents indicates that President Kennedy could not be summoned to appear to answer charges for leaving the scene. Theoretically, Mrs. Kennedy could be prosecuted in Florida or Virginia, but probably not in Massachusetts.

There are no federal statutes granting immunity from prosecution to the President or his family. The President and his family, while using the highways of a State, are subject to the motor vehicle laws and traffic regulations of the State and its subdivisions. It is our view, however, that the President of the United States could not be prosecuted for the violation of a State traffic law, because he could not be compelled to appear to answer charges. This view is based upon several historical precedents. President Jefferson was subpoenaed to appear and to produce documents in the trial of Aaron Burr. He refused to comply with the order and no effort was made to enforce compliance. President Monroe likewise refused to comply with a subpoena ad testificandum in a court martial trial, and apparently no action followed his refusal. See Cummings & McFarland, Federal Justice p.64 (1937).

While both these instances were attempts to compel Presidents to give evidence, rather than direct prosecutions, they have been interpreted as indicating a lack of

judicial authority to direct presidential action. In 1867 the State of Mississippi presented a motion in the Supreme Court for leave to file a petition for an injunction against Andrew Johnson "a citizen of the State of Tennessee and President of the United States." The action was an attempt to enjoin the execution of the Reconstruction Acts. The Court held that the judicial branch of the government had no authority to restrain the President from executing the acts, and observed: "If the President refuse obedience, it is needless to observe that the court is without power to enforce its process." Mississippi v. Johnson, 4 Wall. 475, 500-01. While the opinion of the court is confined to the narrow question presented, the argument of Attorney General Stanbery in the case, presents a broader view.

The Attorney General reviewed the Burr case and then explained the necessity of presidential freedom from court process:

10 "It is not upon any peculiar immunity that the individual has who happens to be President \* \* \* but it is on account of the office that he holds that I say the President of the United States is above the process of any court or the jurisdiction of any court to bring him to account as President." 4 Wall. at 484.

He pointed out that the President has a solemn obligation as head of the executive branch to perform the functions of his office, and that the judicial branch of the government may not force him to leave the duties of his office unattended. It was this same reasoning which prompted President Jefferson to refuse to comply with Chief Justice Marshall's subpoena in the Burr case. Attorney General Stanbery argued that the President could not be compelled by court process as President or "even in his natural capacity."

The court expressly refused to pass upon the "broader issues" as to whether the President "may be held amenable, in any case, otherwise than by impeachment for crime," (4 Wall. 498), but we think, nevertheless, that the arguments

made by the Attorney General in Mississippi v. Johnson, have great weight. It is on these precedents that we conclude that President Kennedy could not be compelled to appear to answer a charge of leaving the scene of an accident.

The precedents and the reasons which compelled them do not pertain in the case of Mrs. Kennedy, however. She is of course, subject to the traffic laws of the States in which she drives and could be prosecuted for failure to comply with the laws. Both Florida and Virginia place an obligation upon the person having physical control of a vehicle, in the case of an accident, to stop, give his name, address, car registration number and render such assistance to an injured person as may be required. Florida Statutes Annotated §§ 317.07-.09-, Code of Virginia § 46.1-176. In Virginia the driver must furnish the number of his operator's license, but in Florida this need be furnished only on request. The laws of both States make it fairly clear that this obligation is personal to the driver. Indeed, Florida has a special provision relieving the driver of this obligation only when he is physically incapable of providing the information. F.S.A. § 317.14. We were unable to find a case in either jurisdiction discussing the possibility of designating an agent to supply the information.

In Massachusetts the operator of a vehicle involved in an accident has a duty to make known his name, address and car registration number, and to exhibit his operators license upon request. Annotated Laws of Massachusetts C. 90 §§ 11, 24. The chief purpose of the statutes is to provide the other party with the necessary information. Commonwealth v. Joyce, 326 Mass. 751, 97 N.E. 2d 192; and it has been held that a driver could not be prosecuted for violating the statute if he sent an agent to the scene of the accident with instructions to provide the required information, Commonwealth v. Horsfall, 213 Mass. 232, 100 N.E. 362. While the Horsfall case is over 50 years old, and the law has been amended several times since that decision, it is our view that the case probably still represents the law of Massachusetts. Accordingly, Mrs. Kennedy could comply

with the Massachusetts statutes by instructing a Secret Service Agent to remain at the scene of an accident and to supply the required information.

Even in Florida or Virginia it is possible that certain circumstances would justify leaving the scene of an accident, provided that an agent, authorized to provide the necessary information, remains at the scene. While we could find no cases in either jurisdiction, we believe that a good argument could be made to justify leaving the scene of an accident where the safety of the driver requires it. As we have pointed out, Florida statutes contain specific exemptions for drivers who have been physically injured, and we think the same rationale could justify leaving the scene where the security or well-being of the driver is otherwise endangered.

In summary, we think the plan of operation, suggested in your memorandum, would comply with the law of Massachusetts. The plan would not comply with the express language of the Florida and Virginia laws, but an argument might be made which would justify noncompliance. It is our view that the President of the United States could not be prosecuted for failure to comply with these laws, but that, in theory, Mrs. Kennedy could be prosecuted unless noncompliance could be justified to the satisfaction of a court.

I might note that, irrespective of the legal liability of either the President or Mrs. Kennedy for prosecution after leaving the scene of an accident, I would suggest that, absent an advance agreement with the local police that they do so, neither of them should leave the scene until a local police officer appears and agrees to their departure, unless remaining at the scene would, in the view of the Secret Service, subject him or her to additional danger. As a practical matter, it is not very likely that the President or Mrs. Kennedy is apt to be driving or involved in an accident in which the local police would not, in fact, be alerted and be available upon the scene very shortly after the accident occurred. I think that at least a token expression of regard for the state laws to which they are subject (whether or not they can be prosecuted) would be appropriate, and it seems most unlikely that the state police would require either of them to remain after their identity has been made known and

after the police have been informed that the Secret Service is in a position to provide all the necessary information. Both in terms of public opinion and legal liability, a far better case would be presented if the Secret Service was in a position to state that it was not the universal practice for the President or Mrs. Kennedy to leave the scene of an accident, but rather that the rule was that the driver would remain on the scene unless the Secret Service agents accompanying him made the judgment that his safety was involved and that that judgment was made in the particular instance.

I believe, too, that whatever policy is adopted, it would be well to advise the local police authorities of that policy in advance and, if possible, obtain their acquiescence. An accident involving the President or Mrs. Kennedy would probably aggravate the usual problems of maintaining order and the flow of traffic which result from accidents. In addition, requiring the President or Mrs. Kennedy to remain at the scene of the accident would impose an additional burden upon the local police of protecting them. In these circumstances, the police might prefer the driver to leave at once or to leave as soon as the Secret Service made a judgment his safety is imperilled. If the local police expressed a desire that the former course should be followed, there would be no objection in doing so. In any event, if an advance understanding to that effect were reached, both the legal and public relations posture of the matter would be substantially improved.

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