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Case file Number(s): 100000-106999

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WITHDRAWAL SHEET

Ronald Reagan Library

Collection: WHORM: Subject Files

Archivist: kdb/srj

File Folder: JL003-01 [100075 - 104619]

Date: 6/23/98

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. report 100075 	re: attempted assassination. 3p.	4/9/81	FT B7 won 12/18/00

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P-1 National security classified information [(a)(1) of the PRA].
- P-2 Relating to appointment to Federal office [(a)(2) of the PRA].
- P-3 Release would violate a Federal statute [(a)(3) of the PRA].
- P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA].
- P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA].
- P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA].

C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

- F-1 National security classified information [(b)(1) of the FOIA].
- F-2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
- F-3 Release would violate a Federal statute [(b)(3) of the FOIA].
- F-4 Release would disclose trade secrets or confidential commercial or financial information [(b)(4) of the FOIA].
- F-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA].
- F-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
- F-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
- F-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].

RONALD W. REAGAN LIBRARY

THIS FORM MARKS THE FILE LOCATION OF ITEM NUMBER 1 LISTED ON THE
WITHDRAWAL SHEET AT THE FRONT OF THIS FOLDER.



U.S. National Archives & Records Administration

Current Status Details for CTRH RECID: 100266CU MAIN SUBCODE: JL002

Current Status	Open
User Name	dbarrie
Status Date	2017-07-06
Case Number	S8008
Notes	4 p. Transferred to JL003-01

[Change Status](#)[Close Window](#)

Review Status History

<u>No.</u>	<u>Status</u>	<u>Date</u>	<u>User</u>	<u>Case Number</u>	<u>Notes</u>
1	Open	2017-07-06	dbarrie	S8008	4 p. Transferred to JL003-01

THE WHITE HOUSE
WASHINGTON

March 4, 1982

SENSITIVE

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

FROM: FRED F. FIELDING

SUBJECT: Hinckley Trial

We should be anticipating that the U.S. Attorney will be contacting us in the near future to express a strong desire that the President testify at the Hinckley trial.

While we can argue that the President did not see his assailant, or for that matter, even know he was shot, the President was one of the victims, and normally would testify. However, his "actual knowledge" of his assailant could be deemed superfluous, and irrelevant (and perhaps inflammatory) in a criminal matter; the proof of his being injured can be established by others and Hinckley's defense will obviously be insanity.

On the other hand, if the President declines to testify upon request, it might be perceived that he is not willing to carry out his obligation as a citizen who is concerned about law and order ("he is not willing to be involved"). Further, if for some reason Hinckley is acquitted, the question of the impact of the President's absence could be raised -- not legitimately, but nonetheless could be raised. (What if...?)

On balance, if the request comes (as it will), we should be prepared to discuss with the President. My recommendation would be in favor of him testifying. I think it is silly, but I feel he has no choice but to comply.

099850

Mar 02 82 David B. Waller memo to Fred
Fielding attached; Received from FF
Hinckley folder, 2/82-

100266 CN
JL002
FBOV
JL003-01
JL003

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

March 2, 1982

FOR: FRED F. FIELDING

FROM: DAVID B. WALLER *DBW*

SUBJECT: U.S. v. Hinckley

Roger Adleman telephoned on February 24 to advise that the U.S. Attorney's Office has requested the Department of Justice to authorize the filing of a motion for rehearing en banc of the recent Court of Appeals decision, affirming the District Court ruling which blocked introduction of certain evidence in this matter.

In an unusual move, the Court of Appeals, following its recent ruling, immediately issued a mandate to the District Court. Thereafter, Judge Parker scheduled a status call for February 25. As a result, in order to preserve their right to seek review by the Court of Appeals, en banc, the Government first filed a motion requesting that the Court of Appeals recall the mandate.

Last Friday, Adleman advised that the hearing before Judge Parker took place and a trial date was set for March 9. Thereafter, however, the Court of Appeals granted the Government's motion and recalled the case from Judge Parker, thereby cancelling the trial date.

