

When It Pays to Be Insane: Three Unusual Legacies of Insanity

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Although the law generally does not permit an individual to profit by his own wrongdoing, that equitable principle may be inapplicable in the case of an individual who has been adjudicated insane (and therefore has not committed a wrong in the eyes of the law). This paper discusses three unusual legacies of a determination of insanity: (1) the inheritance cases (permitting the insane killer to inherit from his own victim), (2) the life insurance cases (permitting the beneficiary to recover when the insured commits suicide while insane), and (3) the effect of insanity on publication rights agreements in sensational criminal cases.

The debate over the insanity defense has intensified since John Hinckley, Jr., was found not guilty by reason of insanity after he attempted to assassinate President Reagan.^{1,2} Even prior to *Hinckley*, it was alleged that admitted killers were getting away with murder legally³ and that dangerous criminals were going free as a result of the workings of the insanity defense.⁴ Yet even while the controversy rages on about whether or not (or to what extent) psychiatrists should involve themselves in such matters or whether or not the insanity defense should be abolished altogether,⁵ it has generally gone unnoticed that sometimes there may be other important consequences, aside from the outcome of criminal pro-

ceedings, when an individual is found to be insane.

In some cases, insane individuals, aside from the issue of exculpation, actually stand to profit by their acts. It literally pays to be insane under certain circumstances!

Although these unusual legacies of insanity are only tangentially related to the issues of the misuse of psychiatric testimony or the abuse of the insanity defense per se, they are important in their own right and are of interest to the forensic psychiatrist. This article discusses three unusual legacies of a determination of insanity: (1) the inheritance cases (permitting the insane killer to inherit from his own victim), (2) the life insurance cases (permitting the beneficiary to recover when the insured commits suicide while insane), and (3) the effect of insanity on publication rights agreements in sensational criminal cases (the "Son of Sam" statute).⁶

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The Inheritance Cases

In general, one who wrongfully kills a person cannot inherit from the victim, under the equitable principle that one cannot be allowed to profit from his own wrong. The leading case is *Riggs v. Palmer*, 115 N.Y. 506 (1889). In *Riggs*, a grandson murdered his grandfather upon learning that the grandfather intended to revoke a will which named him as the primary beneficiary. This appeared to be a classic case of "murder for profit" and the grandson was convicted of murder in the second degree. The court stated as follows:

No one shall be permitted to profit by his own fraud, or to take advantage of his own wrong, or to found any claim upon his own iniquity, or to acquire property by his own crime. These maxims are dictated by public policy, have their foundation in universal law, administered in all civilized countries, and have nowhere been superseded by statutes. . . . It never could have been their [the legislators'] intention that a donee who murdered the testator to make the will operative should have any benefit under it.⁷

It was inconceivable, said the court, that the laws respecting the descent and devolution of property should operate in favor of one who murdered his ancestor so that he might speedily come into possession of his estate.

In New York, therefore, the applicable rule of law, set down by *Riggs v. Palmer*, is that killers cannot inherit as a result of their own crime. But, as the following case illustrations demonstrate, that rule does not apply where a finding of not guilty by reason of insanity is reached.

Matter of Eckardt⁸ Hans Eckardt met his death on June 23, 1943, at the hands of his wife Anna Marie Eckardt.

The decision describes the forensic psychiatric aspect in relevant part as follows:

It is quite unnecessary to detail here the gruesome events leading up to this homicide. The expert for the defendant testified that the wife was afflicted with an ailment known as "somniaambulism" which is described as a state in which a person goes about and does purposeful acts without knowing what he or she is doing. While it is true that the expert for the People testified that in his opinion the wife was not thus afflicted he did admit that it was quite possible for a person to have no memory if he received a brain injury; at least no memory for a certain period of time; that people in a somnambulistic state have done more than walk; that they have been known to do purposeful acts; that a series of events, emotional strain and sorrow could pile up to such an extent that a person's mind becomes deranged. The unhappy life of this couple, the husband's cruel treatment of the wife and his assault upon her the night of the murder might very well . . . create this state of somnambulism and that the wife at the time of the commission of the act did not appreciate the nature thereof and know that it was wrong.⁹

In *Eckardt*, a case of first impression, the court recognized the fundamental bases set out in the *Riggs v. Palmer* decision, i.e., that a party should never be permitted to profit by his or her own wrong. However, the court reasoned that in the case before it, the wife had committed no legal wrong and that, therefore, the principle barring her from profiting from her own wrong would be inapplicable. It could not be concluded that she perpetrated the act with an end in view of profiting thereby, not knowing at the time the nature and quality of her act and that it was wrong. Thus, *Eckardt* established the principle in New York that if a beneficiary is found not guilty of the murder of the testator (or

testatrix) by reason of insanity, he has committed no legal wrong and is not precluded from inheriting under the will of the murder victim.

