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Murder and Mayhem on the Texas Supreme Court: The Shocking Death of Justice William Pierson and the Evolution of the Insanity Defense in Texas

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NEAR THE INTERSECTION OF THE CAPITAL OF TEXAS HIGHWAY and Ranch Road 2222 are some of the most exclusive neighborhoods in all of Austin, Texas. Over decades, prime real estate at the confluence of the Colorado River and Bull Creek, the realization that the hills offered majestic views of the Hill Country, and the dramatic growth of the University of Texas, the City of Austin, and state government spurred the development of the area. As Fifth Circuit Court of Appeals Senior Judge Thomas Reavley said recently in an interview for this paper, “it is filled with expensive homes today.”²



The view from the Colorado River near Cat Mountain—
not out in the sticks anymore.

But in 1935, the same area was in what many people called “the sticks.” It was a dark and quiet area mostly populated by deer and coated with cedar pollen. Austin was a sleepy college town of about 60,000.³ The area between Bull Creek and the Colorado River held few homes and they served as modest ranch headquarters connected by narrow roads or quiet, lonely trails and paths. One trail went from Bull Creek Road to the Pecan Experiment Station on the river’s bank. It was there, on April 24, 1935, that an Associate Justice of the Texas Supreme Court and his wife were brutally murdered ... by their own son.⁴

Like every other elected official in Texas at the turn of the twentieth century, William Pierson was a life-long Democrat. He was born in Gilmer, Texas, on March 12, 1871 and was raised by his father in a rural area called Haskell. He graduated from Baylor University in 1896 and completed his education with two years of law school at the University of Texas. Afterwards, Pierson hung his shingle in Greenville in Hunt County. In 1901, he married Lena Haskell and the union produced three children: two sons, named William, Jr. (hereafter referred to as Bill) and Howard, and a daughter named Alice.⁵

¹ www.GaryLavergne.com © 2014 Gary M. Lavergne. An earlier version of this article appears as *Murder and Mayhem on the Texas Supreme Court Family Matters: The Shocking Death of Justice William Pierson*, available at <http://www.garylavergne.com/TSCHS-Lavergne-PiersonCasePaper-20140307.pdf> (last visited Aug. 20, 2014).

² Interview with Hon. Thomas Reavley, Senior Judge, U.S. Court of Appeals for the Fifth Circuit, in Austin, Tex. (Dec. 10, 2013) [hereinafter Judge Reavley].

³ See CITY OF AUSTIN, POPULATION HISTORY 1840 TO 2014, http://www.austintexas.gov/sites/default/files/files/Planning/Demographics/population_history_pub.pdf (last visited Sept. 19, 2014).

⁴ See Will Ervin, *The Tragic Case of Justice William Pierson: Justices in the State Cemetery, Part 2*, J. TEX. SUP. CT. HIST. SOC’Y, Fall 2012, at 14.

⁵ See David Minor, “Pierson, William,” HANDBOOK OF TEXAS ONLINE, <http://www.tshaonline.org/handbook/online/articles/fpi17> (last visited Sept. 19, 2014).



Justice William Pierson

William Pierson was elected to the Texas House in 1901. As a legislator he is remembered for sponsoring the bills that established a significant part of what is now the second tier of our state university system. What was then called the College of Industrial Arts for Women is now known as the Texas Woman's University. His bills also created the state normal schools that became the University of North Texas at Denton and Texas State University at San Marcos. He served in the House for only one term, returned to his law practice in Greenville, and later ran successfully for a judgeship of the Eighth Judicial District of Texas. During his tenure on the bench his decisions in seven brewery cases impressed Governor Pat Neff, who appointed Judge Pierson as an Associate Justice of the Texas Supreme Court in 1921.⁶

Historian James Haley described Justice Pierson as “another in the growing set of native Texans who replaced aging Confederates born in the Deep South.”⁷ Citing memoirs of a Supreme Court clerk, Haley described Justice Pierson as “a kind Christian gentleman, [who was] saddened by his own somewhat frail health, and more [so] by a siege of family problems, not the least of which was his six-year-old younger son, Howard.” The clerk related how, shortly before Pierson's swearing-in, the new Justice lifted young Howard into his chair on the distinguished bench to show him the courtroom. Howard reacted to this show of affection in a “strange and resentful” way. As Haley summarized, “The boy was clearly, in country parlance, not right.”⁸

By the time Howard grew to be a young man of twenty-one, he had a firm reputation among his own family members for having a troubled soul. But as a family, the Piersons had unconditional devotion to the profoundly delusional and disturbed Howard. His delusions included the unshakable belief that he was not, in fact, the son of an accomplished and well-known jurist, but of some renowned scientist. He believed that he had been adopted and that the Piersons were determined to suppress his emergence as a premier scientist who would literally “save the world.” This delusion was Howard's explanation for his father's refusal to fund his education at the University of Texas. Howard was quoted as saying, “To my mind it is just a question of whether my success as a scientist means more to the world than my father.”⁹ Howard also believed that his father had always favored Bill and Alice and nurtured their ambitions and education. He hated French people and wanted them exiled to Mars.

