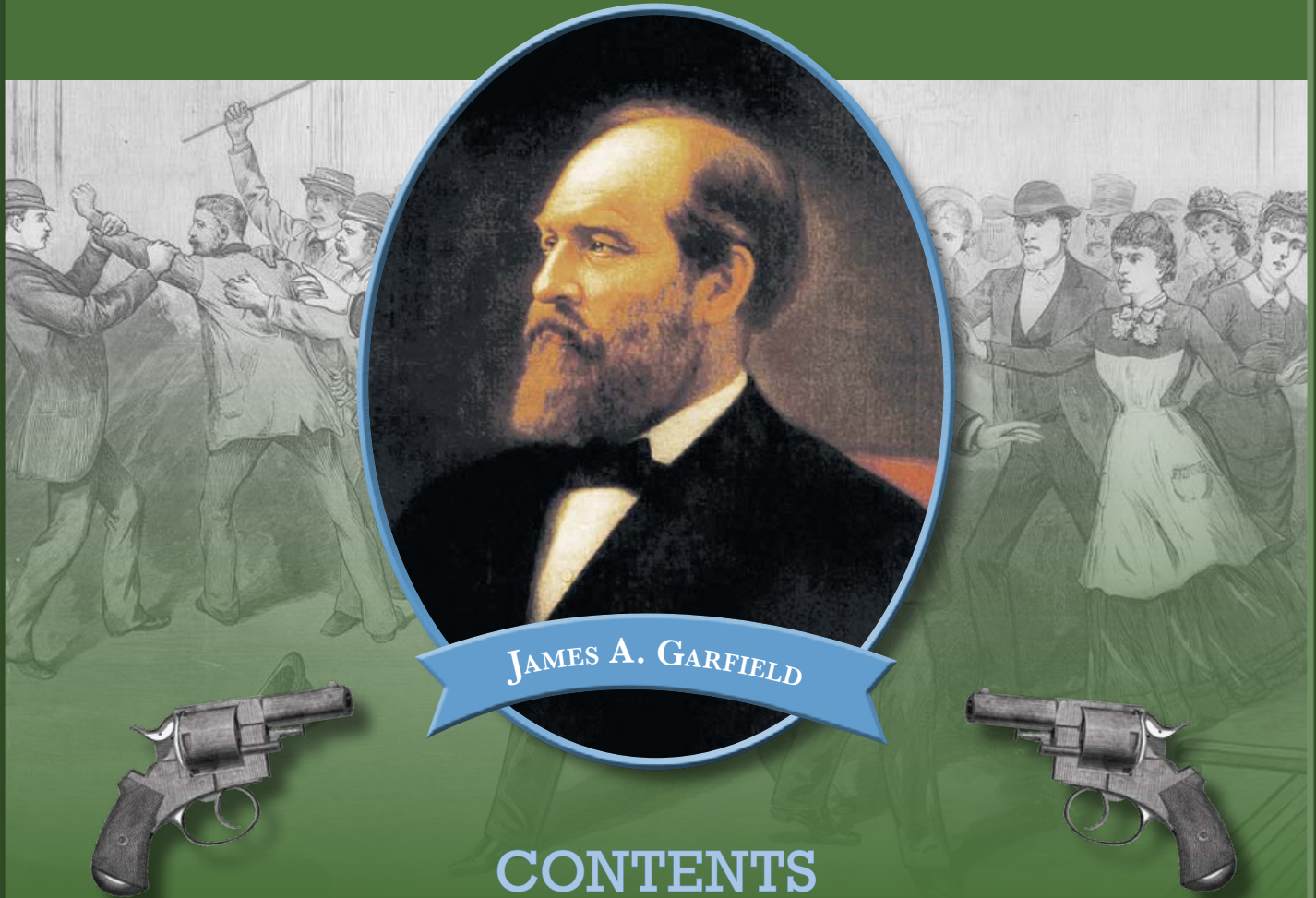


The President and the Lunatic



JAMES A. GARFIELD

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The President and the Lunatic

BY BRUCE WATSON

AMERICAN HERITAGE | VOLUME 61, ISSUE 1 | SPRING 2011

<http://www.americanheritage.com/content/president-and-lunatic-1>

One warm summer night in 1881, a scrawny, nervous man sat in his boarding house a few blocks from the White House. Outside his window, gaslights flickered and horses clopped over cobblestones, but Charles Guiteau barely noticed. For six weeks now, a divine inspiration had festered in his fevered brain. The president, God told Guiteau, had to be “removed.”

Since early June, the lunatic had stalked the president with gun in hand. Enraged at James Garfield for fracturing the Republican Party, convinced that the split would precipitate a second civil war, Guiteau pursued his prey with single-minded calculation. One Sunday he aimed at Garfield through a church window; the following Saturday he crouched in a train depot as the president walked past, but spared him out of pity for the ailing wife clinging to her husband’s arm. A few mornings later, the little man waited along the Potomac, where the president often rode. No horse passed. Now Guiteau could wait no longer, and he began a letter to be delivered the next day:

To Gen. Sherman:

I have just shot the President. I shot him several times as I wished him to go as easily as possible. His death was a political necessity. I am a lawyer, a theologian, and politician. . . . I am going to the jail. Please order out your troops and take possession of the jail at once.

***Very respectfully,
Charles Guiteau***

The following morning, July 2, President Garfield stepped from his carriage outside the Baltimore and Potomac depot at Sixth Street and Constitution Avenue. As he strolled past admirers, the president all

but beamed. After weathering a season of political infighting, he was leaving Washington for the summer. Plans called for him to meet his wife at the Jersey shore, cruise the Hudson, attend his 25th college reunion at Williams College, and then spend August on a farm in Massachusetts. Chatting with his secretary of state, Garfield strode into the waiting room. Across the clutter of heads and hats, he spotted the Venezuelan minister. He had just returned the latter’s polite nod when he heard a shot and felt a stabbing pain in one arm.

“My God! What is this?” he cried. Another blast echoed; a second bullet caught him full in the back, and he pitched face down onto the marble floor.

Two names of presidential assassins are deeply etched in American memory: John Wilkes Booth and Lee Harvey Oswald. Fewer Americans today recall Leon Czolgosz, who shot President McKinley in 1901. The only other man to kill a U.S. president, though his name was once synonymous with villainy, has been forgotten. Yet for decades after Charles Guiteau went to the gallows singing “I am going to the Lordy,” his fate was debated in psychiatric journals, law schools, and the court of public opinion. For despite his confession and a Victorian propriety that considered mental illness a question of morality, “the assassin Guiteau” was tried on a defense of insanity.

In 1881 Sigmund Freud had just earned his medical degree in Vienna. Doctors who worked with the mentally ill were not called psychiatrists but “alienists,” a word derived

from French usage. In late 19th-century America, alienists ran asylums where the “crack-brained” and “feeble-minded” raved through horror-ridden halls. Insanity was sometimes blamed on disease but more often

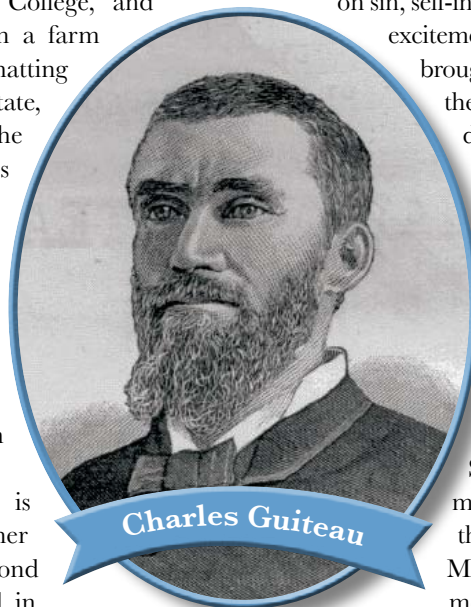
on sin, self-indulgence, or “religious excitement.”

Newspapers brought daily reports of the insane—a man driven mad by “overstudy,” a teenage girl institutionalized after taking a freezing bath, a housewife suddenly eloping with a stranger. Patent medicines promised to cure “Seminal Weakness, Spermatorrhea, and many other diseases that lead to insanity.” Misconceptions about mental illness were reinforced by rigid

Victorian moralism. And a criminal who pleaded insanity as a defense had to face the McNaughten Rules. Based on a British case from 1843, the rules required the defense to prove the accused “was laboring under such a deficit of reason, from disease of the mind, as not to know the nature and quality of the act he was doing.” A man who committed a crime, unless entirely out of touch with reality, had to suffer the consequences. The insanity defense, commonly called “the insanity dodge,” might be used in small-town murder cases; but could it palliate the assassination of the nation’s chief executive?

Toward 10 a.m. on July 2, pandemonium reigned in the Baltimore and Potomac depot. As the president lay gasping for breath amid a circle of onlookers, his assailant walked briskly through the bedlam, his .44 still smoking. Shouts filled the waiting room.

“There he goes!”



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“Stop him! He shot the president!”

Guiteau scrambled for the door, but an alert policeman wrestled him to the ground. His eyes wild, his voice electric, the madman shouted, “Yes! I have killed Garfield! Arthur is president of the United States! I am a Stalwart! I have a letter that will tell you all about it. I want you to take it up to General Sherman.” Police marched him through gathering crowds calling out “Lynch! Lynch!” He was dragged off to jail, where other officers quickly noted his “loony” appearance.

