C. F. ID # 480789 CU

JL003

Dg

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) 1 1

RESTRICTED - White House Counsel's Office

Name of Correspondent: Chris Cerf

☐ **MI Mail Report** **User Codes:** (A) _____ (B) _____ (C) _____

Subject: John Hinckley

ROUTE TO:		ACTION		DISPOSITION		
Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
Cuhall		ORIGINATOR	87 10 30		C	87 10 31
		Referral Note:				
Cmat 26		C	87 10 30		C	87 10 31
		Referral Note:	Mem. 3087 CCC memo to A.B. Culvahouse			
Culv		A/I	87 10 31		C	87 10 31
		Referral Note:	Mem. 3187 ABC hole to Howard Baker, Koch Duberstein and Marlin Fitzwater			
		Referral Note:				
			1 1			1 1
		Referral Note:				

ACTION CODES:
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Comments: _____

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5/81

RECORDS MANAGEMENT ONLY

CLASSIFICATION SECTION

No. of Additional Correspondents:_____ Media: 0 Individual Codes: __.____ __.____ __.____

Prime Subject Code: JL 003.__ Secondary Subject Codes: HE 005.__ __ ____.__

__ ___.__ __ ____.__

__ ___.__ __ ____.__

PRESIDENTIAL REPLY

Code	Date	Comment	Form
C __ __	_____	Time: _____	P- _____
DSP	_____	Time: _____	Media: _____

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- X - Miscellaneous
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THE WHITE HOUSE

WASHINGTON

RESTRICTED - White House Counsel's Office

March 30, 1987

MEMORANDUM FOR ARTHUR C. CULVAHOUSE, JR.

FROM: C. CHRISTOPHER COX

SUBJECT: John Hinckley

As you requested, I have compiled the facts as of today concerning St. Elizabeth Hospital's proposed unaccompanied release of John Hinckley.

The court order of commitment in Hinckley's case prohibits his release from hospital custody without prior notice, hearing and court order. By letter dated March 23, 1987, addressed to the Clerk of Court, St. Elizabeth's Hospital set forth its recommendation that John Hinckley be released from the hospital, unaccompanied by hospital or security personnel, for the purpose of visiting his parents. The letter stated that Hinckley has made "steady progress," and that he is neither "psychotic" nor "overtly depressed." The letter also stated that the hospital believes that such an unaccompanied release would be "beneficial and therapeutic" to Hinckley--who, according to his psychiatrists' judgment, does not pose a danger to himself or others. In response to the letter, the court has set a hearing for April 13, 1987.

According to Dr. Harold A. Thomas, Special Assistant to the Superintendent and Public Information Officer, St. Elizabeth's Hospital, the proposed release is consistent with the hospital's policy of administering treatment in the least restrictive manner possible. Although the letter does not specify the details of the proposed release, Thomas told me that it could be as early as April 19, 1987. Hinckley's parents, according to Thomas, have residences in both Colorado and the District of Columbia, and it is contemplated that they would take their son for a one-day visit to their home here in the District. Thomas was unsure whether the hospital would recommend an overnight visit.

I spoke also with Joseph diGenova, the U.S. Attorney in Washington, D.C., who advised that he plans to submit a brief no

later than this Friday, April 3. The Secret Service is providing deGenova with all of the information he needs from them for inclusion in his brief. I informed Mr. diGenova that Sarah Brady was particularly upset when, last December 28, Hinckley was taken by representatives of St. Elizabeth's Hospital on an "accompanied visit" to a half-way house in Reston, Virginia, for an overnight visit. Based upon advice from Sally McElroy, the Executive Assistant to the Press Secretary, I also told Mr. diGenova that both Jim Brady and Sarah Brady are willing to provide affidavits opposing Hinckley's release. Mr. diGenova seemed interested in this, but noted that the operative statute might prevent the admission of such affidavits into evidence. He plans to discuss this with his staff tomorrow morning, and will get back to us with a recommendation.

Mr. diGenova intends to argue this matter himself at the hearing on April 13.

Attached for your convenience is a copy of a memorandum from Peter Wallison and the Chief of Staff dated January 15, 1987, setting forth the facts surrounding Hinckley's release in December 1986.

Attachment

PJW/CCC:jmy
PJWallison
CCCox
Chron.

THE WHITE HOUSE

WASHINGTON

January 15, 1987 RESTRICTED - White House Counsel's Office

MEMORANDUM FOR DONALD T. REGAN
CHIEF OF STAFF TO THE PRESIDENT

FROM: PETER J. WALLISON
COUNSEL TO THE PRESIDENT ORIGINAL SIGNED BY PJW

SUBJECT: John Hinckley

The following is a synopsis of the facts surrounding John Hinckley's release from St. Elizabeth's Hospital last Christmas.

On December 28, 1986, Hinckley was taken by representatives of St. Elizabeth's Hospital on an "accompanied visit" to the Prison Fellowship House, a halfway-type facility operated by Charles Colson in Reston, Virginia. He was transported in a hospital vehicle departing at 7:00 a.m. and stayed at the Prison Fellowship House until his return at 7:00 p.m. He was in the custody of representatives of St. Elizabeth's Hospital at all times. Members of Hinckley's family were also in attendance.

The Secret Service was aware of the plan to transport Hinckley to and from the Prison Fellowship House prior to the actual visit. According to the Public Information Officer for the Secret Service, agents regularly conduct liaison with area hospitals to keep track of the whereabouts of persons such as Hinckley who might be a threat to the President. Hinckley, being a special case, is monitored especially closely. The Secret Service objected strenuously when informed of the December 28 plan, but the hospital proceeded nonetheless. According to the Public Information Officer, the Secret Service knew at all times where Hinckley was and what he was doing on December 28.

The court order of commitment in Hinckley's case prohibits his release from hospital custody without prior notice, hearing and court order. For this reason, the United States Attorney for the District of Columbia must always be notified prior to any unaccompanied release of Hinckley. In this case, however, the U.S. Attorney's Office was not notified because at no time was it proposed that Hinckley be released from the custody of hospital representatives.

We have been advised that Joseph DiGenova, the U.S. Attorney in Washington, D.C., learned earlier in 1986--on an informal basis--that St. Elizabeth's Hospital planned to seek an unaccompanied release for Hinckley for therapeutic purposes. DiGenova reportedly informed the hospital of his vigorous opposition to this plan, and made clear that he would ask for a public hearing in the matter. The hospital backed down, we have been told, and substituted the December 28 plan.

The term of Hinckley's criminal insanity commitment is indefinite; he will be released only upon proof to the court's satisfaction that he has regained his mental health and is no longer a danger to himself or to others. No one expects such a finding in the foreseeable future.

As you know, the President was in California on December 28, 1986. The Secret Service did not notify you or the President because they judged that there was no increased risk as a result of Hinckley's accompanied visit to the Prison Fellowship House. The Secret Service apparently made the same judgment with respect to informing Sarah Brady; nonetheless, we are told that she is upset about not having been informed.