Howard eventually realized that one way to secure funds for an education in science was to gain access to a \$17,000 life insurance policy Justice Pierson owned. The problem was that for Howard to receive any of that money his mother, Mrs. Pierson, would have to die: “Of course, I would have to kill my mother, too, or she would get it all.”¹⁰

In addition to (or because of) his delusions, Howard was a difficult employee in the job he held as an oil

⁶ *Id.*

⁷ JAMES L. HALEY, *THE TEXAS SUPREME COURT: A NARRATIVE HISTORY, 1836–1986*, 163–64, 171–72 (Univ. of Tex. Press 2013).

⁸ *Id.*, Haley cites Carl Lyda, at 5 (on file at the Texas Supreme Court Historical Society). The frail health attributed to Justice Pierson was severe rheumatism. There were rumors that the Justice would have to resign as a result. *SAN ANTONIO LIGHT*, Apr. 25, 1935.

⁹ One of the most complete descriptions of Howard's delusions is a sworn statement of an unidentified high school and college friend dated April 25, 1935. A redacted copy of the statement is in the Austin History Center. *PIERSON MURDER AF Murders M800 (27)*.

¹⁰ *See* Austin History Center: *PIERSON MURDER AF Murders M800 (27)*; *HOUSTON POST*, Apr. 25, 1935; *AUSTIN AMERICAN-STATESMAN*, Apr. 25, 1935; *DAILY TEXAN*, Apr. 25, 1935; HALEY, at 163–64, 171–72.

field gauger.¹¹ Howard's inability to find rewarding and meaningful employment was evidenced by two unstamped, blood-stained letters soon to be found in his pockets that Justice Pierson had written on his behalf. In a pleading tone the letters extolled Howard's progress as a mental patient and stated that he was employable: Howard was "thoroughly sound in character, vigorous in body, industrious, reliable, and loyal."¹²

The extent of Howard's profound mental impairment first manifested itself on April 20, 1935 during a conversation with a close friend. On that clear Saturday afternoon, he discussed in great detail, why he needed to kill his father, why his mother had to die, the different ways he could do it, and how he could get away with the crime. The different methods included poisoning, a staged automobile accident, beating to death with a pipe, and gunshots. Howard admitted he had been planning for the murder of his parents since November of 1934. He had never been violent before and his friend dismissed the entire conversation as another of Howard's harmless delusions.¹³

Howard's friend did not know that, on his way to Austin from a worksite at High Island, south of Beaumont, Howard had driven an hour out of his way to Galveston to purchase a handgun. Four days later, during the afternoon of Wednesday, April 24, 1935, Howard lured his parents into his car for a short drive west of Austin. He brought them to the foot of an area known today as Cat Mountain. He said he wanted to show them Indian artifacts he had discovered along a remote road in the woods. On Bull Creek Road, Howard turned on to a small path that led to the Colorado River.¹⁴

Near the fork created by the Colorado River and Bull Creek, Howard murdered his parents. The closest inhabited home belonged to a rancher named Will Phillips and was about three hundred yards away. Phillips told the Travis County Sheriff that he heard two shots, followed by a woman's scream, then another shot. A short time later there were two more shots.¹⁵

Later that night, the Austin Police Department received a call from the Seton Infirmary. Howard Pierson, the twenty-one-year-old son of Associate Justice William Pierson, was being treated for a gunshot wound in the arm.¹⁶ Howard spun a tale of two men stopping the Pierson vehicle and attempting a robbery. As Howard ran, he saw his father fighting one of the robbers and then he heard several gunshots. Howard fought the other robber and was shot in the arm. The robbers eventually fled and Howard, because of his wound, was unable to place his dead parents into his car. So Howard decided to get help and medical attention at the Seton Infirmary.¹⁷

Even before Howard could bring law enforcement to the crime scene, the Travis County Sheriff's department and the Justice of the Peace had found Justice and Mrs. Pierson. The officers were part of a large search party that included the Governor, members of the Legislature, and members of the Texas Supreme Court. It was a gruesome discovery. Lena Pierson had been shot in the right temple, in the right side of the neck, and in the left thigh. Her glasses lay at her feet. Afterwards, she was dragged about eight feet in front of where Howard

¹¹ HALEY, at 163–64, 171–72.