The stricken president was taken upstairs and given brandy. Looming over him, his son sobbed. Secretary of War Robert Todd Lincoln, who just 16 years earlier had comforted his dying father, paced the room. The night before, he and Garfield had discussed the topic of assassination. “How many hours of sorrow I have passed in this town,” Lincoln said. (Twenty years later, Lincoln would witness his third presidential assassination when Czolgosz shot McKinley.) A doctor examined Garfield’s back, inserting fingers into the wound. The president grimaced. The doctor assured him he would recover. “I thank you, doctor,” Garfield replied, “but I am a dead man.” Across town, Gen. William Tecumseh Sherman read Guiteau’s letter and ordered the White House guarded against a larger plot.

The news of the shooting sent shock waves across Gilded Age America. From out west, where Indian wars still raged, to East Coast cities filling with both mansions and tenements, people took to the streets. By noon, when some newspapers reported Garfield’s death, bells tolled and crowds wept. But the president was clinging to life in the White House, as he would all summer.

Few knew much about the man who had been president for just four months, but Garfield’s biography seemed archetypal. Born in an Ohio log cabin, he had risen from



Scene of the assassination of James A. Garfield.

one-room schoolhouses to a New England college, then to lay preaching, academia, and finally to Civil War battlefields. A veteran of Shiloh and Chickamauga, General Garfield was elected to Congress, where he survived Reconstruction’s infighting to emerge in 1880 as a Republican dark horse presidential candidate, winning the nomination on the 36th ballot. A strong debater, Garfield was known as bookish, a capable mathematician and classicist—he could simultaneously write with one hand in Greek, the other in Latin—and serious to the point of appearing boring. But the country now rallied behind him, hailing Garfield as “one of the greatest presidents ever chosen” and freely comparing him to Lincoln. Who would want to kill such a man?

The next morning, newspapers began detailing Charles Guiteau’s tawdry life. Raised in rural Illinois, he had been an irascible child, frequently beaten, scarred by his mother’s death, and abandoned when his father remarried. Unable to make friends, Guiteau had sought solace in the Oneida Community, an upstate New York commune notorious for free love and “Bible communism,” but he quarreled

with his coreligionists and left in a rage. Adrift in Reconstruction-era America, he finally settled in Chicago, where he began giving religious lectures. Ranting about “the kingdom of God on earth,” Guiteau quickly earned a reputation as a “crank,” an “unendurable nuisance,” and a “knave of the darkest character.” Hadn’t he once threatened his sister with an ax? Some knew him as a “crack-brained” lawyer who thundered in court, others as a swindler who cheated merchants and skipped out on hotel bills. “There is no man who has had anything to do with Guiteau for years past but knows him to be insane,” a prominent attorney told a reporter. Since March, the nation

learned, Guiteau had been in Washington, pestering the White House and the State Department to name him American consul to Paris. “Disgruntled office seeker” was how history would explain Guiteau’s crime, but throughout July it remained only an “attempted assassination.”

As Garfield’s condition stabilized, his pulse and respiration were reported daily in the press. Meanwhile, Americans eagerly anticipated the trial of “the assassin Guiteau.” Interviewed in his cell, he insisted that “the Deity” had inspired him, and that when Americans realized he had averted another civil war he would be welcomed as a hero on the lecture circuit. Then came the outrageous news that Guiteau might try “the insanity dodge.” A writer for the *New York Times* quipped, “The feeling is quite general that it would be best to execute him first and try the question of his sanity afterward.”

Come August, doctors were predicting Garfield’s recovery. But the “lost bullet” lodged near his liver combined with the steam heat of the nation’s capital to keep the president hovering between life and death. On August 2 Alexander Graham Bell came to the White House with a primitive metal

The President and the Lunatic

— CONTINUED —

detector he had built to find the bullet. When this device failed—Bell did not know that the bed contained metal springs—doctors again probed Garfield’s back wound. Current medical opinion holds that Garfield should have recovered from his wounds, but in an age when the “germ theory” of disease was only beginning to be accepted, surgeons continued to probe with unsterilized fingers. Sepsis soon set in. By September, the president was in critical condition, and the nation seethed with vengeance.

On September 4 a mob in Buffalo burned Guiteau in effigy. A week later, a guard disgusted at having to protect “such a cur as Guiteau” fired into his cell, the bullet grazing the assassin’s head. A few days later, another guard attacked Guiteau with a knife, but the inmate’s screams brought help. Ten days later, the president, taken to the Jersey shore to escape the heat, awoke late in the evening, “How it hurts here!” Garfield said, clutching his heart. On September 19, with his grieving wife by his side, he died.

Within minutes, bells tolled in every American city. Guiteau trembled in his cell, asking guards whether a mob might be outside, cowering when they made the slightest move toward him. Within a week, he was indicted. A speedy trial was promised, but the public had already come to its verdict.

Much of the evidence for Guiteau’s guilt was based on his early October jailhouse “autobiography,” in which he had explained how, on a restless night in his boarding house, “the idea [had] flashed through my brain that if the president was out of the way, everything would go better.” He painstakingly recounted how he bought his gun, fired it on the banks of the Potomac, and then stalked the president. His narrative made the assassination seem the work of a calculating criminal, yet Guiteau soon began to show America otherwise.

From the moment the trial convened, Guiteau commanded the courtroom. Denouncing his lawyers, shouting at the judge, and exploding into religious rants, the defendant appalled and fascinated the overflow gallery. His misshapen head, closely cropped hair, and flaring eyes were equally alarming.

“Looks crazy,” said one spectator.

“Ain’t got the brains to be crazy.”

When not raving, Guiteau sat penning a long speech comparing himself to Washington and Grant and insisting that he would soon be known as “Guiteau, the

We don’t want
any cursed
foolishness in this
trial and we won’t
have any.

patriot.” While he wrote, the prosecution mounted its case.

Witnesses tearfully recalled how sudden shots and chaos broke the stillness of the morning of July 2 as the president strode into the depot. At the defense table, Guiteau seethed. Whenever testimony veered from his version, he responded with rage—“I wore my hat in the usual way! I do not go sneaking about! I do things on the square!” Siblings tried to calm him, but Guiteau turned on them: “Oh, mind your business! Let me alone. I am lead counsel and will talk just as much as I want to!” Fearing a mistrial, the judge refused to silence Guiteau.

With a bizarre defendant and witnesses including General Sherman and several senators, the trial became the capital’s event of the season. Each morning, long

lines formed outside the courthouse. Guiteau’s arrival brought hisses, while any talk of insanity bred outrage. “We don’t want any cursed foolishness in this trial and we won’t have any,” a Civil War veteran told the *Washington Post*. “If they play malpractice and insanity the case will end damned soon.”

On the trial’s fifth day, vengeance boiled over. That day in court, a preserved section of the president’s spine was passed from witness to jurors, each examining the bullet hole. When the ghastly object was handed to Guiteau, the gallery fell silent. For once,

he said nothing. That afternoon, as he rode back to the jail in a police van, a man on horseback pulled alongside, raised a revolver, and fired. “Oh, I am shot!” Guiteau screamed, falling to the floor. Back in his cell, he nursed a bruise on his arm where the bullet had glanced off. When heckled through the bars of his cell, he shouted back: “People will learn after awhile that the Lord is with me and will not allow me to be killed!” The next day, the prosecution rested its case.

On November 24, 1881, rising to his brother-in-law’s defense, attorney George Scoville faced a daunting task. According to the *McNaughten Rules*, Scoville had to prove that Guiteau was so deranged that he did not know he was doing what was wrong. The insanity defense had been used frequently in recent years, yet rarely in a capital case, and only once in the trial of a would-be assassin. In 1835 a deranged man had taken aim at President Andrew Jackson, but his pistols had misfired. Attorney Francis Scott Key, who wrote “The Star-Spangled Banner,” prosecuted the assailant, who pleaded insanity—claiming to be King Richard III—and was institutionalized for life. But Jackson had been unharmed; Garfield had not been so lucky, and neither would his assassin.

Various commentators had already weighed in on Guiteau’s mental condition.

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“There’s nothing of the madman about Guiteau,” declared District of Columbia district attorney George Corkhill. “He’s a cool calculating blackguard, a polished ruffian, who has gradually prepared himself to pose in this way before the world.” The *American Law Review* added, “The danger to society from an insane murderer is at least as great as from a sane murderer . . . Let us destroy an insane murderer as we do anyone or anything else whose continued existence threatens the general safety.” Even alienists seemed to be against Guiteau. The most common causes of insanity, according to a census of asylums, were masturbation, intemperance, and ill health. Guiteau’s lawyer would have to challenge an entire culture’s conventional wisdom. Scoville reminded the jury of society’s increasing empathy with the insane, then summoned an impressive array of witnesses.

One told the court of Guiteau’s ax assault on his sister; others recounted how his fanatical father had practiced faith healing and claimed he would live forever. Another described one of Guiteau’s lectures, cut short when the “theologian” stormed off the podium: “After he went out, we had a conference and all came to the conclusion that he was crazy.” After Guiteau’s sister testified that he had “clear gone daft,” the defense called its most compelling witness: the defendant himself.

Stepping onto the stand, Guiteau riveted the courtroom. Pale, quivering, his eyes darting, he told of his brutal childhood, then read from his self-published religious pamphlet. As he spoke, 20 alienists sat nearby, taking notes: one later said Guiteau was the most fascinating psychotic he had ever seen. In the gallery, a tall, white-haired African American offered his opinion. “If it is acting,” Frederick Douglass judged, “he is the most consummate actor in the world.”

