

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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| <b>UNITED STATES OF AMERICA</b> | ) |                                  |
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| <b>v.</b>                       | ) | <b>Criminal No. 81-306 (PLF)</b> |
|                                 | ) |                                  |
| <b>JOHN W. HINCKLEY, JR.</b>    | ) |                                  |
|                                 | ) |                                  |

**GOVERNMENT'S OPPOSITION TO ST. ELIZABETHS HOSPITAL'S REQUEST FOR  
EXPANDED CONDITIONS OF RELEASE**

The United States, by and through its attorney, the United States Attorney for the District of Columbia, respectfully opposes St. Elizabeths Hospital's ("the Hospital's") request for expanded conditions of release. As grounds for this opposition, the government relies on the following, in addition to such evidence and argument as will be presented at the hearing on the Hospital's request.

**I. Standard of Review And Applicable Legal Principles**

The Hospital's request for expanded conditions of release must be supported by a preponderance of the evidence. United States v. Hinckley, 407 F. Supp.2d 248, 254 (D.D.C. 2005). To grant release, "the court must determine that the patient, under the proposed conditions, 'will not in the reasonable future be dangerous to himself or others.'" Id. at 131 (quoting Hough v. United States, 271 F.2d 458, 461 (D.C. Cir. 1959)). If the evidence shows "the existence of a 'substantial problem of danger in the reasonable future,'" id. at 131 (quoting United States v. Ecker, 543 F.2d

178, 187 (D.C. Cir. 1976)), the Court may deny the request for conditional release. To assess whether an insanity acquittee has “recovered his sanity,” the court must determine whether the acquittee’s “recovery has reached the point where he has no abnormal mental condition which in the reasonably foreseeable future would give rise to danger to...[himself] or to the public in the event of his release.” United States v. Charnizon, 232 A.2d 586, 588 (D.C. 1967); Overholser v. O’Beirne, 112 U.S. App. D.C. 267, 269, 302 F.2d 852, 854 (1961)(Burger, J.).

Where the evidence weighs equally in favor and against release of the acquittee, the court must deny release in order to protect the public’s safety. Hearne v. United States, 631 A.2d 52, 54 (D.C. 1993), quoting DeVeau v. United States, 483 A.2d 307, 314 n.16 (D.C. 1984).

## **II. Hinckley's Current Conditions Of Release And The Hospital's Proposal**

On July 20, 2009, this Court granted Hinckley twelve visits of ten-nights's duration to his mother's hometown. The Order granted Hinckley two hours of unaccompanied time daily in the gated community where his mother resides and, twice per visit, three hours of unaccompanied time in the community at large to engage in recreational and social activities.<sup>1</sup> These recreational activities were to be specifically identified in an itinerary that Hinckley and the Hospital submitted to the Court and the government before each visit. The Order also required Hinckley to obtain a volunteer position with gradually expanding hours up to a maximum of five days per week for four hours each day. When he was not engaging in leisure activities or his volunteer position, the Order required Hinckley to meet with his treating psychiatrist, Dr. Lee, and, upon Lee's retirement, Dr. Giorgi-Guarneiri, at least once per visit and also to meet with Carl Beffa, his case manager and

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<sup>1</sup> During these outings, Hinckley was to carry a GPS enabled cell phone and refrain from entering the home of any other person without prior notice to his responsible custodian and the Hospital.

psychotherapist, once per visit. Finally, Mr. Hinckley was permitted to obtain a driver's permit, take driving lessons with an approved driving instructor, and to obtain a driver's license. He was approved to drive the family car with a responsible custodian accompanying him at all times and was not to drive within 50 miles of the District of Columbia with the exception of driving to and from his visits to his mother's hometown.<sup>2</sup>

By order dated May 13, 2011, this Court extended the current conditional release to permit Hinckley to continue to visit his mother's hometown under the same conditions until a hearing is held on the Hospital's proposal to expand Hinckley's conditions of release.