Matter of Wirth¹⁰ Norbert Wirth was charged with two counts of murder, causing the deaths of his wife Simone Wirth and her lover Henry McDermitt. In a jury trial, he was found not guilty by reason of insanity. Following the judgment of acquittal, he was committed to a state hospital as required by statute, but two months later he showed no evidence of mental illness and was released by the hospital on convalescent status. Thereafter, he routinely reported to the hospital for five years and finally was discharged. Although his wife had left no will, the question arose as to whether her husband could inherit from her estate under New York's intestate statute. (A person dies "intestate" when he or she has left no will and the devolution of the estate is prescribed according to the local statutory scheme.) The court, citing *Eckardt*, stated:

I conclude that it is not against the public policy of this State to permit one who has killed while insane subsequently to take a share of the estate of the deceased or the proceeds of a policy of life insurance on the life of the deceased of which the insane killer is beneficiary. . . . The court is familiar with all the facts involved in the death of Simone Wirth and concurs in the finding of the Criminal Court's verdict holding that Norbert Wirth was not guilty by reason of insanity, and will therefore order that Norbert Wirth is entitled to his intestate distributive share as surviving spouse.¹¹

Matter of Bobula¹² On August 28, 1964, John Bobula took it upon himself to shoot his wife to death and then took his own life in a similar manner. The

court below held that the equitable rule of *Riggs v. Palmer* did not apply in the case of homicide-suicide because in such a case the homicide could not have been motivated by a desire to personally profit from the killing. The Appellate Division reversed, stating that it did not matter whether the profit went to the killer directly or to his estate. New York's highest court, the Court of Appeals, in a terse per curiam decision, skirted the issue by reversing and remanding to the trial court, with instructions to reinstate the trial court's result only if it found that the killing occurred under circumstances which would exculpate the husband from criminal liability, i.e., if he were insane at the time. If it should be determined by the trial court that the husband had been insane and that there could have been no successful prosecution of him had he lived, then the husband's estate can take its share of all jointly owned assets.

Judge Burke, in a thoughtful dissenting opinion, wrote:

The question, as we see it, is not whether John Bobula was *criminally* liable for his wife's death, but rather whether he perpetrated a *wrong* upon her in taking her life whereby he changed and terminated her interest in their jointly owned property. . . . While it is assumed that this was not a classic "murder for profit," . . . nevertheless it falls within the long-established rule that "no man shall be permitted to profit by his own *wrong*." This rule is applicable to the wrongdoer's estate as well as to himself.¹³

Judge Burke went on to raise a further point that must give even the most fearless forensic psychiatrist pause to reflect on the limits of psychiatric expertise:

The majority's disposition of this case presents further difficulties: it imposes upon a

Surrogate¹⁴ the duty of determining whether John Bobula was *criminally* liable for his wife's death. His spirit must be placed upon trial, and it must be determined whether he was guilty of murder beyond a reasonable doubt, or whether he would have been exculpated from criminal liability, "e.g., if he were insane." First of all, the Surrogate's Court is not a proper tribunal for such a proceeding. Secondly, it has not even been alleged that John Bobula might have been insane. And in this respect, if we were dealing in presumptions, we would note that the presumption of sanity, the normal condition of man, "is not overcome by proof of the act of suicide." (Richardson, Evidence [9th ed., 1964], § 61)¹⁵

Thus, in New York State, a "post-mortem insanity defense" is called for in suicide-homicide cases, when the killer's estate may take from the assets of the victim. If the "spirit" of the killer-beneficiary is found to be not guilty by reason of insanity, then his estate is entitled to "profit" as a result of his act.