Guiteau testified for five days, explaining how God had ordered him to kill the president: “The idea kept working me and working me and grinding and oppressing

me.” He had prayed for a sign that “the idea” wasn’t what it seemed, but none came. He had been chosen, he concluded, “because I had the brains and the nerve to do the work and because the Deity always chooses His best material to do His work.”

Rising to cross-examine, prosecutors turned to their most potent weapon—ridicule. When Guiteau again invoked his divine inspiration, they were ready.

“Who bought the pistol, the Deity or you?”

“I said the Deity inspired the act, and the Deity would take care of it.”

“The question is, ‘Who bought the pistol?’”

“The Deity furnished the money with which I bought the pistol. I was the agent.”

“Do you believe in the Ten Commandments?”

“Yes.”

“Have you higher evidence that the Supreme Ruler of the Universe said to you, ‘Thou shalt kill’ than you have that he said, ‘Thou shalt not kill?’”

On his final day in the dock, Guiteau admitted he had hoped that the assassination would increase sales of his pamphlet. He called himself “a man of destiny as much as the Savior or Paul or Martin Luther.” Finally, the prosecutor put the crucial question.

“Are you insane at all?”

“A good many people think I am badly insane. The Oneida people thought so, my father thought so, and my relatives thought so and still think so.”

“You told the jury you were not insane.”

“I am not an expert. Let the experts and the jury decide whether I am insane.”

Onlookers agreed that Guiteau was alarming, terrifying, indeed fascinating. But was he criminally insane? As the trial



Where Justice Will have to Look for Jurors Who Have Not Formed an Opinion in the Guiteau Case. (Cover of *Puck Magazine*, October 26, 1881.)

The President and the Lunatic

— CONTINUED —

inched toward a new year, the question consumed the nation. Tourists flocked to Washington, hoping for a glimpse of Guiteau, “as if he were some rare wild animal,” noted the *Washington Post*. Other newspapers denounced Guiteau as an “impostor” and the chaotic trial as “a burning shame.” The nation’s most famous clergyman, Henry Ward Beecher, judged Guiteau “sane enough to hang,” and added, “I am not especially in favor of hanging but if ever there was a case for it, there is one now.” Was “the assassin,” “the coward,” the “miserable scoundrel,” an actor or a lunatic? It was time for expert opinion.

In its final days the trial pitted the 19th century against the 20th. For two weeks alienists struggled to define insanity. Was it hereditary? Yes, said defense experts, pointing to Guiteau’s father and an uncle in an asylum. Prosecution experts disagreed. Like any disease, they insisted, insanity had an onset and a deeper development, yet Guiteau’s eccentricities were consistent throughout his life. But did insanity manifest itself in physical deformity? Yes, said defense experts. Guiteau agreed. “That hits my case exactly!” he shouted. “One side of my head is larger than the other. Doctors examined me the other night!” Finally, was there such a thing as “moral insanity”?

“I believe in moral insanity,” replied Dr. James G. Kiernan, a Chicago-based physician and staunch critic of asylums and their treatment of the insane.

“You believe that the mind of a man may not be diseased and yet his moral nature may be diseased?”

“Yes, in certain rare cases.”

Prosecution experts rose in righteous indignation. The causes of insanity were many—“over-worry, hard work, insufficient food, venereal diseases”—but the chief cause was, “Intemperance, Sir!” As for “moral insanity,” the very idea was denounced by Dr. John Gray, editor of *The American*

Journal of Insanity. Moral insanity, the staunchly Victorian doctor told the court, “is wickedness, a term loosely used to excuse or palliate conduct, which on any other theory is indefensible.” Likewise, Gray added, other so-called mental disorders—kleptomania, dipsomania, pyromania—were excuses, “make-shifts to secure from punishment for crime.”

Insane? The prosecution preferred other terms: “A shrewd scamp” perpetrating a “desperate scheme.” The defense fought back: “unquestionably insane”; “a moral imbecile,” “as insane as any inmate of any

“Perhaps they will hang me,” Guiteau told a guard, “but the Deity will disappoint them.”

asylum I ever saw.” Guiteau added his own evidence, predicting “an act of God that will blow this court and the jury out that window to protect me if necessary!” After another tirade, public opinion mustered itself in the gallery: “Shoot him now!”

On January 25, 1882, after ten fraught weeks, nearly 100 witnesses, three attempts to murder the defendant, and Guiteau’s continued ravings, America’s first prosecution of a presidential assassin went to the jury. Outside, the late afternoon light was fading. The judge read the final instructions by candlelight. The jury retired.

“Perhaps they will hang me,” Guiteau told a guard, “but the Deity will disappoint them.”

Twenty minutes later, the jury returned. Ghostly shadows flickered on the wall as the verdict was read: “Guilty.” The gallery erupted in cheers. Guiteau shouted, “My blood will be on the heads of that jury!” Led away in handcuffs, he asked, “How does the verdict strike those people outside?”

The verdict was telegraphed across the nation, posted outside newspaper offices, and shouted from theater balconies. Spontaneous parades broke out. The press rejoiced. “The Hyena Hangs!” (*Chicago Tribune*). “The Comedy Is Played Out!” (*New Orleans Bee*). At his sentencing,

Guiteau denounced his brother-in-law’s “jackass theory” of insanity and warned, “The American nation will roll in blood if my body goes into the ground!” He was sentenced to hang on June 30.

Over the next few months, several alienists petitioned President Chester Arthur to appoint an independent board to examine Guiteau, but the president refused. A new trial was denied. In June three alienists went to the White House to seek clemency. The president asked his attorney general for a ruling. The verdict stood.

At noon on June 30, Guiteau mounted the scaffold in the same jail where he had been held since the shooting. Outside hundreds mingled, buying lemonade and cake. In the jail’s courtyard, nearly 250 people, some having paid \$300 for the privilege, gazed at the gallows. Guiteau cast his eyes over them and chanted: “I am going to the Lordy, I am so glad / I am going to the Lordy, I am so glad.”

When he had finished, a black hood was put over his head. He shouted, “Glory, ready, go!” and fell through the trap.

Bitter dispute over “the assassin Guiteau” lingered, but the autopsy shifted the debate. Guiteau’s brain showed signs of syphilitic paresis, asymmetry of the right and left hemispheres, and a chronic degeneration of gray matter. By the 1890s

The President and the Lunatic

— CONTINUED —

several psychiatric journals that had once challenged his insanity had changed their opinions. Come the century of Freud, and the definition of insanity broadened. In 1912 a deranged drifter who shot Theodore Roosevelt was institutionalized without trial. By the 1920s, psychiatrists agreed that Charles Guiteau had been mad, his trial a travesty, his execution shocking.

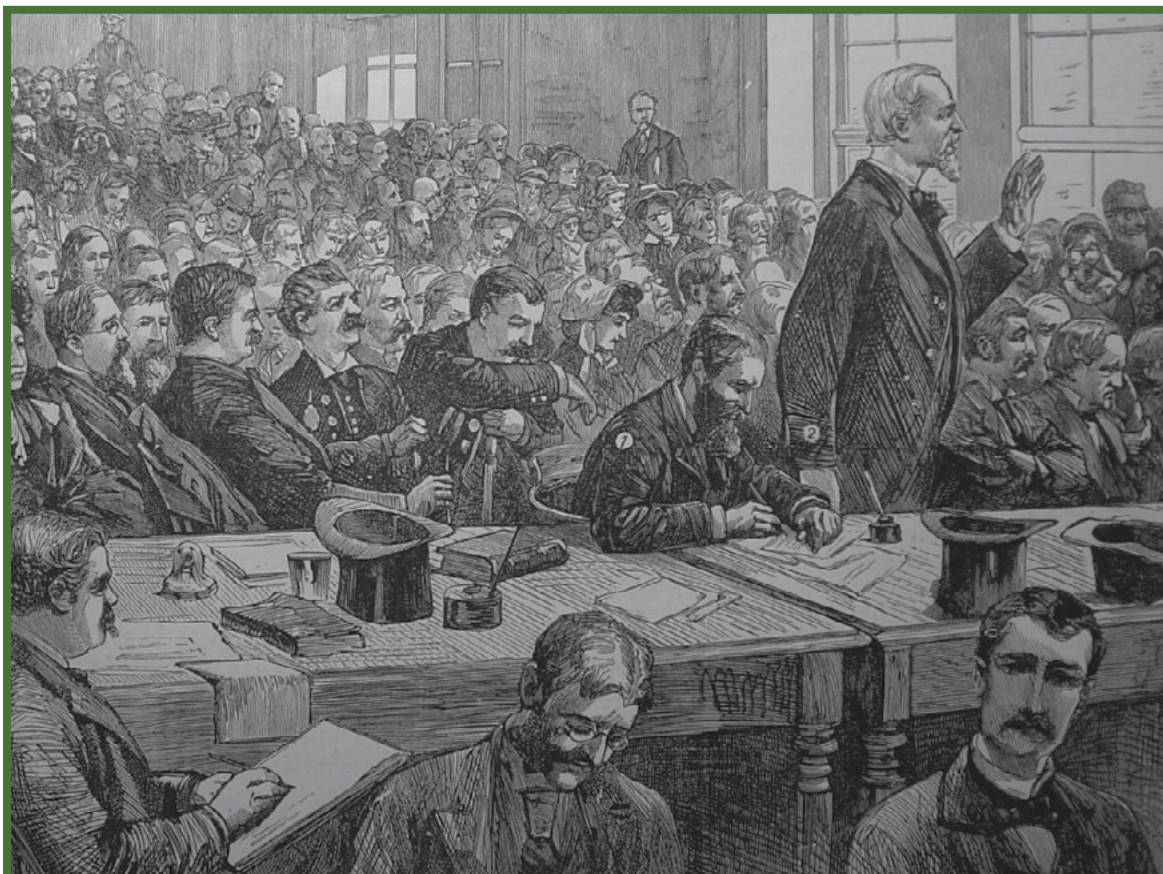
In 1982, a century after Guiteau's execution, Ronald Reagan's assailant, John Hinckley Jr., was held "not guilty" by reason of insanity, a verdict that brought nationwide outrage and a tightening of insanity defense laws. Yet history's ultimate

verdict on Charles Guiteau remains unchanged. Had he shot a common man, he would have been institutionalized after no more than a hearing. And had President Garfield lived, his assailant would have also been spared as being, pure and simple, a lunatic.

