Expanding Slayer Statutes to Elder Abuse

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Common law has a dictum that people must not benefit from their crimes. In years past, states have enacted slayer rules to prevent killers from inheriting from their victims. The specific criteria and applicability of slayer rules vary by jurisdiction. Recently, several states, including Washington, have expanded their slayer rules to disqualify persons from inheriting if they have been involved in abuse or financial exploitation of the deceased. Reviewed herein are the abuse disinheritance laws, the relationship of the laws to concepts of testamentary capacity and undue influence, and the relevance to forensic psychiatric evaluations.

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All states have slayer laws that prohibit killers from inheriting from their victims. Although the specific criteria and applicability of slayer laws vary by jurisdiction, they are premised on the notion that killers should not benefit from their wrongful acts. In recent years, Washington and several other states have expanded their slayer rules to disqualify persons from inheriting when they abuse or financially exploit an elderly or vulnerable adult testator.

The rationale for expanding slayer laws to include abuse provisions is related to states' efforts to reduce elder abuse. Historically, criminal law and adult protective agencies have been the primary mechanisms aimed at addressing abuse of older adults. Mistreatment of elderly persons has similarities to child abuse, in that family members and other trusted individuals make up a significant percentage of those committing the abusive acts. A distinguishing aspect of elder abuse cases, however, is that such family members and trusted individuals may stand to inherit from the victim. By recognizing elder abuse as a matter of probate law, the goal is to disincentivize elder abuse by those who stand to gain from the death of an elderly individual.

In this article, I review the origins and background of slayer rules and discuss how a handful of states are broadening these laws beyond homicidal behavior to include abuse provisions. This review is intended to educate the reader about the expanded slayer rules and how these laws relate to other disinheritance concepts: testamentary capacity and undue influence. Washington statutory and case laws are reviewed and compared with those of other jurisdictions that have amended their laws. A recent Washington case, *In re Estate of Haviland*,[1] is used as the backdrop for discussion. The article concludes with practical considerations for practicing forensic psychiatrists who may be in the position to evaluate cases under these disinheritance schemes.

Background of Slayer Rules

In common law, the rule, *nullus commondum capere potest de injuria sua propria* (no one can take advantage of his wrongdoing) forms the basis of slayer rules, so that slayers cannot inherit from their victims. Slayer rules in the United States began under common law interpretations of property law.

Probably the most well-known U.S. case to articulate a slayer rule is *Riggs v. Palmer*.[2] *Riggs* concerned a grandfather who had executed a will leaving small portions of his property to his children and the remainder to his grandson. The grandfather subsequently married and stated that he intended to change his will to include his wife. The grandson caused his grandfather's death in an effort to secure his portion of the estate. Although the dissent opined that a strict interpretation of the prevailing law at the time would permit the grandson to inherit under the

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will, the court majority held that the grandson was disqualified because of his action. The court based its decision on the grounds of moral equity, thus articulating a slayer rule.

After *Riggs*, most states passed slayer statutes.[3] Currently, 47 states have slayer statutes; the remaining states have common law provisions in case precedent. Many states have adopted the Uniform Probate Code (UPC) or a version of the code.[4] The UPC is a model code that includes an optional slayer rule. The American Law Institute also put forth a model slayer rule in the Restatement of Property.[5] The slayer rule in the UPC states that one who "feloniously and intentionally kills" is not entitled to benefit under the will.[6] The applicable actions of the rule are limited to murder and voluntary manslaughter, excluding accidental killings. The rule is silent as to persons found not guilty by reason of insanity. It has not been amended to include financial abuse.

Under slayer rules, property under a will passes as if the slayer predeceased the victim. Accordingly, slayer rules vary in the results that would occur if usual property rules applied according to the decedent's will or the intestate laws (distribution of property when no will exists). The slayer laws do not require that slayers forfeit their own property; rather, the statutes disqualify slayers from benefiting from their wrongful acts.