THE WHITE HOUSE
WASHINGTON

Date: May 2, 1988

TO: DIANNA HOLLAND

FROM: PHILLIP D. BRADY
Deputy Counsel to the President

As we discussed, Jay Stephens advises that his office is not aware of any pending motions or requests with respect to John Hinkley. We will be kept advised.

to Central files

MEMORANDUM OF CALL

Previous editions usable

TO: Deanna

☐ YOU WERE CALLED BY– ☐ YOU WERE VISITED BY–

Sally McElroy

OF (Organization)

Press Off.

☐ PLEASE PHONE ▶ ☐ FTS ☐ AUTOVON

2100

Roy called on 4/27

☐ WILL CALL AGAIN ☐ IS WAITING TO SEE YOU

☐ RETURNED YOUR CALL ☐ WISHES AN APPOINTMENT

MESSAGE This week, John Hinckley goes to Court again requesting privileges outside St. E's. Last yr. CCC worked. Who this yr is tracking it and

RECEIVED BY	DATE	TIME
ala	4/27	1:00

63-110 NSN 7540-00-634-4018 **STANDARD FORM 63 (Rev. 8-81)**
Prescribed by GSA
FPMR (41 CFR) 101–11.6

☆U.S. GPO: 1986–181-246/40015

Sg

C. F ID # 486789 CU

JL003

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RESTRICTED - White House Counsel's Office

Name of Correspondent: C. Christopher Cox

☐ **MI Mail Report** **User Codes:** (A) _____ (B) _____ (C) _____

Subject: John Hinckley

ROUTE TO: Office/Agency (Staff Name)	ACTION Action Code	ACTION Tracking Date YY/MM/DD	DISPOSITION Type of Response	DISPOSITION Code	DISPOSITION Completion Date YY/MM/DD
cuhall	ORIGINATOR	87/04/08		C	87/04/08
	Referral Note:	Continuing Coverage			
cu at 26	D	87/04/08		C	87/04/08
	Referral Note:				
cuculv	R	87/04/08		C	87/04/08
	Referral Note:	apr. 887 ABC memo to Howard Baker			
		/ /			/ /
	Referral Note:				
		/ /			/ /
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Comments: Copy to Jack Courtemanche

486789

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No. of Additional Correspondents:_____ Media: 0 Individual Codes: ____.____ ____.____ ____.____

Prime Subject Code: IL 003-__ Secondary Subject Codes: __ ____-__ __ ____-__
__ ____-__ __ ____-__
__ ____-__ __ ____-__

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Date Correspondence Received (YY/MM/DD) ___/___/___

RESTRICTED - White House Counsel's Office

Name of Correspondent: Arthur B. Culvahouse, Jr.

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Subject: John Hinckley

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Culvahouse	R	87/04/15		C	87/04/15
	Referral Note:	Cpr 15 87 ABC memo to Howard Baker			
		/ /			/ /
	Referral Note:				
		/ /			/ /
	Referral Note:				
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THE WHITE HOUSE

WASHINGTON RESTRICTED - White House Counsel's Office

April 15, 1987

MEMORANDUM FOR SENATOR HOWARD H. BAKER, JR.
CHIEF OF STAFF TO THE PRESIDENT

FROM: ARTHUR B. CULVAHOUSE, JR.
COUNSEL TO THE PRESIDENT

SUBJECT: John Hinckley

This memorandum will provide a brief update on the status of the hearings on John Hinckley's proposed unaccompanied Easter release.

Following U.S. District Judge Barrington Parker's broad subpoena for documents and information on John Hinckley's correspondence and video library issued yesterday, the hearing will resume today at 1:30 p.m.

According to the U.S. Attorney's Office here, the hearing will begin with Hinckley's attorney, Vincent J. Fuller of Williams & Connolly, continuing his direct examination of St. Elizabeth's Hospital psychiatrist Glenn Miller. Hinckley's next witness will be his personal psychiatrist, Dr. Joan Turkas. It is believed that Fuller may also call Jack Hinckley, John's father.

The government will offer no witnesses of its own, but will rely instead upon cross-examination to establish that the government has not carried its burden of showing that Hinckley is not a danger to himself or others. The government will also ask the court to rule on its motion that even accompanied visits outside the hospital will, in the future, require prior notice and hearing.

THE WHITE HOUSE

WASHINGTON

April 15, 1987

MEMORANDUM FOR JACK L. COURTEMANCHE
DEPUTY ASSISTANT TO THE PRESIDENT AND
CHIEF OF STAFF TO THE FIRST LADY

FROM: ARTHUR B. CULVAHOUSE, JR.
COUNSEL TO THE PRESIDENT

SUBJECT: John Hinckley

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THE WHITE HOUSE

WASHINGTON

RESTRICTED - White House Counsel's Office

April 8, 1987

MEMORANDUM FOR SENATOR HOWARD H. BAKER, JR.
CHIEF OF STAFF TO THE PRESIDENT

FROM: ARTHUR B. CULVAHOUSE, JR.
COUNSEL TO THE PRESIDENT Original Signed by ABC

SUBJECT: John Hinckley

This memorandum provides a brief status report on this matter.

This office discussed with Joe diGenova, the U.S. Attorney who is handling the case, the litigation strategy for the hearing scheduled Monday, April 13, on Hinckley's proposed release. We have also reviewed the papers filed by the U.S. Attorney's Office.

The Government's papers include a brief affidavit from Sarah Brady, which was prepared by her attorney, Jake Stein. In addition, Mrs. Brady plans to attend the hearing. We discussed with Sally McElroy (Jim Brady's executive assistant) and Joe diGenova whether, from their respective points of view, it would be advisable for Jim Brady to attend the hearing. Sally told us that while Jim would not otherwise plan to attend, he would do so if diGenova believed it would be helpful; diGenova, after discussing it with the other litigators on his staff, recommended against it. We communicated this to Sally, and Jim will not be attending the hearing..

The Government's papers not only oppose the proposal by St. Elizabeth's Hospital for an unaccompanied visit, but also seek a court order preventing accompanied visits without prior notice and court hearing. Such an order would prevent a recurrence of last December's "accompanied" visit to Reston, Virginia, which became known to the President and Mrs. Reagan only after the fact.

This office will continue to keep you apprised of developments in this matter.

cc: Jack L. Courtemanche

48676C24

THE WHITE HOUSE

WASHINGTON

RESTRICTED - White House Counsel's Office

April 8, 1987

MEMORANDUM FOR ARTHUR B. CULVAHOUSE, JR.

FROM: C. CHRISTOPHER COX

SUBJECT: John Hinckley

As requested, this memorandum provides a brief status report on this matter. I have also prepared a similar memorandum from you to Senator Baker, with a copy to Jack Courtemanche.

I discussed with Joe diGenova the litigation strategy for the hearing scheduled Monday, April 13, on Hinckley's proposed release. I also reviewed the papers filed by the U.S. Attorney's Office, copies of which are attached.

The Government's papers include a brief affidavit from Sarah Brady, which was prepared by her attorney, Jake Stein. In addition, Mrs. Brady plans to attend the hearing. I discussed with Sally McElroy (Jim Brady's executive assistant) and Joe diGenova whether, from their respective points of view, it would be advisable for Jim Brady to attend the hearing. Sally told me that while Jim would not otherwise plan to attend, he would do so if diGenova believed it would be helpful; diGenova, after discussing it with the other litigators on his staff, concluded that it could be considered an affront to the judge, and recommended against it. I communicated this to Sally, and Jim will not attend the hearing.

