

UNDUE INFLUENCE

THE CRIMINAL JUSTICE RESPONSE

# PARTICIPANT MATERIALS

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# Undue Influence: The Criminal Justice Response

## Agenda

Registration	8:00 – 8:30
<b>Overview</b>	8:30 – 9:00
<b>Abuse, Neglect, and Exploitation</b>	9:00 – 9:30
Break	9:30 – 9:45
<b>Dynamics of Undue Influence</b>	9:45 – 11:00
Break	11:00 – 11:15
<b>Consent and Other Suspect Justifications</b>	11:15 – 12:00
Lunch	12:00 – 1:00
<b>Legal Framework and Investigation</b>	1:00 – 2:15
Break	2:15 – 2:30
<b>Legal Framework and Investigation Continued</b>	2:30 – 3:25
Break	3:25 – 3:45
<b>Multidisciplinary Response</b>	3:45 – 4:15
Q/A and wrap up	4:15 – 4:30

## **ELDER ABUSE**

**Elder abuse** is a term referring to any knowing, intentional, or negligent act by a caregiver or any other person that causes harm or a serious risk of harm to an older individual. The specificity of laws varies from state to state, but broadly defined, abuse may be:

- **Physical Abuse** - Inflicting, or threatening to inflict, physical pain or injury on a vulnerable elder, or depriving them of a basic need.
- **Emotional Abuse** - Inflicting mental pain, anguish, or distress on an elder person through verbal or nonverbal acts.
- **Sexual Abuse** - Non-consensual sexual contact of any kind.
- **Exploitation** - Illegal taking, misuse, or concealment of funds, property, or assets of a vulnerable elder.
- **Neglect** - Refusal or failure by those responsible to provide food, shelter, health care or protection for a vulnerable elder.
- **Abandonment** - The desertion of a vulnerable elder by anyone who has assumed the responsibility for care or custody of that person

([www.elderabuse.org](http://www.elderabuse.org)).

Generally, older victims experience more than one form of elder abuse. If one form of elder abuse is suspected, investigate the possibility of other types of abuse occurring.

Elder abuse can affect people of all racial, ethnic and religious backgrounds and social status. Both men and women are affected. Perpetrators are often in an ongoing, trusted relationship with the victim such as spouse/partners, adult children and other family members, or caregivers.

## FINANCIAL EXPLOITATION

**Financial or material exploitation** is defined as the illegal or improper use of an elder's funds, property, or assets ([www.elderabuse.org](http://www.elderabuse.org))

### Indicators of Financial Exploitation

<b>Victim:</b>	<b>Suspect:</b>
Discusses transactions at unusual or inappropriate times.	Insists on completing transaction at an unusual location or times.
Signs documents and takes actions that run counter to his or her previous long-time values and beliefs.	Insists on completing the transaction(s) quickly.  Emphasizes on extreme consequences of delay.
Gives information to suspect about finances.	Obtains access to victim's bank and other financial statements
Suddenly changes financial management practices (e.g., cashing in insurance policies or changing titles on bank accounts or real property, naming or changing an agent under a power of attorney).  Changes a will and previous disposition of assets under questionable circumstances.  Hires new practitioners who are different than those he or she has always trusted (e.g., bankers, stockbrokers, attorneys, physicians, or realtors).  Engages in an unusual pattern of financial interactions. For instance, the elder writes numerous checks out to "cash," always in round numbers and frequently in large amounts.	Establishes new accounts with victim's assets.  Transfers funds to different banks or financial institutions.  Changes procedures for maintaining finances and check writing when there is no apparent need.
Is treated unfairly in transactions as a weaker party, and the stronger party unduly benefits by the transaction.	Use power imbalance for financial gain.

## CULTURAL CONSIDERATIONS IN UNDUE INFLUENCE CASES

“What may not be perceived as abuse by a professional who represents one racial or cultural group, may well be perceived as such by the abuse participants who represent another racial or cultural group. The reverse may also be true.” (*Hudson and Carlton 1999b, 936*).

### For Example. . .

- 64.5% of Mexican Americans “believe parents are responsible for helping their children with care for grandchildren and with providing money/resources as needed and do not consider this exploitative.” (*Sanchez 1999, 71*).
- The majority of Native American elders perceived by researchers as “financially exploited” believe they were voluntarily sharing their wealth. (*Brown 1989, 23*).
- 45.3% of Korean Americans agreed it was acceptable for an adult child to use his parent’s money for himself, compared to 2.2% of Whites and 2% of African Americans. (*Moon and Benton 2000, 293*).
- More than one-third of Korean Americans felt it is “okay for adult children not to reimburse their elderly parents for money owed, even if the parents ask for the money.” The approval rate among other cultures ranged from 1 to 10 percent. (*Moon 2000, 76*).
- “21% of African Americans, 13.3% of Whites, and a significantly higher, 38.9% of Korean Americans reported that persons outside the family should not become involved when an elderly person is abused or neglected by a family member.” (*Moon and Benton 2000, 297*).
- “The majority of African Americans (57%), and Korean Americans (64.2%) believed that one should not report the suspected elder abuse to the authorities until he or she is absolutely sure about it.” (*Moon and Benton 2000, 297*).
- 80% of Vietnamese-elderly respondents do not know how to report abuse and 70% would not want to complain about mistreatment by their family. (*Le 1997, 56*).
- Only 17.7% of the African American elders would turn to their family for help with abuse, compared to 55.5% of Korean Americans and 30.1% of Caucasian Americans. (*Moon and Williams 1993, 391*).