The insanity defense remains a delicate issue in American jurisprudence. Since Guiteau, numerous legal terms have arisen to qualify the plea. Did the defendant demonstrate "diminished capacity," or "criminal responsibility"? Several states have devised a compromise verdict: "guilty but mentally insane." Still, the struggle between morals and mental illness, between

the law and psychiatry, continues.

Earlier this year, when alleged Tucson assailant Jared Lee Loughner pleaded not guilty to wounding Representative Gabrielle Giffords and killing six others, pundits broached the possibility that he might be freed on an insanity plea. Legal experts agreed that, given the assassination attempt's high profile and the defendant's premeditation, an insanity defense would be a long shot. But the outrage expressed by many showed that America's staunch insistence on criminal responsibility did not die with the Victorian age. Is the insanity plea "a dodge" or an act of mercy? The jury is still out. ■

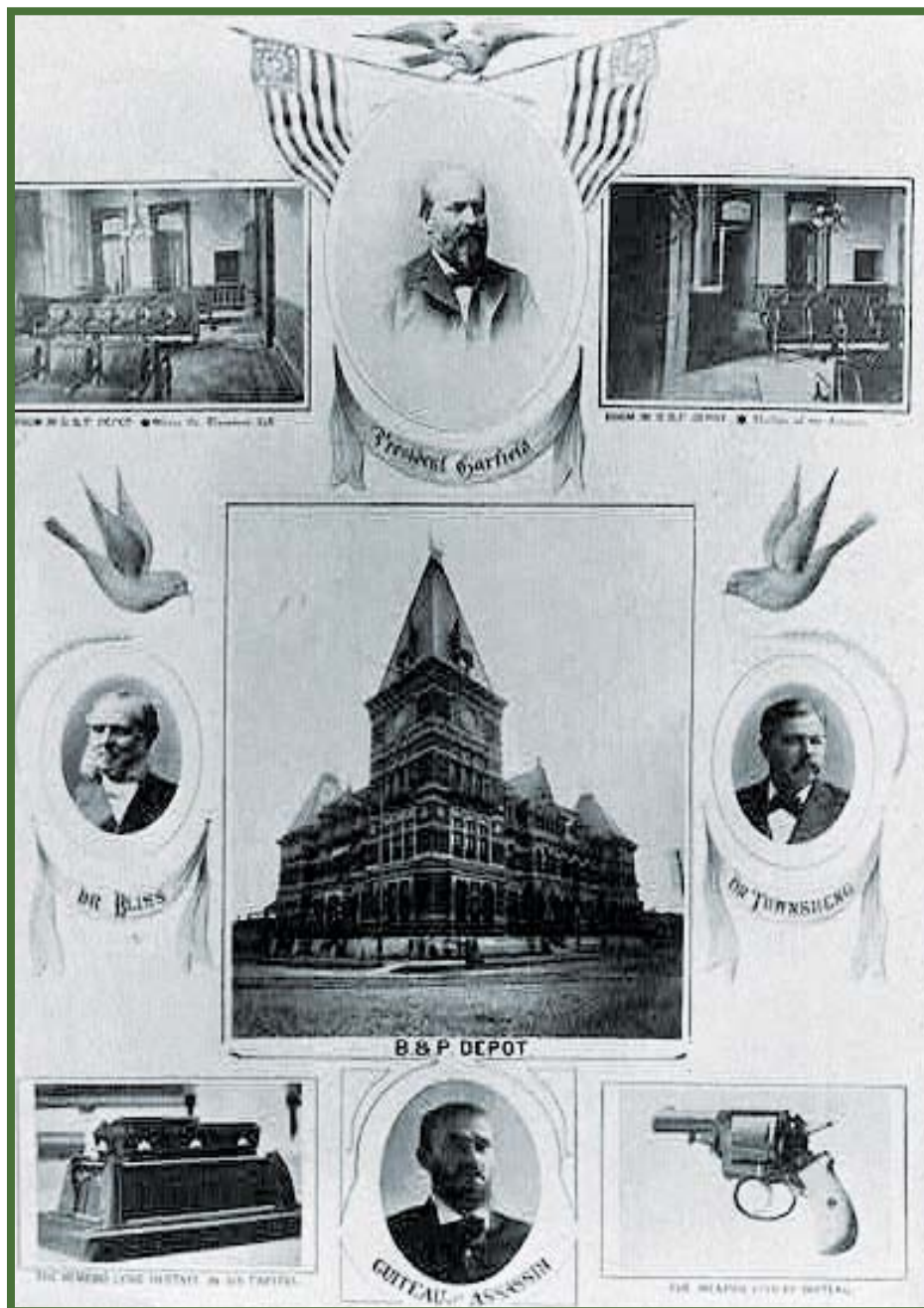


Drawing of the Trial of Charles Guiteau.

Historical Photograph of the Assassination of President Garfield

<http://www.loc.gov/pictures/item/2002709476/>

Summary: Composite of 9 photoprints: portraits of Pres. Garfield, Dr. Bliss, Dr. Townshend and Guiteau the assassin; exterior of B.&P. Depot and room where he was shot; the coffin in State in US Capitol; the gun used.



The President Dead

SEPTEMBER 19, 1881

<http://www.nytimes.com/learning/general/onthisday/big/0919.html#article>

THE PRESIDENT DEAD

He Expires At Half-Past Ten Last Night

The End Comes Suddenly And Without Warning

Gen. Arthur Takes the Oath As President

Symptoms That Were Apparently Favorable Followed By Severe Pains In The Heart—Death Ensures In Fifteen Minutes—The President Unconscious—His Wife And Drs. Agnew And Hamilton Hastily Called—The Sudden End Causes Great Surprise, Excitement, And Grief—Official Notice Sent To Vice-President Arthur

The sad announcement came at 11 o'clock last night that President Garfield had breathed his last at 10:35, thus putting an end to the long weeks of suffering he has endured. His condition yesterday, aside from a slight rigor in the early morning, was apparently more favorable than it had been on Sunday, and his surgeons and attendants, though realizing the fact that he was in an extremely critical state, were inclined to hope that he might grow better after all. At a few minutes after 10 o'clock last night, however, the sufferer complained of a severe pain in the region of the heart and almost immediately became unconscious. Dr. Bliss, who was hastily called, at once announced that he was dying, and Mrs. Garfield and the consulting surgeons were summoned. Within 15 minutes President Garfield had drawn his last breath and the sorrowful intelligence was being sent with lightning speed throughout the country.

Everywhere, notwithstanding the lateness of the hour, the bells were tolled as a mark of respect and sorrow for the long-suffering, patient, and heroic President.

Vice-President Arthur took the oath as President of the United States at his residence, in Lexington-Avenue, this

and went to the West End to finish their dispatches and place them upon the wires there. The information that the President was sinking fast was sent to the West End Hotel at 10:45. At once the correspondents and others hastened to Elberon. When they reached that spot no particulars could be learned. At first Warren Young had

brought the news across the lawn to the hotel. At 11:05 Attorney-General MacVeagh appeared in the hotel, took possession of the Western Union wire in the name of the Government and sent to Vice-President Arthur a dispatch informing him in the briefest manner that the President was dead, and saying that he would at once consult the other members of the Cabinet. The members of the Cabinet were at once summoned. In a few minutes, having started from the West End before the reception of the summons, they were at Elberon, and, arm in arm, they walked across the lawn in the darkness to the Francklyn cottage, where the dead President lay.

At 11:00 Attorney-General MacVeagh came to the Elberon Hotel and made the following statement: "I sent my dispatch to Minister Lowell about 10 o'clock. Just before that Dr. Bliss had seen the President, and had found that his pulse was 106, and that all his conditions promised a quiet night. He asked the President if he felt uncomfortable anywhere, and the President answered, 'Not at all.' Soon afterward the President fell asleep, and Dr. Bliss retired to his room across the hallway while Gen. Swaim and Col. Rockwell remained with the President. About 10:15 o'clock the President said to Gen. Swaim that he was suffering great pain, laying his hand near his heart. Dr. Bliss was immediately called for across the hall, and when he entered the room he found the President unconscious and



morning at 2:10 o'clock. It was administered by Judge John R. Brady.

The President's Last Moments

A Sudden And Unexpected End--The Announcement A Surprise--The Cabinet Summoned And Vice-President Arthur Informed--Attorney-General Macveagh's Statement Of The President's Death

Long Branch, Sept. 19--The President of the United States died to-night unexpectedly at 10:35 o'clock. Between 9 and 10 o'clock almost all the correspondents who had been closely watching the case left the Elberon

The President Dead

SEPTEMBER 19, 1881

— CONTINUED —

substantially without pulse, while the action of the heart was almost indistinguishable. He said at once that the President was dying, and directed them to send for Mrs. Garfield and Drs. Agnew and Hamilton. The President remained in a dying condition until 10:35 o'clock, when life was pronounced to be extinct. He died of some affection of the heart. It is supposed that neuralgia of the heart was the cause, but, of course, that is not certainly known as yet. I have notified the Vice-President and have endeavored to notify Secretaries Blaine and Lincoln, who are on the track from Boston to New-York." The other members of the Cabinet were called from West End and are now together in consultation.

