

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

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NATIONAL ADULT PROTECTIVE
SERVICES ASSOCIATION

THE NATIONAL APS RESOURCE CENTER

Introductions

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&

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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?

Acknowledgements

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**

Undue Influence

- More than persuasion or salesmanship
- Pattern of tactics
- Brainwashing – cults, hostages, POWs
- Method to commit a crime

Case Example: Martha Bedford

- 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**

Martha Bedford

- 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

Importance of Understanding Undue Influence

- **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



CAUTION

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

Forms of Abuse and UI

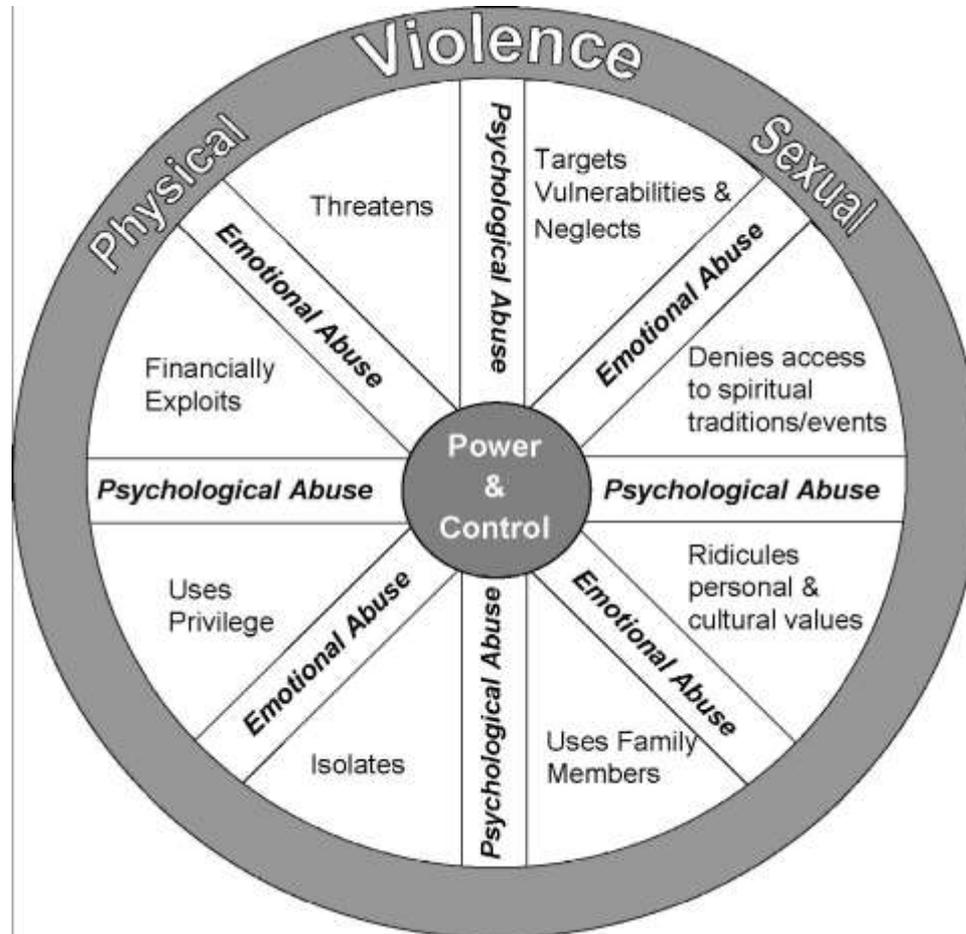
- **UI may be present in virtually all forms of abuse but is most typically associated with**
 - Physical violence, especially abuse in later life and domestic violence
 - Sexual abuse
 - Emotional abuse
 - Financial exploitation
- **Professionals may not consider the role of UI in these situations**
 - 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