### For More Information. . .

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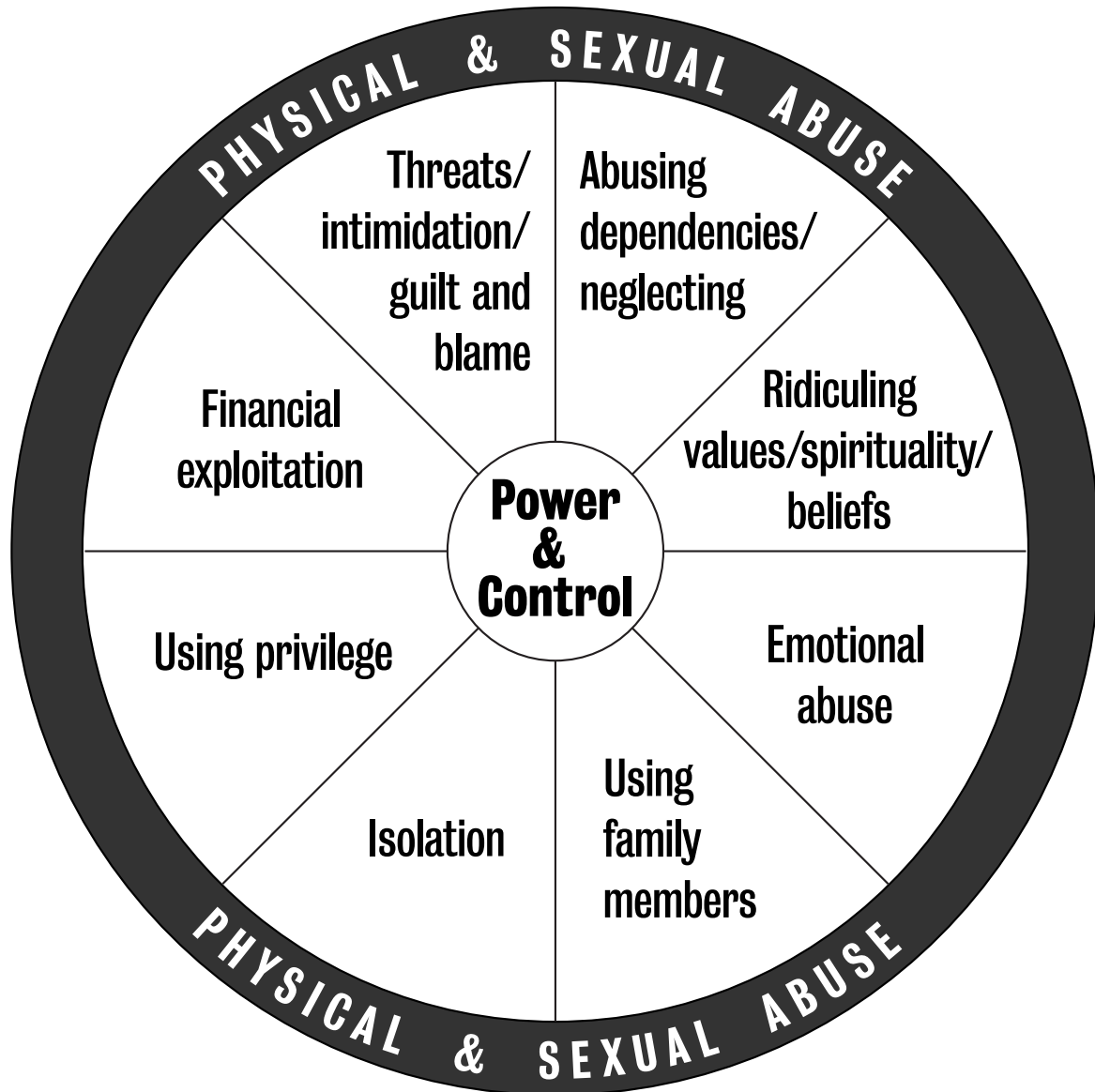
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# Family Violence in Later Life



Wisconsin Coalition Against Domestic Violence  
307 S. Paterson St., Suite 1, Madison, WI 53703  
(608) 255-0539 / FAX: (608) 255-3560

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## TACTICS USED BY ABUSIVE FAMILY MEMBERS

### PHYSICAL ABUSE

- Slaps, hits, punches
- Throws things
- Burns
- Chokes
- Breaks bones

### SEXUAL ABUSE

- Makes demeaning remarks about intimate body parts
- Is rough with intimate body parts during caregiving
- Takes advantage of physical or mental illness to engage in sex
- Forces you to perform sex acts that make you feel uncomfortable or against your wishes
- Forces you to watch pornographic movies

### ABUSING DEPENDENCIES/NEGLECT

- Takes walker, wheelchair, glasses, dentures
- Takes advantage of confusion
- Denies or creates long waits for food, heat, care or medication
- Does not report medical problems
- Understands but fails to follow medical, therapy or safety recommendations
- Makes you miss medical appointments

### THREATS/INTIMIDATION

- Threatens to leave, divorce, commit suicide or institutionalize
- Abuses or kills pets or prized livestock
- Destroys property
- Displays or threatens with weapons

### RIDICULING VALUES/SPIRITUALITY

- Denies access to church or clergy
- Makes fun of personal values
- Ignores or ridicules religious/cultural traditions

### EMOTIONAL ABUSE

- Humiliates, demeans, ridicules
- Yells, insults, calls names
- Degrades, blames
- Withholds affection
- Engages in crazy-making behavior
- Uses silence or profanity

### USING FAMILY MEMBERS

- Magnifies disagreements
- Misleads members about extent and nature of illnesses/conditions
- Excludes or denies access to family
- Forces family to keep secrets

### ISOLATION

- Controls what you do, who you see, and where you go
- Limits time with friends and family
- Denies access to phone or mail

### USING PRIVILEGE

- Treats you like a servant
- Makes all major decisions

### FINANCIAL EXPLOITATION

- Steals money, titles, or possessions
- Takes over accounts and bills and spending without permission
- Abuses a power of attorney



## **BARRIERS TO LIVING FREE FROM ABUSE**

There are many reasons older victims of abuse stay in abusive relationships or return to an abuser after they've left. The reasons listed below highlight some of the main challenges older victims have difficulty living free from abusers.

