

Muffled Voices of the Past: History, Mental Health, and HIPAA

by Todd Richardson

As I set out to write this article, I wanted to explore mental health and the devastating toll that mental illness can take on families and communities. Born out of my own personal experiences with my family, I set out to find historical examples of other people who also struggled to find treatment for themselves or for their loved ones. I know that when a family member receives a diagnosis of a chronic mental illness, their life changes drastically. Mental illness affects individuals and their loved ones in a variety of ways and is a grueling experience for all parties involved. When a family member's mind crumbles, often that person—the brother or father or favorite aunt—is gone forever. Families, left helpless, watch while a person they care for exists in a state of constant anguish.

I understood that my experiences were neither new nor unique. As a student of history, I knew that other families' stories must exist somewhere in the recorded past. By looking back through time, I hoped to shine a light on the history of American mental health policy and perhaps to make the voices of those affected by mental illness heard. Doing so might bring some sense of justice and awareness to the lives of people with mental illness in the present in the same way that history allows other marginalized groups to make their voices heard and reshape the way people perceive the past.

Confident I could write such a story, I focused my research around Austin State Hospital (ASH), Texas' oldest asylum and mental hospital. After reviewing numerous primary sources, I found in a 1963 issue of the *Austin American* an example I believed would allow me to write the type of history I wanted to portray. The newspaper article told of a well-respected thoracic surgeon, Dr. Wendell Thrower, who fought his own forced commitment at ASH. The more I read about his case, the more intrigued I became. I discovered the person responsible for his incarceration was his wife, Joan Thrower. According to the *Austin American*, after witnessing her husband exhibit some strange behaviors, she became concerned for his well-being and attempted to have him committed at the nearest state mental hospital. When Dr. Thrower resisted his commitment in court, his hearing caught the attention of local journalists who published stories about the trial. I thought Thrower's case served as a perfect example of the type of history I wanted to write. All I needed was to find the record of his hearing at the Travis County Clerk's office, which undoubtedly held key details of the proceedings. Since I knew Dr. Thrower passed away in 1987, I thought that his case, though pertaining to his mental health, would fall under the realm of public record. I was wrong.

I found myself, instead, wrestling against layers of red tape and state government bureaucracy, only to find his records sealed according to the confines of the Health Insurance Portability and Accountability Act (HIPAA). Though some details of his case appear in other sources, namely newspaper articles, the key details of Thrower's hearing remain sealed in the probate court record. Even though I intended to write a history I was sure I could tell, the truth is, without the necessary records I cannot write the complete story of Wendell and Joan Thrower's struggle with mental illness. The story I will tell instead is of my search to find out more about the couple, the obstacles I encountered, and, along the way, tell as much of the Thrower's tale as the historical record allows. The ultimate question will be, do historians have the right to access the personal medical information of deceased individuals.

First, it is important to provide some context to the Throwers' experiences at Austin State Hospital. Texas has maintained an effort to take care of its mentally ill since 1857, when the state established the Texas State Lunatic Asylum in Austin. Prior to 1857, most people who suffered from mental illness lived at home with their families, subsisted on their own with some support from their community, or lived in prisons or almshouses. The first facility of its kind in Texas, the Texas State Lunatic Asylum, which later became Austin State Hospital, has historical ties to a larger, national reform movement during the early nineteenth century spearheaded by Dorothea Dix.¹ One of many reformers active at the time, Dix took issue with society's lack of treatment for the mentally ill and believed that, given the proper care, people with mental illnesses could be cured of their ailments.² The opening of asylums, which began in the northeast and swept across the nation, marked the first attempt at government-sponsored aid for the mentally ill. However, even though reformers began with idealistic hopes, their optimism soured as asylums overflowed with patients who suffered from conditions that could not be cured. People began to associate asylums with death and decay as the purpose of state institutions shifted from curing and releasing patients to custodial care.³

Mental health advocates in Texas mirrored the same mission as national reformers, and the optimism people invested in asylums remains visible in the architecture of the hospital's current administration building. The plans for the Texas State Lunatic Asylum, which became the Austin State Hospital in 1925, followed the designs of Thomas Kirkbridge, a leading expert on insanity during the mid-nineteenth century.⁴ His designs emphasized stress-free environments where patients could recover their sanity in clean, healthy surroundings.⁵ Despite well-placed intentions, the need to balance patient populations with institutional resources occurred early on in the history of the asylum. The Texas State Lunatic Asylum began experiencing difficulties with patient population by 1867, when the institution held thirty-five men and thirty-five women

¹ Sara Sitton, *Life at the Texas State Lunatic Asylum, 1857-1997* (College Station: Texas A&M University Press 1999), 1.