Adleman is hopeful that if a rehearing en banc is granted the Court of Appeals will be more receptive to the Government's arguments than was the liberal panel which affirmed the District Court.

Joe DiGenova or Stan Harris will be calling either you or me in the near future to express their strong desire that the President testify at the trial in this matter. I anticipate that they will urge that only by testifying can the President avoid the suggestion that he has not done his part to avoid similar attempts on his life or that of his successors. Further, they will urge that if he were to not testify, the President would be acting in a manner inconsistent with his expressed concern with law and order.

At your convenience, I would like to discuss this matter with you.

Yes

FFF

RE: Hinckley Trial

I concur w/ your
conclusion: RR should
testify if called.

Ed

THE WHITE HOUSE
WASHINGTON

TO: *Jack Fildes*

FROM: MICHAEL K. DEAVER
Assistant to the President
Deputy Chief of Staff

☐ Information

☐ Action

THE WHITE HOUSE

WASHINGTON

March 4, 1982

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JAMES A. BAKER III
→MICHAEL K. DEEVER

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On the other hand, if the President declines to testify upon request, it might be perceived that he is not willing to carry out his obligation as a citizen who is concerned about law and order ("he is not willing to be involved"). Further, if for some reason Hinckley is acquitted, the question of the impact of the President's absence could be raised -- not legitimately, but nonetheless could be raised. (What if...?)

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U.S. National Archives & Records Administration

Current Status Details for CTRH RECID: 100267CU MAIN SUBCODE: JL002

Current Status	Open
User Name	dbarrie
Status Date	2017-07-06
Case Number	S8008
Notes	4 p. Transferred to JL003-01

[Change Status](#)[Close Window](#)

Review Status History

<u>No.</u>	<u>Status</u>	<u>Date</u>	<u>User</u>	<u>Case Number</u>	<u>Notes</u>
1	Open	2017-07-06	dbarrie	S8008	4 p. Transferred to JL003-01

FFF
Stan Harris gave us a
copy of this draft motion
for informational purposes only
Draft -
the name now being used.

DRAFT 4-30-82;

NOT FILED

100267 *CU*

4/30/82
JL002

PRO11

FG001

JL003-01

JL003

FG053

FG114

UNITED STATES OF AMERICA :

v. :

Criminal No. 81-306

JOHN W. HINCKLEY, JR. :

MOTION FOR LEAVE TO TAKE A VIDEOTAPED
DEPOSITION OF PRESIDENT RONALD REAGAN

The United States of America, by its attorney, the United States Attorney for the District of Columbia, respectfully moves for leave to take a videotaped deposition of President Ronald Reagan, and as grounds therefore states the following:

1. Mr. Reagan is a victim in the case on trial, and his testimony constitutes a significant part of the evidence to be presented in the Government's case-in-chief.

2. Rule 15(a) of the Federal Rules of Criminal Procedure governs the taking of depositions by videotape. It provides in relevant part:

Whenever due to exceptional circumstances of the case it is in the interest of justice that the testimony of a prospective witness of a party be taken and preserved for use at trial, the court may upon motion of such party and notice to the parties order that testimony of such witness be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged, be produced at the same time and place.

Thus, the taking of a deposition is justified when "exceptional circumstances" are present and the "interests of justice" are served.

3. In the instant case, the circumstances of having the President of the United States testify in this criminal proceeding are truly exceptional, and the interests of justice require that his testimony be presented via videotape. The fact that Mr. Reagan is the President, and the attendant concerns

about his personal safety and the national security present the most compelling justifications for the use of a videotape. For the President to make a scheduled appearance in the United States Courthouse would seriously affect the elaborate but necessary security measures taken daily to protect him.

Further, the President's schedule does not permit him to remain "on call" to testify during the trial at a point in time convenient to the Court and counsel. In addition to numerous meetings and appearances here in the city, upon information and belief Mr. Reagan has made several commitments which require him to be out of town for several days within the next three weeks. To coordinate his schedule with the trial schedule would thus be a difficult task.