Historically, the slayer's motive in committing the wrong was irrelevant, and application of slayer rules did not require the slayer to have a financial motive in the wrongdoing. Today, jurisdictions vary in considering the intent or motive of the slayer: for example, as to whether a would-be beneficiary who has been adjudicated not guilty by reason of insanity in the killing of the testator is disqualified from inheriting from the decedent or whether the slayer rule is triggered by self-defense or other nonintentional killings.[7]

A principle goal of slayer rules is to transfer property according to the probable intent of the deceased person. It is not difficult to understand that an individual would not want to pass on his property to someone who killed him. In most cases, a victim of homicide would not want the killer to benefit from his wrongs. The testator, had he known at the time of commission of the will about the eventual slaying, would probably want the property to transfer to another (likely innocent) heir. Accordingly, these laws are intended to reflect the mindset of the testator and make the default result the one that most decedents would select.

In addition, the law serves to reflect important positions of public policy. The slayer rules disqualify persons from inheriting when they have engaged in bad behavior, as defined by the legislature or case law and have long limited the ability of killers to benefit from their wrongful acts. Some states have expanded their definitions of bad behavior to disqualify persons from inheriting in situations of abuse, neglect, or abandonment.

Washington Slayer and Abuser Statute

Washington has long had statutory provisions precluding the distribution of property when the decedent is killed by a beneficiary. In 2009, the Washington legislature amended the statute to disqualify persons from acquiring property if the heir financially abused the decedent and the decedent was a vulnerable adult.[8] The impetus for Washington's expanded slayer law was to reduce abuse of vulnerable adults[9] The Department of Social and Health Services and other stakeholders advocated additional civil remedies to dissuade heirs from potential abuse of vulnerable adults because many cases cannot be criminally prosecuted after the victim is deceased.[9] Elder abusers are commonly family members and caretakers, and family members may have little incentive to report the abuse or exploitation after the victim has died. In some cases, an abuser acts deliberately in an effort to modify his victim's estate plan for his benefit.

The expanded Washington statute reads: "No slayer or abuser shall in any way acquire any property or receive any benefit as the result of the death of the decedent" (Ref. 8). Language in the Revised Code of Washington 11.84.900 states that the slayer and abuser statute is to be "construed broadly" so that "no person shall . . . profit by his or her wrong."[10] The definition of decedent is also broad, in that it includes anyone who "at any time during life in which he or she was a vulnerable adult, was the victim of financial exploitation by an abuser."[11] Consistent with this, the definition of "abuser" is "any person who participates, either as a principal or an accessory before the fact, in the willful and unlawful financial exploitation of a vulnerable adult."[12]

In Washington, the definition of abuser in this portion of the statutory code is limited to financial abuse of a vulnerable adult; there is no provision for

Table 1 Types of Abuse Triggering State Slayer-Abuser Rules (Adapted From Hunt[15])

State	Financial Exploitation	Physical and Financial Abuse
Arizona	X	
California		X
Illinois		X
Kentucky		X
Maryland	X	
Michigan		X
Oregon		X
Washington	X	

physical abuse. The financial abuse provisions of the slayer statue apply only to persons who both abuse a vulnerable adult and are would-be beneficiaries of the abused decedent. The state's criminal laws for homicide[13] and the Vulnerable Adult Protection Act[14] were designed to deter acts of physical and financial harm under separate provisions.

Of the eight states that have considered this matter (Tables 1, 2), Washington is one of two that do not require a conviction for financial (or elder) abuse under criminal law for the slayer rule to be applied to a potential heir. Although criminal conviction may be used in support of disinheritance, Washington allows the civil court to determine "by clear, cogent, and convincing evidence whether a person participated in conduct constituting financial exploitation against the decedent."[16] For a finding of financial exploitation, the court is required to determine that the heir's behavior constituted willful action (or willful nonaction) that caused financial injury to the vulnerable adult.[17] No criminal court filing or adjudication of abuse against the heir to need have been made before the death of the vulnerable adult. What is more, distribution of assets that pass outside of probate may be challenged when there is a question of disqualification under the slayer and abuser statute.[18]