² David A. Rochefort, *From Poorhouses to Homelessness: Policy Analysis and Mental Health Care*, 2nd ed. (Westport, Connecticut: Auburn House 1997), 22.

³ Gerald Grob, *The Mad Among Us: A History of the Care of America's Mentally Ill* (New York: The Free Press 1994), 127.

⁴ Sara Sitton, *Life at the Texas State Lunatic Asylum, 1857-1997*, 4.

⁵ Ibid.

but had only 60 beds total.⁶ Judging by the number of admissions detailed in a report by Superintendent Dr. Hanretta, the hospital's patient population remained a constant problem until the mid-twentieth century.⁷ The continued growth of the hospital's patient population led to a strain on ASH's resources and made treating individual patients increasingly difficult over time.

During the late 1930s and early 1940s, mental institutions became the subject of increasing scrutiny from the public. Albert Deutsch, a key activist whose work to reform state hospitals began in the 1930s, wrote *The Shame of the States* in 1948. The book is an exposé Deutsch wrote in regards to mental institutions that he visited across the American Northeast. He wrote about the deplorable conditions of the wards in Philadelphia State Hospital for Mental Diseases, known locally as "Byberry," and likened them to Nazi concentration camps.⁸ In his critique of Byberry, Deutsch also provided a series of shocking photographs of patients in their wards, many of them naked, huddled in dimly-lit corridor.⁹ His work contributed to the increasing skepticism of state hospitals' ability to effectively treat and care for patients.

In reaction to the work of Deutsch and other journalistic exposés, both federal and state governments began to take more active roles in mental health care after Congress passed the National Mental Health Act in 1946. This piece of legislation officially injected the federal government into discussions of state mental health care. In Texas, people heard these criticisms and quickly turned to examine their own state hospitals. Gov. Allan Shivers, newly elected in 1949, set about improving the mental health system in Texas. In the same year, Shivers created the Board for Texas State Mental Hospitals and Special Schools (BTSMHSS) to manage Texas institutions.¹⁰ Governor Shivers also implemented the "penny-a-pack" tax to help raise funding for this new wave of optimistic reform.¹¹

The BTSMHSS, in its efforts to better state hospitals in Texas, employed researchers to survey the state's various institutions and make recommendations for improvement. A report conducted by the National Institute of Mental Health at the bequest of Governor Shivers and the BTSMHSS in 1949 reveals Austin State Hospital's continued struggle to provide care for its burgeoning patient population. The report described the excess patient population by placing the capacity of ASH at 2,810 and the total number of residents at 3,198. The report also stated the patients-to-fulltime-physician ratio at one doctor to every 355 patients, with only four registered nurses employed.¹² This report tells of ASH's considerably strained resources, and that the institution faced many of the same problems at the beginning of the 1950s as it did in the past.

⁶ Historic Structures Report, *Austin State Hospital Historic Administration Building of 1857 Austin, Texas: A Historic Structure Report*, by The Williams Co., AIA (Austin, 1987), 7.

⁷ Dr. A. T. Hanretta to the Legislative Budget Board June 9, 1950. Folder "Superintendent Correspondence" Box 1, Sara Sitton Papers Collection, Austin History Center at Austin Public Library.

⁸ Albert Deutsch, *The Shame of the States* (New York: Harcourt, Brace and Company 1948), 42.

⁹ Albert Deutsch's complete photographic collection of the asylums he visited can be found in Albert Deutsch, *The Shame of the States* (New York: Harcourt, Brace and Company 1948).

¹⁰ Sara Sitton, *Life at the Texas State Lunatic Asylum, 1857-1997*, 47.

¹¹ *Ibid.*, 134.

¹² Riley H. Guthrie, Federal Security Agency Public Health Report by the National Institute of Mental Health, 1950, Folder ¼, Box 1, Sara Sitton Collection, Austin History Center, Austin, TX.