¹² Judge Reavley; HALEY, at 163–64, 171–72; AUSTIN AMERICAN-STATESMAN, Apr. 25, 1935 (quoting Justice Pierson's letter).

¹³ Austin History Center, PIERSON MURDER AF Murders M800 (27).

¹⁴ *Id.*; see HOUSTON POST, Apr. 25, 1935; HOUSTON POST, Sept. 8, 1963; AUSTIN AMERICAN-STATESMAN, Apr. 25, 1935; DAILY TEXAN, Apr. 25, 1935; see also HALEY, at 163–64, 171–72.

¹⁵ Some of the best reporting of this tragic story was done by a young University of Texas Journalism student named Walter Cronkite, who was reporting for the *Daily Texan*. DAILY TEXAN, Apr. 25, 1935.

¹⁶ HALEY, at 163–64, 171–72.

¹⁷ See Austin History Center: PIERSON MURDER AF Murders M800 (27); HOUSTON POST, Apr. 25, 1935; HOUSTON POST, Sept. 8, 1963; AUSTIN AMERICAN-STATESMAN, Apr. 25, 1935; DAILY TEXAN, Apr. 25, 1935; see also HALEY, at 163–64, 171–72.

had parked his car, in a rut created by the tires of Howard's car. Justice William Pierson was about six feet away. He had been shot in the right temple, through the left hand, and in the right shoulder.¹⁸

The news immediately captured national attention, especially after Governor James Allred, who had been sworn in as Governor by the now deceased Justice William Pierson, became personally involved in the investigation. "I have lost a warm friend and Texas has lost a worthy citizen. It is too terrible to comprehend," said the Governor.¹⁹

But at police headquarters Howard's story started to unravel. District Attorney James P. Hart, as well as Sheriff Lee O. Allen and his deputies, grilled Howard and demanded explanations for inconsistencies. The officers were also suspicious of the extraordinarily detailed descriptions of the suspects. Hart confronted Howard by saying, "If you think you have committed the perfect crime, you are a fool, because these officers will find out about it." Early the next morning, after about nine hours of interrogation, Howard confessed to shooting himself in the arm to cover up his murders of his parents. He admitted that he shot his mother first "because she was closest to me." Then he led officers to the crime scene and other locations where the police retrieved the murder weapon, empty shells, and his parents' effects.²⁰

On the day before the funeral, Justice and Mrs. Pierson lay in state in the Texas Supreme Court. The public display offended Clerk Carl Lyda, who found it "the most ill-conceived and obnoxious experience during the time I was with the Court—and probably of my whole life.... [D]uring that day and far into the night thousands of total strangers filed by to view their remains. Most of these people had never heard of the Piersons before the news of their tragic deaths ... and were impelled strictly by morbid curiosity and not by sympathy or any decent concern." Services were held at the University Baptist Church only a few blocks from the Pierson home. They were buried in the Texas State Cemetery.²¹

As soon as law enforcement officials were able to get a confession, those who knew the Pierson family understood that, for some time, Howard had been "not right." What was shocking was that Howard had become so violent and dangerous. His quiet demeanor and small stature did not fit the enormity of the crime he had committed. A close family friend, Dr. Joe Wooten, who had been referred to at the time as a "noted alienist," visited the jail and spent time with Howard. He diagnosed the prisoner as suffering from dementia praecox, or premature dementia. It was often described in news reports as a form of schizophrenia. It is a "chronic, deteriorating psychotic disorder characterized by rapid cognitive disintegration, usually beginning in the late teens or early adulthood."²² Dementia in a person so young is extremely rare. Dr. Wooten immediately recommended that Howard be removed from jail and placed in a state hospital for observation.²³

¹⁸ AUSTIN AMERICAN-STATESMAN, Apr. 28, 1935.

¹⁹ SAN ANTONIO EVENING NEWS, Apr. 25, 1935 (quoting Governor Allred).

²⁰ See SAN ANTONIO EVENING NEWS, Apr. 25, 1935; Austin History Center: PIERSON MURDER AF Murders M800 (27); HOUSTON POST, Apr. 25, 1935; HOUSTON POST, Sept. 8, 1963; AUSTIN AMERICAN-STATESMAN, Apr. 25, 1935; DAILY TEXAN, Apr. 25, 1935; see also HALEY, at 163–64 and 171–72.

²¹ See TEXAS STATE CEMETERY, WILLIAM PIERSON, http://www.cemetery.state.tx.us/pub/user_form.asp?pers_id=2104 (last visited Sept. 19, 2014); HALEY, at 163–64, 171–72.