The Life Insurance Cases¹⁶

Life insurance policies generally provide that the insurance company will not be liable in the event of death from suicide on the part of the insured within a stipulated period, usually the first two years of the policy. (The courts hold that such a "suicide clause" in a life insurance policy, excepting liability for suicide of the insured within two years from the date of the policy, impliedly imposes liability for such suicide occurring after the expiration of the two years. Such a clause is also known as an "incontestable clause" and operates so as to bar the defense of suicide by the insurance company after the time fixed thereby has run.)

Under such a life insurance policy, it

is necessary that the suicide be committed while "sane" in order to prevent a recovery by the beneficiary. Establishment of the suicide's "sanity" merely requires the establishment of an element of intent, i.e., the voluntary, intended taking of one's own life. It is only necessary that the insured have sufficient mentality to realize that the act of suicide is committed for the purpose of producing the result intended. Whereas it might be questioned whether anyone committing suicide can ever be held to have acted truly voluntarily or to have exercised their rational judgment in the matter, courts generally hold that "insanity cannot be presumed from the mere fact of suicide for experience has shown that self-destruction is often perpetrated by the sane."¹⁷ Thus, *intent* is the essence of the act of suicide from a legal point of view and it presupposes a mind sound enough to form that intent. When an individual's suicide proceeds from the exercise of an act of volition, in the eyes of the law he is "sane," and the insurer is not liable during the first two years of the policy.¹⁸

Under what circumstances do the courts allow that a suicide was committed while the individual was "insane?" The present-day standard for insanity in this context was established in 1875. One of the earliest New York cases considering the issue stated that the insured was "insane" and the suicide was not intentional (thereby giving the beneficiaries a right to the proceeds of the policy) because

self-destruction by the assured when his mind was so disordered that he did not know that

the act committed would cause death, when he could form no intention and be influenced by no motive, or when he was under the influence of some insane impulse which he could not resist does not avoid the policy.¹⁹

Thus a stipulation in a life insurance policy excluding death by suicide is effective if the insured commits suicide while "sane" (i.e., while in possession of the requisite capacity to intend to do so, regardless of the motivation, the presence or absence of mental illness, etc.); such a stipulation is inoperative if the insured at the time of the suicide was "insane" (i.e., while lacking the intent to kill himself; "without appreciation of the physical consequences of his action or without power to resist the disordered impulse that impelled him to end his own life"²⁰).²¹

Strasberg v. Equitable Life Assurance Society of the United States²² Strasberg was a 42-year-old stockbroker, earning \$100,000 per year (in 1949). He was also a director of various power companies as well as a trustee of numerous trust funds. When he learned that the Securities and Exchange Commission and the Department of Justice were engaged in conducting an investigation of his role in manipulating the securities of one of his customers, an investment trust, he conferred with his attorney and stated that he was considering various means of getting out of his difficulties, including suicide. Upon a pretext to his wife that he was going to Washington, DC, he went to Newark, New Jersey, registered in a hotel under an assumed name, and took an overdose of sleeping pills, dying as a result thereof on February 19, 1949. The insured left three notes in his

own handwriting. The first note, addressed to the hotel management, directed it to deduct his bill from the money in his wallet and to notify his next of kin. The second note, addressed to his attorney, brother-in-law, and close friend, apologized for his inconveniencing them and requested cremation without any fuss. The third note, written to his wife in endearing terms, stated, "It is the only way for me, cowardly though it may seem to be."

Although the plaintiff (the wife and beneficiary of the decedent's life insurance policy) conceded that suicide had occurred within two years of the issuance of the policy, she contended that suicide was the result of "insanity," i.e., that he had been irrational when he killed himself. Evidence was adduced to the effect that the deceased had assumed the support of a large family when very young; that a paternal uncle had committed suicide; that he slept only three or four hours a day and had an insatiable lust for money; that he would become extremely angry at trivial annoyances; that he was given to violent outbursts while playing cards; that on other occasions he was irritable and aggressive; that he would frequently change plans with dramatic suddenness; and that he sometimes broke down and cried at business reversals. On the basis of a hypothetical question, a court-appointed psychiatrist testified that in his opinion the insured had been suffering from manic-depressive psychosis for some time before his death. The psychiatrist further concluded that the insured had formed an intent to take his life as a means of exit

from his difficulties. The court concluded that

None of the facts leading to the suicide suggests that the insured was irrational when he killed himself. Every step in his plan appears to have been coolly calculated. . . . The manner in which the deceased planned his death indicates neither impulse nor insanity. It would be difficult to find a plainer case of intentional self-destruction with a clear knowledge of the consequences of one's act.²³