- Fear of retaliation, living alone or being placed in a facility
- Financial issues
- Health concerns – possibly victim's, abuser's, or both
- Wants to maintain relationship or keep family together but wants the abuse to end
- Loves the perpetrator
- Generation, cultural or spiritual/religious values
- Housing: Not affordable, doesn't want to move etc.
- Reaction of family and friends
- Caregiving needs (abuser may be caregiver or guardian)
- Lack of affordable health insurance or inability to pay for health care and medications
- Lack of age appropriate services available
- Lack of response by the justice system
- Isolation
- Lack of information about options

## UNDERSTANDING UNDUE INFLUENCE

**Undue influence** is the substitution of one person's will for the true desires of another. Unlike common persuasion and sales techniques, fraud, duress, threats or other deceptions are often features of undue influence. Undue influence takes place when one person uses his or her role and power to exploit the trust, dependency, and fear of another. The power is used to gain psychological control over the decision-making of a weaker person (Singer, 1996).

Parallels to domestic violence, stalking and sexual assault include:

- The victim and exploiter are often in an ongoing relationship
- Exploiters may target and groom their victims
- Exploiters generally use a stealth campaign of tactics to unduly influence and financially exploit their victims
- Exploiters are often charming manipulators
- Exploiters justify their actions through various excuses
- Victims often appear as willing participants in activities that may contradict their beliefs or best interest
- Victims often have trauma reactions and may respond to professionals in ways that impede an investigation

## **UNDUE INFLUENCE VICTIMS**

*Under the right circumstances, anyone can be susceptible to undue influence*

### **What Makes the Victim Vulnerable or Susceptible to Undue Influence?**

- Medical condition(s)
- Cognitive impairment
- Psychological or mental health conditions, including alcoholism and drug addiction
- Adverse life events such as death of spouse, close friends, financial setbacks, change in health status
- Cultural factors, including ability to speak native language
- Environmental, including geographical
- Illiteracy and educational achievement
- Language deficits
- Lack of financial expertise
- Lonely
- Naive, uninformed
- Fatigued, exhausted, distracted
- Frightened,
- Very dependent

### **Common Reactions By Victims Include:**

- Denial
- Protect the suspect
- Inability to understand what has happened
- Anger
- Depression and/or suicidal
- Feels crazy
- Unable to make decisions or follow through
- Physical and mental health concerns
- Disbelief
- Profess love for suspect and for relationship to continue
- Anger and frustration
- Hopelessness/helplessness
- Fear of retaliation
- Distrust or frustration with professionals and lack of options
- Fear of loneliness

## OVERVIEW OF MODELS TO IDENTIFY UNDUE INFLUENCE

There are several models for understanding undue influence. Some are settled while others, such as the third one discussed below, are evolving. The original framework is the one developed by the late **Dr. Margaret Singer**, drawing on her work with returning prisoners of war, cults, hostage takers, and more recently, elderly victims. It has six stages:

- **Isolation.** Isolation may be due to physical realities such as decreased mobility, communication problems, illness; sensory changes; geography; weather and other environmental conditions; grief and depression; as well as the actions of the offender cutting off the victim's contact with friends and family.
- **Creation of a siege mentality.** Everyone except the suspect and those chosen by the suspect is a danger to the victim. Others want to harm the victim, steal from him or her, or lock away in a nursing home. The suspect portrays him or herself as acting exclusively in the victim's interest.
- **Dependency.** Through isolation and creation of the siege mentality, the victim becomes dependent on the suspect for assistance of all kinds, help and advice with financial matters, social interactions, selection of friends, and companionship.
- **Powerlessness.** The victim feels powerless to do anything but what the suspect wants and feels powerless to break the isolation.
- **Fear and vulnerability.** The victim is fearful and afraid of everything that is different from what the suspect wants. The world is a dangerous place for the victim. Only the suspect can make it feel safer.
- **Victim is kept unaware.** This combination of factors induces the victim to do whatever the suspect wants. The victim is unaware of the false world that has been created by the suspect and the perpetrator continues to foster fear and keep the victim unaware of reality. The victim is thereby made compliant.

A second model that has been developed is by **Dr. Bennett Blum**, a physician and psychiatrist who has focused on the elderly for many years. In his model, the victim's conduct is an imperfect mirror for understanding what the suspect has done and focuses on what the suspect has done to gain undue influence over the victim's decision making. The model is known by its acronym "IDEAL." (See handout under Resources for more information.)

- **Isolation** from pertinent information, friends, relatives, usual advisors
  - \* History of prior, poor, or non-existent familial relationships
  - \* Medical disorders
  - \* Perpetrator interference and blocking
  - \* Geographical or technological

- **Dependence** on the perpetrator.
  - \* Physical
  - \* Emotional (including sweetheart scams)
  - \* Information
  
- **Emotional Manipulation or Exploitation of Vulnerability**
  - \* Especially fear
  - \* Exploiting vulnerability includes having a person who is blind sign a legal document, serve alcohol to an alcoholic in return for a benefit, and misrepresenting a legal document to a person with a cognitive disability
  
- **Acquiescence.** The person appears to consent or agree but does because of the above listed factors
  
- **Loss.** Financial loss suffered by victim because of the above-listed acts

Finally, **Dr. Susan Bernatz**, a Los Angeles-based neuro-psychologist, has evaluated cases of undue influence for much of the last decade and is continuing to develop a third model for evaluating cases of possible undue influence. Her model is evolving and is currently being refined. She uses the framework below to describe to the court what has happened and what has induced the victim to act in a particular way. She believes that her model is easier to prove if the victim has a cognitive impairment.