4. The taking of a deposition would eliminate most of the problems associated with the President's live testimony. The scheduling of the deposition would remain known only to the parties and would not be a subject for public announcement. Presidential security would be aided by the taking of the deposition in the already secured Courthouse.^{1/} The President's schedule would be accommodated by the taking of such a deposition at a mutually convenient time, and the jury would be exposed to testimony that simulated Mr. Reagan's actual presence.

5. The granting of this motion lies within the carefully exercised discretion of this Court. Clearly, the exceptional circumstances presented warrant the use of a videotape.

6. Finally, there is precedent for the procedure urged here. In the instant case Ms. Jodie Foster was permitted to testify via a deposition. Moreover, when Sarah Jane Moore

^{1/} As the defendant has refused to waive his presence at the taking of the deposition -- indeed he opposes the entire deposition procedure -- the Courthouse is the only acceptable place for the confrontation to take place.

attempted to kill President Ford, the President's testimony was admitted at her trial in deposition form. It was then and it is now a fair and just means of securing a president's testimony in cases involving attempted assassinations.

WHEREFORE, in light of the above, the United States respectfully submits that this motion should be granted.

Respectfully submitted,

STANLEY S. HARRIS
United States Attorney

ROBERT R. CHAPMAN
Assistant United States Attorney

MARC B. TUCKER
Assistant United States Attorney

ROGER M. ADELMAN
Assistant United States Attorney

CONSTANCE L. BELFIORE
Assistant United States Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing pleading has been mailed to counsel for defendant, Vincent Fuller, Esquire, Williams & Connolly, 839 17th Street, N.W., Washington, D.C. 20006, this _____ day of _____, 1982.

ROGER M. ADELMAN
Assistant United States Attorney

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

O R D E R

Upon consideration of the United States' motion for leave to take a videotaped deposition of President Ronald Reagan pursuant to Rule 15(a) of the Federal Rules of Criminal Procedure and the representations of counsel in support thereof, it is this _____ day of April, 1982,

ORDERED, that the United States' motion for leave to take a videotaped deposition of President Ronald Reagan is granted; and it is

FURTHER ORDERED, that said deposition shall take place in the Courthouse; and it is

FURTHER ORDERED, that said deposition shall remain sealed until it is offered as testimony at trial.

BARRINGTON D. PARKER
United States District Judge



U.S. National Archives & Records Administration

Current Status Details for CTRH RECID: 100268CU MAIN SUBCODE: JL002

Current Status	Open
User Name	dbarrie
Status Date	2017-07-06
Case Number	S8008
Notes	13 p. Transferred to JL003-01

[Change Status](#)[Close Window](#)

Review Status History

No.	Status	Date	User	Case Number	Notes
1	Open	2017-07-06	dbarrie	S8008	13 p. Transferred to JL003-01

[JL002 100268]

1 Good copies
6:00pm

[Post-it note was attached to page 1
of the document immediately
following. KOB 6/9/98]

DRAFT

FFF

5/3/82

100268

CU

draft
Copy of statement to be issued by the U.S. Attorney's

Office this afternoon concerning the participation of President Reagan in the Hinckley trial.

TR

JL002
JL003
FG001
JL003-01
FG017

The United States Attorney's Office originally desired to present President Reagan as one of its witnesses in the case of the United States v. John W. Hinckley, Jr. However, although the President was one of the four victims of the shooting, it is acknowledged that the evidence which he could present directly to the jury is limited and essentially may be developed by and through other witnesses.

President Reagan has a strong interest in this case, both as a victim and as one who is deeply concerned about the effect of conduct such as the defendant's upon the Presidency as an institution. On March 24, 1982, the President met with members of the prosecutorial team (i.e., with United States Attorney Stanley S. Harris and with Assistant United States Attorney Roger M. Adelman) and discussed the case at considerable length.