²² "Alienist" is now an outdated and obscure term usually referring to a psychiatrist who specializes in legal applications of psychiatry. See MERRIAM WEBSTER, "ALIENIST," <http://www.merriam-webster.com/dictionary/alienist> (last visited Dec. 18, 2013). For more information on Dementia Praecox, see http://www.princeton.edu/~achaney/tmve/wiki100k/docs/Dementia_praecox.html.

²³ One of the better treatments of the Pierson murders is by Susan P. Baker in her book, *Murdered Judges of the 20th Century and Other Mysterious Deaths*, SUSAN P. BAKER, MURDERED JUDGES OF THE 20TH CENTURY AND OTHER MYSTERIOUS DEATHS (Pale Horse Pub. 2003). The chapter on Pierson is available at <http://susanpbaker.com/html/excerpt3.html>.



Two days after the murders, the spotlight fell on Justice Pierson's son Howard.²⁴

process. That process began with indictments for two counts of murder. But before any trial could take place, the presiding judge arranged for a competency hearing. Prior to that hearing, a battery of physicians examined Howard and there is no record or account of any of them concluding that he was competent to stand trial. During that time, newspaper reporters had access to Howard and the reports they filed are a heartbreaking tale of Howard's confusion and delusion. Several observers noted that Howard showed no emotion or remorse; it was like he hadn't killed anyone, but instead was removing inanimate impediments to his ascension into the Pantheon of scientific saviors. One of the physicians testified that it was unlikely that Howard would ever recover from his present condition.²⁶

Courts pay close attention to the expertise and testimony of physicians, but those physicians do not determine the sanity of a person accused of a crime. This is because insanity is not an illness—it is a legal condition. Renowned criminal defense attorney Frank Jackson of Dallas, Texas, in what would become a landmark murder case fifty years later (*Texas v. Belachheb*, 291st Judicial District, 1984), explained the concept during his summation:

Insanity is not a medical term. Insanity ... is a legal definition for a complex psychiatric phenomenon, and that's what we are dealing with. We are dealing with a real ... vital living concept in the law, and until it's taken out of law, ladies and gentlemen, jurors like you, lawyers like myself, and lawyers like [the prosecutors] are going to have to deal with it no matter how much they don't like it.²⁷

²⁴ *The Mexia Weekly Herald* (Mexia, Tex.), Vol. 37, No. 18, Ed. 1 Friday, April 26, 1935, Newspaper, April 26, 1935; digital images, <http://texashistory.unt.edu/ark:/67531/metaph299399/?q=the%20mexia%20weekly%20herald%20vol%2037%20no%2018>, (accessed September 22, 2014), University of North Texas Libraries, The Portal to Texas History, <http://texashistory.unt.edu>; crediting Gibbs Memorial Library, Mexia, Texas.

²⁵ Judge Reavley.

²⁶ BAKER, at Ch. 12, available at <http://susanpbaker.com/html/excerpt3.html> (last visited Sept. 19, 2014).

²⁷ GARY M. LAVERGNE, *WORSE THAN DEATH: THE DALLAS NIGHTCLUB MURDERS AND THE TEXAS MULTIPLE MURDER LAW 199–200* (Univ. of N. Tex. Press 2003) (quoting Frank Jackson).

Howard's cause was given a tremendous boost when both his brother and sister publicly supported Dr. Wooten's recommendation for treatment rather than punishment. For the next 40 years, the story of Bill and Alice Pierson and their selfless devotion to the brother who killed their parents is more than remarkable. Bill and Alice Pierson saved their brother from a lifetime in prison. For decades they saw to his best interests, protected his inheritance, and provided for his legal defenses ... and no one ever remembers any gratitude from their stoic brother.²⁵

The Travis County District Attorney, James P. Hart, however, could not ignore the circumstances of the deaths. National media outlets covered the story in great (often gruesome) detail and the case needed to be adjudicated through a fair and legal

The lead prosecutor in the case, Dallas County Assistant District Attorney Norman Kinne, added, “The people of Texas decide what’s criminal and what’s not and what’s sane and what’s insane. They send legislators [to the Capitol] to do that.”²⁸

In October of 1935, the people, represented by the State District Court, found Howard Pierson to be of unsound mind, and he was ordered committed to the Rusk State Hospital for the Criminally Insane. It was almost a foregone conclusion. There had been no meaningful testimony to the contrary, and probably most significant of all, Bill and Alice Pierson strongly supported their brother with statements that the Pierson family had known for many years that Howard was mentally ill. Only days after the brutal murder of his parents, after visiting Howard in the county jail, Bill said, “It was pitiful. I told him that we had only sympathy for him.” The two murder indictments against him were left pending.²⁹