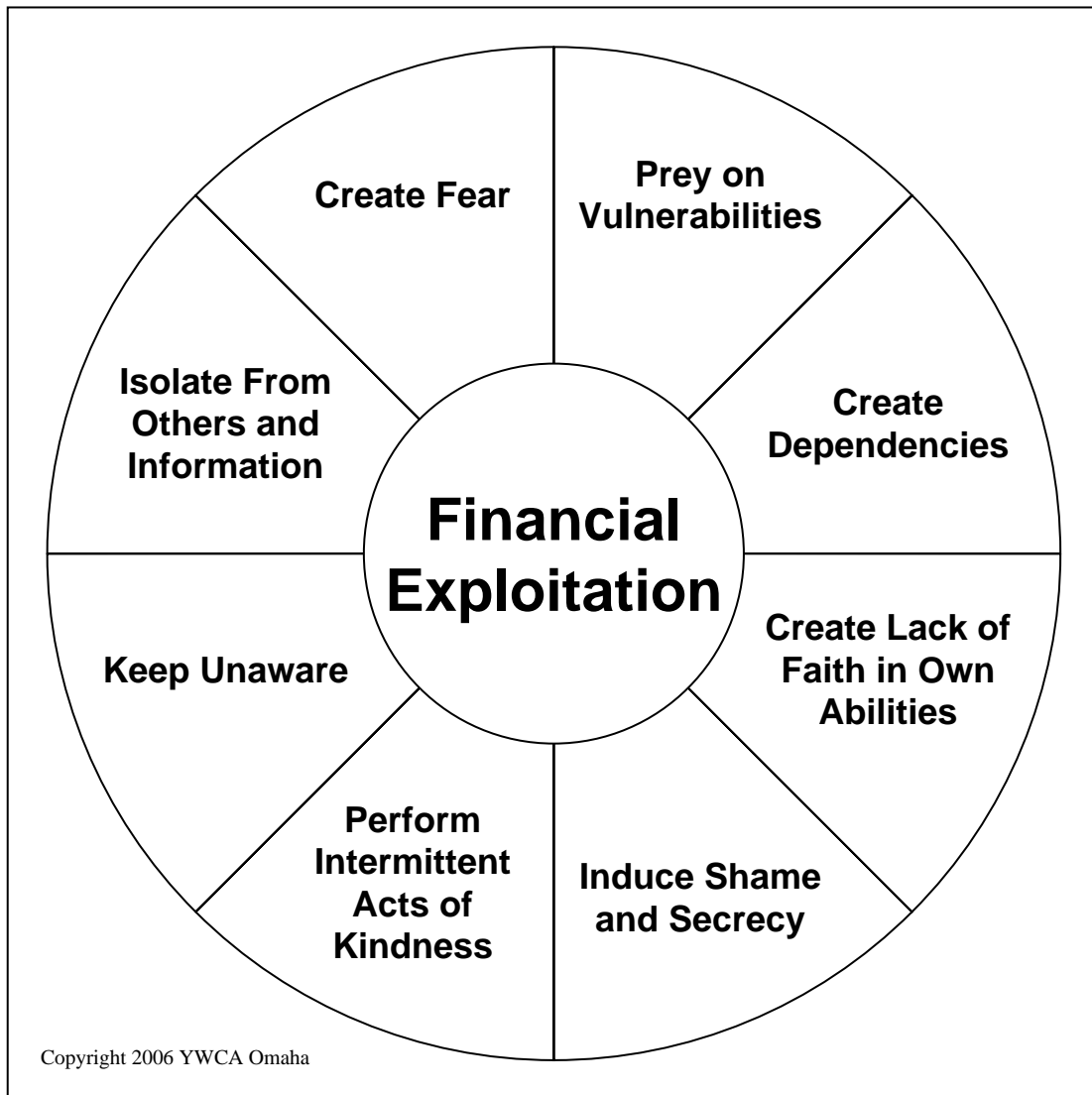
Components present in cases of undue influence are:

- **Susceptibility.** This includes declines in the victim's physical, psychological, or neuro-psychological health; dependence, including physical, financial, or emotional; and isolation by the victim or by the perpetrator.
  
- **Confidential or Trusting Relationship.** The suspect becomes the gatekeeper and controls all contact with the outside world after gaining the victim's trust through manipulation. The methods used are described by Singer and include inducing isolation, encouraging dependency, playing on fears and vulnerabilities, creating a siege mentality, and keeping victim unaware.
  
- **Compliance Techniques.** Social influence techniques a perpetrator uses to gain compliance. These might include using a position of authority, using the concept of reciprocity (where the victim feels indebted to the suspect), or befriending the victim.
  
- **Active procurement of finances and financial instruments.** The suspect actively seeks and obtains changes in the victim's preexisting financial matters.

- **Monetary loss.** Suspect gains control of assets and victim suffers a loss.

This information is useful in assisting in the identification of types of possible information and potential questions to be developed in the course of the investigation.

## UI WHEEL



## INDICATORS ASSOCIATED WITH UNDUE INFLUENCE

*Many of the behaviors listed are present in undue influence, elder abuse, financial exploitation, domestic violence, or sexual abuse cases. When investigating cases or working with victims, evidence of some of these indicators warrants further investigation for undue influence and/or forms of abuse. This is not an inclusive list – some behaviors may not be listed and indicators listed here may not occur in certain cases. Consider how the victim has changed over time. For example, were these behaviors true prior to knowing the suspect or has there been a change in victim behavior since the suspect became involved in his/her life?*

### Targeted by Suspect

<b>Victim:</b>	<b>Suspect:</b>
Is in a relationship with the suspect where he/she has less power (e.g., finances or health).	Is often in a new or renewed relationship with the older person. Others are suspicious of the suspect's motives, especially those who have known the victim a long time.
Shares personal information without realizing it will be used against him/her.	Attempts to gain information about an elder's personal life to use against the victim.

### Isolated from Others and Information

<b>Victim:</b>	<b>Suspect:</b>
Loses contact with friends, family and trusted professionals.	Intentionally damages or destroys victim's relationships with others.  Refuses to allow victim to talk with anyone without being present.
Has not received needed medical care recently.	Does not allow victim to receive needed health care.
Is geographically isolated (living in rural area; living in community with different language, racial or religious background, or ages from victim).	Moves victim to new area.  Takes advantage of an older individual who is isolated.
Does not have access to information.  Unaware of current events.	Withholds mail, e-mail, and limits or eliminates access to television, radio, and printed materials. Will not allow telephone contact.  Takes advantage of a victim's lack of information on various topics.