The following persons were present when the President breathed his last: Drs. Bliss, Agnew, and Hamilton; Mrs. Garfield and her daughter Mollie; Col. Rockwell, O. C. Rockwell, Gen. Swaim, Dr. Boynton, Private Secretary J. Stanley Brown, Mrs. And Miss Rockwell, Executive Secretary Warren Young, H. L. Atchison, John Ricker, S. Lancaster, and Daniel Spriggs, attendants, the last-named colored.

Mrs. Garfield sat in a chair shaking convulsively, and with the tears pouring down her cheeks, but uttering no sound. After awhile she arose, and taking hold of her dead husband's arm, smoothed it up and down. Poor little Mollie threw herself upon her father's shoulder on the other side of the bed and sobbed as if her heart would break. Everybody else was weeping slightly. At midnight, Mrs. Garfield was asked if she would like to have anything done, and whether she desired to have the body taken to Washington. She replied she could not decide until she became more composed. A dispatch was sent to W. H. Crump, the custodian of the White House, announcing the sad news.

Attorney-General MacVeagh was the first member of the Cabinet to get the news. He ran bareheaded through the

darkness across the lawn from his cottage to the Francklyn cottage, followed by his wife, and the first dispatch of sympathy received came from Gen. Arthur.

The First News of the Event

How the Newspaper Correspondents Got The Announcement—Forty Carriages Racing Between The West End and Elberon--The Summons to The Cabinet.

Long Branch, Sept. 19—AT 10:35 o'clock Dr. Boynton was sitting in the office of the Elberon Hotel talking with some newspaper men about the case. Suddenly a man's form

Attorney General
MacVeagh was the
first member of
the Cabinet to
get the news.

appeared at the side-door and beckoned to the Doctor, who sprang to his feet and went outside. He returned in a minute and said: "The President is now sinking very rapidly," at the same time throwing up his hands with an expressive motion. A dispatch was instantly sent to the West End Hotel, and in less than a minute 40 carriages filled with newspaper correspondents were dashing through the darkness in the direction of the Elberon. Hardly had Dr. Boynton disappeared than Capt. Ingalls, the commander of the guard, ran across the lawn. He was asked whether the news was as bad as was supposed. "I think it is," was his reply; "I think the President has another rigor." "Why?" was asked. "Because," he answered, "the Sergeant on duty has ordered a soldier to mount and go for some mustard in haste." A moment later Messrs. Atchison

and Ricker walked over from the cottage, and seated themselves upon the hotel porch. They were not aware of anything alarming. In another instant a bright light flashed from the President's window, showing that the gas had been suddenly turned on and they both ran toward it. In the meantime they newspaper men had swarmed into the hotel. For a short period they were compelled to remain in suspense. Then, at 10:53, Mr. Warren Young, the Executive Secretary, who has taken Miss Edson's place as nurse, appeared, carrying two dispatches. One was dispatched to the boys at Williams College and the other to Mrs. Eliza Garfield, the President's mother, and a formal warrant taking possession of the Elberon telegraph office in the name of the Government. He was surrounded by the eager crowd, whom he scattered like chaff by the announcement: "It's all over. He is dead!" Back at break-neck pace the carriages flew over the shockingly bad road, and in less than five minutes a hundred dispatches were flashing the news to all parts of the country and the world.

When the President died, the members of the Cabinet who were living at the West End-- Secretaries Hunt, Windom, James, and Kirkwood--were retiring for the night. A dispatch announcing the news was sent up to the West End over the single wire which connects the two places. The news was proclaimed in the West End Hotel, and was heard by Assistant General Superintendent of the Railway Mail Service, John Jameson, who verified it, and then ran across the street to the cottages where the members of the Cabinet and their families had rooms. He also hastily ordered carriages for them, and in a few minutes the members of the Cabinet were on their way to Elberon. As soon as they reached the cottage they sent the carriages back for Mrs. James and Mrs. Hunt, who came to the cottage and went to the room where Mrs. Garfield was. ■

The Trial of Charles Guiteau: An Account (excerpt), 2007

BY DOUGLAS O. LINDER

<http://law2.umkc.edu/faculty/projects/ftrials/guiteau/guiteauaccount.html>

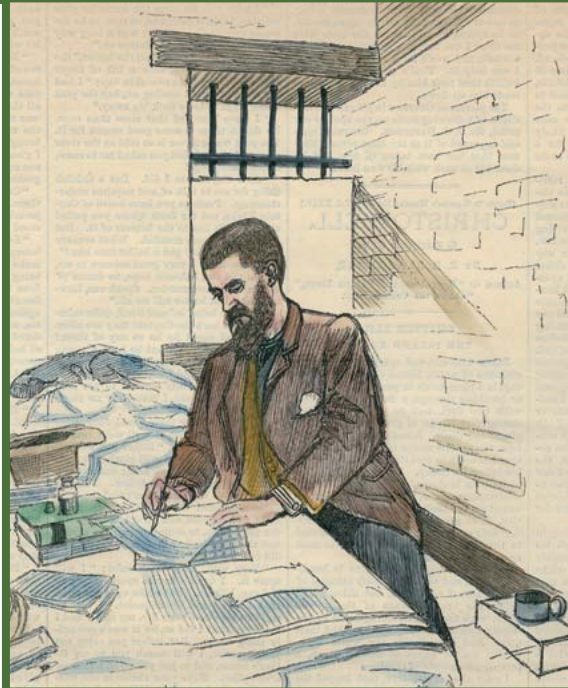
Events Leading to the Trial

In the weeks following Garfield's shooting, Guiteau seemed to enjoy his new found notoriety. He sent a letter to "the Chicago Press" announcing his intention to write and publish an autobiography entitled "The Life and Theology of Charles Guiteau." He expected to make bail and head out on the lecture circuit to speak on matters ranging from religion and politics--and he expected the fees for his lectures to pay for the first-rate lawyers that would surely win his acquittal.

As the summer progressed, Guiteau became more agitated. He was upset with prison officials for denying him access to newspapers and keeping him in near isolation. When word came in September that the president had died, Guiteau fell to his knees.

Guiteau rebounded quickly, however. The day after Garfield died, he penned a letter to the new president, Chester Arthur. "I presume you appreciate [my act]," Guiteau wrote, noting that "It raises you from \$8,000 to \$50,000 a year" and from "a political cypher to President of the United States with all its powers and honors." He described his victim as "a good man but a weak politician." Guiteau's spirits seem to rise further with the publication of the autobiography he had written in prison. The autobiography, published in the New York Herald, included his personal note that he was "looking for a wife" and his hope that applicants for the job might include "an elegant Christian lady of wealth, under thirty, belonging to a first-class family."

Needless to say, the public included far more Guiteau haters than Guiteau fans. Concern about lynching led officials to move Guiteau to a brick cell with only a small opening at the top of a bulletproof oaken door. His biggest threat, it turned



Charles Guiteau in his jail cell.

out, was not from the public, but from prison guards. On September 11, 1881, a guard named William Mason fired at Guiteau, but missed. (The public responded with donations to Mason and his family, but the trigger-happy guard still was court-martialed and received an eight-year term.)

George Corkhill, the district attorney for Washington, understood that Guiteau was likely to raise an insanity defense. Guiteau's speeches, statements, and letters were more than passing strange--and assassination almost seems by its very nature to be the product of a diseased mind. Corkhill's early statements on the issue were dismissive of Guiteau's potential insanity claim. "He's no more insane than I am," Corkhill told a reporter on July 9. In Corkhill's view, Guiteau was a "deadbeat" who "wanted excitement" and now "he's got it."

Formal proceedings against Guiteau began in October. On October 8, Corkhill

filed the presentment and indictment against the prisoner for the murder of James Garfield. Six days later, Guiteau was arraigned. George Scoville, Guiteau's brother-in-law, appeared and asked the court for a continuance to gather witnesses for the defense. He told Judge Walter Cox that the defense intended to make two primary arguments: that Guiteau was legally insane and that the president's death resulted from medical malpractice, not Guiteau's shooting. Judge Cox granted the defense motion and set the trial for November.

Guiteau, unsurprisingly, considered himself supremely qualified to head his own defense. He drew a sharp distinction between "legal insanity," which he was willing to claim, and "actual insanity," which he thought a detestable insult. He was sharply critical, for example, of

Scoville's questions concerning whether any of his relatives had spent time in lunatic asylums: "If you waste time on such things, you will never clear me." Instead, in Guiteau's view, he was legally insane because the Lord had temporarily removed his free will and assigned him the task he could not refuse. In addition to insanity, Guiteau proposed to argue that the doctor's clumsy treatment attempts were the true cause of Garfield's death and, moreover, the court in Washington lacked jurisdiction to try him for murder because Garfield died at his seaside New Jersey home.

Scoville's legal conclusions differed from those of his client on both the issue of causation and jurisdiction. He decided to drop both arguments and concentrate on insanity. Both Scoville and attorneys for the government began scouring the country for medical witnesses best able to address the issue of the assassin's mental

The Trial of Charles Guiteau: An Account (excerpt), 2007

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state. Corkhill landed Dr. John Gray, the superintendent of New York's Utica Asylum, as the prosecution's chief adviser on insanity issues. After interviewing Guiteau, Gray wrote in a memo to Corkhill that Guiteau acted out of "wounded vanity and disappointment," not insanity.