One would expect this sad story to have ended by Howard, who was believed to have incurable dementia, living and dying in the State Hospital. Instead, it was the beginning of decades of escapes and adventures. He escaped twice and spent nearly five years on the run. His first recapture was delayed by the remarkable revelation that he had never been fingerprinted while a murder suspect. The local sheriff explained that Howard had been a member of such a prominent family that fingerprinting would have been an unnecessary indignity.³⁰

Howard’s first escape took place during the evening of April 15, 1938. The next day, during a routine morning checkup, hospital guards reported him missing. He had stuffed a roll of clothes under the covers of his bunk to deceive the guards and make his escape. He had lowered street clothes down a drainpipe to change into and blend in with the free world. Hospital officials surmised that he had managed to secure a key to the facility, unlocked the door, and simply walked out of the facility. He would not be located for another two and a half years—in Minneapolis—over 1,200 miles away. He was arrested by a Minneapolis police captain who recognized him from a wanted poster.³¹

His second escape took place on December 9, 1952. On this occasion, he and a cellmate named Gilbert Wagner used tied bed sheets to climb out of their third floor window to freedom. He would not be discovered for almost three years, and the only reason he was found was because he admitted to a psychiatrist in Syracuse, NY that he was an escaped mental patient from Texas. By that time Howard had tired of running from the law and had resigned himself to life in a state hospital for the mentally insane. His brother Bill, who had been warned that Howard might want to harm him and his sister as he had his parents, responded with his usual tenderness: Howard should be treated kindly at a state hospital “where he cannot escape.”³²

Howard returned to Rusk State Hospital, where he remained until June 1963, when the superintendent of the hospital, Dr. Charles Castner, certified that Howard was no longer medically insane. Castner argued that the hospital no longer had the legal authority to detain him. In a letter to Judge Herman Jones of the 53rd District Court, Castner requested that, “[i]nasmuch as we can no longer confine Howard Pierson in this hospital, it will be appreciated if you would require the Sheriff of your county to take Howard Pierson from this hospital and place him in the proper custody.”³³

²⁸ *Id.* at 218 (quoting Norman Kinne).

²⁹ HOUSTON POST, Apr. 28, 1935 (quoting Bill Pierson).

³⁰ See BAKER, available at Ch. 12, <http://susanpbaker.com/html/excerpt3.html> (last visited Sept. 19, 2014); AUSTIN AMERICAN-STATESMAN, June 13, 1963.

³¹ Unidentified clipping in Austin History Center, in PIERSON MURDER AF Murders M800 (27).

³² *Id.*; AUSTIN AMERICAN-STATESMAN, June 13, 1963.

³³ AUSTIN AMERICAN-STATESMAN, June 13, 1963.

But again, doctors do not determine legal sanity. District Attorney Tom Blackwell bluntly informed the public that, “[a] hospital superintendent can’t adjudge a person sane. Adjudication is up to a jury.”³⁴ That occurred in another sanity hearing in September of 1963, where the district court found Howard competent to stand trial for the murder of his parents, which had taken place 28 years earlier. He was released on a \$15,000 bond.³⁵



Hon. Thomas M. Reavley

As he had in 1935, Bill Pierson arranged for Howard’s defense. He retained the services of a law firm that included Thomas Morrow Reavley, a gifted, Harvard-educated attorney.³⁶ Reavley represented Howard in both the sanity hearing and the murder trial. It was an odd combination of legal proceedings insofar as Reavley’s goal was twofold: first, to establish Howard’s sanity in the 1963 hearing, and second, his insanity in 1935. In other words, he sought to prove that Howard was legally sane in 1963 and was competent to stand trial, but that he had been insane at the time he committed the crime.³⁷

Not surprisingly, the trial became one of the most covered events of the day, and would likely be remembered in much greater detail had the JFK assassination not occurred only a little later. In an effort to protect his troubled client and the rest of the Pierson family, Reavley offered to house Howard, who had been released from custody, and Bill in a lake house Reavley owned in Austin. “I suggested it because they needed to avoid the public and publicity—and maybe develop a relationship. They did not stay long and Bill told me that Howard was too difficult.”³⁸

