Undue Influence: Parallels to Domestic Violence, Stalking, and Sexual Abuse
Introductions

Candace Heisler

&

Paul Needham

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Your Experience with UI

- What is your experience with UI?
- What are the challenges in working a case of UI?
- What do you hope to learn today?
Much of the content to be used in this presentation is drawn from the curriculum “Undue Influence” which is copyrighted by the YWCA in Omaha, Nebraska. The original curriculum and materials are available at: http://www.ncall.us/justice/undue-influence.
Additional content on case development is adapted from a CLE presentation by Arlene Markarian, 6.16.04, “Evidence-based Prosecution.”
Undue Influence (UI)

- Power and control
- Exploit trust, dependency and fear of another
- Purpose: deceptively gain decision making control
More than persuasion or salesmanship

Pattern of tactics

Brainwashing – cults, hostages, POWs

Method to commit a crime
What kind of case is this?

In what kinds of proceedings could the case appear?

Who needs to be involved to address the situation?
Case Example: Martha Bedford

- Recently widowed
- Handy man
- Several trusts worth millions
- Moves and isolates
APS case?

Civil case?

Criminal case?

All or some of the above?

Who needs to be involved to resolve situation?
Importance of Identifying Undue Influence

- Cases that “don’t seem right”
- Explain victim behaviors
- Assist in determining if crime committed
Understand victims’ behaviors and reactions
Prove or discredit offenders’ justifications
Link expertise in DV, stalking, and grooming in SA to UI
Need for Multidisciplinary Response
“It’s Not ALL Undue Influence!!!”

- Gift giving
- New relationships and partners
- New caregivers
- Changes in wills
Purpose of the Training

- Enhance victim safety by identifying and responding effectively to UI
- Hold abusers accountable through investigation and prosecution of UI cases
Abuse, Neglect and Exploitation
UI may be present in virtually all forms of abuse but is most typically associated with
- Physical violence, especially abuse in later life and domestic violence
- Sexual abuse
- Emotional abuse
- Financial exploitation

Professionals may not consider the role of UI in these situations
- Recognizing and Reporting by victims
- Seeking help and pursuing remedies
- Cooperating with authorities
Generational and Cultural Considerations

- How do cultural considerations affect Identification of abuse and UI?
  - Who owns resources?
  - Freely given?
  - Freely shared?
  - Extended family in same household?
Thinking about the connections between Domestic Violence, Stalking and Grooming and Undue Influence
Abuse in Later Life Wheel

- Physical
  - Threatens
  - Financially Exploits
- Sexual
  - Targets Vulnerabilities & Neglects
  - Denies access to spiritual traditions/events
- Psychological Abuse
  - Uses Privilege
  - Ridicules personal & cultural values
  - Isolates
  - Uses Family Members

Power & Control
Stalking

- Conduct directed at a specific person that causes fear
- Repeated behaviors
- Purpose: to control victim or instill fear
Grooming

- Double life of the suspect
- Target based on vulnerability
- Often develop relationship
Case example: Norman

- What forms of abuse or tactics were used?
- How similar to DV?
- What kind of case is this?
  - APS?
  - Civil?
  - Criminal?
Case Example: Norman

“I’d Rather Be Home”
Exercise: I’d Rather Be Home

- What forms of abuse or tactics were used?
- How similar to DV?
- APS?
- Civil?
- Criminal?
Small Group Activity: Barriers to Safety

- Think about Norman and victims with whom you have worked
  - Work with your small group to list barriers victims face to living free from abuse in later life
- You have 2 MINUTES!
- Group with longest list wins
Barriers

- What effect do these barriers have on your work?
- How could you overcome these barriers when speaking and working with a victim?
Dynamics of Undue Influence
Undue Influence:

“The substitution of one person’s will for the true desires of another.

Fraud, duress, threats or other types of pressure often accompany it.

It occurs when one person uses his or her role and power to exploit the trust, dependency, and fear of another.”

Mary Joy Quinn, 1998
No Single Model

- Two models mentioned in this presentation here
  - Tactics Wheel (Brandl, Heisler, and Stiegel) especially helpful when a DV or abuse in late life relationship
  - IDEAL (Dr. Bennett Blum) especially helpful in other situations
Based on her behavior, what initial impressions could be formed about Paula?

