

UNDUE INFLUENCE

THE CRIMINAL JUSTICE RESPONSE

UNDUE INFLUENCE:

The Criminal Justice Response

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Jodie Drapal Kluver
Grant Project Manager

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Bonnie Brandl, Candace Heisler, and Lori Stiegel

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INTRODUCTION

Unfortunately, too many older individuals are being financially exploited. Often the exploiter is someone known to the victim, such as a family member or caregiver. In other circumstances, an exploiter targets a vulnerable victim, builds a relationship with the older individual, and begins to steal money and/or possessions.

Some cases of financial exploitation involve undue influence (UI). Undue influence occurs when people use their role and power to exploit the trust, dependency, and fear of others (Singer, 1996; Quinn, 2001). Exploiters use this power to *deceptively* gain control over the decision making of their victim (Singer, 1996). Undue influence is a pattern of manipulative behaviors that enable an exploiter to get a victim to do what the exploiter wants, even when the victim's behaviors are contrary to his or her previous beliefs, wishes, and actions. These tactics are similar to those used by cults and hostage takers and in brainwashing.

The tactics used in UI also have striking similarities to the strategies used in domestic violence, stalking and grooming, which occurs in some sexual abuse cases. In these situations, the exploiter uses a pattern of tactics in combination to get his or her desired goal. In cases of financial exploitation, the goal is obtaining the victim's money or possessions. When law enforcement investigates these cases, officers need to look beyond the presenting incident and explore the tactics a suspect may have used to financially exploit the older person. If officers focus exclusively on the presenting incident, they may miss the pattern of behaviors that led to UI and financial exploitation. Through their investigation, officers may discover criminal behavior that could justify arrest and prosecution of the exploiter. Otherwise, they may view the problem as exclusively a social services or civil matter.

In addition, victim behaviors in UI cases may be similar to those demonstrated by victims of domestic violence, stalking, or sexual abuse. Older victims may appear to be willing participants in activities that are not in their best interest and that run counter to belief systems they have held for many years. They may protect the suspect. Some older victims impede the investigation by not providing information or giving inaccurate information. Some victims later recant.

The purpose of this training is to explore the parallels between UI and domestic violence, stalking, and grooming so that law enforcement officers can better understand the dynamics of some financial exploitation cases and implement effective investigative strategies. Law enforcement officers will learn to use expertise they already have in domestic violence and sexual abuse cases to effectively identify and investigate financial exploitation where UI may be present.

This curriculum is for a full-day training designed **primarily for law enforcement officers**. The training was tested twice in Omaha, Nebraska in May 2005. Sample materials from these trainings are available in the Resources section. This training may be adapted, with permission, to meet the needs of different audiences.

These materials are divided into five sections:

1. Overview
2. Event Planner Materials
3. The Teaching Plan
4. Participant Materials
5. Resources

In the Overview, a brief article by Brandl, Heisler and Stiegel describes the parallels between UI and domestic violence, stalking, and grooming behavior used by some sexual predators. An overview of the training is on page 32. The second section recommends a process an event planner or task force can use to determine if this training would be useful in their community and the steps necessary to make the event a reality. The third section is the teaching plan. Potential participants handouts are contained in the fourth section (new handouts will be necessary to describe state statutes, case law, and jury instructions in other states). The final section provides resources including articles on UI, sample materials from the pilot trainings in Omaha, Nebraska, and resource lists.

The Parallels Between Undue Influence, Domestic Violence, Stalking, and Sexual Assault

By Bonnie Brandl, Candace Heisler and Lori Stiegel

This short article provides event planners and trainers using the undue influence curriculum, particularly those who are teaching the first three modules, with additional background on the dynamics of undue influence and its similarities to domestic violence (DV), stalking, and grooming behavior used by some sexual predators. Since this subject is cutting-edge and very little has been written on it, the curriculum developers believe that trainers using the curriculum will benefit from a fuller explanation of the concepts than the teaching plan provides.