Kent v. New England Life Insurance Company²⁴ On December 23, 1964, Edward Kent killed himself by firing a .22 caliber bullet from a semiautomatic pistol into his right temple. He had been drinking heavily at an office party, was knocked to the ground by a jealous husband who resented Kent's attentions to his wife, and had driven home from the party, striking a parked vehicle without stopping along the way. He arrived home and appeared to be very restless and irritable to his wife. He ripped off his tie and his shirt, causing the shirt buttons to fly off. During this time, he stated to his wife, "What difference does it make?" He asked his wife to get his gun, but she refused to get it. He then ordered her out of the room, got the gun himself from a cabinet, prepared and cocked the gun for shooting,²⁵ put it to his head with both hands, and fired a bullet through his head, dying instantly.

The plaintiff (the wife and beneficiary of the decedent) claimed that, although the suicide occurred within two years of the issuance of his life insurance policy, he was so drunk at the time of his death that he was unable to form an intent to kill himself (and therefore she should be able to collect the proceeds on the policy notwithstanding the suicide clause). The

court stated that, despite the apparent absence of any "rational" motivation to commit suicide, intent may be formed in the absence of or regardless of any motivation. In regard to his intoxication, the court said:

The first question is whether Kent was so drunk that his mind could not form the intent to kill himself. It must be remembered that drunkenness by itself does not necessarily so becloud, befuddle or obscure the mind as to prevent the formation of an intent to kill. . . . That a man may be even grossly intoxicated, and yet be capable of forming an intent to kill or do any other criminal act, is indisputable.²⁶

The court concluded that in view of Kent's conduct, although concededly not in full command of his reflexes or reason, it was conclusively established that Kent had intended to kill himself. Therefore, by virtue of his demonstrated intent to commit suicide, he was sane at the time and the insurance company was released from any liability under the terms of the policy.

The Effect of Insanity on Publication Rights²⁷ Agreements in Sensational Criminal Cases ("Son of Sam" Statute)

As a consequence of the increased focus of public attention on sensational crimes, criminal defendants not infrequently have attempted to capitalize on the media interest in their stories by selling the publication rights to their life story or their alleged role in the crime. As one court stated:

The sophistication of our society has embellished the field of entertainment to the extent that reading of the "exploits" becomes an acceptable substitute for "live performances in the Roman arena"—witness the mad rush of publishers to obtain the literary and motion

picture rights to the last days of the condemned murderer who preferred death by execution to life imprisonment [viz Gary Gilmore].²⁸

The New York Legislature, shocked by the large numbers of vicarious thrill seekers and by the media trumpeting forth each little happening in the notorious "Son of Sam" case in New York, hastened to debar David Berkowitz (the "Son of Sam" killer) and others from profiting from their heinous misdeeds. New York was the first state (followed by 21 others) to enact a statute precluding criminal defendants from the unjust enrichment that could result from selling the publication rights to their stories. (For an excellent discussion of these statutes, see reference 29.)

The author of the New York bill prohibiting convicts from profiting from their stories commented on the rationale behind the statute:

It is abhorrent to one's sense of justice and decency that an individual, such as the forty-four caliber killer [viz David Berkowitz], can expect to receive large sums of money for his story once he is captured—while five people are dead, other people were injured as a result of his conduct. This bill would make it clear that in all criminal situations, the victim must be more important than the criminal.³⁰

The congressional conference committee report on the proposed federal version of the New York statute echoed the same rationale:

A number of people have expressed concern that the widespread publicity surrounding a crime can result in the criminal wrongdoer receiving lucrative fees for books, articles, interviews and the like. These people see such income on the part of the wrongdoer as unjust enrichment and have proposed that such income be held in escrow by the State in order to pay claims made against the wrongdoer by

the victims of the crimes which led to the unjust enrichment.³¹

The New York Statute (dubbed the "Son of Sam" statute)³² and most of the others generally provide that, if the defendant is convicted, the victim of the crime and his or her family may collect from the escrow account by bringing a civil action against the perpetrator. If acquitted of the crime, the defendant receives the funds.