Table 2 Standard of Proof for Elder Abuse by State Slayer Rules

State	Criminal Conviction of Abuse	Civil Clear and Convincing Evidence of Abuse
Arizona	X	
California		X
Illinois	X	
Kentucky	X	
Maryland	X	
Michigan	X	
Oregon	X	
Washington		X

The Washington law provides an avenue to rebut the testator's presumed intent to disqualify an abuser from inheriting according to the slayer and abuser rules. The Act states that, despite a history of abuse toward the testator, the abuser may nevertheless inherit if the abused person "[k]new of the financial exploitation" and "[s]ubsequently ratified his or her intent" to benefit the abuser.[19] The court must find by "clear, cogent, and convincing evidence" that the testator intended to ratify his will.[19] The court may consider the record of court proceedings in making an equitable decision about whether the abuser may benefit from the decedent's estate. Because he may make changes to his estate until death, the intent of the testator may vary at different times.

In re Estate of Haviland

One of the first cases in Washington to address the state's expanded slayer rules was *In re Estate of Haviland*[1]. Dr. Haviland, a medical doctor practicing in the Seattle area, and his wife had been married for decades and had four children. They had devised an estate plan to benefit their children and grandchildren and some charities to which they had been longtime donors. Dr. Haviland's wife died in 1993. Three years after his wife's death, Dr. Haviland, then 85 years old, met 35-year-old Mary Burden who was employed at a local hospital where he was a patient. He began dating Ms. Burden after his hospital discharge and gave her several hundred thousand dollars to pay for her education and to provide her with a nest egg.

Dr. Haviland subsequently married Ms. Burden, at which time he modified his estate plan to include a share for his new wife. During his second marriage, he changed his will several times, leaving larger shares of his property to Mary Haviland and her children from a former relationship. His last will was executed in 2006. His wife escorted him to his estate attorney, where she gave handwritten changes to the attorney.

When Dr. Haviland died of advanced dementia in 2007, his children challenged the validity of the 2006 will on the basis that he had lacked testamentary capacity and that the will was produced under undue influence. Court records reveal that Dr. Haviland had not seen a physician in the two years preceding his death, except for an appointment a few days before the execution of his 2006 will. Mary Haviland commented at that appointment that Dr. Haviland's "mentation was good" (Ref. 20, p 566). In the course

of the will challenge, Dr. Haviland's attorney testified that he did not ask Dr. Haviland about the nature and extent of his property or his family or natural heirs, but the attorney stated that he believed Dr. Haviland to have been competent to execute his will at that time.

The court ruled that there was insufficient evidence to substantiate that Dr. Haviland lacked testamentary capacity in executing his 2006 will. However, it found that Mary Haviland spent millions of dollars of Dr. Haviland's funds and that, at the time of his death, the total value of the estate was negative. The trial court ruled in favor of the children on their second claim, finding by "clear, cogent and convincing evidence that the will was the product of undue influence by Ms. Haviland" (Ref. 1, p 33).

Specifically, the trial court applied prior case law[21] and found that three presumptive factors for undue influence had been met: the beneficiary was a fiduciary of the testator; the beneficiary participated in the procurement of the will; and the distribution of the will was unnatural based on past estate planning. In addition, the court discussed another factor: Dr. Haviland's poor health and his dependence on his wife as his caregiver. In light of these factors, Mary Haviland's transfer of assets to herself and her children was exploitative. Finding substantial evidence to support the trial court's ruling, the appellate court affirmed the lower court's decision.[20]

Independent of the *Haviland* contest and while it was pending court action, the Washington legislature amended its slayer statute to include financial abuse provisions.[8–12,16,17] In light of the statutory change, Dr. Haviland's estate administrator filed a petition to disqualify Mary Haviland from benefitting from the estate on the basis that she should be classified as an abuser who had financially exploited a vulnerable adult under the expanded slayer law. The trial court denied the administrator's petition, declining to apply the statute retroactively. The court of appeals reversed on the question of the applicability of the slayer and abuser statute.[22] The state supreme court granted review.[23] The possibility of undue influence was not before the state supreme court.