Undue influence occurs when people use their role and power to exploit the trust, dependency, and fear of others (Singer, 1996; Quinn, 2001). Exploiters, whether family, acquaintances or strangers, use this power to *deceptively* gain control over the decision making of their victim (Singer, 1996). Undue influence is most often used to commit financial exploitation. Undue influence is usually not itself a crime, but rather may be the method used to commit a crime. Exploiters using UI employ deception, develop or take advantage of a trusting relationship, and use an array of tactics that result in the victim's loss of free will. Undue influence is a pattern of manipulative behaviors that enable an exploiter to get a victim to do what the exploiter wants, even when the victim's behaviors are contrary to his or her previous beliefs, wishes, and actions. These tactics are similar to those used by cults and hostage takers and in brainwashing. There are also parallels to domestic violence, stalking and grooming used by some sexual predators. Understanding these parallels can help criminal justice professionals understand strategies used in domestic violence, stalking, and some sexual assault cases may also be used to effectively investigate and prosecute financial exploitation cases and prevent further financial losses by the victim. In many cases, a criminal justice response may be appropriate in addition to—and more effective than—social services or civil remedies.

Perpetrators may be opportunistic exploiters who find a situation where it is possible to take advantage. In other cases, suspects are career criminals with a history of preying on older persons and financially exploiting several people (Singer, 1998; Quinn, 2001). Many exploiters are family members who take advantage of their ongoing relationship with an older individual. In other situations, the exploiters, like some sexual predators, use a process known as grooming for selecting their victims. Exploiters may start by being in locations where older people gather. They may look for especially vulnerable elders and begin a relationship with them, with the purpose of gaining their trust to eventually financially exploit them.

Who are the victims of UI? Under the right circumstances anyone could be unduly influenced (Singer, 1992). Even the many older persons who have the ability to make

decisions about their finances may become victims of UI. However, adverse life events, inexperience and naiveté, illness, and dependence may increase a person's susceptibility. Examples of adverse life events might include the death of a spouse, child, close friend or pets; financial setbacks; and changes in health status. Other pertinent characteristics that may increase vulnerability to UI include loneliness and isolation (whether caused by the acts of another person or by situational factors, such as living in a rural area, limited mobility due to health or other problems, the inability to speak English, status as an illegal immigrant, etc.). Characteristics that may increase vulnerability to UI include: being a trusting person, lacking knowledge about financial matters, being fearful, being uninformed, being dependent on others, or having cognitive disabilities (Singer, 1992; Quinn, 2001). Similarly, illness, some medications, drug and alcohol addiction, and exhaustion may limit a person's ability to resist manipulation. An individual with any of these factors could also face a greater risk that an exploiter will recognize vulnerability and target that person for manipulation.

Recognizing UI requires the identification of the exploiter's pattern of tactics. Undue influence is a process, not an event. Criminal justice and other professionals whose work usually causes them to focus on a particular incident may disregard or discount what seem to be minor, often non-criminal acts. However, such acts are critical to the identification of UI tactics. The pattern of tactics exploiters use is similar to the strategies used by domestic violence perpetrators and stalkers, as well as the grooming tactics used by some sexual predators. As a result, criminal justice professionals may be able to apply effective investigative and prosecutorial procedures used in domestic violence, stalking, and some sexual assault cases to arrest and prosecute the perpetrators using UI for financial exploitation and prevent further harm to victims.

This article will describe seven parallels between UI, domestic violence, stalking, and sexual assault cases. These include:

- The victim and exploiter are 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.

Understanding these parallels between UI, domestic violence, stalking, and targeting and grooming behaviors in some sexual assault cases is important to professionals for the following reasons:

- Like stalking and domestic violence, UI is a pattern of tactics that will not be recognized if only isolated incidents are investigated. Exploiters use various tactics to accomplish their goals – often in combination.
- Common reactions to victimization and trauma may be confused with mental illness, dementia, or substance abuse. As a result, allegations by victims who experience those reactions may be discounted and not investigated.
- Isolation and victim behavior changes are critical indicators warranting further investigation.
- Cases often involve family members with differing versions of events and complex motives.
- Investigating financial exploitation, especially where UI is present, can lead to the discovery of domestic violence, sexual abuse, or neglect.
- Investigating domestic violence, sexual abuse, or neglect can lead to the discovery of financial exploitation – often involving UI.

This knowledge will help professionals distinguish between cases where an older person decided to change a will or make gifts using clear judgment and cases where the victim lacked capacity to make those decisions or perpetrators used UI to “steal” assets. It is critical to understand, however, that many older people have the ability to make financial and personal decisions, including decisions to change wills or enter into new relationships. Older people have the right to make their own decisions, even bad decisions, if they have decision-making capacity and are free of UI. Cases only involve UI if the perpetrator substitutes his or her judgment for that of the victim.