You will note that the Government's papers not only oppose the proposal by St. Elizabeth's Hospital for an unaccompanied visit, but also seek a court order preventing accompanied visits without prior notice and court hearing. Such an order would prevent a recurrence of last December's "accompanied" visit to Reston, Virginia.

I will continue to keep you apprised of developments in this matter.

Attachments

THE WHITE HOUSE
WASHINGTON

3/31/87

[redacted]

TO: HOWARD BAKER
KEN DUBERSTEIN
MARLIN FITZWATER

FROM: A.B. CULVAHOUSE, JR.

For your information.

RESTRICTED - White House Counsel's Office

[redacted]

[redacted]

THE WHITE HOUSE
WASHINGTON

Date: 3-31-87

FOR: A. B.

FROM: KEN DUBERSTEIN for D

- ☐ Action
- ☐ Your Comment
- ☑ Let's Talk
- ☐ FYI

RESTRICTED - White House Counsel's Office

THE WHITE HOUSE

WASHINGTON

RESTRICTED - White House Counsel's Office

March 30, 1987

MEMORANDUM FOR ARTHUR C. CULVAHOUSE, JR.

FROM: C. CHRISTOPHER COX

SUBJECT: John Hinckley

As you requested, I have compiled the facts as of today concerning St. Elizabeth Hospital's proposed unaccompanied release of John Hinckley.

The court order of commitment in Hinckley's case prohibits his release from hospital custody without prior notice, hearing and court order. By letter dated March 23, 1987, addressed to the Clerk of Court, St. Elizabeth's Hospital set forth its recommendation that John Hinckley be released from the hospital, unaccompanied by hospital or security personnel, for the purpose of visiting his parents. The letter stated that Hinckley has made "steady progress," and that he is neither "psychotic" nor "overtly depressed." The letter also stated that the hospital believes that such an unaccompanied release would be "beneficial and therapeutic" to Hinckley--who, according to his psychiatrists' judgment, does not pose a danger to himself or others. In response to the letter, the court has set a hearing for April 13, 1987.

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later than this Friday, April 3. The Secret Service is providing deGenova with all of the information he needs from them for inclusion in his brief. I informed Mr. diGenova that Sarah Brady was particularly upset when, last December 28, Hinckley was taken by representatives of St. Elizabeth's Hospital on an "accompanied visit" to a half-way house in Reston, Virginia, for an overnight visit. Based upon advice from Sally McElroy, the Executive Assistant to the Press Secretary, I also told Mr. diGenova that both Jim Brady and Sarah Brady are willing to provide affidavits opposing Hinckley's release. Mr. diGenova seemed interested in this, but noted that the operative statute might prevent the admission of such affidavits into evidence. He plans to discuss this with his staff tomorrow morning, and will get back to us with a recommendation.

Mr. diGenova intends to argue this matter himself at the hearing on April 13.

Attached for your convenience is a copy of a memorandum from Peter Wallison and the Chief of Staff dated January 15, 1987, setting forth the facts surrounding Hinckley's release in December 1986.

Attachment

PJW/CCC:jmy
PJWallison
CCCox
Chron.

THE WHITE HOUSE

WASHINGTON

January 15, 1987 RESTRICTED - White House Counsel's Office

MEMORANDUM FOR DONALD T. REGAN
CHIEF OF STAFF TO THE PRESIDENT

FROM: PETER J. WALLISON
COUNSEL TO THE PRESIDENT ORIGINAL SIGNED BY PJW

SUBJECT: John Hinckley

The following is a synopsis of the facts surrounding John Hinckley's release from St. Elizabeth's Hospital last Christmas.

On December 28, 1986, Hinckley was taken by representatives of St. Elizabeth's Hospital on an "accompanied visit" to the Prison Fellowship House, a halfway-type facility operated by Charles Colson in Reston, Virginia. He was transported in a hospital vehicle departing at 7:00 a.m. and stayed at the Prison Fellowship House until his return at 7:00 p.m. He was in the custody of representatives of St. Elizabeth's Hospital at all times. Members of Hinckley's family were also in attendance.

The Secret Service was aware of the plan to transport Hinckley to and from the Prison Fellowship House prior to the actual visit. According to the Public Information Officer for the Secret Service, agents regularly conduct liaison with area hospitals to keep track of the whereabouts of persons such as Hinckley who might be a threat to the President. Hinckley, being a special case, is monitored especially closely. The Secret Service objected strenuously when informed of the December 28 plan, but the hospital proceeded nonetheless. According to the Public Information Officer, the Secret Service knew at all times where Hinckley was and what he was doing on December 28.

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We have been advised that Joseph DiGenova, the U.S. Attorney in Washington, D.C., learned earlier in 1986--on an informal basis--that St. Elizabeth's Hospital planned to seek an unaccompanied release for Hinckley for therapeutic purposes. DiGenova reportedly informed the hospital of his vigorous opposition to this plan, and made clear that he would ask for a public hearing in the matter. The hospital backed down, we have been told, and substituted the December 28 plan.

The term of Hinckley's criminal insanity commitment is indefinite; he will be released only upon proof to the court's satisfaction that he has regained his mental health and is no longer a danger to himself or to others. No one expects such a finding in the foreseeable future.

As you know, the President was in California on December 28, 1986. The Secret Service did not notify you or the President because they judged that there was no increased risk as a result of Hinckley's accompanied visit to the Prison Fellowship House. The Secret Service apparently made the same judgment with respect to informing Sarah Brady; nonetheless, we are told that she is upset about not having been informed.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA :

v. : Criminal No. 81-306

JOHN W. HINCKLEY, JR. :

MOTION FOR AN ORDER COMPELLING ST. ELIZABETHS HOSPITAL TO SEEK COURT APPROVAL PURSUANT TO 18 U.S.C. § 4243(f) FOR AN ACCOMPANIED RELEASE FROM THE HOSPITAL

The United States of America respectfully moves for an order requiring that St. Elizabeths Hospital seek Court approval pursuant to 18 U.S.C. § 4243(f) whenever the Hospital plans to release defendant from the grounds of St. Elizabeths Hospital even if he is to be accompanied by Hospital personnel. A Memorandum of Points and Authorities is provided in support of this motion. A proposed Order is provided for the Court.

Respectfully submitted,

JOSEPH E. diGENOVA
United States Attorney

JOHN OLIVER BIRCH
Assistant United States Attorney

ROGER M. ADELMAN
Assistant United States Attorney

THOMAS E. ZENO
Assistant United States Attorney

JOHN M. FACCIOLA
Assistant United States Attorney

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA :

v. : Criminal No. 81-306

JOHN W. HINCKLEY, JR. :

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION FOR AN ORDER REQUIRING
THAT ST. ELIZABETHS HOSPITAL SEEK COURT
APPROVAL PURSUANT TO 18 U.S.C. § 4243(f)
FOR AN ACCOMPANIED RELEASE OF DEFENDANT

St. Elizabeths Hospital has had a practice over the years of releasing patients off the grounds of the Hospital in the company of Hospital personnel without notifying the United States Attorney for the District of Columbia and without seeking Court approval. In this case the Hospital undertook just such a release in December, 1986. That practice is not specifically authorized by statute, and, in this case, it is so potentially dangerous to the community that the Hospital should be required to obtain court approval before releasing Mr. Hinckley into the community even in the company of Hospital personnel.