On July 29, 2011, the Hospital proposed that Hinckley be granted an expansion of the current Order to allow him to have two visits of seventeen days and six visits of twenty-four days to his mother's hometown. After these eight visits, the Hospital is requesting that, without any further review by this Court, it be given the sole discretion to place Hinckley on convalescent leave in his mother's hometown. During the first two visits to his mother's hometown, the Hospital proposes that Hinckley be permitted to utilize "six 4 hour unaccompanied outings" to unspecified locations outside of his mother's housing community. Neither the government nor the Secret Service will be notified of Hinckley's specific destination in advance, thus precluding the Secret Service from conducting any surveillance of Hinckley. During the subsequent two visits to his mother's hometown, the

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<sup>2</sup> Hinckley also was required to maintain daily phone contact with the Hospital; take his medication as prescribed; refrain from contacting Leslie DeVeaue either in person or by phone during the visit; adhere to the Media Plan; and to fill out an "Individualized Relapse Prevention Plan Feedback From Patient While on Conditional Release" form within two hours of his return from the visit. Hinckley was permitted to use the Internet only under the supervision of his mother or siblings or with the use of tracking technology designed to monitor his use. Any use of the Internet, the sites to be visited and the goals to be achieved were to be determined in advance and provided in the Hospital's itinerary.

Hospital proposes that Hinckley be permitted "nine 4 hour unaccompanied outings" to unspecified locations outside of his mother's housing community and, thereafter, "for the remainder of the visits or until the issuance of a new conditional release," the Hospital proposes that Hinckley be permitted to "utilize up to a total [of] twelve 8 hour unaccompanied outings . . . within a 30 mile radius" of his mother's community. The Secret Service, again, will not be notified in advance of Hinckley's destination. Instead, the "Hospital/Mr. Beffa" will approve Hinckley's outings in advance and provide notice "on the day of the activity."<sup>3</sup> The only limit on Hinckley's outings is the proviso that he shall "avoid traveling to government centers in Richmond or to areas where the President or members of Congress may be visiting."

When Hinckley is not engaging in unsupervised outings, the Hospital's proposal provides that he continue to volunteer at Eastern State Hospital for up to five days per week; participate in various unspecified social groups for "up to 3 days per week"; meet with Dr. Giorgi-Guarneiri "weekly for the first two visits and at least once while on the remaining visits"; meet with his social worker weekly for psychotherapy appointments; attempt to obtain employment; and continue to have daily unaccompanied time in his mother's community. The goal of this expansion of Hinckley's release privileges is to consolidate Hinckley's mother's hometown as "the primary site for eventual convalescent leave" (Risk Assessment, hereinafter "RA" at 55).

### **III. Argument**

The Hospital's proposal for expanded conditions of release is premature and ill conceived.

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<sup>3</sup> The government assumes that notice will be given to the Secret Service, as the Hospital explicitly states that it will not be providing the Court with any notice of Hinckley's unaccompanied activities and will not be specifying those activities in an itinerary (Hospital letter at 21).

Moreover, the proposal fails to adequately address the risks presented by Hinckley's clinical record, which reveals the persistence of several behaviors that universally have been recognized as risk factors for Hinckley's future violence. The Hospital's motion should be denied.

**A. The Hospital's Proposal for An Expansion of Release is Not Adequately Supported By the Existing Record**

The Hospital seeks sweeping expansions of Hinckley's release privileges that, if granted, will result in the Hospital having sole discretion over Hinckley's transition to his mother's hometown with little oversight by the Court and no ability by the Secret Service to conduct surveillance. But the Hospital's preparation of its current release proposal demonstrates that it is inappropriate to delegate to it the unsupervised authority to manage Hinckley's risk of future dangerousness. On July 29, 2011, the Hospital submitted its expanded release proposal. Approximately one month later, on or about September 2, 2011, the Hospital submitted the accompanying risk assessment. As the Court knows from prior hearings, and as the government's experts are prepared to reiterate at the upcoming hearing, a risk assessment is a critical tool for predicting dangerousness. The risk assessment contains the results of psychological tests performed on the defendant to gauge, among other things, the defendant's personality and emotional functioning as well as the defendant's risk of future violence. The practice among forensic psychiatrists designing conditional-release plans is to complete the risk assessment before the release plan because without an accurate gauge of the defendant's psychological status and risk of future dangerousness, it is impossible to design a release plan that will manage that risk.

