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THE WHITE HOUSE
WASHINGTON

April 20, 1982

LD

MEMORANDUM FOR EDWIN MEESE III
JAMES A. BAKER, III
MICHAEL K. DEEVER

FROM: FRED F. FIELDING

SUBJECT: U.S. vs. Hinckley

Update:

As you may be aware, Hinckley's attorneys have filed a motion to bifurcate the trial and preclude the government from presenting the testimony of the victims. It is expected that the judge will deny this motion today. The trial is scheduled to proceed on April 27.

The prosecutors have also made the offer to Hinckley's attorneys that the President might be willing to give a videotaped deposition in lieu of trial testimony if Hinckley will waive his right to be present. A response to that offer is expected as soon as the judge denies the motion to bifurcate.

Thus, if we are going forward with a deposition, we should be tentatively prepared to make the President available the latter part of this week for (1) a preparation session and, (2) a brief deposition.

As for the need for the President to participate in the trial at all, I'm afraid the editorial in this morning's Post reinforces the need. Also, you should be aware that the prosecutors have again talked with Jim Brady's doctor, as well as with his personal attorney, none of whom will permit Jim to testify.

I'll keep you advised of developments.

/Attachment

Apr 20 82 Wash Post Editorial attached

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The Hinckley Trial Evidence

THE CASE OF John W. Hinckley, accused of shooting President Reagan, his press secretary, James Brady, Secret Service agent Timothy McCarthy and D.C. police officer Thomas Delahanty more than a year ago is scheduled to come to trial next week. The delay in the legal proceedings is due in part to a dispute over what evidence should be admissible at trial. Specifically, defense attorneys have already been successful in barring certain notes found during a search of his cell and statements made to the FBI before Mr. Hinckley had a lawyer. Prosecutors had hoped to use this evidence to show that the accused was sane at the time of the shooting, but both the trial judge and the U.S. Court of Appeals held that the evidence had been illegally obtained and could not be used.

Mr. Hinckley admits that he shot the four men — the act was videotaped and witnessed by dozens of bystanders—but, according to papers filed in court, he plans two defenses. He was insane at the time of the shooting, he will allege, and he wasn't planning to harm the men at all. He was aiming at the president's limousine.

In our system of justice, every accused person is entitled to a good defense, and the lawyers who have been engaged by Mr. Hinckley's family to represent him are naturally leaving no stone unturned. Having succeeded in keeping out some evidence bearing on Mr. Hinckley's mental state, they have

now moved to prevent introduction of evidence on the shooting itself. There is, for example, a complete videotape of the event that shows the defendant's hand firing the gun and then a group of security officers wrestling him to the ground. This sight of the actual violence, complete with victims writhing in pain, might "arouse the jury's sympathy for the victims," say the defense attorneys. So would seeing the victims in person, so their testimony should be barred. They also object to the jury's having a description of the explosive bullets used by the assailant. No doubt that would cause jurors to speculate on Mr. Hinckley's intention to inflict special pain and damage on the limousine.

This effort by the defense certainly represents an imaginative and aggressive legal strategy. But one wonders whether justice can be done if the jury is prevented from evaluating evidence simply because it might engender sympathy toward the victim. Aren't the basic facts of *what* happened relevant to the question of *why* they happened? Isn't visual evidence of the defendant's demeanor at the time of the crime relevant to the question of whether he was insane at that time? And isn't there something to be said for the victim's interest in appearing before the jury to say: "This is what happened to me. This is what this case is all about"?

Judge Barrington Parker will consider such questions before ruling on the defense motion. His decision shouldn't be a difficult one to make.