The murder trial took place in November of 1963 amid media frenzy. District Attorney Blackwell, like District Attorney Hart before him in 1935, decided to adjudicate the pending indictments. He apparently felt he could not avoid taking action on such a high-profile murder case, but he evidently approached the case believing that Howard would ultimately be freed in some way or acquitted outright. He stated publicly that the trial would be “over ... in time for deer shooters and football fans.” Reavley lined up an impressive cadre of doctors to testify to Howard’s diminished mental state. But Reavley also argued that his client was no longer dangerous because, after decades in a mental hospital, Howard was “burned out” and not a threat to anyone. Reavley also used Howard’s voluminous writings about himself, which made evident that Howard was delusional and “not right.” District Attorney Blackwell quietly offered Howard a plea bargain in which Howard would plead guilty but would be set free as a result of a “time served” sentence. Bill flatly rejected the offer when he found out that under such an arrangement Howard would have to forfeit his share of his father’s estate. The result of the trial was a comprehensive victory for Howard Pierson, who was declared legally sane in September of 1963, but was found not guilty by reason of insanity because he was legally insane in April of 1935. The seven-man five-woman jury deliberated only five hours.³⁹

³⁴ *Id.* (quoting Tom Blackwell).

³⁵ *Id.*

³⁶ See TARLTON LAW LIBRARY: JAMAIL CENTER FOR LEGAL RESEARCH, JUSTICES OF TEXAS 1836–1936: THOMAS MORROW REAVLEY, <http://tarlton.law.utexas.edu/justices/profile/view/85> (last visited Sept. 19, 2014). Reavley, who served on the Texas Supreme Court from 1968 to 1977, is now a Senior Judge of the United States Court of Appeals for the Fifth Circuit. The Pierson case remains the only insanity case he has ever represented.

³⁷ Judge Reavley.

³⁸ Email from Thomas Reavley, Senior Judge, U.S. Court of Appeals for the Fifth Circuit, to author (Dec. 18, 2013).

³⁹ *Id.*; see also AUSTIN AMERICAN-STATESMAN, Nov. 16, 1963.

Within a week following the not guilty verdict, Bill Pierson petitioned the Court to release that portion of Justice Pierson's estate that would have gone to Howard back in 1935. Back then, it would have been one-third of an estate worth about \$50,000. The extreme irony is that one of Howard's many delusions was that he would become the beneficiary of one-third of a \$17,000 life insurance policy on his father—roughly the equivalent of his share of the actual estate. For nearly thirty years Bill and Alice Pierson had maintained Howard's share of their parents' estate in a trust, and because of numerous real estate and other investments it became worth over \$800,000. (Today such an estate would be worth many millions.) Such devotion to the brother who killed their parents is even more remarkable since, for decades, Bill and Alice sent Howard money and gifts while he was confined in the State Hospital. As noted earlier, Howard was never known to show any gratitude.⁴⁰

Howard Pierson understood that his notoriety precluded his living a normal life in Austin under his own name. He lived out the rest of his life in Seattle, Washington as Robert Hamilton, and died of an accidental drowning in the 1970s. His inheritance remained in a high-earning trust account, so he left a hotly-contested estate valued in excess of \$1,000,000.⁴¹

The case of Howard Pierson is a complex one, not only because it spanned almost three decades and had many unexpected twists and turns, but also because it touched on a range of thorny legal and moral issues. His is more than just a tragic story of a profoundly disturbed young man who became violent and murdered his parents. He is an example of the wrenching choices we often face when deciding, as an enlightened and civilized people, how we are to deal with the mental health of our fellow citizens who kill. It is entirely conceivable that some other person, under similar mental circumstances, would have had to face a vigorous prosecution including far more rigorous questions of premeditation (he admitted to beginning his plans for murder as early as November of 1934) and an attempt to cover-up a crime (his false statements and self-inflicted gunshot wound). He lured his parents to an area where he was able to shoot his father two times and his mother three times. Most haunting of all, he knew what he was doing and tried to cover it up.

In the years since Texas courts decided, twice, that Howard Pierson had been insane at the time of his parents' murders, several nationally publicized cases brought the plea into disrepute.⁴² In 1978, San Francisco municipal supervisor Dan White killed Mayor George Moscone and fellow supervisor Harvey Milk. White won a diminished-capacity defense that made him guilty of manslaughter rather than murder because his lawyers convinced the jury that he was suffering from untreated depression evidenced by his degeneration from a health-conscious individual into a junk-food junkie. White's infamous "Twinkie defense" symbolized the absurdities to which defense attorneys would go to obtain acquittals by reason of insanity.⁴³ Sentenced to seven years in prison for killing two civic leaders, he received parole in 1984 after serving just five years in prison.⁴⁴

⁴⁰ See Judge Reavley; BAKER, Ch. 12, available at <http://susanpbaker.com/html/excerpt3.html> (last visited Sept. 19, 2014); AUSTIN AMERICAN-STATESMAN, Nov. 21, 1963.