Parallels Between Undue Influence, Domestic Violence, Stalking, and Sexual Assault

1. The Victim and Exploiter Are in an Ongoing Relationship

Because the goal of the exploiter is to take over the will of the target, he or she must have a relationship in which the victim has faith and trust in the exploiter. In some situations, the relationship is well established, such as that between a long-time friend and confidant, a family member, a caregiver, or a person with legal or financial authority to make decisions for the older person (Singer, 1998; Quinn, 2001). If there is no existing trusted relationship, the suspect may rekindle an old friendship or establish a new one.

The existence of a relationship involving trust can complicate an investigation. As in many domestic violence cases, the victim may be more interested in protecting the abuser/exploiter than assisting the investigator. Victims may recant or refuse to participate in an investigation. Exploiters who have an ongoing relationship with the victim may use that connection to continue to manipulate and pressure the victim to minimize or deny what has happened.

2. Exploiters Often Target and Groom Their Victims

As UI may require the creation or rekindling of a relationship, the exploiter must gain the trust of the victim, often very quickly. “Undue influence of the elderly is a ‘con’ or ‘hustle’” (Singer, 1998). The following strategies typically are employed:

- A. Find a likely target, generally vulnerable and has resources and assets
- B. Gain the confidence of the potential victim
- C. Induce dependence through exploitation of the target’s weaknesses
- D. Gain dominance over the victim’s circumstances and resources/assets
- E. Engineer the victim’s total incapacity and/or death (Singer, 1998)

Predatory exploiters visit locations frequented by older adults, such as parks, churches/synagogues/mosques, libraries, neighborhood restaurants, or markets. Exploiters may follow older individuals home from their banks. They may observe elders to determine who may be most vulnerable, isolated or easy to isolate, and likely to have assets. Next, the exploiter befriends the potential victim and asks questions about his or her life to determine if the person is a good target. The exploiter ensures that early contacts are non-threatening—by dressing well and being very friendly—so the elder does not suspect the exploiter of foul play (Singer, 1998; Quinn, 2001).

This gaining the confidence of the victim, often called “grooming behavior,” is similar to the strategies used by some sexual predators. Salter (2003) discusses techniques of deception (grooming) used by sexual predators. They begin by creating a double life, deliberately establishing themselves as persons who would never harm a child or rape anyone. They may select respected and revered positions such as clergy, coaches or teachers where they encounter potential victims without arousing concern. Their dress and public behavior deflect suspicion (Salter, 2003).

Professionals with expertise in grooming behavior used by sexual predators may recognize that similar behaviors can target elders for UI. To examine the use of targeting and grooming tactics in both sexual predator and UI cases, an investigation should explore how the victim and suspect met, the length of their relationship, how the relationship changed over time, and the intensity of the relationship.

3. Exploiters Use a Stealth Campaign of Tactics to Unduly Influence and Financially Exploit Their Victims

In cults and hostage situations (including prisoners of war), perpetrators use various tactics to gain and maintain compliance of their victims. “The accounts of hostages, political prisoners, and survivors of concentration camps from every corner of the globe have an uncanny sameness” (Herman, 1992). Biderman created a *Chart of Coercion* to describe these tactics. They include:

- Isolation from social support by making the victim completely dependent on the offender
- Monopolization of perception by fixing the victim's attention on the immediate predicament, eliminating competing stimuli, and frustrating any actions that are not in compliance with the offender's wishes
- Inducing debility and fatigue (e.g., by sleep deprivation, inadequate nutrition, medication mismanagement) so the victim becomes exhausted from the tension
- Providing occasional indulgences which reinforce the omnipotence of the perpetrator and provides motivation for compliance
- Devaluing the person through words and actions (Biderman, n.d.).

Battered women are subjected to many of the same tactics used against hostages and political prisoners (Herman, 1992). Abusers use a pattern of coercive tactics to gain and maintain power and control over the victim. A tool that is often used to illustrate the dynamics of domestic violence is the power and control wheel created by the Duluth, Minnesota "Domestic Abuse Intervention Project." This wheel illustrates the tactics used by many batterers. The segments within the wheel show those behaviors used most often, such as emotional abuse, threats, and isolation. The outer rim, in which the physical and sexual violence are listed, describe those behaviors that are used to ensure dominance and compliance. The inner circle shows the goal of the abuser: to gain and maintain power and control in the relationship and the household.