The difficulties connected with having a sitting President testify in a criminal trial are numerous and obvious. Domestic and international problems of great importance make persistent and sometimes unpredictable demands upon a President's time, and the matter of security -- as evidenced by this very case -- always is of concern. Giving careful consideration to all of the factors which must be evaluated, with particular emphasis upon the fact that the President's testimony would be quite limited and not essential to the presentation of the fundamental issues, a determination was made at the White House that the President would not make a personal appearance at the trial. The United States Attorney's office acquiesced in that determination.

Comments: Received from JF Hinckley Folder 9/82

President Reagan always has been and remains willing to testify by means of a videotaped deposition pursuant to Rule 15(a) of the Federal Rules of Criminal Procedure. Defense counsel consistently have opposed any testimony by the President. Thus, to seek to have the President testify by means of a videotaped deposition -- at which the defendant would be entitled to be present -- would precipitate legal controversy and would be distracting from the presentation of evidence concerning the fundamental issues in this case.

Considering all of the relevant circumstances, the United States Attorney determined not to seek an order for a videotaped deposition of the President. Accordingly, while there will be considerable testimony about President Reagan and the effect of the events upon him, it is not now expected that he will be an active participant in the trial.

The trial judge in this case has rescinded his December 1981 order which had directed that the jury be sequestered. In light of that fact, all affected governmental personnel have concluded that no comment as to the role of President Reagan in this case should or will be made beyond this statement.

First draft of statement proposed to be issued by the Department of Justice concerning the participation of President Reagan in the Hinckley trial.

The United States Attorney's Office ^{originally desired} wished to present President Reagan as one of its witnesses in the case of the United States v. John W. Hinckley, Jr. However, although the President was one of the four victims of the shooting, ^{it is} the evidence which he could present ^{directly} to the jury is limited and essentially may be developed by and through other witnesses.

^{acknowledged that} The difficulties connected with having a sitting President testify in a ^{criminal} trial ~~which never has happened before~~ are numerous. Domestic and international problems of great importance make persistent ^{and sometimes unpredictable} demands upon a President's time, and the matter of security -- as evidenced by this very case -- always is of concern. Giving careful consideration to all of the factors which must be evaluated, with particular emphasis upon the fact that the President's testimony ^{fundamental} would be quite limited, ^{and not essential to the presentation of the issues,} a determination was made at the White House that the President would not make a personal appearance at the trial.

President Reagan has a strong interest in this case, both as a victim and as one who is deeply concerned about the effect of conduct such as the defendant's upon the Presidency as an institution. ^{On March 24, 1982,} The President met with members of the prosecutorial team (i.e., with United States Attorney Stanley S. Harris and with Assistant United States Attorney Roger M. Adelman) and discussed the case at considerable length.

President Reagan has ^{always} been and remains willing to testify by means of a videotaped deposition pursuant to Rule 15(a) of the Federal Rules of Criminal Procedure. The prosecutors had discussions with defense counsel concerning the taking of such a deposition. Defense counsel made clear their opposition

to such a procedure.^{*/} Thus, to seek to have the President testify by means of a videotaped deposition -- at which the defendant would be entitled to be present -- not only would precipitate legal controversy but further would be distractive from the presentation of evidence concerning the fundamental issues in this case.

Considering all of the relevant circumstances, the United States Attorney ~~was~~ determined not to seek an order for a videotaped deposition of the President. Accordingly, while there will be considerable testimony about President Reagan and the effect of the events upon him, it is not now expected that he will be an active participant in the trial.

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^{*/} It should be noted that the Government had objected to the defense's ultimately successful effort to secure testimony from Ms. Jody Foster by means of a videotaped deposition.

Good - 6:00 pm

original

Copy of statement to be issued by the U.S. Attorney's Office this afternoon concerning the participation of President Reagan in the Hinckley trial.