The Washington Supreme Court found that the abuser provisions of the slayer statutes applied in this case.[1] The court ruled that the event that triggers consideration of the slayer and abuser statute may occur during probate. In this case, the estate administrator's petition during probate for a finding that Mary Haviland was an abuser was sufficient.

In addition to being one of the first cases to address the expanded slayer rules, *Haviland* underscores the possible interplay between the various disinheritance schemes of expanded slayer rules, testamentary capacity, and undue influence.

Slayer and Abuser Statutes in Other Jurisdictions

Washington is one of eight states that have broadened slayer rules to apply in some form to abusers. The other seven states that have expanded their disinheritance laws to preclude abusers from inheriting from their victims are Arizona, Oregon, California, Illinois, Kentucky, Maryland, and Michigan.[15] States vary as to the type of abuse that triggers application of the law. In contrast with Washington, which expanded it slayer rules to include only financial abuse, some jurisdictions have amended their laws to include physical, sexual, and psychological abuse. In addition, states differ as to whether a criminal conviction of abuse is necessary to trigger application of the rule and whether the rules can be applied retroactively.

Similar to Washington, Arizona and Maryland have expanded their disinheritance and slayer rules to disqualify persons on the basis of financial exploitation of vulnerable adults (Table 1). For example, in Arizona, the statute reads:

> A person who is in a position of trust and confidence to a vulnerable adult shall use the vulnerable adult's assets solely for the benefit of the vulnerable adult and not for the benefit of the person who is in the position of trust and confidence to the vulnerable adult or the person's relatives [Ref. 24].

Maryland's statute has similar wording:

> [A] person may not knowingly and willfully obtain by deception, intimidation, or undue influence the property of an individual that the person knows or reasonably should know is at least 68 years old [or a vulnerable adult] with intent to deprive the individual of the individual's property [Ref. [25]].

These statutes do not include physical, sexual, or psychological abuse as triggers for application of the slayer and abuser law. Of note, the Arizona law requires the abuser to be in a position of "trust and confidence." The law ignores situations where a would-be beneficiary does not have such a fiduciary relationship to the vulnerable adult.

The other states that have expanded their slayer or disinheritance laws to include abuser provisions (California, Illinois, Kentucky, Michigan, and Oregon) have amended their laws to apply to physical abuse and neglect in addition to financial exploitation. In Oregon, an "abuser" is defined as "a person who is convicted of a felony by reason of conduct that constitutes physical abuse . . . or financial abuse."[26] California's statute uses a broader definition of abuse that includes physical abuse, neglect, false imprisonment, or financial abuse of an elderly or dependent adult.[27]

Other than Washington, California is the only state with slayer and abuser laws that do not require criminal conviction related to abuse of the decedent as a triggering event for application of the disinheritance abuse rules (Table 2). The California disinheritance scheme is triggered if the would-be heir is convicted of abuse under the state's penal code, or the abuse (in addition to such factors as whether the decedent was a vulnerable adult) is proved in a civil court by clear and convincing evidence. In Arizona, Illinois, Kentucky, Maryland, Michigan, and Oregon, criminal conviction related to the abuse of the decedent by the heir is required. By way of illustration, the Michigan statute provides:

> [A] judgment of conviction establishing criminal accountability for the . . . abuse, neglect, or exploitation of the decedent conclusively establishes the convicted individual as the decedent's killer or as a felon [Ref. 28].

The Michigan statute provides for an alternative civil determination that an individual is a slayer under the slayer and abuser rules. This judgment is achieved when a preponderance of the evidence provided in civil court proves that the would-be heir feloniously and intentionally killed the decedent.[28] The statute is devoid of any civil-standard alternative for persons accused of abusing the decedent. The Michigan statute specifically calls for a felony conviction related to abuse; presumably, then, a finding or plea for a misdemeanor-level crime would not trigger the disinheritance provision. The plain language of some of the other statutes as to the degree of criminal culpability is not as clear.