What would the result be in a situation in which the defendant is found to be not guilty by reason of insanity? Of course, such an individual is legally blameless and has committed no legal wrong. Therefore, in such a case, the insane defendant should be allowed to retain the proceeds of any publication rights agreement.

Contrary to all expectations, the New York statute treats the defendant who is not guilty by reason of insanity and the defendant found guilty of the crime alike. Subdivision 5 of the statute reads as follows:

For purposes of this section, a person found not guilty as a result of the defense of mental disease or defect pursuant to section 30.05 of the penal law shall be deemed to be a convicted person.³³

It is not surprising that many commentators have debated the constitutionality of the "Son of Sam" statute.^{34, 35} When Congress rejected a bill patterned after the New York statute, the determining factor was the finding of the American Law Division of the Library of Congress Congressional Research Service that "serious constitutional issues are raised by the [New York] legislation: the main constitutional issues

raised concern the due process clause of the 14th Amendment and the 1st Amendment protection for freedom of speech and press."³⁶

The legislative bill jacket of the New York statute, prior to passage, included an adverse memorandum from Franklin E. White, of the Division of the Budget, listing possible constitutional arguments against the bill and recommending a veto. His final comment, handwritten (apparently for emphasis) was: "This bill is terribly drafted!! Its intent & objectives should be praised but it should be vetoed with a promise to resubmit a bill which will (1) be clear [and] (2) have a chance of surviving a constitutional attack."³⁷ The same jacket contained a memorandum to counsel for the Governor reading in part: "Obviously, there are many holes in the proposal. . . . Though it may be a little weak on details, the bill is certainly strong and definite as an expression of public policy. We believe the public policy is a good one and should be supported."³⁸

Apparently, in response to the public outcry over the monetary windfall from the media's base delight in the ghoulish recounting of the exploits of "Son of Sam,"³⁹ the Legislature conceived, drafted and enacted Executive Law Section 632-a in great haste, less concerned with its possible constitutional defects than with the need to respond promptly to mounting public pressures. Insanity acquittees and convicted felons were lumped together and accorded the same treatment—confiscation of all profits from publication rights agreements. Although vulnerable to constitutional at-

tack, these laws have yet to be judicially tested to date.

Conclusion

If we accept the legal dictum, *Actus non facit reum, nisi mens sit rea*, ("An act does not make the person doing it guilty unless it is accompanied by a guilty mind"), then it follows that an individual found not guilty by reason of insanity should be allowed to inherit the property of the murder victim. Having committed no legal wrong, the equitable principle barring an individual from profiting from his or her own wrong would be inapplicable. In the life insurance cases, "insanity" is equated with lacking the capacity to form the intent to take one's life. An individual who commits suicide while lacking the requisite capacity to form an intent to commit suicide would thereby not be responsible for this action. Under such circumstances, even if the suicide occurred during the first two years of the policy, the beneficiaries could recover the insurance benefits.

The "Son of Sam" statute in New York treats insanity acquittees the same as convicted felons and bars them from profiting from the sale of the publication rights to their stories. It would appear that such individuals have committed no legal wrong and, like the insanity acquittees who are allowed to inherit the property of their murder victims, should be permitted to recover publication royalties without state interference. Such a statute may turn out to be constitutionally defective and be overturned. On the other hand, the statute may successfully

resist a constitutional challenge on the basis that the state is justified in treating insanity acquittees as a "special class"⁴⁰ for the purpose of promoting public safety, health or morality.⁴¹ (For an excellent discussion of constitutional challenges based on other grounds, e.g., impermissible restrictions on defendants' first amendment rights, see reference 42.)