Gaining an acquittal by reason of insanity in 1881 was no easy task. Under the prevailing test, the so-called M'Naghten rule, the government need only show that the defendant understood the consequences and the unlawfulness of his conduct. This test, for Guiteau, posed nearly insurmountable obstacles. Guiteau knew that it was illegal to shoot the president. He knew that if he pulled out his revolver and shot and hit the president, that the president might die. Moreover, Guiteau did not act impulsively, but planned the assassination and waited for a good opportunity. Under the conventional interpretation of M'Naghten, Guiteau was a dead man.

The Trial

The trial of Charles Guiteau opened on November 14, 1881 in a packed courtroom in Washington's old criminal court building. Guiteau, dressed in a black suit and white shirt, asked the proceedings be deliberate so not to offend "the Deity whose servant I was when I sought to remove the late President." Jury selection proved difficult. Many potential jurors claimed that their opinions as to Guiteau's guilt were fixed. "He ought to be hung or burnt," one panel member said, adding, "I don't think there is any evidence in the United States to convince me any other way." It took three days, and the questioning of 175 potential jurors, to finally settle on a jury of twelve men--including, against the wishes of Guiteau, one African-American.

As the prosecution was set to begin its case, Guiteau jumped up to announce that he was none too happy about his team of

"blunderbuss lawyers" and that he planned to handle much of the defense himself. "I came in here in the capacity as an agent of the Deity in this matter, and I am going to assert my right in this case," he said.

The prosecution focused its early efforts in the trial on detailing the events surrounding Garfield's assassination. Witnesses included Secretary of State Blaine, Patrick Kearney (the arresting officer), and Dr. D. W. Bliss, who performed the autopsy. Letters written by Garfield shortly before the assassination were introduced as exhibits, as

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were several of the vertebrae shattered by Guiteau's bullet.

The most important testimony came from Dr. Bliss. Spectators cried and cringed as Bliss made his point, using Garfield's actual spine, that the shot fired by Guiteau directly caused the President's death, however long it took to do so. As Guiteau was driven away from the courtroom after Bliss's testimony, a horse pulled alongside his van and the horse's drunk rider--a farmer named Bill Jones--fired a pistol through the bars of the van. The bullet struck Guiteau's coat, but left the prisoner uninjured.

In his opening statement for the defense, George Scoville told jurors that as society has gained more knowledge of insanity it has come to recognize that persons so afflicted deserve sympathy and treatment, not punishment. This trend, he said, is

part of becoming a civilized people: "It is a change all the while progressing to a better state of things, to higher intelligence, to better judgment." He argued that the jury should try to determine, based on expert testimony, whether Guiteau's actions were the product of a deranged mind. Guiteau, meanwhile, offered untimely interjections. When Scoville said Guiteau's "want of mental capacity is manifest" in his business dealings, the prisoner rose to his feet and insisted, "I had brains enough but I had theology on my mind." At times, according to newspaper accounts, Guiteau was "foaming at the mouth" as he shouted his objections to Scoville's characterizations of his odd legal practice.

Defense witnesses painted the picture of a strange and disturbed man. A physician summoned to Guiteau's home after he threatened his wife was an ask testified that he had told Guiteau's sister at the time that his brother was insane and should be committed. He concluded Guiteau had been captured by "an intense pseudo-religious feeling." A Chicago

attorney who visited Guiteau shortly after the assassination told how Guiteau, in a voice that veered from a whisper to a shout, claimed that the shooting of Garfield was the Lord's work and he merely carried it out. Other witnesses pointed to the strange behavior of Guiteau's father as evidence that the defendant's insanity might be a hereditary condition. They told of Luther Guiteau's attempts at faith healing and his belief that some men could live forever.

Charles Guiteau took the stand on November 28. Responding to his attorney's questions in a hurried and nervous style, Guiteau traced for jurors the story of his life. Much of the testimony focused on his years at the Oneida Community--the community Guiteau grew to hate and sought to destroy. He also described in great detail his political activities and inclinations

The Trial of Charles Guiteau: An Account (excerpt), 2007

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during the spring of 1881, finally turning to the prayerful period of June when he awaited word from God as to whether his inspiration to kill Garfield was divine. He took some of his own narrow escapes from death (a ship collision at sea, a jump from a speeding train, three attempted shootings) as evidence that God had an important plan for him. He insisted that he had performed a valuable service in killing Garfield: "Some of these days instead of saying 'Guiteau the assassin', they will say 'Guiteau the patriot'."

On cross-examination, prosecutor John K. Porter tried to suggest to jurors that what the defense claimed was evidence of insanity was instead only evidence of sin. He forced Guiteau to concede that he thought the assassination would increase sales of his autobiography. He demanded to know whether Guiteau was familiar with the Biblical commandment, "Thou shalt not kill." Guiteau responded that in this case "the divine authority overcame the written law." He insisted, "I am a man of destiny as much as the Savior, or Paul, or Martin Luther."

The heart of the defense case was built by medical experts. Dr. James Kiernan, a Chicago neurologist, testified that a man could be insane without suffering from delusions or hallucinations. He offered his expert opinion--accepting as true a long list of assertions about Guiteau and his state of mind--that the defendant was doubtless insane. (Kiernan's credibility, however, was badly damaged in cross-examination when he guessed one out of every five adults was--or would become--insane.) Seven additional medical experts for the defense followed Kiernan to the stand, but seemed--to most observers--to add little new support for the insanity claim.

Few experts had been as adamant about Guiteau's insanity as New York neurologist Dr. Edward C. Spitzka. He had written that it was as plain as day that "Guiteau is not only now insane, but that he was never

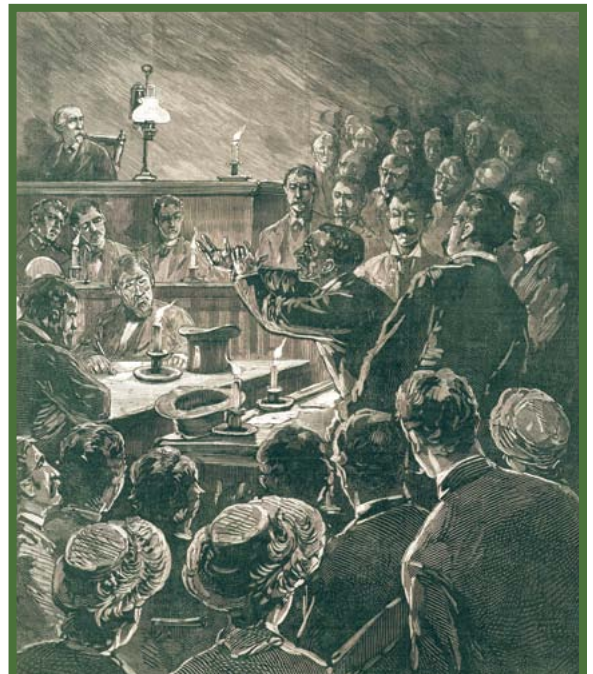
anything else." It is no wonder that Scoville depended heavily on Spitzka's testimony. On the stand, Spitzka told jurors that he had "no doubt" that Guiteau was both insane and "a moral monstrosity." The doctor drew his conclusions as much from his looks (including his lopsided smile) as his statements, concluding that the defendant had "the insane manner" he had so often observed in asylums. He added, based on his interview with the prisoner, that Guiteau was a "morbid egotist" who misinterpreted and overly personalized the real events of life. He thought the condition to be the result of "a congenital malformation of the brain." On cross-examination, prosecutor Walter Davidge forced Spitzka to admit that his training was as a veterinary surgeon, not a neurologist. Conceding the point, Spitzka said sarcastically: "In the sense that I treat asses who ask me stupid questions, I am."

The prosecution countered with its own medical experts. Dr. Fordyce Barker testified that "there was no such disease in science as hereditary insanity." Irresistible impulses, the doctor testified, were not a manifestation of insanity, but rather "a vice." Prison physician Dr. Noble Young testified that Guiteau was "perfectly sane" and "as bright and intelligent a man as you will ever see in a summer's day." Psychiatrist (called an "alienist" at the time) Allen Hamilton told jurors that the defendant was "sane, though eccentric" and "knew the difference between right and wrong."

Dr. John Gray, superintendent of New York's Utica Asylum and editor of the *American Journal of Insanity*, took the stand as the prosecution's final--and star--witness. Gray, based on two full days of interviews with Guiteau, testified that the

defendant was seriously "depraved," but not insane. Insanity, he said, is a "disease" (typically associated with cerebral lesions, in his opinion) that shows itself in more than bad acts. Guiteau displayed far too much rationality and planning to be truly insane, Gray concluded.

Closing arguments began on January 12, 1882. Prosecutor Davidge emphasized the legal test for insanity, which he claimed Guiteau failed to meet. Guiteau, Davidge argued, knew that it was wrong to shoot the President--and yet he did. He warned the jury not to reach a result that would be "tantamount to inviting every crack-brained, ill-balanced man, with or without a motive, to resort to the knife or to the pistol." Judge Porter, in the government's final argument, predicted that Guiteau will soon feel for the first time real "divine pressure, and in the form of the hangman's rope." For the defense, Charles Reed argued that common sense alone--the facts of his life, his vacant glance--should persuade



After the verdict in the Guiteau trial,
drawn by T. De Thulstrup.