Similar to Washington law, other states have drafted rebuttable-presumption clauses in their abuse disinheritance laws to negate the disqualification of an abuser from inheriting from a decedent. The California code negates the disqualification of an abuser if the alleged abuser proves that the vulnerable adult "was substantially able to manage his or her financial resources and to resist fraud or undue influence" subsequent to the alleged abuse.[27] This presumes that the testator, with knowledge of the abuse, had the capacity to change his estate plans but elected to retain the abuser in a position to benefit.

Oregon requires a criminal conviction of elder abuse within five years of the death of the abused.[29] The slayer and abuser rule does not apply in Oregon if the heir's conviction occurred more than five years before the person's death. The five-year mark presumably grants the person whose estate is at issue sufficient time to make modifications to his will after any finding of abuse. If the deceased does not change his will, the presumption is that the deceased forgave the abuser or intended for the abuser to inherit despite his actions.

Discussion

Slayer statutes have long been entangled with criminal law. Expanding the slayer rules to include disinheritance for types of abuse similarly entangles these laws with civil law concepts that are relevant to forensic psychiatrists: testamentary capacity and undue influence. In will challenges, expert opinion from forensic psychiatrists can assist courts in determining the capacities and vulnerabilities of the testator.

In jurisdictions that have expanded their slayer statute to include financial abuse and exploitation, it is foreseeable that there could be challenges to a testator's estate on the basis of testamentary capacity (or some other contractual capacity in jurisdictions that make a distinction depending on the type of estate instrument executed), undue influence, and the abuse provisions of the slayer rules, as occurred in *Haviland*. That case can be used to illustrate how these concepts are related, and a forensic evaluator may be called to assess them separately or in tandem.

Testamentary Capacity and Related Contractual Capacities

Dr. Haviland's 2006 will was initially challenged on grounds of both testamentary capacity and undue influence. In support of the will contest, the challengers pointed to the facts that Dr. Haviland had a diagnosis of dementia (presumably, based on court records, meeting criteria for major neurocognitive disorder by the time of his death) and that he required home care.

The threshold for testamentary capacity is low. Scholarly articles and case law on the topic of testamentary capacity routinely identify four general requirements for testamentary capacity: that the person understand that he is making a will and that he know the general nature and extent of his property, the natural objects of his bounty, and to whom and how his property is to be distributed.[30] Mental illness, *per se*, is not a predicate to incapacity to execute a will. Likewise, even severe mental illness, without more evidence, does not equate with lack of testamentary capacity, which may be challenged before or after the decedent's death.

Although the requirements are similar across states, each jurisdiction has its own specific legal requirements. In Washington,[31] any person 18 years of age and of sound mind can make a will. The law does not identify any specific definition of mental illness in this context. When a challenge to testamentary capacity succeeds, the will is declared invalid, and the next most recent will (when the testator had the requisite capacity) takes its place. If there is no prior will, the laws of intestate succession take effect.

In *Haviland*, the trial court found that the challengers failed to meet their burden in establishing a lack of testamentary capacity. A geriatric psychiatrist testified that Dr. Haviland had exhibited signs of Alzheimer's disease several years before his death and that, by 2004 (as revealed in witness statements), he required cueing for his basic daily activities. That information proved insufficient, in light of comments from Dr. Haviland's attorney, who testified to his belief that Dr. Haviland had been competent, and the medical record was therefore rendered void.

Although not directly discussed in *Haviland*, other estate instruments may also be challenged on the basis that the benefactor lacked capacity to execute the instrument. Similar to challenges to testamentary capacity, a forensic psychiatric evaluator may be hired to render an opinion as to the capacity in question. A recent case from California, *Lintz v. Lintz*[32] is illustrative of other estate instruments.