The report's information did not fall on deaf ears. Hospital staff, government officials, psychiatrists, and the public at large understood the uphill battle faced by state hospitals. Though people held varying opinions on the effectiveness of such mental institutions, by the mid-1950s the concept of community care, the notion that people with mental illness would receive better care if they remained close to their families, began to gain traction. Ivan Belknap, a sociologist at the University of Texas, published an extensive study on Austin State Hospital called *Human Problems of a State Mental Hospital*. In his work, Belknap questioned the ability of centralized mental hospitals to effectively care for the mentally ill.¹³ He also stated that the problems at ASH were similar to those in institutions across the nation.¹⁴ His ideas gained immediate traction amongst mental health professionals. One newspaper editorial effectively described the importance of Belknap's work, stating, "Few books are in need of a wide market as much as this one."¹⁵ Though Belknap's work did not immediately change the landscape of mental hospitals, it proved instrumental in providing momentum for community-centered healthcare.

By the beginning of the 1960s, the mental health care field rested on the verge of momentous change. In 1961, the Joint Commission on Mental Illness and Health released a report entitled, *Action for Mental Health*. The report "recommended smaller, more specialized state psychiatric hospitals and a network of community treatment centers."¹⁶ In March 1963, about a month before Dr. Thrower's sanity hearing, Pres. John F. Kennedy gave a speech endorsing community-centered care. In October of that same year, Kennedy signed the Community Mental Health Act, which provided the grounds for the reorganization and reduction of mental hospitals.¹⁷

Dr. Wendell Thrower's sanity hearing took place in April 1963, in the midst of the national discussion of state hospital reform. Born July 29, 1926, Dr. Thrower held degrees from Duke University, South Carolina Medical College, and Harvard University.¹⁸ He authored several articles in leading medical journals between 1958 and 1966, and appears to have been well-known and respected in the medical field.¹⁹ He taught part-time as a gross anatomy instructor at Boston University School of Medicine in 1953, and between 1956 and 1959 worked

¹³ Ivan Belknap, *Human Problems of a State Mental Hospital* (New York: McGraw-Hill Inc. 1956), 206.

¹⁴ Ivan Belknap, *Human Problems of a State Mental Hospital*, 210.

¹⁵ William B. Ruggles, "Book that Needs Big Market," *Dallas Morning News*, 4 Apr. 1957.

¹⁶ Sara Sitton, *Life at the Texas State Lunatic Asylum, 1857-1997*, 143.

¹⁷ *Ibid.*

¹⁸ "Service Set for Reevesville Surgeon," *The News and Courier*, Charleston, South Carolina, May 12, 1987.

¹⁹ Wendell B. Thrower's name appears in the following journals: Irwin M. Arias, Norman Zamcheck, and Wendell B. Thrower, "Recurrence of Hemorrhage from Medically Treated Gastric Ulcers: Four- to Eight-Year Follow-Up of Forty-Seven Patients," *Archives of Internal Medicine* 101 no. 2 (Feb. 1958): 369-376; Warren J. Taylor, Harrison Black, Wendell B. Thrower, and Dwight E. Harken. "Valvuloplasty for Mitral Stenosis during Pregnancy," *Journal Of The American Medical Association* 166, no. 9 (1958): 1013-1018; Wendell B. Thrower, Thomas D. Darby, and Early E. Aldinger. "Acid-Base Derangements and Myocardial Contractility: Effects as a Complication of Shock." *Archives Of Surgery* 82, no. 1 (January 1, 1961): 56-65; William C. Birtwell, Harry S. Soroff, Fabio Giron, Wendell B. Thrower, Ulises Ruiz, and Ralph A. Deterling, JR. 1966. "Synchronous Assisted Circulation," *Canadian Medical Association Journal* 95, no. 13 (1966): 652-664.

as a research fellow in surgery at Harvard Medical School.²⁰ Looking at his academic and professional career, one might conclude that he did well for himself as an ambitious and intelligent man. From this perspective, it is understandable why the events at ASH in 1963 caught many by surprise. However, the hearing as it was reported in the *Austin American* provides a few hints of Dr. Thrower's personal struggles.

The troubles began when Dr. Thrower visited Austin to investigate the prospect of opening a private practice with Dr. Maurice Hood, a fellow thoracic surgeon who had lived and practiced medicine in Austin since 1955. Dr. Thrower and Dr. Hood first met in 1962 at an American College of Surgeons conference in Atlantic City, New Jersey. At the meeting, Dr. Thrower impressed Dr. Hood "most favorably" and Dr. Hood invited Wendell and Joan Thrower to visit Austin. The initial visit went well, and Dr. Hood and Dr. Thrower agreed, provided Joan Thrower held no objection, to open a practice together in Austin. Dr. Thrower asked Dr. Hood not to contact the University of South Carolina Medical College (USCMC), where he was then employed, because Thrower, "was having some difficulty with some of his superiors."²¹ Dr. Hood apparently thought nothing of these difficulties, because he agreed to the arrangement.