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jurors of Guiteau's insanity. He told jurors that if it were up to Christ, he would heal and not punish such an obviously disturbed man as his client. Scoville, in a closing argument that lasted five days, suggested that Guiteau's writings could not be the product of a sane mind and that the defendant was owed the benefit of doubt. He scoffed at the prosecution's suggestion that only a cerebral lesion could prove a man insane: "Those experts hang a man and examine his brain afterward."

Guiteau offered his own closing. At first, Judge Cox denied his request. Disappointed, Guiteau said that the judge had denied the jurors "an oration like Cicero's" that would have gone "thundering down the ages." Later, when the prosecution (fearing adding a possible point of error to the record) withdrew its objection to Guiteau's request, Judge Cox reversed his decision. Guiteau looked skyward and swayed periodically during his address, which included the singing of "John Brown's Body" and featured comparison's between his own life as "a patriot" and other patriots such as George Washington and Ulysses S. Grant. He insisted that the shooting of Garfield was divinely inspired and that "the Deity allowed the doctors to finish my work gradually, because He wanted to prepare the people for the change." He warned the jury that if they convicted him, "the nation will pay for it as sure as you are alive."

The jury deliberated for only an hour. In a candlelit courtroom, jury foreman John P. Hamlin announced the verdict: "Guilty as indicted, sir." Applause filled the room. Guiteau remained oddly silent.

The Sentence and Aftermath

Judge Cox sentenced Guiteau "to be hanged by the neck until you are dead" on June 30, 1882. Guiteau shouted at the judge, "I had rather stand where I am

another defense partisan, John Wilson. Guiteau wrote a letter to Arthur asking that he at least stay the execution until the following January so that his case might "be heard by the Supreme Court in full bench." On June 24, President Arthur announced that he would not intervene. Hearing the news, an angry Guiteau shouted, "Arthur has sealed his own doom and the doom of this nation."

Guiteau approached his hanging with a sense of opportunity. He abandoned his plan to appear for the event dressed only in underwear (so as to remind spectators of Christ's execution) after being persuaded that the immodest garb might be seen as further evidence of his insanity. In the prison courtyard on June 30, 1882, Guiteau read fourteen verses of Matthew and a poem of his own that ended with the words, "Glory hallelujah! Glory hallelujah! I am with the Lord!" The trapdoor opened and Guiteau fell to his death. Outside the jail, a thousand spectators cheered the announcement of the assassin's demise.

that where the jury does or where your Honor does."

On May 22, Guiteau's appeals were rejected. Guiteau still held out the hope that President Arthur, the benefactor--as he saw it--of his act, would grant a pardon. Arthur listened to arguments by defense experts for twenty minutes on June 22. Five days later, the President granted an interview with

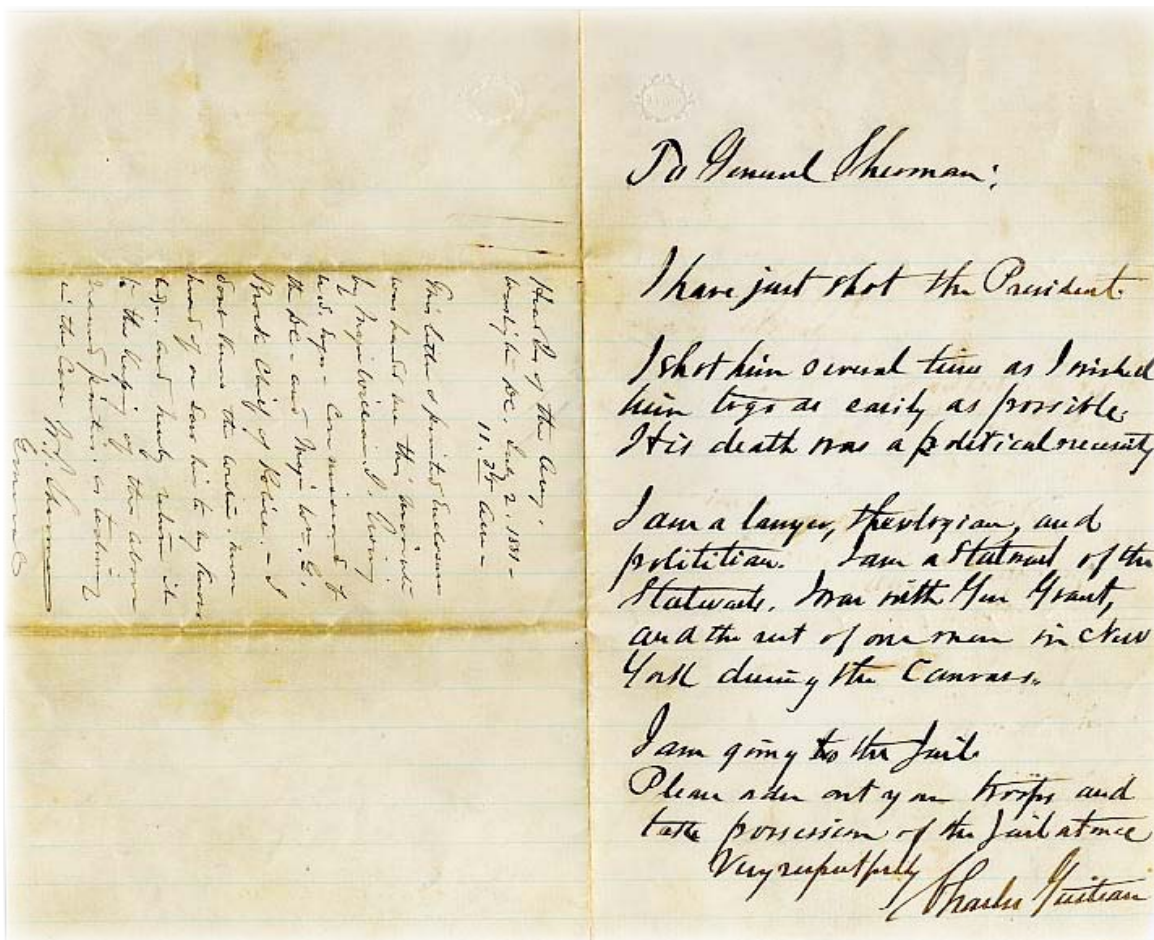
In the years following Guiteau's execution, public opinion on the issue of his insanity shifted. More people--and almost all neurologists--came to the view that he was indeed suffering from a serious mental illness. Guiteau's case was seen in medical circles as supporting the theory that criminal tendencies were often the result of hereditary disease. ■

Guiteau still held out the hope that President Arthur, would grant a pardon.

Correspondence: Charles Guiteau to William T. Sherman

CHARLES GUITEAU, JULY 1881

<http://www.nytimes.com/learning/general/onthisday/big/0919.html#article>



Transcript:

To General Sherman:

I have just shot the President. I shot him several times as I wished him to go as easily as possible. His death was a political necessity. I am a lawyer, theologian, and politician. I am a stalwart of the Stalwarts. I was with Gen. Grant, and the rest of our men in New York during the canvass. I am going to the jail. Please order out your troops and take possession of the Jail at once. Very respectfully, Charles Guiteau

On same folio, ANS note by Sherman addressed from "Headquarters of the Army, Washington, D.C. July 2, 1881," in which he states that "I don't know the writer. Never heard of him or saw him to my knowledge."

An Important Distinction: 'Not Guilty By Reason of Insanity' and 'Diminished Capacity'

<http://www.law.cornell.edu/background/insane/insanity.html>

Although a defense known as "diminished capacity" bears some resemblance to the "reason of insanity" defense (in that both examine the mental competence of the defendant), there are important differences. The most fundamental of these is that, while "reason of insanity" is a full defense to a crime -- that is, pleading "reason of insanity" is the equivalent of pleading "not guilty" -- "diminished capacity" is merely pleading to a lesser crime.

One of the most famous recent uses of the insanity defense came in *United States v. Hinckley*, concerning the assassination attempt against then-President Ronald Reagan.

The history of "not guilty by reason of insanity"

The insanity defense reflects a compromise on the part of society and the law. On the one hand, society believes that criminals should be punished for their crimes; on the other hand, society believes that people who are ill should receive treatment for their illness. The insanity defense is the compromise: basically, it reflects society's belief that the law should not punish defendants who are mentally incapable of controlling their conduct.

In the 18th century, the legal standards for the insanity defense were varied. Some courts looked to whether the defendant could distinguish between good and evil, while others asked whether the defendant "did not know what he did." By the 19th century, it was generally accepted that insanity was a question of fact, which was left to the jury to decide.

The McNaughton rule—not knowing right from wrong

The first famous legal test for insanity came in 1843, in the McNaughton case. Englishman Daniel McNaughton shot and killed the secretary of the British Prime Minister, believing that the Prime

Minister was conspiring against him. The court acquitted McNaughton "by reason of insanity," and he was placed in a mental institution for the rest of his life. However, the case caused a public uproar, and Queen Victoria ordered the court to develop a stricter test for insanity.

The "McNaughton rule" was a standard to be applied by the jury, after hearing medical testimony from prosecution and defense experts. The rule created a presumption of sanity, unless the defense proved "at the time of committing the act, the accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing or, if he did know it, that he did not know what he was doing was wrong."

The McNaughton rule became the standard for insanity in the United States and the United Kingdom, and is still the standard for insanity in almost half of the states.

The Durham rule—"irresistible impulse"

Monte Durham was a 23-year-old who had been in and out of prison and mental institutions since he was 17. He was convicted for housebreaking in 1953, and his attorney appealed. Although the district court judge had ruled that Durham's attorneys had failed to prove he didn't know the difference between right and wrong, the federal appellate judge chose to use the case to reform the McNaughton rule.