### Fears Others and Outside World (siege mentality)

<b>Victim:</b>	<b>Suspect:</b>
Has changed behavior – doesn't trust those who used to be close.  Appears fearful.  Believes others want to hurt or institutionalize him/her.	Tells victim others are out to harm or institutionalize him/her.  Colludes with investigator – often helpful and offers own explanations of incidents.
Only trusts suspect.  Hesitant with new people or situations.	Promises lifelong care, security, and companionship if victim does as suspect asks.
Places unusual trust in newfound "friend."  Unwilling to be or do activities alone.	Says "I'm the only one who loves and understands you."
Hysterical, upset or confused.	Calm, rational and non-emotional.

### Vulnerabilities

<b>Victim:</b>	<b>Suspect:</b>
Has a significant and/or unexplained change in appearance, nutrition, behavior, or cognition.	Tampers with victim's medications, food, sleep, or hydration.
Seems fearful, confused, unsure of self, and dependent on suspect.	Intentionally engages in "crazy-making" behavior and undermines victim's confidence in making decisions (e.g., convinces victim he/she is going crazy or has dementia).  Takes advantage of victim's grief state, fear of loss or loneliness.
Convinced that the suspect is better at handling financial decisions.	Takes over financial decisions.

### Dependency and Fear of Loss

<b>Victim:</b>	<b>Suspect:</b>
Seems fearful, confused, unsure of self, and dependent on suspect.	Creates rules for the victim to live by and enforces consequences if the rules are not followed (including rules about finances).
Experiences changes in behavior, appearance, nutrition, and financial situation.	Ensures the victim is dependent on suspect for transportation, food, hydration, and medications.
Says he/she wants the relationship to end but always lets the suspect back into life.  Says he/she is afraid of losing suspect.	Threatens to leave but reminds the victim of negative consequences if the relationship ends (e.g., suicide).
Is overshadowed by the suspect.	Has a dominant personality. May appear charming and often is an excellent manipulator.

### Lack of Faith in Own Abilities

<b>Victim:</b>	<b>Suspect:</b>
Looks to suspect to answer questions or to be given permission before answering.	Makes all significant decisions.
States "I'll do whatever the s/he says is best."  Doesn't engage in activities s/he previous enjoyed and excelled at.  Takes actions or makes statements that are contrary to long-time values and beliefs.  Depression, sadness.  Questions ability to accurately remember details.	Undermines victim's confidence in own decision making ability and skills.

### Shame and Secrecy

<b>Victim:</b>	<b>Suspect:</b>
Is embarrassed to tell others about relationship or transactions.	Shrouds relationship and/or transactions in secrecy.
Asks others to keep details of the relationship or transactions secret.	Is unwilling to meet with family or friends.
Absent from church/mosque/synagogue for fear of being scrutinized.	Redirects and reframes victim's statements.
	Minimizes and displaces responsibilities.

### Intermittent Acts of Kindness

<b>Victim:</b>	<b>Suspect:</b>
Talks about times or activities where suspect was particularly kind.	Takes victim on special trips or places.
Is allowed to purchase something using own money.	Gives the victim money to spend on whatever s/he wants.
Describes how kind, wonderful and generous the suspect can be.	Is kind, loving and thoughtful – often in beginning of relationship and later when least expected.
	May be apologetic.
	Is complimentary of the victim in front of others.

### Unaware of Actual Circumstances

<b>Victim/Suspect:</b>
Versions of events do not match (e.g., the victim does not know what the money is being spent on or that the suspect has an ongoing sexual relationship with someone else).
Versions of events match perfectly. Victims may be coached on what to say.

## **NON-LEADING QUESTIONS USING THE UNDUE INFLUENCE TACTICS WHEEL**

**(Focus on pattern of tactics and change since suspect came into victim's life).**

### **Isolate from Others and Information**

- Before meeting (suspect), whom did you regularly visit? How often did you see these persons? When is the last time you visited? Is there a reason you no longer visit?
- Who visited you? How often did you see these persons? When is the last time they visited? Is there a reason they no longer come to visit?
- How is your life different now that (suspect) is part of your life?
- Who answers the door/telephone? Before (suspect) was in your life, who did?
- What are your sources of information? (radio, television, magazines, newspapers, Internet)
- How often do you leave the house? Do you ever leave by yourself? If not, who goes with you?

### **Create Fear of Others and Outside World**

- What are your fears?
- What do you think your family wants of you?
- Does anyone wish you harm? Who? What do they want to see happen?
- Are you afraid of anyone? Does anyone make you feel uncomfortable? Who? Why?
- What do you think could happen if you went outside without (suspect)?
- Do you think that your family/friends want to see you? Why?

### **Create Dependency**

- Before (suspect) was with you, what did you do for yourself? What did you do before that you no longer do?
- What does (suspect) do for you?
- Could anyone else do those things for you?
- What would life be like without (suspect)?

### **Create Lack of Faith in Own Abilities**

- Has anyone told you that you should not do certain things you once did? Who? What things?
- How do you feel about yourself? Your abilities?
- Is there a reason you no longer do (tasks or activities) you used to do?
- Do you trust your own judgment? Did you do so before? What has changed?
- Do you manage your financial affairs? If not, who does? Why have you handed these matters over to (suspect)?

### **Re-enforce Feelings of Helplessness or Powerlessness**

- If you are unhappy about something (suspect) wants, can you do anything about it?
- Can you refuse to do something because you do not think it is a good idea? If you do refuse, what happens?
- Do your opinions or wishes matter?
- Are you asked to state your opinions or wishes?
- What do you think the future holds for you?

### **Induce Shame and Secrecy**

- Are there things you may have done that cause you embarrassment?
- Has anyone threatened to expose those things? Under what circumstances?
- Have you ever done something to avoid having personal matters disclosed?
- Has anyone asked you to keep something you did with them a secret? Circumstances?
- Have you been expected to do things that you felt were wrong?
- What do you think would happen if (suspect) told what you did?

### **Intermittent Acts of Kindness**

- What things do you really enjoy? How do you feel when you do these activities?
- How often do you do them?
- Who decides when these fun activities will occur?
- When is the last time you did these activities? Who did them with you? Did you enjoy them?
- When do you think you will next do them? Who decides when they will be done?
- Were you ever told that more activities that are special would occur if you did certain things? What things? Who said that?