Based on his behavior what are your initial impressions of the male character?
Case Example

“Gaslight”
Exercise: “Gaslight”

- Based on her behavior, what initial impressions could be formed about Paula?
Under the right circumstances, anyone could be susceptible to UI.
Victims: Increased Vulnerability

- Lonely
- Naive, uninformed
- Ill or cognitively impaired
- Adverse life conditions
- Fatigued, exhausted, distracted
- Frightened
- Dependent

What about Martha Bedford?
Perpetrators

- Based on his behavior what are your initial impressions of the male character?
Perpetrators

- Opportunists
- Career criminals
  - Family members, trusted friends or others
  - Caregivers
  - Fiduciary gained elder’s trust/confidence
Victim elderly benefactor of police entities
Perp is LE officer who met V through her gifts
Targeting and Grooming

- Find a likely target
- Gain confidence of potential victim
- Induce dependence through exploitation of weakness
- Gain dominance of victim’s life circumstances and wealth
A short look at “Targeting” & “Undue Influence”
Undue Influence: Common Tactics

Create Fear
Create Dependencies
Create Lack of Faith in Own Abilities
Induce Shame and Secrecy
Perform Intermittent Acts of Kindness
Keep Unaware
Isolate From Others and Information
Prey on Vulnerabilities
Create Dependencies
Create Lack of Faith in Own Abilities
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Prey on Vulnerabilities

Financial Exploitation
“Gaslight”

“Coming and Going” & “The Little Picture”
Small Group Activity: Indicators/Questions

- List 2 – 4 victim indicators
- List 2 – 4 suspect indicators
- List 2 – 4 non-leading questions
Key Points

- Common victim reactions
- Tactics often not recognized
- Ongoing, trusted relationship
- Grooming behaviors
- Pattern of tactics
- Indicators warrant inquiry and investigation
Undue Influence:
Bennett Blum

IDEAL describes those psychological and social factors that commonly co-exist in undue influence situations. These factors are:

I - Isolation
D - Dependency
E - Emotional manipulation and/or Exploitation of vulnerability
A - Acquiescence
L - Loss

http://www.bennettblummd.com/
Perpetrator Justifications: Is it Really Consent?
What is Consent?

Three elements

• Mental capacity
• Knowledge of true nature of act
• Acted freely and voluntarily
Legal Competency

- Not the same as capacity

- Legal judgment
  - Able to testify or participate in a criminal trial
  - Control of one’s life or property

- A person can be competent but also be a victim of undue influence
Decision Making Capacity

- Ability to understand circumstances and consequences of a decision
- Can fluctuate
- Reduced capacity increases vulnerability to UI
  - Increases dependence
  - Decreases ability to make good decisions & resist
Suspect’s or A/P’s tactics prevented such accurate knowledge
  • Isolate from others and information
  • Keep unaware
  • Create lack of faith in own abilities
  • Create dependency
UI is the substitution of one person’s will for the true desires of another

Victims of UI cannot act freely and voluntarily

“Apparent” not actual consent
Norman – The Rest of the Story...?
Consent vs. Undue Influence

- Adult daughter contacted you about Mrs. B
- Mrs. B signed deed and gave home to in-home caregiver, Carol, who has been caring for Mrs. B for 6 months
- Carol the caregiver says Mrs. B wants her to have home
Family and friends contacted you about Mr. Thompson.

Mr. T had lost his wife.

Mr. T gave Mercedes to Tina the in-home caregiver.

Tina tried to get the will changed.