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DRAFT

FFF

6:00 pm
Change for Connie
5/3/82 +

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President Reagan (has always) been and remains willing to testify by means of a videotaped deposition pursuant to Rule 15(a) of the Federal Rules of Criminal Procedure. Defense counsel consistently have opposed any testimony by the President. Thus, to seek to have the President testify by means of a videotaped deposition -- at which the defendant would be entitled to be present -- would precipitate legal controversy and would be distracting from the presentation of evidence concerning the fundamental issues in this case.

Considering all of the relevant circumstances, the United States Attorney determined not to seek an order for a videotaped deposition of the President. Accordingly, while there will be considerable testimony about President Reagan and the effect of the events upon him, it is not now expected that he will be an active participant in the trial.

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President Reagan has always been and remains willing to testify by means of a videotaped deposition pursuant to Rule 15(a) of the Federal Rules of Criminal Procedure. ~~The prosecutors had discussions with defense counsel concerning the taking of such a deposition.~~ *Defense counsel consistently have opposed any testimony by the President.* ~~Defense counsel made clear their opposition to such a procedure.~~ *thus* ~~Thus,~~ to seek to have the President testify by means of a videotaped deposition -- at which the defendant would be entitled to be present -- ~~not only~~ would precipitate legal controversy ~~but further~~ *and* would be distracting from the presentation of evidence concerning the fundamental issues in this case.

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Reagan

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**WHITE HOUSE
COUNSELLOR'S OFFICE TRACKING WORKSHEET**

TL003-01☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence
Received (YY/MM/DD) 82110115Name of Correspondent: Fred E. Inbau☒ CN Mail Report

User Codes: (A) _____ (B) _____ (C) _____

Subject: Writer sends an article he wrote
entitled, "Over- Reaction - The mischief of
Miranda v. Arizona."**ROUTE TO:****ACTION****DISPOSITION**

Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>CNHAMM</u>		<u>O</u>	<u>82110115</u>	<u>EM</u>	<u>A</u>	<u>82,10,25</u>
		Referral Note: _____				
<u>CNCRIB</u>		<u>A</u>	<u>82110115</u>		<u>C</u>	<u>82110119</u>
		Referral Note: _____				
<u>CNMEES</u>		<u>I</u>	<u>82110115</u>		<u>C</u>	<u>82110115</u>
		Referral Note: _____				
			<u>1 1</u>			<u>1 1</u>
		Referral Note: _____				
			<u>1 1</u>			<u>1 1</u>
		Referral Note: _____				

ACTION CODES:

A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet
to be used as Enclosure

I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:

A - Answered
B - Non-Special Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:

Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
Always return completed correspondence record to Central Files.
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

RECORDS MANAGEMENT ONLY

CLASSIFICATION SECTION

No. of Additional Correspondents: _____ Media: L Individual Codes: 4.640 4.610 _____

Prime Subject Code: IL 003.01 Secondary Subject Codes: IL 003. Pu _____
EG 006.01 _____

PRESIDENTIAL REPLY

<u>Code</u>	<u>Date</u>	<u>Comment</u>	<u>Form</u>
C	_____	Time: _____	P- _____
DSP	_____	Time: _____	Media: _____

SIGNATURE CODES:

CPn - Presidential Correspondence

- n - 0 - Unknown
- n - 1 - Ronald Wilson Reagan
- n - 2 - Ronald Reagan
- n - 3 - Ron
- n - 4 - Dutch
- n - 5 - Ron Reagan
- n - 6 - Ronald
- n - 7 - Ronnie

CLn - First Lady's Correspondence

- n - 0 - Unknown
- n - 1 - Nancy Reagan
- n - 2 - Nancy
- n - 3 - Mrs. Ronald Reagan

CBn - Presidential & First Lady's Correspondence

- n - 1 - Ronald Reagan - Nancy Reagan
- n - 2 - Ron - Nancy

MEDIA CODES:

- B - Box/package
- C - Copy
- D - Official document
- G - Message
- H - Handcarried
- L - Letter
- M - Mailgram
- O - Memo
- P - Photo
- R - Report
- S - Sealed
- T - Telegram
- V - Telephone
- X - Miscellaneous
- Y - Study

25 October 1982

Dear Fred:

Thank you for your letter of 11 October 1982. I appreciate your sending me the copies of your article "The Mischief Wrought by the Miranda Ruling." Your points are certainly thought provoking.