In *Lintz*, a wealthy decedent had a trust. Before his death, he executed various amendments to the trust, each time increasing the share to his third wife and disinheriting some of his children from a prior marriage. He and his third wife jointly executed a new trust that gave her the right to disinherit the decedent's youngest child and leave any residual property to her two children from a prior relationship. The decedent's children filed a complaint challenging, among other things, the decedent's capacity when executing the trust. The trial court held that the decedent had lacked testamentary capacity.

On appeal in *Lintz*, the court of appeals affirmed, but ruled that the court had applied the wrong standard for determining testamentary capacity. The court stated that a sliding-scale capacity to enter into a contract is required in the setting of trusts, rather than testamentary capacity, because trust instruments are more complex than wills. Although the court did not specifically comment on how the sliding-scale standard applied to the decedent, its ruling in *Lintz* suggests that, at least in some jurisdictions, a higher capacity is needed to execute more complex estate documents. Forensic psychiatrists who conduct capacity assessments for estate instruments should review the applicable law in their jurisdiction.

Undue Influence

In the will contest, Dr. Haviland's children also asserted undue influence on the part of Mary Haviland. Undue influence may be exerted in the setting of execution of wills or other estate documents, when an individual is vulnerable to the influence of another person, usually a beneficiary of the estate. Although whether the testator had testamentary capacity is relevant to the discussion of vulnerability, a will may be set aside on the basis of undue influence, even if the testator had testamentary capacity.

Psychiatric evaluators may be asked to assess a testator's vulnerability to undue influence. These evaluations can be present-state or retrospective. To establish undue influence, courts generally require proof that the person actually exerted influence over the testator, that the influence rose to the level of coercion, and that the influence caused the testator to execute a will that would not have been created without the undue influence.[33] In performing a forensic assessment, it is helpful to consider the testator's mental and physical disabilities as well as whether "an individual keeps other family members away from the testator; tells tales about other heirs to alienate them from the testator; and controls personal access, mail, and phone calls from relatives to the testator" (Ref. 34, p 515).

In Washington, the standard is that, at the time of the execution of the estate instrument, the beneficiary must have exerted sufficient influence to control the volition of the testator, interfere with his free

Table 3 Comparison of Challenges to Inheritance

Cause or Effect of Challenge	Testamentary Capacity	Undue Influence	Expanded Slayer-Abuse Statutes
Relevant bad behavior of the heir		X	X
Invalidates the will when successfully challenged	X	X	
Abuser may inherit outside probate despite successful challenge	X	X	

will, and prevent the exercise of his judgment and choice.[35]

The court in *In re Haviland* relied on additional Washington law that applies when suspicious facts give rise to a rebuttable presumption of undue influence. The court found that Mary Haviland had participated in the execution of the will; received an unnatural share compared with previous estate documents; and systematically reduced Dr. Haviland's estate. The court emphasized that Dr. Haviland was vulnerable because of his physical limitations and cognitive impairment.

Expanded Slayer Rules that Include Financial Abuse

In addition to challenges to testamentary capacity and undue influence, citizens in eight states may seek (in addition or as an alternate remedy) to have an heir disqualified from inheriting on the basis of abuse of the deceased. In *Haviland*, challenges were asserted on this basis as well.

The disinheritance-based abuse laws are distinct from and may be adjunctive to criminal elder abuse laws and mandated reporting laws that govern reporting of abuse of elderly and vulnerable adults. In the case of the Havilands, Mary Haviland had not faced any criminal elder abuse charges before or surrounding her husband's death. In contrast to most of the states that have passed abuse disinheritance laws, Washington does not require a criminal conviction of abuse for the heir to be disinherited. Mary was disqualified from inheritance based on a civil court determination that she financially exploited a vulnerable adult by clear, cogent, and convincing evidence. Had this case occurred in another state (other than California, which also has a civil court standard of proof), a criminal conviction of abuse would be necessary to trigger the amended slayer-abuser law.

