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Perspectives: JFK assassination: long ago but still recalled in law

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By: Marshall H. Tanick

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There are at least two dates that most Americans born after the mid-20th century will never forget. One, of course, is Sept. 11, 2001, the date of the terrorist attacks on this country.

The other occurred 48 years ago, Nov. 22, 1963. This year marks the 48th anniversary of the day President John F. Kennedy was assassinated in Dallas.

JFK’s assassination, like the assaults of 9/11, had a huge impact on this country and the world. Threats to the president also have brought about litigation in federal and state courts in Minnesota and within the 8th Circuit. Here’s a look at a few of them, traceable to a date that will never be forgotten.

Racists Rejected

A Minnesota man who pleaded guilty to threatening President Barack Obama in vile, racist emails posted on the White House website failed to persuade the 8th Circuit Court of Appeals to set aside his plea of threatening the president in violation of § 18 U.S.C., sec. 871 in *U.S. v. Christenson*, 653 F.3d 697 (8th Cir. 2011). The racist epithets in the emails triggered a sentence of three years' probation by U.S. District Court Judge Donovan Frank in Minnesota, and the 8th Circuit Court of Appeals over the summer refused to allow withdrawal of the plea.

His claim of insufficient "factual basis" for the plea under Rule 11(b)(3) of the Federal Criminal Rules of Procedure was rejected. Reviewing the matter under a "plain error" standard, the court concluded that the wording of the emails was sufficiently clear and specific, to convey an objective impression that the threat was a serious one "rather than a harmless rant."

An employee who made loud statements over a loudspeaker, heard by customers on the premises, including derogating Obama, was denied unemployment compensation benefits in *Goble v. Speedway Super America, Inc.*, 2010 WL 1850243 (Minn. App. May 11, 2010)(unpublished). The claimant, a shift leader at a gas station convenience store, got into an argument with an African-American customer 10 days before the president's inauguration three years ago. The customer, asserting racism, said it was a "good thing Obama was elected," which elicited the employee to say over the store's outdoor intercom "Obama sucks." The Department of Employment and Economic Development (DEED) deemed him ineligible for unemployment due to "misconduct" under Minn. Stat. 268.095 subd. 4(1), and the appellate court affirmed. The employee's claim that he made a mistake "under the heat of the moment" was rejected for several reasons because the employer could "reasonably expect [him] to adhere to higher standards of behavior," and he had been warned after a prior incident involving misuse of the loudspeaker. His "repeated abuse of the intercom system" resulted in a "loss of trust."

Offensive remarks about the president leading a human resources worker to quit were insufficient to obtain unemployment benefits in *Nelson v. Pinnacle Engineering, Inc.*, 2010 WL 3306919 (Minn. App. Aug. 24, 2010) (unpublished). The employee, a white woman at a company in Osseo, resigned because of several incidents that she claimed created a hostile work environment, including being passed over for a bonus and hearing profanity and a racial epithet about Obama, which she found improper because she thought it reflected unfavorably on her fiancé, who was black. One of the offending comments was a remark by the company's CEO characterizing a rifle he gave to an employee as a "gift for you for all the Obama people outside."

The ex-employee's claim for benefits was denied by DEED, and the appellate court affirmed because none of the incidents was sufficiently grave to cause "an average, reasonable employee to quit," as required to qualify for benefits under 268.095 subd. 3(a)(1).

The "highly inappropriate remarks ... use of the profanity and racial epithet" about the president were not "good cause" to quit because they were "not directed" at the claimant. Since they took place some six months before she resigned, their "relevancy [was] questionable."

Dakota Duo

A pair of cases in the 8th Circuit involved two incarcerated individuals in the Dakotas who threatened the life of Obama's predecessor.

A former inmate from North Dakota had his conviction for threatening President George W. Bush overturned in *U.S. v. Cvijanovich*, 2011 WL 2680485 (D.N.D. July 8, 2011) (unpublished). The defendant told a fellow inmate, while incarcerated in county jail, that all he wants to do is "kill the president" and that he would not rest "until the president is dead." A federal judge in North Dakota refused four years ago to overturn the verdict, which was based in large

part on the testimony of the defendant's cellmate, who was seeking a reduction of his sentence in exchange for cooperation with the government and also had an "extensive criminal record." 2007 WL 4313469 (D.N.D. 2007) (unpublished).

After serving 19 months in prison, he persuaded the trial judge to throw out the conviction on grounds that the fellow inmate had written a letter stating that he would lie to avoid prison time in his own case. The letter, which came to light in the trial against the informant, was not known or used by the prosecutor in the presidential threat case, and should have been turned over to the defense. The failure to do so "undermines confidence in the outcome of the proceedings" and warranted setting aside the prior conviction and ordering a new trial.

But the 8th Circuit upheld an upward variance for an 84-month sentence, about double the guidelines for a man incarcerated in South Dakota, who threatened Bush and others in *United States v. Austad*, 519 F.3d 431 (8th Cir. 2008). While imprisoned in South Dakota, an inmate sent a letter to a judge who had sentenced a couple of the inmate's friends, expressing "exceptionally graphic threats," capped off with the pledge to shoot the judge "through the back of the head, assassination style." He also sent an assassination threat to one of the state's senators, threatening to kill the lawmaker as well as the president.

The 8th Circuit affirmed the long sentence, rejecting the defendant's contention that there must be "extraordinary circumstances" to justify such a large departure because that standard, which had been followed by the 8th Circuit in prior cases, was overruled by the U.S. Supreme Court in *Gall v. United States*, 552 U.S. 38 586 (2007). Although a lesser sentence might have been "appropriate," the trial judge did not abuse his discretion because there were "sufficient justifications for the sentence."