18 U.S.C. § 4243(f) specifically provides only two methods for patients to leave the grounds of St. Elizabeths Hospital: conditional and unconditional release. Both require notice to the United States Attorney and prior approval from the Court. 1/

1/ Similarly, 24 D.C.C. § 301(e) provides only these same two types of release.

There is no specific statutory provision providing for any other type of release from the grounds of St. Elizabeths Hospital without notice and Court approval. Although there is no caselaw precisely on point, Hough v. United States, 271 F.2d 458 (D.C. Cir. 1959) and United States v. Ecker, 543 F.2d 178 (D.C. Cir. 1976) (Ecker II) appear to assume that no release from the grounds of the Hospital can occur without notice and Court approval. Nevertheless, the general practice of releasing persons from Hospital grounds in the company of Hospital personnel without judicial approval has not been challenged and it is not challenged here.

In this case, however, there are extraordinary public safety concerns which the Court should recognize by ordering that the Hospital seek approval pursuant to the provisions of 18 U.S.C. § 4243(f) whenever it plans to release Mr. Hinckley into the community in the company of Hospital personnel. As is demonstrated in the affidavit of Mr. John R. Simpson, Mr. Hinckley is considered an extremely serious threat to the safety of the President. 2/ Given the proximity of Mr. Hinckley to the President, it is essential that the Secret Service been given ample notice of Mr. Hinckley's movements in order to plan for the protection of the President. Furthermore, the Court should impose conditions upon Mr. Hinckley's movements whenever he leaves the Hospital which will ensure that

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2/ Mr. Simpson's affidavit is appended to the government's opposition to St. Elizabeths Hospital's application for Mr. Hinckley's unaccompanied conditional release, filed April 7, 1987.

the community does not face the potential of yet another asassination attempt. Such Court control of Mr. Hinckley's movements is statutorily in the Court's duty to protect the public safety and it can only be realized by examining the conditions of Mr. Hinckley's release each time he leaves the Hospital. Accordingly, the United States of America seeks an order that all further releases of Mr. Hinckley off of the Hospital grounds, even if accompanied, be accomplished only pursuant to 18 U.S.C. 4243(f).

Respectfully submitted,

JOSEPH E. DIGENOVA
United States Attorney

JOHN OLIVER BIRCH
Assistant United States Attorney

ROGER M. ADELMAN
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JOHN M. FACCIOLA
Assistant United States Attorney

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
v.	:	Criminal No. 81-306
JOHN W. HINCKLEY, JR.	:	

O R D E R

UPON CONSIDERATION of the United States of America's motion for an Order requiring that St. Elizabeths Hospital seek approval from this Court pursuant to 18 U.S.C. § 4243(f) whenever the Hospital plans to release defendant from the grounds of the Hospital even if he is to be accompanied by Hospital personnel, and of the entire record, it is this _____ day of April, 1987, hereby

ORDERED that the United States of America's motion is granted; and it is further

ORDERED that St. Elizabeths Hospital shall seek approval from this Court pursuant to 18 U.S.C. § 4243(f) whenever it plans to release defendant from the grounds of the Hospital even if he is to be accompanied by Hospital personnel.

_____
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been mailed, postage prepaid, to counsel for the defendant, Vincent Fuller, Esquire, 839 Seventeenth Street, N.W., Washington, D.C., 20006, this 7th day of April, 1987.

John M. Facciola

JOHN M. FACCIOLA
Assistant United States Attorney

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
v.	:	Criminal No. 81-306
JOHN W. HINCKLEY, JR.	:	

OPPOSITION OF THE UNITED STATES TO ST. ELIZABETHS HOSPITAL'S APPLICATION FOR UNACCOMPANIED CONDITIONAL RELEASE PURSUANT TO 24 D.C.CODE § 301(e)

I. INTRODUCTION

On March 23, 1987, the Superintendent of St. Elizabeths Hospital, through a letter to the Court, requested that this Court authorize, pursuant to 24 D.C.Code § 301(e), a "limited conditional release" of the defendant John W. Hinckley, Jr. to permit "a visit with his family and friends over the Easter Holidays at a date, time and place agreed upon by the Hospital." Under the release proposed, Mr. Hinckley would not be accompanied by Hospital personnel once he left the grounds of the Hospital.

On April 3, 1987, counsel for Mr. Hinckley filed a pleading in support of the Hospital's application. The United States has noted its opposition to the "limited conditional release" proposed by the Hospital and has requested a hearing. Upon an Order of this Court issued March 30, 1987 a hearing in this matter has been set for April 13, 1987.

This pleading is submitted by the United States to substantiate its opposition to the "limited conditional release" sought

by the Hospital. While discussing evidentiary matters to some extent, the principal focus of this pleading is on legal and procedural concerns, since the full evidentiary record will not be developed until the April 13 hearing. On the record as it now stands, and as will be supplemented at the hearing, the United States respectfully submits that the Hospital's request for an unaccompanied "limited conditional release" should be denied. The application of the Hospital for an unaccompanied release is vague, overbroad, and fails to meet applicable legal standards. Beyond this, the Hospital has failed to adequately take into account public safety considerations which under the law must be considered by this Court.

II. THE LEGAL SETTING

The Hospital's March 23 letter, and Mr. Hinckley's supporting pleading, appear to misperceive the legal setting in which this matter must be decided. Accordingly, the United States sets forth herein its discussion of the standards which govern the Hospital's request for an unaccompanied "limited conditional release". We outline law relating to the nature of the hearing to establish that: (1) this Court must make an independent determination whether the release sought is appropriate, and the Court is not bound by psychiatric opinion that such a release is appropriate; (2) the conditional release the Hospital seeks may not be permitted unless the Court is convinced that Mr. Hinckley's release will not endanger

the public; (3) to secure his conditional release Mr. Hinckley must establish, by clear and convincing evidence, that he has recovered his mental health to the extent that conditional release would not create a risk of bodily injury to someone else; (4) the failure of the Hospital to adequately address whether Mr. Hinckley's release will endanger public safety and its vagueness renders it an inadequate basis, as a matter of law, to authorize the conditional release.

A. NATURE OF HEARING

This Court is obliged to conduct an independent hearing on a conditional release application such as this, and to make de novo findings. In the leading case in the area our Court of Appeals held that hospital-initiated conditional release proceedings "are truly investigatory proceedings" where:

> "The district court, the hospital, the patient, and the government share an obligation to elucidate and explore all of the relevant facts." United States v. Ecker, 543 F.2d 178, 193 (D.C. Cir. 1976)(Ecker II).

The District Court must conduct a de novo review of the Hospital's request, and "as trier of fact, must independently weigh and evaluate the evidence" 543 F.2d at 184; DeVeau v. United States, 483 A.2d 307, 313 (D.C.C.A. 1984).