Stalking

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

Grooming

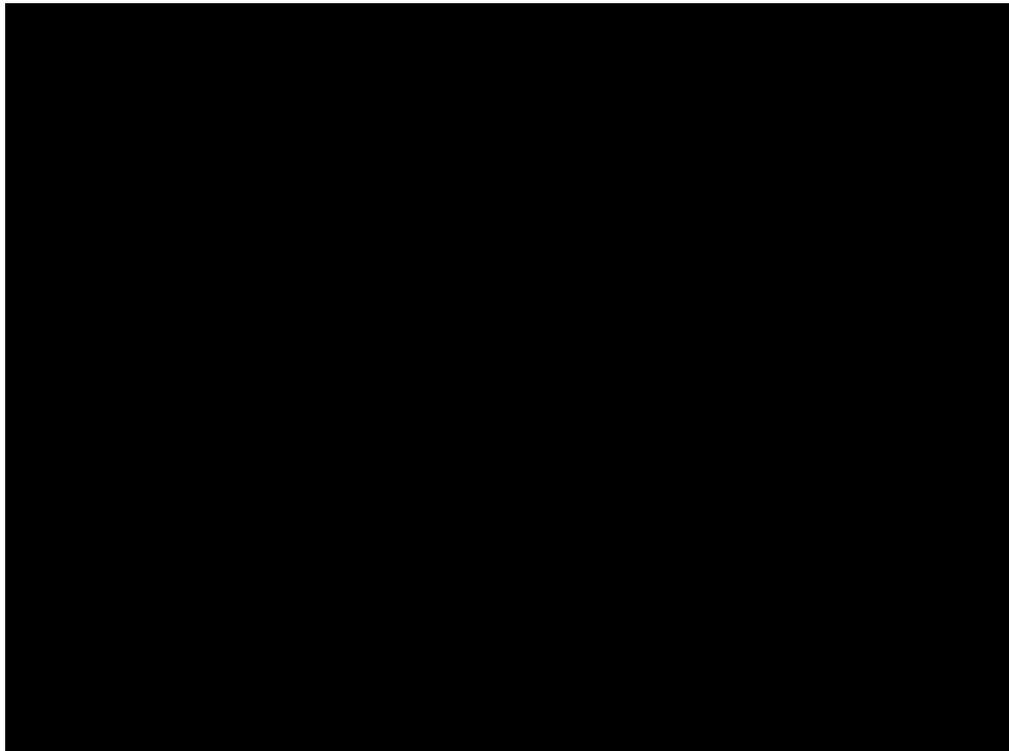
- **Double life of the suspect**
- **Target based on vulnerability**
- **Often develop relationship**

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

“Gaslight”

- 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?

Victims

**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

Paul's Case Example

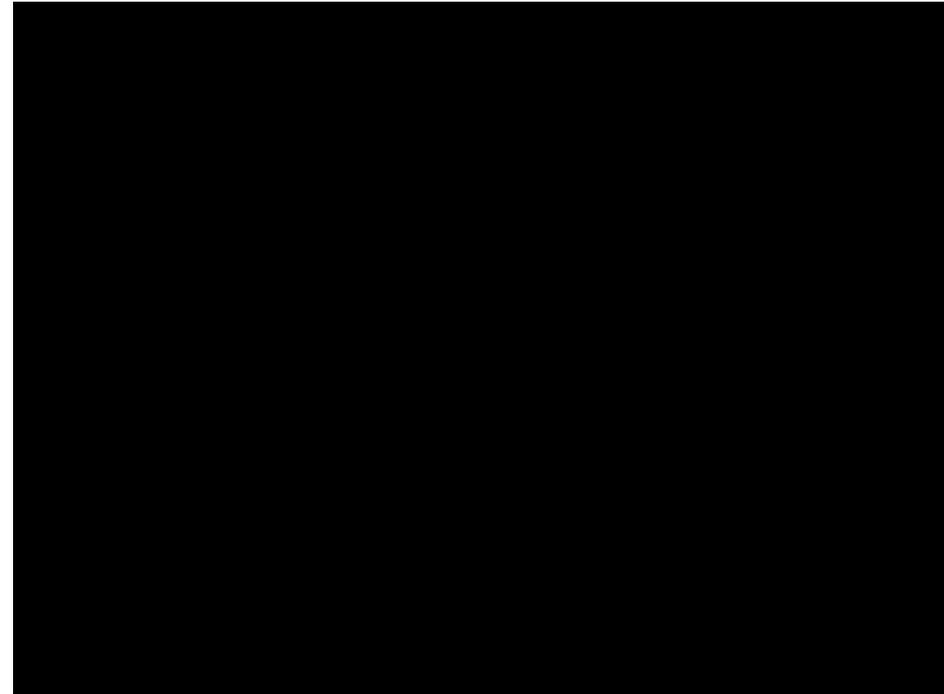
- Victim elderly benefactor of police entities
- Perp is LE officer who met V through her gifts