### **Kept Unaware**

- How much money is in your bank account?
- Where is your bank account? Who are the joint account holders?
- How much money have you given to suspect?
- Do you know if your family has asked to see you?
- Did you know if your neighbors have tried to visit?
- What liens are on your home?
- Have you applied for a second mortgage on your home?

## SUSPECT JUSTIFICATIONS AND DEFENSES

<b>Defense or Justification</b>	<b>Investigative Approach</b>
Loan	Capacity of lender; amount; period of loan; terms of repayment; how often were loans made; written or other proof of a loan; consideration; any repayment made
Gift for Self or Children	Capacity of donor; value of the gift; relationship between donor and donee; evidence of donor's intent to make a gift; value of gift; why was gift made (any promises or other inducements?)
Services Provided	Capacity of the person seeking the services; what were the services; were they needed; how often were services provided; how well performed; were supplies provided; value of services vs. amount paid for them
Permission	Capacity of the elder; evidence of actual permission; promises or other inducements to get permission; who benefited; how often was permission used; value of items obtained; did elder understand what permission was used to do
Quid Pro Quo	Capacity of the elder; was the marriage reasonable given the relationship between the parties; was the suspect legally able to marry; mutual consideration; any suspect misrepresentations
Favor	Capacity of the elder; who benefits from the favor; what did elder receive in return; is the benefit reasonable; how does it fit prior financial planning and actions of the elder; elder's relationship to the business or person
Lack of Knowledge	("But I do not know her PIN"); what is the contrary evidence; access to information; other acts for same goal (e.g., forged her signature to get an ATM card in victim's name)
Legal authority	Capacity of the elder; legal authority in writing; what does the legal authority cover
Victim is crazy	Medical opinion of victim's mental health; statements from friends and family about victim's behavior prior to and after suspect came into life
I'm the real victim	Who is benefiting financially? Evidence of suspect fear or injury?
"We're married/ in a relationship/ in love" "We're family" "She's like a mother to me" therefore, we share resources	Who is benefiting financially? What is true nature of relationship? Does suspect have other relationships or marriage licenses? Does suspect have other income or debts?
Purchase made as part of care	Evidence of purchase being used to provide care; is purchase necessary for care?

See: Barron, T. (1998) Financial Exploitation of Infirm Adults – A Prosecutor’s Perspective, *Violence Against the Elderly and Disabled, 1*, 53–64.

## **Sample Interviewing Questions on Consent**

### **Mental Capacity**

Are you able to care for yourself? Are there things you need help with? Who provides that help? Is anyone else available to help with these things? Has someone else helped you with these things before?

Do you take medication? Can you take it by yourself? Need help with knowing when to take it? Who gets the prescriptions filled? Are there any prescriptions you believe you are not getting? Do your medications ever make you sleepy? Groggy?

How do you spend your time? Do you read? What? Can you tell me about an article or book you read recently? Can you tell me about an important issue in the news?

### **Knowledge of True Nature of Act**

Tell me how you came to sign the documents (do you know what was done)? What was the reason you did so? Did you discuss what you did with anyone? What about (suspect)? Did s/he tell you anything about it?

Please explain what the documents you signed are. What do they say? Did you read them yourself? Did anyone review them with you? What do they mean?

What do you think can happen to you now that you have signed this document?

What events preceded the discussion about the transaction?

What are the relative benefits to you and the suspect?

### **Acted Freely and Voluntarily**

Did you have time to think over the transaction? Were you “rushed” to act?

What did you believe would happen if you did not agree to the action?

Did you have the opportunity to consult with a neutral third party?

Who else was present?

What else occurred at about the same time?

Have there been other transactions?

Have you told anyone else about these events?

## **Sample Interviewing Questions on Undue Influence and Financial Exploitation**

*These are phrased for interviewing the victim but can be modified to use with other witnesses.*

### **Changes in Life Circumstances**

Have there been recent changes in your life? Examples:

- Death of a spouse
- Diagnosis of serious medical condition
- Loss of assets
- Activities you have discontinued
- Frequency of visits with family, friends
- Loss of animal companion (pet)

### **Isolation**

How often do you leave home? What do you do when you leave? Can you drive yourself? Do you have a license? Do you have a car? Is the car in working order?

Who are your close friends? Family? When is the last time you visited them? When is the last time they saw you? Why are you seeing them less often? (Check for planted information, cutting off from family and friends, and isolation)

Do you go to church, synagogue or mosque? Did you used to go? When did you stop participating? Why?

Do you see the mail when it arrives? Read it? Did you previously? Who gets and reads the mail? Why the change?

If you need to use the telephone, where is it? Can you reach it? Is it in working order? Do you know your phone number? Have there been changes in the service?

Do you have a radio? Television? Do you watch or listen? How often? If not, did you previously do so? Why did it change? Can you hear the radio or television? Can you see the television? Whose idea was it to stop?

Receive a newspaper? If not, did you previously receive a paper? When did it stop? Why?

Do you have a computer? Has your access to e-mail or the Internet changed? Why?

### **Questions about the Suspect and Relationship**

Are there any new people in your life? Who? How did you meet? When? How often do you see them? Given gifts to them? Made loans? Offered to pay for things for them? Paid for things for them? Have they offered to do things for you? How would you describe your relationship?

Does the suspect live with you? Why? When did s/he move in? Does s/he pay rent? What does s/he do within your home? What do you know of the suspect's life? Is s/he married? Have children? Where did suspect live before?

### **Questions about Financial Decision Making**

How do you decide how to spend your money? For giving gifts? To whom have you previously given items of value? On what occasions?

Do you have a will? Any changes to it? Why? Were there changes to the people to receive bequests? The amount they were to receive? Any new beneficiaries? What has your relationship been to the people in the first will? What changes have there been?

Do you live on a fixed budget? Do you have concerns about having enough money to last for your lifetime? To provide inheritances? For whom? What advanced planning have you done? Who assisted you with those plans? Are there written documents? Where are they?