With best personal regards,

Sincerely,

EDWIN MEESE III
Counsellor to the President

Mr. Fred E. Inbau
357 East Chicago Avenue
Chicago, IL 60611

cc: Ed Meese

EM:ES:vml

Dear Fred:

Thank you for your letter of 11 October 1982. I appreciate your sending me the copies of your article "The Mischief Wrought by the Miranda Ruling." Your points are certainly thought provoking.

With best personal regards,

Sincerely,

EM

cc to Meese

EM;es

Fred E. Inbau

John Henry Wigmore Professor of Law Emeritus
NORTHWESTERN UNIVERSITY

357 EAST CHICAGO AVENUE
CHICAGO, ILLINOIS 60611

October 11, 1982

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Dear Ed:

Enclosed are three copies of an article of mine entitled "Over-Reaction — The Mischief of *Miranda v. Arizona*," which was published in the Summer issue of the Journal of Criminal Law and Criminology. I hope you can at least take a peak at the first two pages where I discuss the mischief *Miranda* created in the *Hinskey* case. When you find the president in a "relaxed" situation I think it would interest him. Jim Brady would also find it of interest, I believe. For these latter two possibilities I am sending the extra copies of the reprint.

I notice that you will be addressing judges at the National Judicial College on October 22nd. If relevant, you may want to rub their noses in the *Miranda* mischief.

A sampling of the press coverage of the *Miranda* article is also enclosed. The editorial in the Arizona Republic might be of particular interest.

With all good wishes,

Sincerely,
Fred

Byrnes

AUG 1 1982

The Mischief Wrought by the Miranda Ruling

Fred E. Inbau

Immediately after the attempted assassination of President Reagan in the early afternoon of March 30, 1981, Secret Service agents and District of Columbia police arrested John W. Hinckley Jr. and took him to local police headquarters, arriving there at 2:40 p.m.

They wanted to question Hinckley not only about his motive, but also about possible accomplices. Before doing so, however, they dutifully read him the warnings of constitutional rights the Supreme Court in 1966 mandated in its 5-4 decision in *Miranda vs. Arizona*. These were the warnings of his rights to remain silent and to have an attorney present before or during his questioning by the police. Unless a custodial suspect waives those stated rights, there can be no questioning of him, except with his attorney's consent. That consent rarely is forthcoming.

Concerned that a court might decide the warnings they give are inadequate or improperly stated, police read them to Hinckley from a printed departmental document three times within a two-hour period. After receiving the third set of warnings, Hinckley was given a "waiver of rights" form on which he wrote "yes," indicating he had read his rights and understood them. Then he was asked whether he "wished to answer any questions." At this point Hinckley said, "I don't know. I'm not sure; I think I ought to talk to Joe Bates (his father's lawyer in Dallas)." Hinckley added: "I want to talk to you, but first I want to talk to Joe Bates."

After he was booked, at which time identification data and fingerprints were taken, and while police were trying to contact Bates, two FBI agents arrived and arrested Hinckley for violating the Presidential Assassination Statute. They were informed of all that had transpired and then took Hinckley to the FBI field office at about 5:15 p.m. He received the Miranda warnings for the fourth time. The FBI presented him another waiver form. Hinckley signed it; however, "it was clearly understood that he did not waive his right not to answer questions before consulting counsel." Nevertheless, he did answer various "background" questions the FBI agents asked. Hinckley's answers, however, were declared unusable as evidence in the District of Columbia trial and appellate courts, because he previously had asked for a lawyer. Both courts rejected the government's contention that the questioning of Hinckley at the FBI office was merely "standard processing procedure" of an "essentially administrative nature." They concluded the "background" questioning constituted an interrogation for the purposes of obtaining information that would negate the reasonably anticipated insanity defense plea at the time of trial.