Citing leading psychiatrists and jurists of the day, the appellate judge stated that the McNaughton rule was based on "an entirely obsolete and misleading conception of the nature of insanity." He overturned Durham's conviction and established a new rule. The Durham rule states "that an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect."

The Durham rule was eventually rejected by the federal courts, because it

cast too broad a net. Alcoholics, compulsive gamblers, and drug addicts had successfully used the defense to defeat a wide variety of crimes.

The Model Penal Code: turning responsibility to the jury

In 1972, the American Law Institute, a panel of legal experts, developed a new rule for insanity as part of the Model Penal Code. This rule says that a defendant is not responsible for criminal conduct where (s) he, as a result of mental disease or defect, did not possess "substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law." This new rule was based on the District of Columbia Circuit's decision in the federal appellate case, *United States v. Brawner*, 471 F.2d 969 (1972).

Obviously, this standard is very vague. It leaves a number of factors up to the jury to determine, given the facts of a case and the testimony of experts. About half the states have adopted the Model Penal Code rule for insanity.

The Federal rule: Reagan gets into the act

In 1984, Congress passed, and President Ronald Reagan signed, the Comprehensive Crime Control Act. The federal insanity defense now requires the defendant to prove, by "clear and convincing evidence," that "at the time of the commission of the acts constituting the offense, the defendant, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his acts" (18 U.S.C. § 17). This is generally viewed as a return to the "knowing right from wrong" standard. The Act also contained the Insanity Defense Reform Act of 1984, 18 U.S.C. § 4241, which sets out sentencing and other provisions for dealing with offenders who are or have been suffering from a mental disease or defect. ■

The Insanity Defense: An Intersection of Morality, Public Policy, and Science

BY RONALD SCHOUTEN, M.D., J.D.

<http://www.psychologytoday.com/blog/almost-psychopath/201208/the-insanity-defense>

THERE ARE TIMES WHEN THE INSANITY DEFENSE, WITH ALL THE CONTROVERSY THAT SURROUNDS IT, IS IN THE NEWS. THIS IS ONE OF THOSE TIMES:

- It is highly likely that James Holmes, who is facing 142 felony counts in connection with the Aurora, Colorado shootings on July 22, 2012, will raise an insanity defense. First, he'll have to be found competent to stand trial, which is a separate issue.
- Anders Breivik admitted to killing 77 Norwegians in July 2011 in a carefully prepared bombing and mass murder, which he claimed was an act of self-defense against Islamization and multiculturalism in Norway. On August 24, 2012, he will learn the court's verdict. Prosecutors urged the court to find Breivik legally insane, as this would lead to a lifetime of confinement in a mental hospital. Breivik argued against an insanity verdict, because under Norwegian law he could conceivably be released from prison some day, if found guilty.
- Clayton Osbon, the JetBlue pilot who disrupted a March 27, 2012 flight from Las Vegas to New York by screaming about terrorists and religion, was found not guilty by reason of insanity on July 3, 2012.

What is the Insanity Defense?

For a person to be convicted of a crime, the prosecution must prove not only that the person engaged in a guilty act (*actus reus*), but also that he or she had guilty intent (*mens rea*). If a person does not have criminal intent during an act, no crime occurs: a person who takes someone else's property, honestly believing it is his own, is not guilty of larceny.

But what about situations in which the person commits the act, and intended to do so, but was suffering from a mental or physical condition that impairs their ability to appreciate that they are doing something wrong or to control their behavior? That's where the insanity defense comes in.

While the insanity defense is a legal doctrine, at its heart it is the expression of a moral principle found in societies across time and multiple cultures: individuals should not be punished for their otherwise criminal acts if they lack certain characteristics that relate to the ability to engage in rational thinking, including an appreciation of the wrongfulness and consequences of their actions, or control their behavior. Take, for example, children. A

five year old who sets fire to the drapes because the flames are pretty, will not be charged with arson when the house burns down. The same is true for people with severe developmental disabilities. What about people who cause harm to others or commit crimes while sleepwalking? Yes, those cases exist, and the defendants are generally not held criminally responsible.

The legal requirements for the insanity defense have varied over the centuries and societies in which it has existed. Here in the United States, public outrage in response to successful insanity defenses in high profile cases has often led to changes that limit the availability of the defense and its likelihood of success. For example, in the early 1980's, the standard for the insanity defense in federal criminal cases was the American Law Institute/Model Penal Code standard. It provides for acquittal on the basis of insanity if as the result of a mental disease or defect, the defendant lacked substantial capacity to appreciate the wrongfulness of his actions or lacked substantial capacity to conform his behavior to the requirements of the law. This was considered to be more lenient than the standard that had been used until then. But, after John Hinckley was found not guilty by reason of insanity for his failed assassination attempt on President Ronald Reagan, the federal standard was changed to a stricter version that limits the defense to those with severe mental illness and those who are unable to appreciate the wrongfulness of their conduct. Thus, the new federal standard eliminated the volitional component and left only the cognitive component. Many states have followed suit and some have eliminated the insanity defense altogether.

Regardless of the precise legal standard, the insanity defense is rarely raised and even more rarely successful. It is used in only about 1% of cases in the U.S., and is successful less than 25% of the time.

What Qualifies as a "Mental Disease or Defect" for the Insanity Defense?

While any mental or medical condition could theoretically serve as a basis for an insanity defense, the law limits the conditions that can be considered for that purpose. These restrictions are aimed at insuring that only those who truly deserve to be relieved of responsibility are eligible for it. To that end, voluntary intoxication is excluded, as are conditions that have antisocial behaviors as their primary characteristic, e.g. kleptomania, pyromania, and pedophilia and appear to have no physiological basis. Some legal standards require that the mental illness serving as the basis for the defense be "severe."

The Insanity Defense: An Intersection of Morality, Public Policy, and Science

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Not every condition that qualifies to be the basis for an insanity defense has an equal chance of succeeding in achieving an acquittal. Those that succeed tend to be marked by either severity or evidence that they arise from a physiological, as opposed to a purely psychological, disorder. These are, for example, mental illnesses that severely affect a person's perception of reality or, in some jurisdictions, ability to control their behavior. They include psychoses, severe depression, mania, or anxiety disorders like posttraumatic stress disorder (PTSD). An argument that an act of violence was the result of a traumatic brain injury causing irritability and poor impulse control is more likely to be convincing than the assertion that the violence arose from personality disturbance.

How Will Advances in Neuroscience and Genetics Affect the Insanity Defense?

The presence of abnormal brain function due to injury, tumor, and epilepsy has been successfully offered as the basis for an insanity defense in number criminal cases hundreds of years. When it has been successful, the apparent key to the success of these defenses lies in the concrete and observable nature of the abnormality: juries can see the tumor on a brain scan, and may be presented with evidence that the criminal behavior did not occur before the injury or that it stops after treatment.

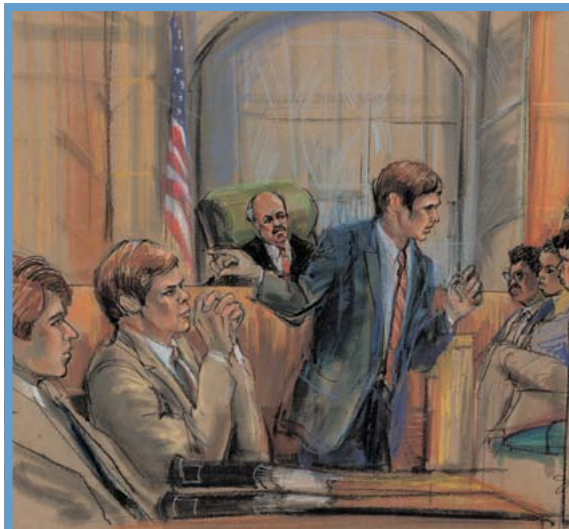
Advances in neuroscience and genetics provide a means for less obvious brain abnormalities to be offered as the basis for a defense. And this presents a challenge to traditional notions of the causes of mental illness, as well as some types of criminal behavior. There is growing evidence for genetic transmission of numerous psychiatric conditions, including personality disorders, as well

as their underlying anatomic and physiological abnormalities. Psychopathy, for example, is an extreme form of personality disturbance, with no established effective treatment, marked by indifference to right and wrong, lack of empathy, conning and manipulation, and aggressive pursuit of self-interest. It is associated with criminal behavior of all sorts, including crimes of extreme violence in some cases. As such, it has been excluded

from consideration as the basis for an insanity defense. But discoveries of fundamental anatomical and physiological differences between the brains of psychopaths and non-psychopaths—including non-psychopathic criminals—as well as evidence those psychopathic traits may be inherited, has set the stage for arguments that even those who commit the worst of crimes should not be held responsible for them. After all, they didn't choose their genetic makeup or to be born without the capacity for empathy. The current issue of *Science* contains a report that while a diagnosis of psychopathy may result in a longer criminal sentences, judges seem inclined to impose more

lenient sentences where evidence of a biological basis for the defendant's psychopathy was introduced.

So far, these new arguments have failed in preventing guilty verdicts. But as the evidence mounts, we can expect to see more such arguments, and perhaps more leniency in sentencing. When, and if, the insanity verdict is extended to individuals with psychopathy, society must be prepared for the next question: What do we do with those who are not criminally responsible, but who are too dangerous to live in society and for whom there is little, if any, effective treatment? It will be a fascinating debate that challenges our notions of justice, morality, and science. ■



John Hinkley Jr. trial courtroom sketches.