The Hospital's letter is not binding on the Court. It is simply part of the information which the Court may evaluate. 543 F.2d

at 184-185. Thus, this Court is obliged to make an independent finding, even one which may conflict with expert opinion offered in the testimony it hears. The weight to be given to expert opinion admitted in evidence is exclusively for the Court, "and the judge is not bound to accept the opinion of any expert witness or group of expert witnesses." 543 F.2d at 184. In fact, the Court is free to reject expert opinion, even if all of the experts who testify support release. United States v. Ecker, supra, 543 F.2d at 185 (Ecker II); United States v. Ecker, 479 F.2d 1206 (D.C. Cir. 1973); (Ecker I); United States v. Snyder, 529 F.2d 871, 879 (D.C. Cir. 1976); United States v. Taylor, Crim. No. 2270-70; United States v. Gross, Crim. No. 1193-69; United States v. Blackman, Crim No. 208-73; DeVeau v. United States, supra, 483 A.2d at 312, 315, and 316. As the D.C. Court of Appeals has stated, in a conditional release hearing:

> "If the trial court has reason to reject the opinions of the experts on the issue of dangerousness, it may do so even though they are unanimous." United States v. DeVeau, supra, 483 A.2d at 316.

Correspondingly, the inquiry is a broad one, and this Court is not restricted to hearing expert opinion:

> "The district court's determination can be based on other evidence in the record besides expert testimony, e.g., the patient's hospital file, the court files and records in the case and whatever illumination is provided by counsel." United States v. Ecker, supra, 543 F.2d at 185.

And, since hearings on conditional release applications are investigatory and not strictly adversary proceedings, the Court may receive hearsay. United States v. Snyder, supra, 529 F.2d at 877 (Conditional release hearings, "not strictly adversary proceedings" and are conducted before a judge without a jury; this consequently "relaxes the strict rules of proof and allows the judge to evaluate evidence without straining it through a fine technical seive.") 1/

Finally, because of the importance of the issues presented at conditional release hearings and because of the Court's need to make an independent inquiry, the scope of what may be considered at the hearing is broad. As expressed in DeVeau v. United States, supra:

> "It is appropriate, therefore, for the Court to examine previous diagnoses and prognoses, attempts to release the acquittee, success or failure of any attempts, and whether these past occurences are similar to or distinguishable from the present situation, including the latest proposed conditions of release.

1/ Of course, the rule against hearsay does not preclude admission of a wide variety of out of court statements made by Mr. Hinckley and others. These are admissible either because they are not offered for the truth of the matter asserted (and are therefore not hearsay) but rather to show Mr. Hinckley's mental state or the effect of others' statements on his mind, see Lempert & Saltzburg Evidence, pp. 362-364 (2d.ed., West Pub. Co. 1982) Rule 801(c) FRE, or are admissable as exceptions to the hearsay rule. See, Rule 803(3), FRE; Rule 803(4), FRE.

> The court may refer also to the acquittee's demonstrated behavior, including the act for which [he] was prosecuted as well as any other prior crimes or bad acts, if, in the particular case before the Court, the behavior relates to the current determination of dangerousness. It has been suggested that one's prior behavior is at least one indicator of future behavior. . . . To preclude an examination of acquittee's prior behavior would, therefore, go against logic and unduly handicap the court.
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> Third, the court may take into account the period of time that has elapsed since the acquittee was adjudged unsuitable for conditional or unconditional release. For it cannot be denied that, in a particular case, the passage of time allows observation and may be relevant to finding an improvement in the acquittee's condition.
>
> Fourth, the court must examine the proposed conditions themselves and determine if, as applied to this particular acquittee, they will protect the public safety. This determination must be made on an individualized basis.
>
> Finally, and related to each of the above factors, the court will consider the testimony adduced at the hearing. Given the specialized nature of the inquiry, the importance of the psychiatrist's testimony is obvious, despite the 'lack of certainty and fallibility of psychiatric diagnoses.'...
>
> It is also obvious that, in the course of the hearing, psychiatrists will offer opinions on each of the above factors, and how they bear on the decision whether to release the acquitee. Although the trial court is not bound necessarily by the testimony of the 'experts'. . . it may not arbitrarily disregard such testimony. 483 A.2d at 314-315. (citations omitted)

Ecker II and DeVeau establish beyond question that the Hospital's letter is only the start of the inquiry into the suitability of Mr. Hinckley's unaccompanied conditional release. 2/

B. THE QUESTION OF SAFETY

While the primary concern of the Hospital in this, and in other, cases is treatment, the Court of Appeals has made plain that safety of the public in general, and particular members of the public, are paramount considerations for the Court in evaluating a conditional release application. In Ecker II, the Court held:

2/ Ironic but nevertheless important to this Court's evaluation of Mr. Hinckley's present mental condition, is the fact that Ms. Leslie DeVeau, the subject of DeVeau v. United States, is now Mr. Hinckley's girlfriend. Letter of Dr. Glenn Miller to Joseph Henneberry, February 12, 1987 at 6. In a February, 1987 interview with Dr. Miller, Mr. Hinckley described Ms. DeVeau as "the biggest influence in my life."

As stated in the published opinion in her case, DeVeau v. United States, 483 A.2d at 309, Ms. DeVeau was found not guilty by reason of insanity of murdering her child and committed to St. Elizabeths Hospital. As the opinion reports, in footnote 1:

> "DeVeau killed her sleeping child, on the morning of March 18, 1982, with her husband's shotgun. She then attempted to kill herself with the weapon, but only succeeded in injuring her arm, which ultimately had to be amputated.
>
> DeVeau has had a history of mental illness. Prior to the death of her daughter, DeVeau was hospitalized in 1979 at the Psychiatric Institute, after several suicide attempts and one attempt on her daughter's life. She had undergone therapy and drug treatment at that time, but eventually discontinued both sometime prior to her daughter's death." 483 A.2d at 309, n.1.

According to Dr. Miller's letter, Ms. DeVeau has now been released from St. Elizabeths Hospital and Mr. Hinckley's, "ultimate wish is to leave the Hospital, and [Mr. Hinckley] is hopeful the Court would see fit to place him in her custody." (Miller letter at 6).

> "We hold that the existence of a 'substantial problem of danger in the reasonable future' provides an adequate basis for the continued detention and confinement of an insanity acquittee . . . who has committed a violent criminal act -- unless the District Court can make an 'affirmative finding that it is more probable than not that he will not be violently dangerous in the future.'" 543 F.2d at 188 (footnote omitted) (quoting Dixon v. Jacobs, 427 F.2d 589, 602 (D.C. Cir. 1970) (Leventhal, Judge, concurring)

Therefore, in this case, as in every other conditional release case, unless the Court determines that Mr. Hinckley will not be violent under the proposed conditions of release, the existence of a substantial problem of danger in the reasonable future provides an adequate basis for the Court to deny the application for release.

While appropriate deference is due to the Hospital's medical opinions, both Ecker II and DeVeau recognize that the Hospital experts and the Hospital staff are in no better position to evaluate safety than is the trial court. In Ecker II, the court stated:

> "when, and if, the patient is to cross the hospital boundary [for conditional release] then other factors affecting the public safety come into play, and both the statute and our decisions impose a different role and far heavier responsibility on the courts. 543 F.2d at 183.