⁴¹ BAKER, Ch. 12, available at <http://susanpbaker.com/html/excerpt3.html> (last visited Sept. 19, 2014).

⁴² *Editor's Note*: Texas courts have worked to balance the rights and interests of the mentally ill with the rights and interests of other members of society since at least 1888. In *Pearson v. Cox*, 71 Tex. 246, 249-50, 9 S.W. 124, 12526 (1888), for example, Texas Supreme Court Justice Walker ruled that parties seeking to set aside a conveyance of land based on the grantor's insanity had to repay all of the money they had received when they petitioned a court to rescind a land sale, ruling that, "[h]e that seeks equity must do equity." *Id.*, 71 Tex. at 249-50, 9 S.W. at 125-26.

⁴³ See LAVERGNE, at 151, 217, 219 n.29; DOUGLAS LINDER, FAMOUS AMERICAN TRIALS: THE JOHN HINCKLEY TRIAL, 1982, <http://law2.umkc.edu/faculty/projects/ftrials/hinckley/HINCKLEY.HTM> (last visited Sept. 19, 2014).

⁴⁴ See John Geluardi, *Dan White's Motive More About Betrayal Than Homophobia*, SF WEEKLY, Jan. 30, 2008. On October 21, 1985, Dan White killed himself. See LAVERGNE, at 219 n.30.

On March 30, 1981, John Hinckley, Jr. wounded President Ronald Reagan, Press Secretary Ron Brady, a Secret Service agent and a policeman while attempting to assassinate the President.⁴⁵ Hinckley's defense team convinced a Washington, D.C. jury that Hinckley shot the President in a delusional effort to impress actress Jodi Foster, whom Hinckley had stalked since watching her film *Taxi Driver* fifteen times the summer it debuted.⁴⁶ In a letter sent to Jodi Foster shortly before the assassination, John Hinckley, Jr. announced,

Jodie, I would abandon this idea of getting Reagan in a second if I could only win your heart and live out the rest of my life with you, whether it be in total obscurity or whatever. I will admit to you that the reason I'm going ahead with this attempt now is because I just cannot wait any longer to impress you. I've got to do something now to make you understand, in no uncertain terms, that I am doing all of this for your sake!⁴⁷

Eighteen years after the shooting, John Hinckley left intensive psychiatric treatment at St. Elizabeth's Hospital in Washington, D.C. on his first unsupervised furlough. Hinckley lost that privilege one month later, after guards discovered in Hinckley's room a book about Jodi Forster that demonstrated she was still the subject of a continuing obsession.⁴⁸

An ABC News Poll taken the day after the Hinckley verdict revealed that 83 percent of those surveyed believed that "justice was not done" during the Hinckley trial. Congress reacted to a nationwide storm of criticism by enacting the Insanity Defense Reform Act of 1984.⁴⁹ The statute severely limited the availability of the defense in future federal proceedings and resulted in the promulgation of Federal Rule of Evidence 704(b).⁵⁰ Half of the states, including Texas, soon imposed similar restrictions.⁵¹

The Texas Legislature reacted by severely tightening the insanity defense. Before the Hinckley acquittal, a jury had to find either that: (1) a defendant had a mental illness that prevented him from knowing wrong from right (the *M'Naghten Rule*, which originated from Parliament's adverse reaction to the acquittal given psychotic Daniel M'Naghten after his 1843 assassination attempt on British Prime Minister Robert Peel),⁵² or (2) the defendant

⁴⁵ See LAVERGNE, at 151, 217, 219 n.29; Linder.

⁴⁶ See LAVERGNE, at 151, 217, 219 n.29; see also UNIV. OF MO.-KS. CITY SCH. OF L., JOHN W. HINCKLEY, JR., A BIOGRAPHY, <http://law2.umkc.edu/faculty/projects/ftrials/hinckley/HBIO.HTM> (last visited Sept. 19, 2014); *Larry King Live: Remembering the Assassination Attempt on Ronald Reagan* (CNN television broadcast Jan. 11, 1990).

⁴⁷ Letter from John W. Hinckley, Jr. (March 30, 1981), available at UNIV. OF MO.-KS CITY SCH. OF LAW, <http://law2.umkc.edu/faculty/projects/ftrials/hinckley/jfostercommun.HTM> (last visited Sept. 20, 2014).

⁴⁸ See LAVERGNE, at 219 n.29 (citing PBS, AMERICAN EXPERIENCE, BIOGRAPHY: JOHN HINCKLEY, JR., <http://www.pbs.org/wgbh/american-experience/features/biography/reagan-hinckley/> (last visited Sept. 19, 2014)).