Have you changed your plans? If so, in what way? When? Why? Did someone suggest that you make those changes? Did you consult your attorney/financial advisor/ a professional in making the changes? Was it the same professional who helped with the original documents? If not, is there a reason you went to someone else? Who suggested the new professional to help you? Did someone drive you to the meeting where the new documents were prepared? Who witnessed the signing? Who was present during the meetings with the professional? Who paid for the professional's services?

Where do you bank? How long have you banked there? Have there been any changes to your bank accounts? Any names added to the account? Any new accounts opened? Where do monthly statements come? Have you checked the statements recently? How much money is in your checking account? Savings? IRAs? Other accounts? If there have been changes, who selected the new bank? Did anyone drive you to the bank to make the changes?

Have you executed a power of attorney? Whom have you designated to be your decision maker? Did you have another POA? Who was the decision maker in the earlier POA? Why did you make the change? Who suggested it?

### **Questions about Fear**

Are there people you are afraid of? Does anyone make you uncomfortable? Do you think someone wants to put you in a nursing home or move you out of your home? Steal your money? Why do you believe that?

### **Other Witnesses**

Has the victim suffered a loss? Grieving? Financial?

Is the victim ill? Has there been any recent change in health status?

Is the victim depressed? Is there any history of mental illness, including depression?

Is the victim isolated? In what ways? By whom?

What is the relationship between victim and suspect? How does each party characterize the relationship?

Is the victim “different” since the suspect entered the victim’s life?

## **SOURCES OF EVIDENCE**

### **Selected Sources of Evidence**

- Financial institutions for records in the name of the victim, name of the suspect, or in both names
- Tax records before and after assets were given to suspect (may need to do a joint investigation with the state taxing agency)
- Loan applications
- Court order applications
- Civil litigation including interrogatories, answers, depositions, and discovery, including facts supporting a claim or defense, witnesses and their location information, and other supporting documents, and evidence
- Medical and mental health and substance abuse records
- Employment records for suspect
- Deeds
- Credit card applications and records of purchases by suspect
- Prescriptions and prescription records for victim
- Toxicology screen for victim
- Bills of sale
- Marriage certificates, past and present
- Pictures from crime scene and crime lab records
- Data off home or work computers
- Criminal records of suspect (Try to go back as far as possible. Some old records may show violent crimes.)

## **Witnesses**

- Bank and brokerage officials where victim and suspect currently or formerly have/had accounts to help identify prior spending patterns and any changes
- Accountants and financial advisors with knowledge of victim's assets, spending patterns, and degree of financial expertise
- Lawyers who have advised victim and suspect and who may be aware of changes in wills or advanced planning documents, or the execution of a recent power of attorney
- Adult protective services, health and human services, and case managers
- Medical/mental health professionals/pharmacists who have knowledge of victim's history
- Service providers such as hairstylists and barbers, dry cleaners, mail carriers, meter readers, or restaurant staff who have knowledge of victim and behaviors and level of functioning over time
- Uninvolved family members to describe victim historical behavior patterns and changes as well as recent losses and changes in health
- Friends, including neighbors, employers and clergy, to describe victim past behavior patterns, as well as recent losses and changes in health, socialization or living situation
- Retail professionals, such as car dealerships or jewelers
- Experts in same field as suspect to analyze and advise on the profession's standard of practice, appropriate professional conduct, ethical principles, and relevant rules for dealing with clients
- Experts to analyze case facts, suggest areas of investigation, and testify
- If case reported to law enforcement or APS, reporter if known

## **How can this Information be Obtained?**

- Subpoena, court order or search warrant
- Grand jury
- If victim has a guardian, the guardian can sign consent forms
- In some states, APS may be able to share records and information from their investigation

## **THE GEORGE THOMPSON CASE: SUMMARY OF FACTS**

George and Grace Thompson hired Tina Martin as a caregiver. George was in his late 70's and had early stages of Parkinson's disease. Grace had Alzheimer's. Grace died a year later. George's health had deteriorated and Tina remained as his caregiver.

### Items Purchased

A few months after Grace's death, Tina insisted that George buy her a new Mercedes although he had a relatively new Mercedes in good working order. She berated him or made him feel guilty if he questioned her requests for money, clothing, jewelry, and expensive gifts.

### Requests to Change the Will

- Tina repeatedly asked George to change his will to leave everything to her and her family.
- George's longtime lawyer refused to help change the will. Tina then pressured George to fire his lawyer.
- Tina took George to four other attorneys she selected; each refused to change the will.
- George's health deteriorated further. He suffered from impaired memory and was unable to understand financial transactions or the consequences of changing his will. He lost his ability to walk and used a wheelchair.

### Isolation

- Tina prevented George's long-time friends and neighbors from speaking with him.
- Tina then moved George to an efficiency apartment that was in a neighborhood unfamiliar to George and located away from his friends.
- The apartment was not accessible and George could not maneuver his wheelchair through doorways, including the bathroom and front door.
- Tina continued to live in George's house. Her sister, who had rented the apartment, moved in to George's house with Tina. George was left alone in the apartment.
- Tina and George were married.

### APS Investigations

- Family and friends made reports to APS. Tina attempted to block the investigation.
- APS received additional reports and involved law enforcement. Ultimately, APS found George in the apartment. He was very ill.
- APS discovered that Tina was planning to move George to another country within 24 hours. The Court was notified and issued emergency orders to protect George and meet his needs.
- APS arranged for a mental health assessment by a forensic psychiatrist. The assessment stated that George suffers from severe dementia, which prevented him from understanding the consequences of his actions or for adequately describing his needs; that he was unable to care for himself; and has severe memory impairment.

## **UNDUE INFLUENCE: EXPERT WITNESSES**

Different case facts may require the use of experts with varying expertise. All will need to be able to define undue influence and address key components. Where the victim lacks capacity the expert may need particular expertise in neuro-psychology or related fields. If the victim has significant capacity, an expert may not need such expertise. If the situation has components of domestic violence, it may be preferable to find an expert who can address both undue influence and its similarities to elder domestic violence.