DeVeau recognizes that the trial court's perspective and responsibility is different than that of the Hospital;

> ". . . [T]he primary concern of the hospital and psychiatrists is whether release constitutes sound therapeutic treatment for the patient. . . Courts, however, are charged with the broader task of assuring

> the best treatment for the acquitee in a manner that protects the public safety. 483 A.2d at 312. (emphasis in original)

In this aspect Ecker and DeVeau build upon the seminal decision on the subject, Judge Bazelon's opinion in Hough v. United States, 271 F.2d 458 (D.C. Cir. 1959). There, Judge Bazelon placed great emphasis on the independent role of the Court, making note of section 301(e)'s, "grant of judicial power to protect the public safety." 274 F.2d at 461 (emphasis added). The clear implication of Hough, Ecker II and DeVeau, is that this Court, in this case as well as any other, has the obligation to assess the public safety aspect of the conditional release requested for Mr. Hinckley. As Ecker II put it, the balancing required is between: "providing for the treatment and cure of the mentally ill in a manner which affords reasonable assurance for the public's safety." 543 F.2d at 186 (emphasis added).

Accordingly, one of the required determinations that this Court must make in passing on this conditional release proposed is whether Mr. Hinckley, will not in the reasonable future be dangerous under the terms of the conditional release proposed by the Hospital. 543 F.2d at 187. While Mr. Hinckley obviously has a substantial interest in the outcome of the proceeding, the statutes and construing decisions indicate that the public interest must be taken into account as well. As Ecker II establishes if there is a "substantial problem of danger in the reasonable future" under the proposed conditions of release, there is an adequate basis for rejecting

the proposed release for Mr. Hinckley unless the Court can make a finding that under the proposed conditions he will not be violently dangerous. See, 543 F.2d at 188. As for the public Ecker II instructs:

> "The test in either conditional or unconditional release cases is the same, i.e., whether release will benefit the patient and be safe for the public." 543 F.2d at 191.

Nothing in the Superintendent's March 23 letter indicates that the Hospital has heeded the dictates of Ecker II and DeVeau.

C. REQUIREMENTS FOR CONDITIONAL RELEASE

Mr. Hinckley was found not guilty by reason of insanity by a jury in this Court on June 21, 1982. He was committed immediately to St. Elizabeths Hospital, and after proceedings held on August 4, 1982, was committed indefinitely to the Hospital by order of this Court. The applicable standard for releasing Mr. Hinckley is established in the United States Code.

Title 18, United States Code, Section 4243(f), (Supp. II 1985) states that release may be granted by this Court only if there is a determination by clear and convincing evidence that:

> ". . .the person has recovered from his mental disease or defect to such an extent that . . . his conditional release under a prescribed regimen of medical psychiatric, or psychological care or treatment would no longer create a substantial risk of bodily injury to another person or serious damage to the property of another. . . ."

The same statute requires that the conditional release be granted under strict requirements. Subsection (f)(2) of section 4243 prescribes that the Court, in ordering a conditional release, must require that the patient be:

> ". . . conditionally discharged under a prescribed regimen of medical, psychiatric or psychological care or treatment that has been prepared for him, that has been certified to the court as appropriate by the director of the facility in which he is committed, and that has been found by the court to be appropriate. . . and [further][the order must contain]. . . an explicit condition of release, that he comply with the prescribed regimen of medical, psychiatric or psychological care or treatment."

As will be discussed more fully infra (Section III) the Hospital's March 23 letter simply fails to meet the criteria of Section 4243(f).[3/]

D. BURDEN OF PROOF

In this proceeding Mr. Hinckley bears the burden of proving by clear and convincing evidence that he is eligible for release. 18 U.S.C. § 4243(f) provides, in pertinent part, that a person

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3/ The District of Columbia Code, 24 D.C.C. § 301(e), as construed by the Court of Appeals, also sets strict limits on conditional releases, even when initiated by the Hospital. As stated in Ecker II, even where the hospital recommends a conditional release:

> ". . . the District Court must conclude that the patient has sufficiently recovered so that under the specified conditions he will not in the reasonable future endanger himself or others." 543 F.2d at 184, citing Hough v. United States, supra, 271 F.2d at 461.

may be conditionally released "[i]f, after the hearing, the Court finds by the standard specified in subsection (d) that the person has recovered" sufficiently. 18 U.S.C. § 4243(d) in turn provides that:

> ". . . a person found not guilty only by reason of insanity of an offense involving bodily injury to, or serious damage to the property of, another person, or involving a substantial risk of such injury or damage, has the burden of proving by clear and convincing evidence that his release would not create a substantial risk of bodily injury to another person or serious damage of property of another due to a present mental disease or defect." 4/

As a result, Mr. Hinckley must demonstrate to this Court by "clear and convincing evidence" that he has recovered from his mental dis-

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4/ Construing the conditional release provisions of the D.C. Code, 24 D.C.C. § 301(e), the court in Ecker II held that there is no assignable burden of proof.

> "We hold that in a hospital-initiated conditional release proceeding there is no assignable burden of proof as we would know it in a criminal or civil case. These are truly investigatory proceedings in which traditional notions of proof are simply inapplicable." 543 F.2d at 193.

Building on Ecker the D.C. Court of Appeals in DeVeau, supra, held that the trial judge passing on a conditional release requests, "must be convinced by a preponderance of the evidence that the conditional release is warranted." 483 A.2d 314. This is in concord with the concurring opinion in Ecker II in which Judge Lumbard indicates that he would go further than the prevailing opinion in that case and place the burden of proof on the patient to show by "preponderance of the evidence" that he is entitled to release under the proposed conditions. See, 543 F.2d at 200-201.

By passing the Insanity Defense Reform Act of 1984, however, Congress changed the burden of proof. 18 U.S.C. § 4243. There is no ex post facto bar to application of the 1984 law to Mr. Hinckley because release provisions of the statute are not penal, Weaver v. Graham, 450 U.S. 24, 28 (1981); Jones v. United States, 463 U.S. 354 (1983).

orders to the extent that his release would not create a substantial risk of bodily injury to another person or serious damage to the property of another due to a present mental disease or defect.

III. THE HOSPITAL'S APPLICATION

At this point, before the evidentiary hearing is held, the extent of the Hospital's application for "limited conditional release" is as contained in the Superintendent's March 23, 1987 letter. In that two-page letter, the Court is merely advised that the Hospital has reached the opinion that Mr. Hinckley's mental condition has improved (supplemented by a corresponding view by consultant Dr. Glenn Miller as reflected in his February 12 letter) and that on this basis the Hospital believes that an unaccompanied "limited conditional release" is appropriate. Specifically the letter states:

> "It is recommended that Mr. Hinckley be allowed a visit with his family and friends over the Easter Holidays at a date, time, and place agreed upon by the Hospital."

Under the circumstances of this case the United States, under its obligation to represent and protect the public interest, and to insure that the case is reviewed under the appropriate principles, respectfully suggests that the proposed conditions of release are

inadequate. Mr. Hinckley's assessment of the situation, ignoring the federal statute, is, we respectfully submit, incorrect. 5/

First, the conditions themselves reflect classic vagueness. The Court is not informed, as it customarily is in such cases, precisely where Mr. Hinckley will go, exactly whom he will be with, the duration of the release, and other information which the Court needs to rule upon the release in general and the public's safety in particular. The Court is only informed by the Hospital that the date, time and place of the release is to be "agreed upon by the Hospital."