Dr. Thrower, along with Joan, visited Dr. Hood and his wife a second time on April 5, 1963 at 11:50pm. During his testimony at the hearing, Dr. Hood relayed some of Dr. Thrower's strange behavior that night. The article in the *Austin American* states that Dr. Thrower began discussing the problems he faced with his superiors at USCMC. Dr. Hood described Dr. Thrower's behavior noting, "He was talking constantly and incessantly, and doing trivial things with his hands...He couldn't seem to be still." Dr. Thrower also insisted on driving around Austin despite his and Joan Thrower's late arrival. It is important to note that Dr. Hood provided this testimony in support of Joan Thrower's attempt to commit her husband.²² It was evident to Dr. Hood that something was indeed wrong with his friend.

Sources reveal little about Joan Thrower. She came with her husband to Austin, purportedly willingly, to support her husband's goal of opening a private practice. It is also clear that she was responsible for the attempt to commit Dr. Thrower for ninety days of observation, which she did on April 12, Good Friday of that year. Out of concern for her husband, Joan Thrower called the dean of USCMC, who suggested that she have her husband committed for psychiatric observation. Joan Thrower must have alerted the authorities, because the sheriff escorted Dr. Thrower to ASH in handcuffs.²³ His wife's concerns found support from some of Dr. Thrower's colleagues and family. As previously mentioned, both the dean of USCMC and Dr. Maurice Hood supported Joan Thrower's attempt to commit her husband. In addition, Dr. Thrower's two brothers, Dr. James Thrower and Troy H. Thrower, came to testify in support of Joan's claims.²⁴ That Dr. Thrower's superior at USCMC, his wife, his friend Dr. Hood, and his two brothers all saw a need for his commitment implies that, indeed, Wendell Thrower

²⁰ "Service Set for Reevesville Surgeon," *The News and Courier*, Charleston, South Carolina, May 12, 1987.

²¹ "Medics Behavior Related in Court," *The Austin American*, May 3, 1963.

²² "Medics Behavior Related in Court," *The Austin American*, May 3, 1963.

²³ Betty MacNabb, "Dr. Thrower Leaves Free," *Austin American*, May 10, 1963.

²⁴ "Service Set for Reevesville Surgeon," *The News and Courier*, Charleston, South Carolina, May 12, 1987; Betty MacNabb, "Dr. Thrower Leaves Free," *Austin American*, May 10, 1963.

experienced some type of mental or emotional condition serious enough to require professional help.

Dr. Thrower's testimony, along with statements from ASH staff, suggest otherwise. The doctor, who had received a \$250,000 grant, claimed that his superiors at USCMC attempted to commandeer the funds for the college's use. His claim held some validity in court because Dr. Thrower's legal counselors, Percy Foreman and Paul Holt, built their defense around the alleged conspiracy.²⁵ Furthermore, the chief of male services at ASH did not believe Dr. Thrower required the hospital's services, stating in the May 10, 1963 issue of the *Austin American*, "We're glad to have him go." On the day of his release approved by presiding judge J. H. Watson, the spectators in the courtroom reacted with "jubilant" and "spontaneous applause." Yet, Dr. Thrower did not return to freedom unscathed; the six-man jury at the sanity hearing, after listening to the testimonies of four different psychiatrists, found Dr. Thrower insane though not in need of forcible state hospital commitment. Leaving the courtroom on May 10, 1963, Dr. Thrower made a final statement to reporters that revealed the emotional toll of the trial. "My wife did this to me," he told reporters, "and now I'm just crossing one bridge at a time."²⁶

At this point there are few sources to tell the rest of the Throwers' story. Sources reveal more about Dr. Thrower than they do of Joan Thrower, who disappeared from available public records after leaving Austin in 1963. Dr. Thrower moved back to South Carolina and continued to work in the field of thoracic surgery, despite being adjudged insane. His career at USCMC ended, as one might expect, in that year; however he continued his work as a consultant on thoracic surgery for the Atlanta Regional Office of the Veterans Administration until 1964, and from 1963 to 1965 worked as a research associate at New England Medical Center Hospital. From 1965 to 1972 he was an associate clinical professor at Tufts University Medical School and a lecturer at the Boston University School of Medicine from 1967 through 1972. Between 1973 and 1976 he held a teaching fellowship at New England Medical Center and then from 1976 to 1978 as a staff surgeon for the Veterans Administration in Fayetteville, Arkansas. After working for the VA, he opened up his own private practice in Sewanee, Tennessee, in 1978, where he remained until his death in 1987.²⁷ Again, by examining his professional career, one might again conclude that Dr. Thrower had a productive life and an active career.