### **Records and Statements:**

- All witness statements regarding mental and physical state of victim, losses, behavior patterns over time, and social interactions
- Any taped statements of victim
- Reports—APS/EA, court investigator, law enforcement, any court proceedings
- Records—medical, mental health, substance abuse, banking and other financial

### **Assessments:**

- Mental health assessment
- Victim assessment, including any limitations, verbal and thought appropriateness, medications, drug and alcohol usage, educational achievement, and language abilities
- Victim's demeanor such as fearfulness, "planted beliefs", evasiveness, or unable to talk freely

### **Information About:**

- Relationship between suspect and victim
- Victim's social situation
- New acquaintances in life
- Losses
- Serious health condition

### **What the Expert Can Discuss in Court**

- Victim behaviors such as recanting, protecting the suspect, minimizing and denying, accusing others
- Myths about elder abuse and elderly persons
- Definition of undue influence
- The difference between undue influence and salesmanship
- The components of undue influence and how they apply to the case in court
  - In most cases, cannot opine that this is a case of undue influence
  - Can say the facts here are consistent with a case of undue influence

## **OMAHA CASE SCENARIO: Martha Bedford and Larry Thompson**

### **Persons Involved**

- Victim: Martha Bedford
- Out-of-town Niece of Victim
- Out-of-town Nephew of Victim
- Former Long-time Neighbor of Victim
- Former Long-time Friends of Victim
- APS Worker
- Victim's Husband (Deceased)
- Suspect: Larry Thompson
- Suspect's Children (3)
- Banker/Trustee for Martha
- Long-time Friends of Martha
- Former Attorney for Martha
- Medical Doctor for Martha
- Real Estate Agent
- Assessment Doctor who Evaluated Martha for APS (professional background not indicated)
- Omaha Police Department Detective
- Temporary Conservator

### **Facts Derived from APS Investigation and Assessment of Martha**

- Niece and Nephew of Martha Bedford reported to APS their concerns that Larry Thompson was financially exploiting Martha after Martha's long-time neighbor contacted them.
- Larry was a handyman for Martha.
- Martha's husband had died a few years earlier. They had been married for 50 years.
- Husband had established two trusts, worth more than a million dollars, for Martha's benefit. Martha was the sole beneficiary of one trust. Martha and Niece were the beneficiaries of the other trust.
- Martha was legally blind. She also suffered from shortness of breath due to chronic obstructive pulmonary disease (COPD) and other respiratory problems and had significant problems moving around.

- Martha and her Husband had lived in their house for 50 years. In July of the year this investigation occurred, Martha told her Niece that she would never leave her home. By September, she had sold her house and moved into a small condominium that had many stairs in a neighborhood across town.
- Niece learned of Martha's move from her Banker.
- Martha's former long-term Neighbor said that Larry had cut off contact between Martha and Neighbor, who had been friends for almost 50 years, prior to the move.
- Nephew visited Martha in September and observed the following:
  - Martha was confused about her age
  - Martha did not appear to be eating properly; there were no signs of dishes
  - Martha was alone much of the time but had nothing to do with her former long-time Neighbor or her long-time Friends
  - Martha was now showing her financial documents to other people and talking about her financial matters with them. She had previously been very private about her financial matters, so this behavior was unusual.
- Larry's name is on the title to the condominium. (Actual case summaries not clear as to whether Larry is listed as the sole owner or a co-owner with Martha.)
- Martha indicated to APS that Larry did her grocery shopping, helped her pay bills, took her to doctor appointments, read her mail, took her dog to the veterinarian, and took her out to dinner occasionally. Larry's children cleaned the condominium. Martha said that she had sold her house and moved into the condominium because Larry was concerned that her old house was unsafe. Martha also indicated that she had not met any neighbors in the condo subdivision and that she did not keep in touch with any of her old friends. Martha claimed that she and Larry were going to be married.
- Larry was present during a home visit by APS worker. Larry stated that neighbors were nosy and that they bad-mouthed him to Martha and that he had moved her out of that terrible neighborhood. Larry also said that Martha's Husband didn't do anything with her and that Husband had committed suicide.
- Larry does not live with Martha in the condominium. He lives with his two daughters, about 20 minutes away from the condominium.
- Martha's former Attorney indicated that he had written to Larry after becoming concerned about Larry's withdrawals from Martha's trust. Attorney said that several checks had been written to cash and that in the letter he had asked Larry to account for the cash. Within two weeks of mailing the letter, Martha's trust account was transferred to another bank.
  - Martha's Medical Doctor indicated that Larry had accompanied Martha to all of her recent medical appointments.

- Banker/Trustee indicated that she had denied previous attempts to name Larry as a beneficiary of the trusts. Banker/Trustee said that Martha, in the presence of Larry, had asked Banker/Trustee for money so that Larry could purchase a truck for Martha. Martha said that Larry needed the truck in order to transport Martha.
- Subsequently, Banker/Trustee reported to APS that Martha had appointed Larry as her agent for her Power of Attorney and that Larry was trying to liquidate the trust.
- Investigation revealed that Larry had very few assets of his own, paid his children with Martha's money to clean Martha's house, purchased a new truck, and purchased new furniture for the condo (including a big screen TV). Martha believed that her old furniture was in the basement of the condo, but the basement was empty.
- APS arranged for a psych assessment at Martha's home. The Omaha Police Department (OPD) had to be called in to secure the situation. Larry told the OPD officer that Larry and Martha were not getting married, but that he loved Martha.
- The psych assessment indicated the following:
  - Martha was limited due to her vision problems and dependent upon Larry
  - Martha was easily manipulated by Larry
  - Martha was uninformed about Larry's actions regarding her trust accounts
  - Martha believed that Larry was going to marry her
  - Martha indicated that her shortness of breath was worse when she experienced increased stress
  - Martha experienced confusion and short-term memory problems, which she also indicated were worse during times of increased stress
  - Martha had a history of depression and anxiety over at least the previous six months
  - Martha completed the 11<sup>th</sup> grade and worked in a restaurant prior to marriage to her husband, but apparently had not worked outside the home since that time
  - Martha's cognitive functioning was estimated to be in the low average to average range
  - Martha exhibited severely impaired verbal short-term memory as well as very poor verbal fluency; her formal judgment was also mildly impaired.