A "conditional release" of this nature is doubly objectionable. In the first place, it appears to provide no opportunity for this Court to exercise its proper judicial role as to the prescribed circumstances of the release, in particular, the location, duration, and timing of the release. These matters are not only of interest

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5/ Particularly misguided are the claims of Mr. Hinckley's counsel that the Hospital's letter itself is sufficient basis for under § 301(e) to order his release and to find that such a release "by the preponderance of the evidence", and his further argument that the burden of going forward is a matter of the Court's discretion.

First, the Hospital's letter can serve as the basis for release only if the government does not oppose the release; if the government opposes the release the letter has no dispositive effect, certainly not being "clear and convincing" evidence. 18 U.S.C. § 4243(b). This was also true under the D.C. Code. 24 D.C.C. § 301(e); Ecker II, supra, 543 F.2d at 184-185.

Second, the burden of proving eligibility for release, is upon Mr. Hinckley by clear and convincing evidence. If Mr. Hinckley elects not to call witnesses, and stands on the Hospital's letter, the proposed release must be summarily denied, because the Court would have insufficient evidence to rule upon and could not find by clear and convincing proof that he is eligible for release or that the safety of the public is adequately protected.

to the Court, but as Ecker II and DeVeau, and other cases make clear, it is part of the Court's obligation. Because the Hospital's letter, in this respect, in effect seeks to derrogate the Court's responsiblity to itself, the letter is inadequate as a matter of law, either under Section 301(e) or the governing federal statute.

Secondly, while one would expect in a case of this magnitude that St. Elizabeths Hospital would propose specific limitations and specific controls over Mr. Hinckley's unaccompanied release, the Hospital's letter on its face does no such thing. Read literally, the letter would provide Mr. Hinckley with a license to travel freely once he leaves the grounds of the Hospital. For all the Court knows -- at least based upon the Hospital's letter -- Mr. Hinckley could travel by plane out of the area (never to return) or just as possibly make his way into the city and pose a threat to any number of people, including the President, other Secret Service protectees, and other concerned individuals.

The Hospital's letter, moreover, does not even recognize, let alone attempt to meet, the required legal conditions for a conditional release. As we have indicated, the Federal statute, 18 U.S.C. § 4243(f) requires that the releasing hospital include in its request for court approval a prescribed regimen of psychiatric care, etcetera. No such regimen appears in the Hospital's letter. While the Hospital does indicate that its staff and Dr. Miller believe that such a release would be "beneficial and therapeutic"

for Mr. Hinckley, such conclusory language falls short of the regimen Congress required in the 1984 statute. 6/

Even though federal law and cases such as Ecker II and DeVeau require that consideration be given to the safety of the public as a whole and particular members of the public, the Hospital's letter virtually ignores this requirement. 7/ In a sense this is not surprising for in DeVeau, the D.C. Court of Appeals recognized that the primary concern of hospitals and psychiatrists is treatment rather than public safety:

> "It has been observed that the primary concern of hospitals and psychiatrists is whether release constitutes sound therapeutic treatment for the patient. . .. Courts, however, are charged with the broader task of assuring the best treatment for the acquittee in a manner that protects the public's safety." 483 A.2d at 312. (Emphasis in original).

The Hospital's letter in this case shows the prescience of the DeVeau court. It contains no meaningful reference to the public safety, but merely states:

6/ It may well be that the requisite conditions prescribed in section 4243(f) cannot be met on the basis of a one-day release. The Federal statute certainly implies that this is the case, since a "regimen" must be imposed and that presumably requires more than one day to carry out. Even though the regimen may be modified or eliminated by the Court, that may occur only "after a hearing". 18 U.S.C. § 4243 (e). The Hospital is therefore required to at least proffer such a regimen.

7/ It is true that Dr. Miller discusses the safety issue, but his letter does not make clear whether he supports an unaccompanied release as distinguished from a release in the company of Hospital personnel. See Miller letter at 13-14.

> "The Hospital believes and Dr. Miller concurs that such a privilege would be beneficial and therapeutic in that it will enhance Mr. Hinckley's self-esteem and provide him with the opportunity to test out the insights he has gained through his treatment at St. Elizabeths as well as accelerate the therapeutic work that has occurred both in his family and individual therapies. It is the Hospital's opinion that Mr. Hinckley does not impose a danger to himself or others if granted this limited privilege." (March 23, 1987 letter at 2)

While reflecting appropriate concern for Mr. Hinckley's progress, the quoted portion of the letter demonstrates the Hospital's failure to focus on public safety. Since Section 4243(f) as well as cases construing 24 D.C.C. § 301(e) require that public safety be considered along with therapeutic values in evaluating a conditional release, the Hospital's virtual failure to do more than offer a single conclusionary sentence makes its letter inadequate as a matter of law to provide a basis for conditional release.

A. SAFETY OF THE PRESIDENT AND JAMES BRADY

On March 30, 1981, Mr. Hinckley shot and seriously wounded President Reagan, Presidential Press Secretary James Brady, Secret Service Agent Timothy McCarthy and MPD Officer Thomas Delahanty. On June 21, 1982, a jury in this Court determined that these crimes were the result of mental diseases suffered by Mr. Hinckley at the time. On August 4, 1982, this Court committed Mr. Hinckley to St. Elizabeths Hospital and declared that he was then dangerous to himself or others because of mental illness.

Because the safety of the community, and particular members of the community, is a paramount concern at this juncture, the United States is obliged to bring to the Court's attention concerns expressed by United States Secret Service, which is charged by statute[8/] with protecting the President and other public officials, and the concerns of the family of Presidental Press Secretary James Brady.

To this end, we have attached hereto affidavits of John R. Simpson, the Director of the United States Secret Service (Exhibit A), and Mrs. Sarah Brady, the wife of James Brady (Exhibit B). These affidavits explain to the Court the views of the affiants that Mr. Hinckley represents a threat to the President and to James Brady as well.

Thus, in his affidavit, Mr. Simpson states:

> "Essential to the performance of [the Secret Service's] protective function is the need to identify those individuals who constitute a possible threat to the physical safety of Secret Service protectees, and take appropriate preventive measures to counter the threat presented. John W. Hinckley, Jr., has been identified by the Secret Service as an individual who is an extremely serious threat to the physical safety of the President of the United States and others.
>
> On March 30, 1981, Mr. Hinckley shot and seriously wounded four people, including the President of the United States. Although the Secret Service is aware of a number of individuals who we believe may currently pose a threat to the President, only Mr. Hinckley has actually carried out an attack against the President. Accordingly, Mr. Hinckley is considered by the Secret Service to be an extremely serious threat to the safety of the President.

8/ 18 U.S.C. § 3056.