References

1. Perr IN: The insanity defense: The case for abolition. *Hosp Commun Psychiatry* 36:51-4, 1985
2. McGrath JJ: The insanity defense: A difficult necessity. *Hosp Community Psychiatry* 36:54-5, 1985
3. White J: Guilty is guilty, insane or not. *New York Times*, Op-Ed page, 1979, February 25
4. Stone AA: The insanity defense, in *Mental Health and the Law: A System in Transition*. New York, Jason Aronson, 1976, pp. 218-32
5. Halpern AL: The insanity defense: A juridical anachronism. *Psychiatr Ann* 7:41-63, 1977
6. The discussion of these three unusual legacies of the insanity defense will be limited to the jurisdiction of New York State.
7. 115 N.Y. 506 (1889) 22 N.E. 188
8. 184 Misc. 748 (1945) 54 N.Y.S. 2d 484
9. *Id*
10. 59 Misc. 2d 300 (1970) 298 N.Y.S. 2d 565
11. *Id*
12. 19 N.Y. 2d 818, 280 N.Y.S. 2d 152, 227 N.E. 2d 49
13. *Id*
14. A Surrogate is a judge or judicial officer who presides over probate matters, e.g., wills, testaments, etc.
15. 19 N.Y. 2d 818, 820
16. "Insanity," as the term is used and defined in the life insurance cases, is quite different from the exculpatory insanity defense in criminal law.
17. *Strasberg v. Equitable Life Assurance Society of United States*, 117 N.Y.S.2d 236-240, (1952) (quoting *Shipman v. Protected Home Circle*, 174 N.Y. 398, 405)
18. *Kent v. New England Mutual Life Insurance Company*, 277 N.Y.S.2d 788 (1966)
19. *Van Zant v. Mutual Benefit Life Insurance Company*, 55 N.Y. 169, 179 (1873)
20. *Franklin v. John Hancock Mutual Life Insurance Company*, 298 N.Y. 81, 84 (1948), 80 N.E. 2d 746
21. New York allows a recovery by the beneficiaries even if the policy provides that the insurer is not liable in the event of death by suicide, "sane or insane," if the insured did not realize what he was doing or that the act would cause death, i.e., if he lacked the intent to take his life.
22. *Strasberg v. Equitable Life Assurance Society of United States*
23. Op cit n. 22 at 240
24. Op cit n. 18
25. A detective testified that one would first have to insert a loaded clip in the gun to release the magazine safety, then cock the gun to place a round from the magazine into the gun chamber in position for firing, and finally place the thumb safety on the side of the gun in a position for firing. All this would have to be done first, before the gun could then be fired by pulling the trigger.
26. Op cit n. 18 at 793
27. The phrase "publication rights" includes newspaper, magazine, movie, television, radio, theater, photograph, and any type of literary right.
28. *Matter of Johnson (David A. Berkowitz)*, 430 N.Y.S.2d 904, 906 (1979)
29. Note: In cold type: statutory approaches to the problem of the offender as author. *J Crim Law Criminol* 71:255-72, 1980
30. 1977 New York State Legislative Annual, 267 (Memorandum of Senator Gold)
31. Congressional Record 124:35, 736-9, 1978
32. N.Y. Exec Law § 632-a (McKinney 1982)
33. *Id*
34. Note: Compensating the victim from the proceeds of the criminal's story—The constitutionality of the New York approach. *Colum J Law Soc Prob* 14:93, 1978
35. Note: Criminals-turned-authors: Victims' rights v. freedom of speech. *Indiana Law J* 54:443 (1979)
36. Op cit n. 31
37. Quoted in 430 N.Y.S.2d 904, 906 (1979)
38. *Id*
39. David Berkowitz, who did not raise the insanity defense, obtained a contract with the McGraw-Hill Book Company for publication of his story, wherein the publisher advanced the sum of \$250,000. At the time, it was estimated that the royalties might exceed the advance payment.

40. *Jones v. United States*, 51 U.S. L. W. 5041 (U.S. Sup. Ct. June 29, 1983) (holding that insanity acquittees are a "special class" that may be treated differently from other candidates for commitment)
41. It might be argued that if insanity acquittees can inherit property from their victims, then they should also be allowed to sell their stories about their "criminal" acts and keep the proceeds. Perhaps the rarity of the former situation and the absence of any public outcry about the injustice of it accounts for the different response of the law. The spectacle of large numbers of criminals profiting from their sensational crimes, along with a growing concern for the rights of victims, has led to the enactment of "Son of Sam" statutes throughout the country. On strong public policy grounds, insanity acquittees, although legally blameless, are likewise precluded from what the public perceives as unjust enrichment at the expense of the victims of crime.
42. Note: Publication rights agreements in sensational criminal cases: a response to the problem. *Cornell Law Rev* 68:686-705, 1983