In contrast to this clinically-accepted practice, the Hospital prepared its proposal before it had conducted the risk assessment. Two weeks after it tendered its proposal to the Court, the Hospital

was still interviewing Hinckley and his doctor (RA at 2). The government did not receive the risk assessment, with its important psychological testing results and comprehensive review of Hinckley's clinical condition, until almost one month after the Hospital asked to expand Hinckley's conditions of release, thus confirming that the Hospital had not completed this assessment before it prepared its proposal. The Hospital's willingness to ask this Court to expand Hinckley's conditions of release before it had methodically determined Hinckley's risk to himself and the community demonstrates why it is inappropriate to cede to the Hospital the right to withhold information about Hinckley's activities while on release and to determine, in its sole discretion, whether Hinckley ought to be granted further release, much less be placed on convalescent leave in his mother's home town.

The Hospital's preparation of the conditional-release plan, in the manner described above, makes it particularly important that the Court, the government, and the government's experts be able to review Hinckley's complete clinical record. Such review is impossible, however, because the Hospital has failed to maintain contemporaneous notes of its treatment of Hinckley over the past three years. For the nineteen months between September 2005, and April 2007, the Hospital produced approximately 1070 pages of records. For the fifteen-month period between the April 2007 hearing and the July 2008, hearing, the Hospital produced 637 pages of records. For the forty-month period between the July 2008 hearing and the present date, the Hospital has produced only 1365 pages. Additionally, there are obvious gaps in the treatment logs. The Hospital appears to have stopped documenting the interviews that it conducts with Hinckley, his doctors in his mother's hometown, and his siblings after every visit. Moreover, the Hospital was unable to produce notes from any staff member who may have attended those interviews. Additionally, the Hospital no longer maintains daily ward notes pertaining to Hinckley. Hinckley has been placed on a "treatment

mall" when he is not at work, and the only notes taken there are in the form of monthly reports about the groups that Hinckley attends. These monthly reports typically state the number of sessions that Hinckley attended, with a brief description of the activities and issues addressed during the month, and whether Hinckley participated. There are no entries in the records by Hinckley's work supervisor, there are no social work reports since September 2010, and the chart does not contain several months of individual therapy notes by Dr. Binks, Hinckley's treating psychotherapist. The government also has found only brief mention of any attempt to discuss with Hinckley the thirtieth anniversary of his attempt to assassinate President Reagan, and the notes suggest that these conversations focused on the media coverage. As a result, the government, its experts, and the Court are severely hampered in their ability to independently assess whether, as the Hospital claims, Hinckley's diagnoses have become sufficiently attenuated that it is appropriate to grant him the requested expansion of his release conditions. In the absence of any objective verification of the Hospital's claims about Hinckley's clinical progress, the Court ought to be wary of expanding Hinckley's release privileges in the rapid and dramatic fashion that the Hospital seeks.

The Hospital's inadequate preparation for Hinckley's expanded release also is evident with regard to the specifics contained in the proposal. Although a core feature of the Hospital's release plan is Hinckley's participation in social groups operated by Colonial Behavioral Health ("CBH"), the Hospital has neither identified those groups nor, apparently, ascertained whether Hinckley can participate in those groups consistent with the work schedule laid out in the proposal. Moreover, CBH has informed the government's experts that the Hospital, despite CBH's repeated requests for these materials, never provided CBH with Hinckley's clinical records so that CBH could determine whether it offers programs appropriate for Hinckley's clinical needs.

The Hospital's plan for Hinckley's psychiatric care in his mother's hometown likewise appears insufficient. At the time that it submitted its proposal, the Hospital appears to have been unaware that, Dr. Giorgi-Guarnieri, Hinckley's treating psychiatrist, no longer would be working in the same practice where she had been treating Hinckley and in fact would be moving to a location approximately 50 miles away. The current plan, as the government understands it, is for Hinckley to be seen by Dr. Giorgi-Guarneiri on the weekends, when she returns to his mother's hometown for this purpose, but the Hospital's August 15, 2011 letter to the Court suggests that Dr. Giorgi-Guarneiri would prefer that Hinckley travel to her new office. The government has serious concerns that this arrangement is too precarious to provide Hinckley with reliable mental health treatment. Further, Carl Beffa, Hinckley's psychotherapist and case manager, has stated that he plans to retire in two years. As the Court knows from the last hearing, the government has significant concerns about Mr. Beffa's ability to act as an effective psychotherapist. Those concerns take on greater force if Mr. Beffa plans to treat Hinckley in retirement because it is reasonable to expect that, without an office, a set schedule, and a reliable after-hours means of maintaining contact with Hinckley, Mr. Beffa cannot continue as an effective psychotherapist for Hinckley.