> Currently, Mr. Hinckley is confined to St. Elizabeths Hospital which is less than four miles from the White House, and even less distant from other locations in the District of Columbia that are regularly visited by the President and other protectees of the Secret Service. The close physical proximity of Mr. Hinckley to our protectees increases the threat potential of Mr. Hinckley. The removal or relaxation of the constraints on Mr. Hinckley's freedom of movement would greatly increase the threat that he poses.
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> In view of Mr. Hinckley's past history of violent acts against the President and others and his geographic proximity to protectees of this Service, it is my opinion, and the position of the Secret Service, that Mr. Hinckley is presently a danger to protectees of this Service and others. Further, it is my belief that the release of Mr. Hinckley from the secured confines of St. Elizabeths Hospital would adversely impact on the ability of this Service to successfully carry out its protective mission, and could seriously jeopardize the safety of the President of the United States and others."

Mrs. Brady has expressed similar concerns. She states:

> "James Brady has been confined to a wheelchair because of the injury that Mr. Hinckley inflicted on him.
>
> Mr. Hinckley's request if granted [he] has no restraints and if he were to confront Mr. Brady, Mr. Brady would be completely vulnerable.
>
> Both my husband, James Brady, and I have a suit pending against John Hinckley in which we are making a claim for damages.
>
> Mr. Hinckley has shown no remorse for what he did. If he claims he has recovered from his alleged mental disorder one would have thought he would have demonstrated some acknowledgement of the terrible injury he caused. He is vigorously defending the lawsuit raising every defense. Under the circumstances we are apprehensive. His behavior is unpredictable. It may cause us further harm."

The Hospital's letter reflects a hopeful view of Mr. Hinckley's situation. But Mr. Simpson and Mrs. Brady inform the Court of the hard realities which are presented by Mr. Hinckley's unaccompanied release. It is from the perspective of these hard realities that the law obliges the Court to view this matter.

CONCLUSION

By this Opposition the United States questions the suitability of the Hospital's proposal for an unaccompanied "limited conditional release" for Mr. Hinckley. While the evidentiary record is incomplete, pending the April 13 hearing, the law is quite clear: this Court must make an independent determination whether the unaccompanied release is appropriate, and given the fallibility of psychiatric opinion, and the independent role of the Court, this Court is not bound by psychiatric opinion that an unaccompanied release is appropriate; the unaccompanied release sought by the Hospital may not be permitted unless the Court is convinced that Mr. Hinckley's release in an unaccompanied mode will not endanger the public; Mr. Hinckley must establish by clear and convincing evidence that he has recovered his mental health to the extent that the unaccompanied conditional release would not create a risk of bodily injury to someone else; and, finally, the Hospital's letter fails to accurately address the laws of public safety concerns.

For these reasons, the United States respectfully opposes the Hospital's request for an unaccompanied conditional release for the defendant John W. Hinckley, Jr.

Respectfully submitted,

JOSEPH E. diGENOVA
United States Attorney

ROBERT R. CHAPMAN
Assistant United States Attorney

THOMAS E. ZENO
Assistant United States Attorney

JOHN M. FACCIOLA
Assistant United States Attorney

ROGER M. ADELMAN
Assistant United States Attorney

E X H I B I T A

Affidavit of John R. Simpson

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States of America)
)
v.) Criminal No. 81-306
)
John W. Hinckley, Jr.)

DECLARATION OF JOHN R. SIMPSON
DIRECTOR, UNITED STATES SECRET SERVICE

I, John R. Simpson, hereby declare:

1. I am the Director of the United States Secret Service, having held this position since my appointment on December 2, 1981. In this capacity, I am responsible for directing the activities and operations of the Secret Service as authorized by law.

2. Pursuant to Section 3056 of Title 18 of the United States Code, the Secret Service is authorized to protect the person of the President of the United States, the President-elect, the Vice President or other officer next in order of succession to the Office of President and the Vice President-elect, and the members of their immediate families. In addition, the Secret Service is also charged with the responsibility to protect former Presidents and their spouses for their lifetimes, their minor children, the person of a visiting head of a foreign state or foreign government, and, at the direction of the President, other distinguished foreign visitors to the United States and official representatives of the United States performing special missions abroad. Finally, the Secret Service is authorized to furnish protection to major presidential and vice presidential candidates.

3. Essential to the performance of this protective function is the need to identify those individuals who constitute a possible threat to the physical safety of Secret Service protectees, and take appropriate preventive measures to counter the threat presented. John W. Hinckley, Jr., has been identified by the Secret Service as an individual who is an extremely serious threat to the physical safety of the President of the United States and others.

4. On March 30, 1981, Mr. Hinckley shot and seriously wounded four people, including the President of the United States. Although the Secret Service is aware of a number of individuals who we believe may currently pose a threat to the President, only Mr. Hinckley has actually carried out an attack against the President. Accordingly, Mr. Hinckley is considered by the Secret Service to be an extremely serious threat to the safety of the President.

5. Currently, Mr. Hinckley is confined to St. Elizabeths Hospital which is less than four miles from the White House, and even less distant from other locations in the District of Columbia that are regularly visited by the President and other protectees of the Secret Service. The close physical proximity of Mr. Hinckley to our protectees increases the threat potential of Mr. Hinckley. The removal or relaxation of the constraints on Mr. Hinckley's freedom of movement would greatly increase the threat that he poses.

6. In view of Mr. Hinckley's past history of violent acts against the President and others and his geographic proximity to protectees of this Service, it is my opinion, and the position of the Secret Service, that Mr. Hinckley is presently a danger to protectees of this Service and others. Further, it is my belief that the release of Mr. Hinckley from the secured confines of St. Elizabeths Hospital would adversely impact on the ability of this Service to successfully carry out its protective mission, and could seriously jeopardize the safety of the President of the United States and others.

I declare under penalty of perjury that the foregoing is true and correct.

John R. Simpson

JOHN R. SIMPSON

Executed on: April 3, 1987

E X H I B I T B

Affidavit of Mrs. Sarah Brady

AFFIDAVIT OF SARAH BRADY

I, Sarah Brady, do state upon my oath as follows:

1. James Brady has been confined to a wheelchair because of the injury that Mr. Hinckley inflicted on him.

2. Mr. Hinckley's request if granted has no restraints and if he were to confront Mr. Brady, Mr. Brady would be completely vulnerable.

3. Both my husband, James Brady, and I have a suit pending against John Hinckley in which we are making a claim for damages.

4. Mr. Hinckley has shown no remorse for what he did. If he claims he has recovered from his alleged mental disorder one would have thought he would have demonstrated some acknowledgement of the terrible injury he caused. He is vigorously defending the lawsuit raising every defense. Under the circumstances we are apprehensive. His behavior is unpredictable. It may cause us further harm.

Dated: April 6, 1987

Sarah Brady

I, Sarah Brady do declare under penalty of perjury that the foregoing is true and correct.

Sarah Brady

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been mailed, postage prepaid, to counsel for the defendant, Vincent Fuller, Esquire, 839 Seventeenth Street, N.W., Washington, D.C., 20006, this 7th day of April, 1987.

Roger M. Adelman

ROGER M. ADELMAN
Assistant United States Attorney

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MEMORANDUM OF INFORMATION FOR THE FILE

~~EXECUTIVE~~

~~DATE~~

~~LETTER, MEMO, ETC.~~

~~TO:~~

~~FROM:~~

~~SUBJECT:~~

~~CORRESPONDENCE FILED CENTRAL FILES - CONFIDENTIAL FILE~~