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

Targeting and Grooming

A short look
at
“Targeting”
&
“Undue
Influence”



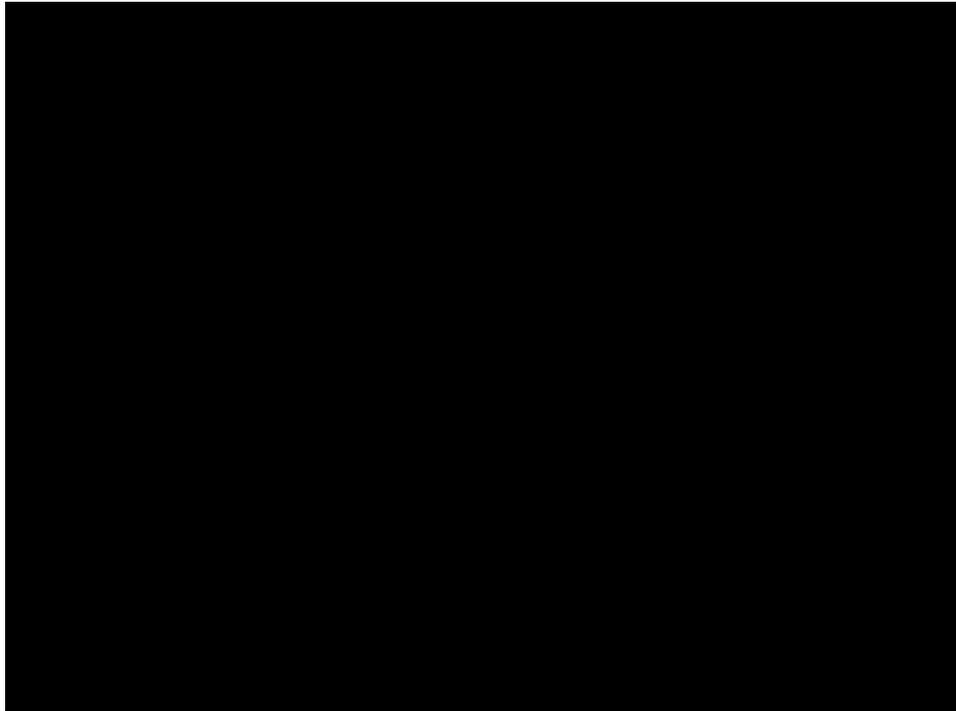
Lex Luther “ Superman
Returns”

Undue Influence: Common Tactics



“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:

Isolation

Dependency

Emootional manipulation and/or Exploitation of
vulnerability

Acquiescence

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

Knowledge of True Nature of Act

- 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

Act Freely and Voluntarily

- 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

Consent vs. Undue Influence

- 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)

Locate Witnesses

- 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?



Interviewing Considerations

- 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

Collecting Evidence

- 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



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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