⁴⁹ Pub. L. No. 98-473, § 402, 98 Stat. 1837, 2057 (codified at 18 U.S.C. § 20). The federal Insanity Defense Reform Act changed the previous statute by, *inter alia*, requiring that a defendant prove that he suffered from a "severe" mental disease while eliminating the American Law Institute's volitional insanity defense. The new federal insanity-defense statute required a defendant to prove insanity by clear and convincing evidence and barred the admissibility of opinion testimony as to the ultimate issue of insanity.

⁵⁰ See FED. R. Evid. 704(b) (1984) ("In a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the trier of fact alone."); *United States v. Freeman*, 804 F.2d 1574, 1575 (11th Cir. 1986) (describing the statute's changes to the law).

⁵¹ See Kimberly Collins, Gabe Hinkebein, and Staci Schorgl, *The John Hinckley Trial and Its Effect on the Insanity Defense*, available at <http://law2.umkc.edu/faculty/projects/ftrials/hinckley/hinckleyinsanity.htm> (last visited Sept. 19, 2014); LAVERGNE, at 151, 162 n.5; see also Linder.

⁵² See *M'Naghten's Case* (1843), 10 Clark & Fennelly 200, 8 Eng. Rep. 718 (H.L.). See Brian D. Shannon, *The Time is Right to Revise the Texas Insanity Defense: An Essay*, 39 TEX. TECH L. REV. 68, 71-72 (2007).

was incapable of controlling his actions or conforming his conduct to the requirements of the law (the “volitional prong” of the insanity defense).⁵³ In August 1983, soon after the Hinckley trial, the Texas Legislature amended the law to eliminate the “volitional prong” of the insanity defense.⁵⁴

But acting “crazy” is not the same as being legally “insane.” By reducing the definition of insanity in Texas to the British Parliament’s minimalist 1843 “Right/Wrong” Rule, the Texas Legislature effectively disallowed an insanity defense for anyone who engaged in preparation, execution, and flight during the criminal act being prosecuted.⁵⁵ Howard Pierson and his attorneys would have faced a far greater challenge proving an insanity defense after 1983, when competent evidence of Howard’s preparation and execution of his murderous plans would have made a guilty verdict much more likely.⁵⁶

Although high profile cases like Justice Pierson’s murder often give the public the illusion that criminals can make outlandish claims into a defense—and that the defense often works—that is not the way the real world works. In 1980, more than 80,000 criminal cases were heard in Texas, but only 20 resulted in verdicts of not guilty by reason of insanity, that is, 2.5 one-hundredths of one percent.⁵⁷ The twice-successful invocation of the insanity defense in Howard Pierson’s prosecutions was the exception to a much larger rule. In the end, insanity is a rather subjective condition.

All we will ever know was that Howard was “not right.”

⁵³ See RITA J. SIMON & DAVID E. AARONSON, *THE INSANITY LEGAL DEFENSE: A CRITICAL ASSESSMENT OF LAW AND POLICY IN THE POST-HINCKLEY ERA* 12–14 (1988) (discussing the *M’Naghten* standard).

⁵⁴ See LAVERGNE, at 151–52, 162 n.25.

⁵⁵ Texas courts adopted the *M’Naghten* test from English courts after its 1843 enactment by Parliament. See Shannon, 39 TEX. TECH L. REV. at 71–72. The *M’Naghten* test governed insanity proceedings in Texas criminal courts until 1973, when the Legislature enacted a new insanity defense based on the American Law Institute’s (ALI) 1962 Model Penal Code, which included a “volitional” insanity defense that remained Texas law through 1983. See *id.* at 72.

⁵⁶ LAVERGNE, at 152. Texas now codifies its insanity defense in Chapter 46C of the Texas Code of Criminal Procedure Annotated. As a result of the Seventy-ninth Legislature’s enactment of Senate Bill 837, effective September 1, 2005, Article 46C.151 of the Code states that “the issue of the defendant’s sanity shall be submitted to the jury only if the issue is supported by competent evidence,” and “[i]f the issue of the defendant’s sanity is submitted to the jury, the jury shall determine and specify in the verdict whether the defendant is guilty, not guilty, or not guilty by reason of insanity.” See generally Ray Farabee & James L. Spearly, *The New Insanity Law in Texas: Reliable Testimony and Judicial Review of Release*, 24 S. TEX. L. REV. 671 (1983).

⁵⁷ See LAVERGNE, at 218, 219 n.32 (citing DALLAS TIMES HERALD, Oct. 28, 1984).



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