**B. The Hospital Cannot Demonstrate That Hinckley Will Not Be A Danger To Himself Or Others**

The Hospital's proposal to release Hinckley to his mother's hometown also is inappropriate in light of Hinckley's clinical record. Notwithstanding the numerous holes in the record, it is evident that Hinckley persists in numerous behaviors that universally have been recognized as risk factors for Hinckley's future violence. For example, Hinckley continues to be deceptive regarding his relationships with and interest in women. In June 2009, Hinckley searched the Internet for

photographs of his female dentist. When he was caught, Hinckley claimed, falsely, that the dentist had invited him to view her personal photographs. The Hospital disciplined Hinckley by placing him on "unit restriction" (Pet. at 6), but Hinckley has denied to the government's experts that the Hospital took this disciplinary action.<sup>4</sup>

Hinckley's behavior concerning his dentist is concerning on several levels. Not only does this Internet search appear to violate the conditions under which Hinckley is permitted to use the Hospital's computers, but also Hinckley has twice not told the truth about the underlying facts. Moreover, Hinckley's Internet search concerned a woman with whom he appears to have been attempting to establish a relationship. A Hospital note from April 2009, reveals that Hinckley made an emergency visit to the Hospital dental clinic complaining of tooth pain. When Hinckley learned that his female dentist was not available to treat him that day, Hinckley declined further treatment until she was available. A fair reading of this encounter is that Hinckley feigned his dental emergency in order to spend time with the dentist to whom he was attracted.

Hinckley also appears not to have been candid with Mr. Beffa, his psychotherapist in his mother's hometown, regarding the status of his relationship with "CB," his current girlfriend. Hinckley openly told his family and his treating physicians at the Hospital that he intended to marry CB (RA 22). Mr. Beffa, however, "never got any indication from [Hinckley] that he would like to marry" CB (RA at 35). Since Mr. Beffa and Hinckley discuss Hinckley's interest in women and the status of his relationships with various women at every meeting, it is difficult to explain why Mr. Beffa did not know that Hinckley openly planned to marry CB unless Hinckley never told him. At

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<sup>4</sup> Given Hinckley's deception and his unauthorized use of the Hospital computer, it is unwise to consider further release until a forensic review is conducted of all computers to which he has access, including his computer at his mother's home..

best, Hinckley was not forthright with his therapist concerning this important matter. At worst, Hinckley intended to conceal this important fact from Mr. Beffa. The government consistently has maintained that Hinckley's deception of others, particularly his treating psychiatrists, is directly relevant to his future dangerousness and, hence, any conditional release plan, because it makes it difficult to assess and control his risk of future violence.

Hinckley's narcissism, one of his core psychiatric diagnoses and a risk factor for his future dangerousness to himself or others, also remains intact. The signs of this illness continue despite years of therapy and medication. Hinckley's behavior towards CB and his behavior toward his family with regard to CB's visits to his hometown are merely two recent examples of this disorder.

Hinckley also has failed to demonstrate a clinical basis for expanding his social privileges in the manner that the Hospital requests. In its last proposal to expand Hinckley's conditions of release, the Hospital stated that its therapeutic objective for expanding Hinckley's conditions of release was to enable Hinckley to integrate into the community in his mother's hometown. To address Hinckley's demonstrated lack of initiative and unwillingness to deviate from a routine, the Hospital intended that Hinckley use his visits to his mother's hometown over the past three years to engage in "varied activities" (2008 Pet. at 13). The Hospital indicated that it intended that Hinckley's receipt of additional recreation time while in his mother's hometown be conditioned upon Hinckley demonstrating that he had actively met this treatment goal (*id.*). To assist Hinckley in becoming more integrated into the community in his mother's hometown, the Hospital planned to develop "goals" for Hinckley to achieve during each visit (*id.*), although there is no record in the files of any such "goals" after the date that the Court entered the current release order.