Forensic psychiatric evaluators may be called in this context to assess the alleged abuser's *mens rea* for the criminal elder abuse charge or opine about the defendant's mental state in a civil trial related to abuse. For example, as with criminal charges outside of the context of elder abuse, defendants may seek forensic psychiatric evaluation for criminal responsibility or other *mens rea* defenses. Criminal elder abuse charges vary depending on the behavior of the abuser. In California, for example, alleged abusers may be charged with any relevant provision of the penal code, such as murder or manslaughter. The California Penal Code also includes specific crimes toward elders when the accused "willfully causes or permits an elder or dependent adult to suffer" from physical, sexual, or mental abuse or financial exploitation.[36]

Unique to the expanded abuse provisions in the slayer statutes are provisions that enable the abuser or testator to rebut the presumed intent to disqualify the abuser from benefiting from the estate. These rebuttable-presumption clauses vary by jurisdiction. The Washington law focuses on the testator's intent: that is, whether he ratified his intent to benefit the abuser despite knowledge of the financial exploitation. Similar to other assessments of intent in the legal context, the testator's intent may change over time.

Forensic psychiatrists may be asked to opine on these questions. These assessments could be present-day or retrospective evaluations of the testator's wishes or capacities. As the Washington court has identified, the psychiatric evaluator should consider the record of court proceedings and other relevant materials. In making these assessments, a review of other written documents, witness statements, and any communications made by the testator is likely to be helpful. Table 3 provides a comparison of challenges affecting inheritance that may involve evaluation by forensic psychiatrists.

The California clause focuses on the testator's capacities for decision-making after the abuse. The statute requires the abuser to prove that the vulnerable adult was, after the abuse, substantially able to manage his financial resources and resist fraud. The clauses permit the abuser to establish that the vulnerable adult had the capacity, after the abuse, to change

his mind as to the estate document, but did not make changes.

High-profile cases of abuse and neglect toward elderly persons, such as the circumstances in *Haviland*, underscore the need to protect vulnerable citizens and their wishes. In addition to the laudable goal of reducing elder abuse, the states that have amended their slayer provisions to disqualify abusers from benefiting from their wrongful acts are responding to wishes of their citizenry that the presumptive intent of testators in leaving bequests to certain heirs be examined and that bad behavior on the part of heirs be discouraged.

Proponents of expanding slayer statutes to include financial abuse provisions are likely to point out that the concept of undue influence has limitations in disincentivizing bad behavior that may be more aptly addressed by amended slayer rules. Although a successful challenge on the basis of undue influence invalidates a will, the abusive heir may nevertheless receive his intestate share. For example, suppose that Dr. Haviland had executed only one will in his lifetime, the 2006 will. If this will were thrown out on the basis of Mary Haviland's undue influence, she would have inherited based on her position as Dr. Haviland's wife and the state's intestacy laws. In most jurisdictions, the surviving spouse is entitled to a substantial portion of the estate. Although she may have received more under the 2006 will, she nevertheless would benefit.

What is more, legal actions based on the amended statutes are likely to be attractive to heirs that seek disinheritance of an abusing beneficiary because, if successful, the disqualified abuser is precluded from assets that pass outside of probate, in addition to probate matters, such as a will. Examples of nonprobate assets include, for example, life insurance contracts, community property agreements, payable-on-death accounts, individual retirement accounts with designated beneficiary, and civil judgments for wrongful death, even when the civil judgment is against a defendant other than the abuser.

Conclusion

American law has long recognized the common law principle that one should not benefit from his wrongdoing. Slayer statutes have operated to disinherit a killer from the victim's estate. In recent years, several states have expanded their notions of slayer rules to include various abuse provisions, including disinheriting heirs that have engaged in financial exploitation of the deceased. Forensic psychiatrists are commonly asked to evaluate testator capacities and vulnerabilities in the setting of will contests. The expanded slayer–abuser rules have ties with the concepts of testamentary capacity and undue influence and present new causes of action that may call for forensic psychiatric opinion. Forensic psychiatrists have an important role to play in assessing a testator's intent and capacities.

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