The circumstances of Dr. Thrower's death, however, raise many questions as to his mental health. On Saturday, May 9, 1987, he entered a grocery store on U. S. Highway 78 in South Carolina at around 11:00 am. He then reached behind the counter, removed a handgun kept there, and ended his own life.²⁸ It is important to note, however that his suicide does not mean he took his own life because of a chronic mental illness; people end their lives for a variety of reasons. Perhaps Dr. Thrower found himself overwrought with loneliness, buried in debt, or dealing with looming failure in some aspect of his life. As with any suicide, the exact motive he had to end his own life remains mysterious. Regardless, the public nature of his suicide and the

²⁵ "Thrower Hearing Enters Second Week," *Austin American*, May 1, 1963.

²⁶ Betty MacNabb, "Dr. Thrower Leaves Free," *Austin American*, May 10, 1963.

²⁷ "Service Set for Reevesville Surgeon," *The News and Courier*, Charleston, South Carolina, May 12, 1987.

²⁸ "Service Set for Reevesville Surgeon," *The News and Courier*, Charleston, South Carolina, May 12, 1987.

sanity hearing's judgment raise questions about his mental condition at the time of his death. In 1963, many people close to Dr. Thrower felt he needed psychiatric help and he was found insane, though his exact diagnosis is unknown through public records. The circumstances of his death, his past with the mental health system in Texas, and his family and friend's attempt to find him help raise one important question for historians: did the system fail Dr. Wendell Thrower?

At present, this question lends no clear answer. In accordance with the HIPAA, all of the state records pertaining to mental health remain sealed. HIPAA serves to make healthcare information easier to access for healthcare professionals while at the same time protecting the privacy of patients' medical information.²⁹ The act, as I was informed at the Travis County Clerk's Office, even protects the records of deceased individuals.³⁰ In order to publish or access a person's medical information "permission must be granted by the person mentioned in the record or his or her legal representative."³¹ Researchers can also seek the approval from a judge. However, receiving a judge's approval can be a lengthy process, and may require litigation, which does not guarantee the researcher access to sources.

The question I pose, then, is this: whose rights take precedent in situations where a family member is deceased? The individual's surviving family member's rights to privacy, or a researcher's right to explore and draw meaning from the past? We must acknowledge that when we write about people, living or dead, our words affect those living today, and exploring other people's pasts, especially painful ones, may unearth real pain for people in the present. Using my own experiences as an example, if someone chose to write about my family's trials with a loved one's mental illness it might feel as if our personal lives had been violated.

Keeping the power of our words in mind, one must also remember the role of historians is to explore and ask hard questions about the past. Historians write on a variety of topics people consider personal, and yet historians do not pull any punches when it comes to writing about sensitive issues. After all, one purpose of history is to tell those stories in order to remind those of us in the present that the past was just as real, human, and purposeful. The lives of the mentally ill are just as much a part of that process as any other, their lives and struggles just as relevant and insightful. Yet the fact remains, without access to the key primary sources that reveal their struggles, historians will never get the chance to tell the full story of people with mental illness. Without the proper access, the voices of the mentally ill remain muffled, and their lives unknown. So the question yet remains: to whom does the past belong? Does a case like that of Wendell and Joan Thrower's need protection from the close scrutiny of historians or should the vault be unlocked and their voices heard?

²⁹ U. S. Department of Health and Human Services, Standards for Privacy of Individually Indefinable Health Information, OCR HIPAA Privacy, Revised April 3, 2003.
<http://www.hhs.gov/ocr/privacy/hipaa/understanding/summary/guidanceallsections.pdf>.

³⁰ Office of the Secretary Department of Health and Human Services. 45 CFR Parts 160 and 164 Standards for Privacy of Individually Identifiable Health Information Final Rule, August 14 2012.
<http://www.hhs.gov/ocr/privacy/hipaa/administrative/privacyrule/privrulepd.pdf>.

³¹ Maria Blackburn, "HIPAA, Heal Thyself," *John Hopkins Magazine*, November 2004.
<http://www.jhu.edu/jhumag/1104web/hipaa.html>.

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