After three years of regular visits to his mother's hometown, Hinckley has failed to show

either that he has integrated into the community or that he has taken the initiative necessary to complete this task. Indeed, Hinckley himself has complained that his support system consists only of his mother and professionals (RA at 25). But the reason for this is Hinckley's own behavior. A review of Hinckley's proposed itineraries for his visits and the Hospital's post-visit reports since the date of the last court order reveals that, with few exceptions, Hinckley repeatedly engages in the same limited activities. For example, on the second day of every visit, Hinckley has either shopped at Best Buy or gone to a movie. On the ninth day of every visit but three, Hinckley has dined at the Bonefish Grill. And, while the post-visit reports reveal that Hinckley has varied his other activities among the days of his trips, the visits as a whole invariably consist of trips to the exact same stores (Walls Alive, PetSmart, the Prime Outlets, and Merchants Square) and dinners at the same restaurants (Bonefish Grill and The Whaling Company). On only two trips since the last Court order has Hinckley ever engaged in activities outside of this paradigm. In light of this record, it is difficult to characterize Hinckley's integration into the community as a success. Correctly stated, Hinckley has developed a routine of engaging in solitary pursuits that have no likelihood of permitting him to make friends or increase the support system that his treating physicians, and Hinckley himself, view as critical to preventing him from decompensating.<sup>5</sup>

The evidence of Hinckley's current mental condition and the Hospital's failure to adequately plan for his release demonstrate that the current request should be denied. But even if the Court ultimately concludes that Hinckley is ready for some type of expansion of his current conditions of

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<sup>5</sup> Neither does Hinckley appear to have demonstrated initiative with regard to the functioning of his daily life. Scott Hinckley has, correctly, characterized Hinckley's behavior as adolescent and noted that Hinckley relies upon his mother to make calls for the appointments that he is required to complete during his visits to his mother's hometown (RA at 22).

release, there remains an important question about whether the time has come to declare that the experiment of transitioning him to his mother's hometown has failed. Scott Hinckley has stated that it is "debatable" whether Mrs. Hinckley's hometown is the optimal site for Hinckley to attempt to live on his own (RA at 32). As we have detailed above, and we expect to more fully develop at a hearing, the Hospital appears to be unable to knit together either a web of effective mental-health providers or meaningful activities that Hinckley can use to integrate himself into the community. The absence of such structure and reliable psychiatric oversight of Hinckley makes it impossible to find, even by a preponderance of the evidence, that Hinckley will not become a danger to himself or others if he is permitted to transition into the community in his mother's hometown. Indeed, the Hospital itself appears to have concerns that it cannot adequately monitor Hinckley's mental-health status from afar, because it asks this Court to order Hinckley to stay away from "government centers in Richmond," presumably because it believes that Hinckley cannot be trusted to enter them for a non-dangerous purpose.

#### **IV. Conclusion**

Although it has been thirty years since Hinckley attempted to assassinate President Reagan, the damage that he caused his victims remains. James Brady continues to suffer physical impairments from the shooting. The Reagan family to this day is distraught by President Reagan's shooting. Secret Service Agent McCarthy and Metropolitan Police Department Officer Delahanty suffered serious gun shot wounds from which they, fortunately, recovered.

Thus, as the record has demonstrated, Hinckley is a man capable of great violence. Moreover, Hinckley still is not sufficiently well to alleviate the concern that this violence may be repeated. Hinckley's mental health is better, but his core diagnoses remain and there is recent

evidence of deception toward his treating physicians as well as narcissism, both of which are significant risk factors for future violence. Furthermore, the Hospital's proposed release plan has numerous shortcomings. Accordingly, the record does not permit this Court to find that Hinckley will not, in the future, be a danger to himself or others under the conditions proposed by the Hospital. The government therefore respectfully requests that the Hospital's petition to expand Hinckley's conditions of release be denied.

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