McNaughton Matters

Another presidential assassination threat case in Minnesota invoked the age-old McNaughton doctrine for adjudication of the insanity defense in criminal law. *State v. Rawland*, 294 Minn. 17, 199 N.W.2d 774 (1972).

Reversing the conviction of a man who stabbed his father to death while laboring under assassination delusions, the Supreme Court applied the McNaughton rule, stemming from an English decision in 1843 establishing the insanity defense. The tenet, which was codified in Minn. Stat. sec. 611.026, bars criminal culpability if a defendant did not "know the nature of his action or that it was wrong." The defendant's insanity claim stemmed from his fear that his parents were part of a right-wing conspiracy that intended to assassinate him after he announced that he was running for president. Because the McNaughton rule applied, the guilty verdict was set aside, the killer was found not guilty by reason of insanity and he was subjected to a mental commitment proceeding.

The federal codification of *McNaughton*, the Insanity Defense Reform Act of 1984, 18 U.S.C. sec. 17, led the 8th Circuit to reverse the conviction of a Missouri man who, after discharge from a state mental hospital, was charged with violation of the presidential threat law, 18 U.S.C. sec. 871(a), because he told police that he had been hired to assassinate the president in *United States v. Neavill*, 868 F.2d 1000 (8th Cir. 1989). The conviction was reversed because the trial judge erroneously failed to instruct the jury of the possible consequence of civil confinement due to a defective mental condition. The federal statute requires jurors to be informed that the defendant may be subject to involuntary commitment, even if acquitted on insanity grounds. Because of the "probable ignorance" of the jurors of this possibility, the verdict was flawed and set aside.

The federal law was enacted after the attempt by John Hinckley on the life of President Ronald Reagan a couple of months after his inauguration, which formed the basis for another

ruling by the 8th Circuit in *United States v. Auerbach*, 682 F.2d 735 (8th Cir. 1982). The case concerned a defendant in an unlawful firearm possession case, who objected to the prosecutor's remark that he was involved with the "type of weapons that had been used by snipers around the country." The defendant claimed that the remark was "particularly prejudicial and inflammatory" because the trial took place shortly after the assassination attempts in the spring of 1981 on Reagan and Pope John Paul II.

But the 8th Circuit rejected the claim, holding that the prosecutor's statement was only an "isolated remark and was promptly condemned" by the trial judge, who sustained an objection to it.

Another defendant who sought to raise an insanity defense failed in *Wood v. Lockhart*, 809 F.2d 457 (8th Cir. 1987). The acquittal of Hinckley on insanity grounds did not warrant a change of venue for the defendant because Hinckley's acquittal was "too far removed from the specifics" of this case to affect "the jurors' decision-making process."

Shooting Simulated

One of the most bizarre and tragic assassination-related cases occurred in a different Dakota, the county where a simulated re-enactment of the president's assassination formed the basis for an unsuccessful wrongful death lawsuit in *Greaves v. Galchutt*, 289 Minn. 335, 184 N.W.2d 26 (1971).

The case arose out of an incident in which an 11-year-old boy was killed when a friend took a loaded .22 rifle from the decedent's home in an attempt to re-enact the Kennedy assassination. The 11-year-old was struck by a bullet fired during the re-enactment by the other youth, who hid the gun from "a position behind him and accidentally killed him." A jury in Dakota County District Court found that assumption of risk barred a wrongful death action brought on behalf of the deceased boy against the shooter as well as the decedent's own brother and grandmother.

The Supreme Court affirmed, rejecting the challenge to the assumption of risk defense with "no difficulty." Although youthful, the decedent had taken a course on gun safety, using the rifle with which he was "thoroughly familiar." The case was a "classic example" of assumption of risk, because the youth was aware of the "dangers inherent in handling a firearm, and ... deliberately chose to encounter those dangers." Under these circumstances, the jury not only reasonably found the claim barred by assumption of risk but was "virtually compelled" to make such a determination in these "tragic circumstances."

Secret Service Suits

A pair of individuals whose threats on the president's life were snuffed out by the Secret Service lost their civil suits.

An institutionalized patient, who was given medication against his will, failed in a due process challenge in *Dautremont v. Broadlawns Hospital*, 827 F.2d 291 (8th Cir. 1987). Hospitalized three times for mental illness, the patient sued the hospital and physicians for administering psychotherapeutic drugs to him after he communicated to the Secret Service threats to assassinate Reagan.

The hospital and doctor were entitled to summary judgment under the standard of *Youngberg v. Romeo*, 457 U.S. 307 (1982), which provides due process immunity to claims by patients against involuntary administration of medication. The suit could not be pursued on that standard because it limits claims to "arbitrary governmental action." In this case, however, the medical personnel properly exercised "professional judgment" in light of the evidence of "serious mental impairment," highlighted by the assassination threats.


The law proscribing false information to law enforcement authorities, 18 U.S.C. sec. 1001, was upheld in *United States v. Rodgers*, 706 F.2d 854 (8th Cir. 1983), based on information given to Secret Service personnel. The case arose when a man told the Secret Service that his estranged wife was involved in a presidential assassination plot, a hoax used to get federal agents to locate his wife after she left him.

The statutory prohibition was inapplicable because it only pertained to authorities who were empowered to make “final or binding determinations,” not protective agencies like the Secret Service. However, the Supreme Court reversed and remanded, holding that the statute encompassed investigations conducted by law enforcement agencies such as the Secret Service or the FBI. 466 U.S. 475 (1984).

Nearly everyone of age in 1963, and even some younger, remembers the JFK assassination. They and their descendants have lived through the event and its aftermath, which includes some of these assassination-related cases in Minnesota and the 8th Circuit.

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