In view of the court rulings declaring the "background information" inadmissible, whatever value that information may have been to the prosecution was irretrievably lost. Reliance had to be placed, therefore, upon independent evidence of Hinckley's sanity, including the prosecution's psychiatrists' testimony that he was sane. Their testimony was contradicted by several defense psychiatrists.

Hinckley ultimately was found not guilty by reason of insanity.

A month before Hinckley shot the president, a Washington, D.C., murderer's conviction was reversed because, after receiving the same litany of warnings given to Hinckley, the suspect wrote "no" on the printed question form in answer to the question whether she was "willing to answer questions without having a lawyer present." Such acceptances of the Miranda invitations to silence are not rare.

Another example of the mischief caused by the Miranda mandate is the California case of Barry Braeske. After confessing that he had murdered his mother, father and grandfather, that confession was nullified by the California Supreme Court. After receiving the required warnings and having agreed to be questioned, Braeske's attention was called to the blood on his trousers, whereupon he said he wanted a lawyer. The interrogation ceased, but as the police were processing the charging papers, Braeske requested to speak "off the record." He then admitted the killings and disclosed the location of the fatal weapon. The California Supreme Court, in a 4-3 decision, held this constituted a violation of Miranda because Braeske had asked for a lawyer before making the statement.

Why did the U.S. Supreme Court create the Miranda rules after 30 state supreme courts and a federal circuit court of appeals had held for many years that no such warnings were constitutionally required? They were the product of the Warren court's pursuit of egalitarianism.

The Warren court's basic consideration was this: rich, educated, intelligent sus-

pects very probably know from the outset they have the privilege of silence, where poor, uneducated or unintelligent suspects are unaware of that privilege. Consequently, anyone in custody or otherwise deprived of his freedom, must receive warnings prescribed in Miranda.

Egalitarianism does not lend itself to criminal investigation. The time to show compassion because of a criminal suspect's unfortunate background is after it is determined whether he committed the offense, not before.

The Supreme Court, at the earliest opportunity, ought to overrule Miranda, and else uphold the validity of the test of confession admissibility enacted by Congress shortly after Miranda as part of the 19 "Omnibus Crime Bill." That test provided that a confession "shall be admissible evidence if it is voluntarily given," and that the failure to give any of the warnings would not categorically outlaw a confession.

Although Congress intended, in effect, to overrule the Miranda decision in 1968 crime bill, nothing has changed; the Supreme Court's Miranda ruling takes precedence, and it continues to be used and overused daily by police officers in courtrooms across the country. The test of admissibility of a confession should be as Congress stated, only whether the confession is voluntary. This affords adequate protection to the innocent, while at the same time, allows the prosecution to prove its charge against the guilty.

Fred E. Inbau is professor emeritus at Northwestern University School of Law, Chicago, Ill.

Arizona Republic July 28, 1982
Miranda Rights Overdone?

THE *Miranda* decision is a generally judicial landmark left by the so-called Warren Court.

In 1966, a 5-4 vote the U.S. Supreme Court held that Ernesto Miranda of Arizona had not received a fair trial because he was not told of his rights when he was arrested.

As a result, law enforcement officials are required to tell a suspected criminal, before questioning him, that he has a right to remain silent and to have an attorney present during his questioning.

Unless the suspect waives his rights, he cannot be questioned without the consent of his attorney.

The court was motivated by its quest for social justice. It believed the rich and well-educated know their legal right, while the poor and unschooled don't.

It should be noted, however, that 30 state supreme courts and one federal circuit court of appeals believed there was no constitutional requirement for such warnings.

After he was arrested for attempting to assassinate President Reagan, John W. Hinckley Jr. was read his *Miranda* rights three times by local police and once by the FBI. Twice he signed waiver of rights forms.

The court ruled that the "background information" sought by the FBI was inadmissible. Because Hinckley had not consulted a

lawyer, the information could not be used in the trial which ended with Hinckley's being declared not guilty by reason of insanity.