Like batterers, exploiters using UI often use a pattern of tactics to achieve their goal of financial exploitation. The UI wheel provided at page 3e of the Participant Materials illustrates some of their tactics. These tactics may be used in combination or individually. They may occur in a specific order or be used randomly. Physical and sexual violence are not shown on the diagram. If physical or sexual abuse or both are occurring, crimes in addition to financial exploitation must be explored.

Indicators of UI can be drawn from the headings on the wheel. A table listing some indicators of UI can be found at page 3f of the Participant Materials. Many of the behaviors listed are present in UI, elder abuse, financial exploitation, domestic violence, stalking, and some sexual abuse cases (e.g., isolation, creating fear, shame and secrecy). When investigating cases or working with victims of any of these acts, the presence of indicators should prompt further investigation for UI or other forms of abuse to determine if other criminal behavior is taking place. This is not an exhaustive list—some behaviors may not be listed and indicators listed here may not occur in certain cases. The investigation should examine victim behaviors, including changes in long-standing patterns of conduct, and what actions the suspect may have taken to engineer them.

An understanding of the role of these tactics, actions, and behaviors is helpful in cases where there is no clear evidence of criminal activity. While many of these acts are not themselves crimes, they are part of the pattern of actions that have led to this point. It is

always critical to remember that like stalking and domestic violence, UI is a process rather than an event.

4. Exploiters Are Often Charming Manipulators

Bancroft (2002) states “Most abusive men put on a charming face for their communities, creating a sharp split between their public image and their private treatment of women and children. Abusers are drawn to power and control and they enjoy looking good in public. They realize they make it difficult for their partners to reach out for help if they have a ‘great guy’ image so that friends, family and professionals may not believe them.” Abusers are excellent manipulators. “Few abusive men rely entirely on verbal abuse or intimidation to control their partners. Being a bully nonstop is too much work and it makes the man look bad. If he is abusive all the time, his partner starts to recognize that she is being abused, and the man may feel too guilty about his behavior. The abuser therefore tends to switch frequently to manipulating his partner to get what he wants” (Bancroft, 2002). Sexual predators, pedophiles and psychopaths may also be excellent manipulators. Often they use charm and deception to get close to their victims (Salter, 2003).

Exploiters use guile and deception to get their way. Their personality traits may include “glibness, pathological lying, conning/manipulative; no remorse; shallow affect; callous/lack of empathy; parasitic lifestyle; lack of realistic, long-term goals; impulsivity; irresponsibility; short-term and opportunistic relationships; and criminal versatility” (Singer, 1998). Recognizing that exploiters are often predators who are excellent liars and manipulators is significant information for professionals. Their charm, unless recognized for what it is, may deceive the victim, family, friends, and criminal justice professionals. Excessive charm is often an indicator of abusive traits.

5. Exploiters Justify Their Actions Through Various Excuses

Domestic violence abusers use various excuses to deny that abuse occurred, minimize their violence, and justify their behavior. These excuses can range from “she made me do it” to “it happened just this one time” to “I was defending myself.” Similarly, exploiters have a variety of justifications to excuse their behavior. One of the challenges of investigating and prosecuting UI cases is countering suspects’ justifications. Suspects will often claim that the money taken from the victim was a loan or salary for caregiving. Often these justifications will suggest that the victim consented and gave the resources to the suspect (Barron, 1998).

Before accepting such justifications, investigators should fully investigate the surrounding facts and consider the mental capacity of the victim, compare the relative benefits to each party, examine prior patterns of decision-making (particularly those related to gift-giving and other aspects of financial and estate planning), explore the nature and duration of the relationship between the parties, and determine if the tactics of UI have been used. Keep in mind that the exploiter may have told the victim that family, law enforcement, social worker are out to steal his or her money or place him/her in a nursing home, so it may be difficult to establish rapport.