Caregiver says Mr. T. loves her and wants her to have his entire estate.
Consent vs. Undue Influence

- Group 1: Questions to explore elements of consent
- Group 2: Questions to explore tactics of UI
Key Points

- Suspects justify actions
- Apparent Consent/ Acquiescence versus actual consent
Case Building and Proof
Tools of the Criminal Justice System To Address Undue Influence

• Separate the victim from the alleged perpetrator
• Obtain search warrants and issue subpoenas for persons and property which may be evidence
• Order the defendant to make a full accounting
• Require the offender to admit the behavior
Tools of the Criminal Justice System To Address Undue Influence

- Order the offender to undergo counseling and treatment
- Request restitution
- Monitor court ordered conditions
- Create a “track record” of the offender
- Validate the victim's belief in self-worth and his/her right to be protected from abuse
Reduce Dependence on the Victim’s Testimony

Why?
- Victims reluctant to testify against family member or caregiver
- May recant, change their testimony, disappear
- Victims may be unable to testify due to mental or physical impairments, or death

Stop perpetrators before they commit further acts or cause victim’s death
Gather Evidence

- If victim does testify, corroborates; helps meet standard of “beyond a reasonable doubt”
- If victim does not testify, proves crime and identity of perpetrator
- Gather evidence as though case were a homicide (unless this conflicts with department homicide protocols)
Identify persons in victim’s life
- May be able to describe prior functioning
- May have heard complaints from victim
- May have heard admissions by suspect
- May have witnessed suspect’s tactics
- May corroborate victim
- May provide dates of events
- Are victim’s potential support system
Identifying Witnesses

- Who are the witnesses?

- Victim
- Children
- Neighbors
- Doctor, Dentist
- CPA
- Banker, Financial Advisor
- Lawyer
- Mail Carrier
- Clergy
- Vet
- Friends
- Hairdresser
- Children
- Bank
Deficits You May Encounter With Older Adults

- Hearing
- Vision
- Sundowning
- Fatigue
- Illiteracy
- Medications
Legal Framework
Investigative Framework

Legal Elements

• Subject to UI

• Opportunity to exercise UI

• Disposition or intent to exercise UI

• Result was the effect of UI
Investigative Overview

- More than today’s incident
- Historical patterns
- Changes over time
- Suspect’s involvement
Using the undue influence wheel and legal elements, decide:

- What types of evidence will you collect?
- Who are the witnesses?
- How will you obtain the evidence?
**Investigative Framework Tactics**

Financial Exploitation

- Create Fear
- Create Dependencies
- Create Lack of Faith in Own Abilities
- Induce Shame and Secrecy
- Perform Intermittent Acts of Kindness
- Isolate From Others and Information
- Prey on Vulnerabilities
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Paul’s Case Example

- Importance of applying the model presented here – it works!
- Affects investigative approach
- Guides questions to be asked
- Not about capacity
- Will affect remedies
APS, law enforcement officers, and others investigating possible undue influence must consider:

- What seems to be consent may not be.
- Must also investigate if UI.
- Is the consent real or acquiescence.

How does this effect practice and policy?
Multidisciplinary Response

- Cannot do this work alone; need expertise of others
- Need remedies only others can provide
- Meet multifaceted and ongoing needs of victim
  - Financial
  - Legal
  - Health
  - Housing
  - Emotional
Multidisciplinary Response

- Importance of a multidisciplinary response
- Process, not an event
- Not simply issue of consent
- Not simply issue of capacity
Coordinated Community Response

Religious Leaders
Advocates
Police

Adult Protective Agencies
Health Professionals
Friends

Policy Makers
Judges & Legal Professionals
Educators
“Taking a person in a direction they would not ordinarily go.”

Paul Greenwood
Assistant District Attorney
San Diego, California

How far can a person be taken?

How much control can one person have over another in a situation?
Avoiding Undue Influence

- Professionals
  - Education of public
  - Work with other professionals
  - Develop FAST and other teams
- Friends and Family
  - Prevent isolation
  - Stay in close and regular contact
- Older Adults
  - Stay active in community affairs
  - Continuing education classes
  - Stay engaged in activities that are fulfilling, such as religious and/or cultural observances
Most effective way to combat UI is to

STOP THE ISSOLATION & GIVE VICTIMS BACK THEIR LIVES

Remember when the bond is severed between the AV and the AP there can be a severe sense of loss.
Questions?

- Any final questions?
- Thank You!

  - Paul Needham
    - Paul.Needham@okdhs.org
  
  - Candace Heisler
    - cjheisler@aol.com
Don’t rush it......