Summary and Considerations

- **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?**

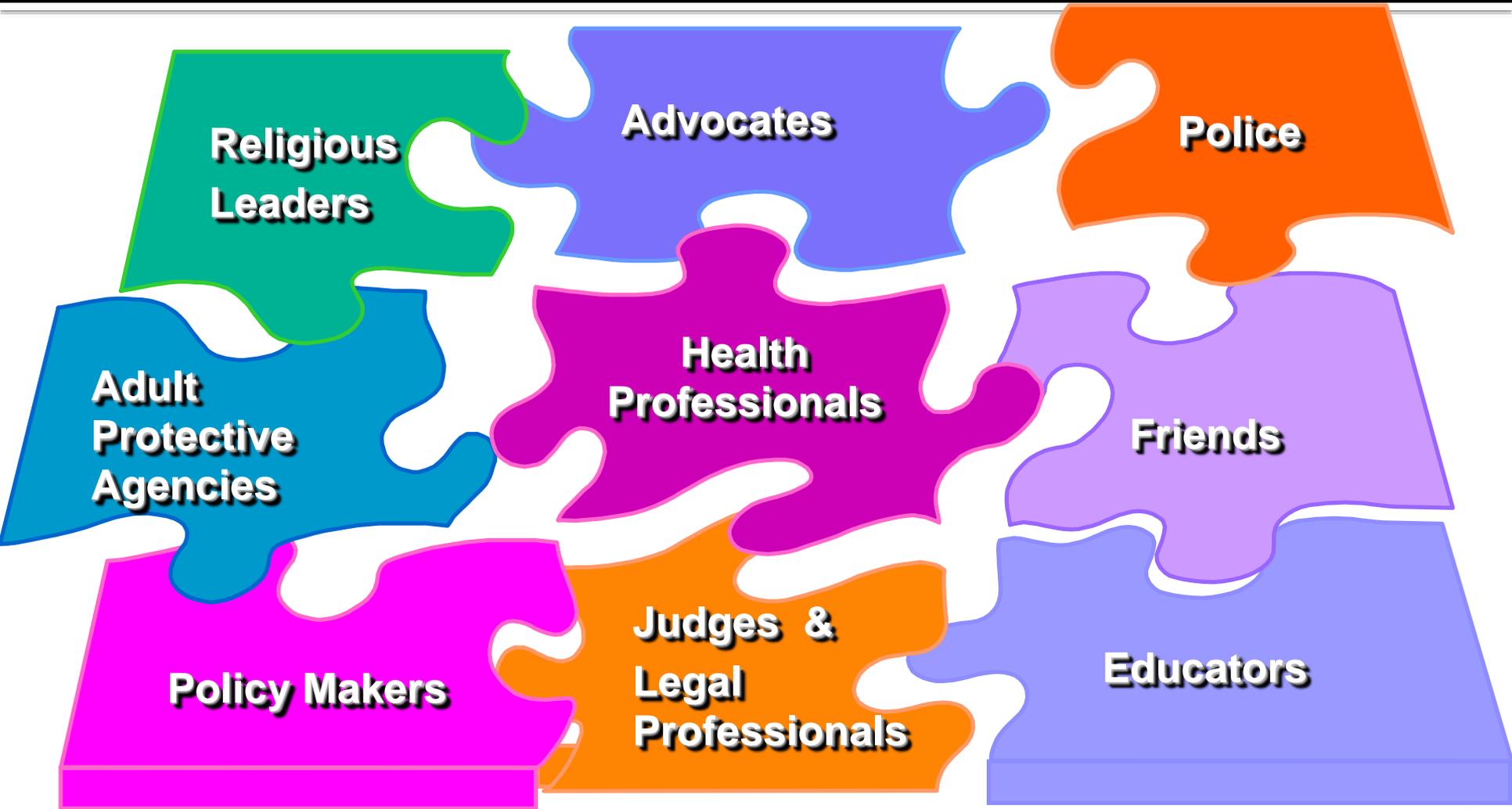
Multidisciplinary Response

- 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

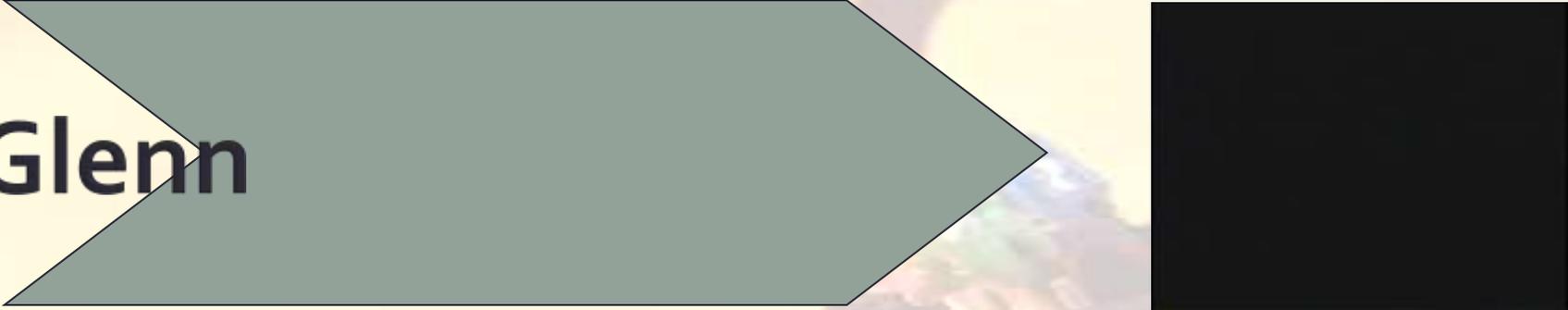
Coordinated Community Response



“Taking a person in a direction they would not ordinarily go.”

Paul Greenwood
Assistant District Attorney
San Diego, California

Glenn



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

Undoing Undue Influence

- 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!
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Don't rush it.....