6. Victims Often Appear as Willing Participants in Activities that May Counter Their Beliefs or Best Interest

Like victims of domestic violence, UI victims may appear to be willing participants in activities that run counter to their belief systems or best interests. If the victim's decision-making has been deceptively taken over by the exploiter, UI is present. Persons with full or diminished decision-making capacity may become victims of UI, although it is easier to manipulate persons with diminished capacity. A victim of UI "has been 'brainwashed' and, in effect, has been living in a cult, albeit one with very few members" (Quinn, 2001). Victims are of course unaware of what has really happened to them and may state that they gave consent or permission for the exploiter's actions. At first glance this appears to be legitimate consent and so the action taken will appear to be proper and legal. Exploiters expect that they will escape detection and accountability once a victim says he or she gave consent or agreed to the now-disputed action. Historically, because UI and its impact on consent were not recognized or understood, they have been correct. However, an investigation of UI must focus on whether the consent was truly legitimate or just seemed that way. This entails focusing on whether the victim had knowledge of the true nature of the act in question and was acting freely and voluntarily. Because the exploiter creates fear, keeps the victim unaware of the true state of matters, induces shame and secrecy, and isolates from others and information, the victim does not have the requisite knowledge and is unable to act freely and voluntarily. Indeed, the gist of UI is that the victim's free will has been deceitfully stripped away. Therefore, in an UI case when the victim claims to have consented or agreed to an action, careful investigation will reveal what appears to be consent is actually only "apparent" consent.

7. Victims Often Have Trauma Reactions and May Respond To Professionals In Ways That Impede An Investigation

Like victims of domestic violence, stalking, and sexual assault, victims of financial exploitation through UI may exhibit posttraumatic stress disorder (PTSD) symptoms. Like victims who have been subjected to "totalitarian control over a prolonged period of time (months to years)," they may exhibit a sense of helplessness or paralysis of initiative; shame, guilt and self-blame; preoccupation with their relationship with exploiter; unrealistic attribution of total power to the exploiter; a sense of special relationship; acceptance of the perpetrator's belief system or rationalizations; isolation and withdrawal; disruption in intimate relationships; a repeated search for a rescuer; persistent distrust; repeated failures at self-protection; loss of sustaining faith; and a sense of hopelessness and despair (Herman, 1992). Like victims of domestic violence, victims of UI may deny that abuse or exploitation has occurred, defend the abuser, and refuse to accept that he or she has been defrauded (Quinn, 2001). Victims may focus on the well-being of the exploiter and feel deeply bonded to that person (Quinn, 2001).

Conclusion

Understanding the parallels between UI and domestic violence, stalking, and the targeting and grooming behaviors of some sexual predators helps professionals recognize the process and pattern of tactics often used in financial exploitation cases involving UI. In many cases, what appeared to be consent really was only “apparent” consent; financial exploitation using UI had actually occurred. Criminal justice professionals can employ investigation strategies commonly used with battered women and victims of stalking and sexual assault to build financial exploitation cases.

Resources

Bancroft, L. (2002). *Why does he do that? Inside the minds of angry and controlling men*. New York: Berkley Books.

Barron, T. (1998). Financial exploitation of infirm adults: A prosecutor's perspective. *Violence Against the Elderly and Disabled, 1*, 53 – 64.

Amnesty International. (2005). *Biderman's chart of coercion*. Retrieved on June 30, 2005 from <http://www.nwrain.net/~refocus/coerchrt.html>

Herman, J. (1992). *Trauma and recovery: The aftermath of violence – From domestic abuse to political terror*. New York: BasicBooks.

Quinn, M. J. (2001). Friendly persuasion, good salesmanship, or undue influence. *Elder Advisor*, 49 – 56.

Singer, M., & Nievod, A. (n.d.). *A model for assessing undue influence in the elderly*. Unpublished document.

Salter, A. (2003). *Predators, pedophiles rapists and other sexual offenders: Who they are, how they operate, and how we can protect ourselves and our children*. New York: BasicBooks.

EVENT PLANNER MATERIALS

RECOMMENDATIONS FOR DETERMINING COMMUNITY READINESS AND ORGANIZING THE TRAINING

1. **Discuss concept:** Read the article “The Parallels Between Undue Influence, Domestic Violence, Stalking, and Sexual Assault” found on pages 11-19. This article provides an overview of the key concepts of this training. Additional articles on UI in this section may also be helpful.

Review the training overview (page 32), the agenda (page 33) the modules at a glance (page 34) and the teaching plan (page 29). Discuss the article and the curriculum with other professionals or an existing task force. Determine if this training would be useful for law enforcement officers and others in your community.