Whether the jury's mind would have been changed if these questions and answers had been allowed, no one knows.

According to Fred E. Inbau, of the Northwestern University law school, the *Miranda* precedent may have affected the outcome of the Hinckley case.

He cites other cases to prove that the egalitarian philosophy of the Warren Court does not apply to the field of criminal investigation.

"The time to show compassion because of a criminal suspect's unfortunate background is after a determination of whether or not he committed the offense, not before," writes Inbau in a Northwestern law review.

He believes the Supreme Court should overrule *Miranda* or uphold a law stating a confession "shall be admissible in evidence if it is voluntarily given."

The *Miranda* case originated in Arizona, after the state Supreme Court held he could answer police questions voluntarily.

It would be irony indeed if, 16 years after the U.S. Supreme Court rejected the Arizona Supreme Court's reasoning, the country should go back to procedures that seemed to be working well enough then.

92/

THE WHITE HOUSE
WASHINGTON

April 10, 1981

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UT 001-01

MEMORANDUM FOR MICHAEL K. DEEVER

FROM: KENNETH L. KHACHIGIAN

You know Bruce Herschensohn out in L.A. who does commentaries
for KABC.

Attached is an especially good one done after March 30. If
and when you think he's up to it, the President might like to
read it because it expresses a number of sentiments which I
believe he agrees with.

BRUCE HERSCHENSOHN

COMMENTARY

4-1-81

Over the last two days I've heard, and I'm sure that you've heard a great deal of quick and angry analysis that arrived at the conclusion that this is a sick and a violent society, and that somehow, the man who's the attempted assassin is reflective of our sick and violent society. I'm convinced that that kind of analysis is too quick and too dumb. And if any speck of that kind of analysis is true, then we, and the rest of the world, better understand and appreciate that we're also reflective of Timothy McCarthy and Thomas Delahanty, the secret service agent and the D.C. policeman who risked their lives to save the life of the President.

Yesterday, D.C. police-officer Delahanty was visited in his hospital room by Michael and Maureen Reagan and he told them, "Tell the President I did everything I could." Well, he certainly did, and he didn't need to say that at all because the video-tapes bear witness to that fact, as they do for the secret service agent, Timothy McCarthy. In light of all that, I don't understand the fascination with someone else---the lunatic, or how anyone can arrive at the conclusion that he typifies the society in which we live. I do understand any great fascination with the two men who made the split-second determination to be killed, if necessary, in order to save the life of someone they didn't know:

Bruce Herschensohn
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But they did know that that person was the President of the United States and, at all costs, he had to be guarded from a maniac.

I would hope that psychiatrists would appear on television and over radio and tell us what makes men like Timothy McCarthy and Thomas Delahanty tick. Where do they come from? What kind of backgrounds do they have? What are their families like? What kind of society produced heros like this?

Look at those tapes. Just look at them. The average American is not an assassin: is not responsible for the breeding of crazy people...and I'm convinced that we have the best and the most decent society in the history of the world. I'm also convinced that, though lunatics exist in our society and always will, that there is a great heroic counter-balance to them, and that that great heroic counter-balance outweighs the lunatics, at least in this case, by two to one. And who knows how many others in the secret service and the D.C. police-force and the police-forces all over the nation would have done exactly the same thing?

In truth, what heros we produce for young people to emulate, if we'd just give them the attention that they deserve. We all did see those video-tapes of that tragedy of two days ago. But it wasn't as tragic as it could have been. I'm in no way trying

Bruce Herschensohn
Commentary / 4-1-81
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to discount the actions of the nut who fired those shots: but that's all he was. A nut. I can think of nothing less important than his name. And, at this time, I can think of nothing more important than the names of Timothy McCarthy and Thomas Delahanty.

No honor is high enough, no respect is deep enough, and no pride is worthy enough for those two American human beings who used their heads and lives, if necessary, to save us all from a deeper crisis than the one that we witnessed.