2. **Target audience:** This training was designed primarily for law enforcement officers, prosecutors, and judges and other court personnel. It contains content on investigation, sources of evidence, interviewing and expert witnesses. At the pilot trainings, a few adult protective services (APS) workers, domestic violence advocates, aging network professionals and health care providers also attended. Determine if law enforcement would be the primary audience in your community. If the audience would be multidisciplinary, the content may need to be adapted.
3. **Readiness:** This training was designed for law enforcement officers, prosecutors, and judges and other court personnel with some background in elder abuse, domestic violence and sexual assault. It is not an introductory level training. Basic training on these topics should be provided before this program is offered.
4. **Audience size:** The training was designed for 20 – 40 participants. Given the number of small group and interactive exercises, it would be difficult to present this training to a group larger than 40 participants.
5. **Capacity to organize the event:** Determine who should be involved in organizing the event to ensure its success. Is an advisory committee or task force necessary? Does one already exist? Are law enforcement or the other target audiences for training already involved? How would the training be funded?
6. **Legal research:** Before conducting the training program, legal research on applicable state statutes, case law, and jury instructions regarding UI and financial exploitation must be conducted and PowerPoint slides and handouts must be developed. Determine who has the time and expertise to complete this research. See pages 23-25 for information about how to conduct the legal research.
7. **Trainers:** Multiple trainers from various backgrounds are probably necessary. Modules 1 – 3 are best presented by a seasoned trainer with background in domestic violence, sexual abuse, and/or elder abuse. Modules 4 – 6 are best

presented by a prosecutor and law enforcement officer. Determine if local presenters could deliver the material or if state or national experts would be beneficial. Presenters must be comfortable using an interactive teaching style because this curriculum has a series of exercises for small and large group discussion.

8. **Multidisciplinary Panel:** The last module of the day is a multidisciplinary panel working through a case of UI. Participants in the pilot trainings found it helpful to learn how various professionals would approach a case and about the services they had to offer. Organizers will need to determine if a similar panel would be useful in their community and, if so, who will present and what format to use.
9. **Method of training:** The training was designed as a full day event for a local community. However, it could be implemented as a statewide or regional training. Also, consider organizing a training of trainers to teach the material to new presenters so that they can go back to their communities and deliver the material.
10. **Adaptations:** If the target audience will include professionals from disciplines other than law enforcement, the material may need to be modified. If only a half-day is available, organizers will need to determine what material to include.
11. **Logistics:** A checklist can be found on page 26 listing the tasks to complete for this event.
12. **Videos and case examples:** One video and one movie are used to illustrate teaching points in the curriculum. “I’d Rather Be Home” is available from Terra Nova Films, 9848 South Winchester Avenue, Chicago, IL, 60643; 1-800-779-8491 or e-mail at tnf@terranova.org. “Gaslight” is a 1944 movie starring Charles Boyer and Ingrid Bergman. It is distributed by Warner Home Video and may be available at a local video rental store or through an online bookstore.

This curriculum also uses several case examples. One example can be found on the enclosed DVD/CD. Several other cases are described in the teaching plan. Trainers may want to locate local cases prior to the training to use at the event.

GUIDANCE FOR LEGAL RESEARCH

The following research guide will aid your own research on the law governing investigation and prosecution of undue influence in your state. This guide was designed for use by researchers in all 50 states and the District of Columbia. Therefore, it is general in application. The resources and terminology used in your state may vary from those listed here.

This guide will not educate you on how or where to conduct your legal research. It will, however, provide you with the benefit of what the curriculum developers learned while conducting research in preparation for the Omaha pilot programs. Whether you conduct this research with print materials or with a computer, the information provided will help you focus and expedite your research in the three sources we found most useful: (1) statutes, (2) cases, and (3) jury instructions. Some additional sources of information are also listed. This guide provides Westlaw key numbers and lists national annotations whenever possible. The American Bar Association staff that conducted this curriculum used Westlaw for their computer-based research and so Westlaw database information is provided when available. If you use a different computer-based legal research service, the Westlaw guidance may still assist you. (Note: If you use the Westlaw databases referenced, replace “XX” with your state’s two-letter abbreviation.)

I. STATUTES

A. Definitions You Should Research

1. Undue Influence
2. Consent
3. Decision-Making Capacity/Competence/Competency
4. Elder or Adult Abuse
5. Sexual Assault
6. Domestic Violence

B. Statutes That May Provide Those Definitions

1. Criminal provisions (for definitions of #1, #2, #4, #5, #6)
2. Adult Protective Services (APS) and/or Elder or Adult Abuse provisions (for definitions of #1, #2, #3, #4, #5, #6)
3. Guardianship/conservatorship statutes (for definitions of #1, #2, #3)
4. Sexual Assault provisions (for definitions of #2, #5)
5. Domestic Violence provisions (for definitions of #6)

II. CASE LAW

A. Case Law You Should Research

1. Undue Influence
2. Consent
3. Decision-Making Capacity/Competence/Competency
4. Sexual Assault
5. Domestic Violence

6. Application of a Civil Concept or Civil Presumption to Criminal Prosecutions

B. West Key Numbers

1. Contracts 95k96 *Undue influence*
2. Release 331k19 *Undue influence*
3. Wills 409K166(1) *Fraud and Undue Influence in General*
4. Gifts 191K38 *Fraud, Duress, and Undue Influence*
5. Deeds 120K72 *Undue Influence*

C. Westlaw Databases

1. State Cases Database Identifier: XX-CS*
2. Cases from All States Database Identifier: ALLSTATES

III. JURY INSTRUCTIONS

A. Jury Instructions You Should Research

1. Undue Influence
2. Consent
3. Decision-Making Capacity/Competence/Competency
4. Elder or Adult Abuse
5. Sexual Assault
6. Domestic Violence
7. Use of a Civil Presumption in a Criminal Case

B. Westlaw Databases

1. State Jury Instructions
 - a. Civil Database Identifier: XX-JICIV*
 - b. Criminal Database Identifier: XX-JICRIM*
2. Jury Instructions from All States
 - a. Database Identifier: JI-ALL

IV. OTHER POTENTIAL SOURCES OF INFORMATION

A. Legal Periodicals

1. State Bar Journals
2. Law Review Articles
3. Treatises
 - a. Suggested Resource: Richard A. Lord, *Williston on Contracts*, § 71:50 (4th ed. 2004)

B. State Legal Encyclopedias

1. Westlaw Database Identifier: XX-ENC*

C. Annotations

1. American Jurisprudence Second Edition (Am. Jur. 2d)
 - a. Suggested Resource: 40 Am. Jur. 2d, *Consent Induced by Imposition, Fraud, Mistake, Etc.*, § 141 (2004)
 - b. Suggested Resource: 25 Am. Jur. 2d *Duress and Undue Influence* § 36 (2004)
 - c. Suggested Resource: 6 Am. Jur. 2d, *Assault and Battery*, § 33 (2004)
 - d. Westlaw Database Identifier: *AMJUR*
2. Corpus Juris Secundum (C.J.S.)
 - a. Suggested Resource: 17B C.J.S. *Contracts* § 766 (2004)
 - b. Suggested Resource: 26A C.J.S. *Deeds* § 443 (2004)
 - c. Suggested Resource: 38A C.J.S. *Gifts* § 33 (2004)
 - d. Suggested Resource: 90 C.J.S. *Trusts* § 82 (2004)
 - e. Suggested Resource: 95 C.J.S. *Wills* § 380 (2004)
 - f. Westlaw Database Identifier: *CJS*
3. American Law Reports (A.L.R.)
 - a. Suggested Resource: Annotation, *Existence of Illicit or Unlawful Relations Between Testator and Beneficiary as Evidence of Undue Influence*, 76 A.L.R.3d 743 (2004)
 - b. Suggested Resource: Don F. Vaccaro, J.D., Annotation, *Solicitation of Testator to Make a Will or Specified Bequest as Undue Influence*, 48 A.L.R.3d 961 (2004)
 - c. Suggested Resource: R. T. K., Annotation, *Presumption and Burden of Proof as to Undue Influence on Testator*, 154 A.L.R. 583 (2004)
 - d. Suggested Resource: R. T. K., Annotation, *Form and Particularity of Allegations to Raise Issue of Undue Influence*, 107 A.L.R. 832 (2004)
 - e. Westlaw Database Identifier: *ALR*

Sample materials illustrating how this information was compiled and distributed in Omaha can be found on page 1 in the Resources Section.

LOGISTICS

Space: Room large enough for speakers in the front and round tables so 5 – 6 participants are at each table facing the speakers (crescent rounds).

Equipment:

- Microphones (for speakers and roving microphone for participants if needed)
- LCD player, laptop, and screen
- VCR/TV if using “I’d Rather Be Home” and if the LCD player cannot project a VCR tape
- DVD player if using enclosed DVD or “Gaslight” and if the LCD player cannot project the DVD(s).
- Paper and pens at the tables
- At least one flip chart and markers
- A post-it note or index card listing one slice of the UI wheel (e.g., isolate from others and information; create fear) placed on each table before the training. (See Participant Handouts, page 3d for the UI Wheel.)

Handouts

- Materials are provided in Participants Materials section
- Additional handouts may be created on consent and based on legal research
- Pre- and post-test may be used (provided in Resources)
- Evaluation form (sample provided in Resources)
- Information about local resources

Set-up

Ask participants to register in advance. Prior to the event, consider assigning participants to tables to mix them by discipline if training professionals other than law enforcement officers.

Teaching Plan

TRAINERS OVERVIEW

Recommended Target Audience

- This training was designed for a primarily law enforcement audience, although prosecutors, judges and other court personnel, adult/elder protective services workers, and advocates could benefit from the training.

Note to Trainer: Some states have adult protective services (APS) programs, others have elder protective services or elder abuse programs, and some states have both. This curriculum will use the terms “adult protective services workers” or “adult protective services programs” generically. Trainers who implement this curriculum should use the appropriate terminology for their state.

- The ideal audience size is 20 — 40 participants to effectively run the interactive exercises.

Recommended Criteria for Trainers

- Using seasoned trainers with a background in elder abuse and adult protective services, financial exploitation, domestic violence, stalking and sexual assault is recommended.
- Consider using multiple trainers from various disciplines. Each module could be taught with co-trainers.
- Ideally, an advocate or social services worker with expertise in domestic violence, sexual assault, and elder abuse would be one of the trainers for Modules 1 – 3. A prosecutor and/or law enforcement officer should be one of the trainers for Modules 4 – 6. The panel should include at a minimum an APS worker, law enforcement officer, prosecutor, and advocate. A civil attorney and a health care or mental health professional would also be beneficial.
- Trainers must be comfortable facilitating interactive exercises.

USING THE TEACHING PLAN

This teaching plan was pilot tested twice in Omaha, Nebraska in spring 2005. The teaching plan can be adapted as necessary.

The Legal Framework Module (5) will require legal research prior to the training to determine the elements of consent and UI for the state where the training will be held. PowerPoint slides and handouts will need to be created.

- The “Modules at a Glance” chart (pages 34 and 35) provides an overview for the training. This chart is broken into segments throughout the teaching plan to provide an overview of the timing, exercises, media equipment, PowerPoint slides, and handouts for each segment.
- This training contains seven modules: (1) Overview; (2) Abuse, Neglect and Exploitation; (3) Dynamics of Undue Influence; (4) Consent and Other Suspect Justifications; (5) Legal Framework; (6) Investigation; and (7) Multidisciplinary Response.
- Each module begins with a one-page summary.
- The training content follows an overview of each segment. In some cases, the material is presented in script form to illustrate how the content could be conveyed. The material is not meant to be read to the audience but rather is written as a script to demonstrate for the trainer a way to present the concepts.
- Interactive exercises are included in most modules. A grid describes the purpose, equipment, and method of teaching, PowerPoint slides, and handouts for each exercise. Directions for running the exercise follow the grid.
- Feel free to add personal experiences working cases of UI or working with older victims or living with aging family members. These real examples can often provide powerful reinforcement to teaching points.
- This teaching plan uses legal and other terminology (e.g., “guardianship,” “guardian,” or “capacity”) and discusses legal authority in a generic sense, unless otherwise indicated. When adapting these materials for your state, you will need to use the appropriate terminology, definition, and legal authority based on your state’s law.

Preparation Overview

Room layout: Round tables for five to six participants at each table.

Equipment: Microphones, LCD/laptop/screen, VCR/TV if VHS tapes and DVD cannot be run through LCD, post-it notes, and flip charts and markers.

Videos/DVDs: (1) “I’d Rather Be Home” by Terra Nova Films; (2) “Gaslight” starring Charles Boyer and Ingrid Bergman, a 1944 movie distributed by Warner Home Video; and (3) Omaha case on the enclosed DVD.

Handouts: Participant handouts can be found following the teaching plan. Additional handouts could include state statutes and case law and local resources.

Notes to the Trainers

- In Module 4, the framework used to define consent may differ in your state. The framework used in these materials provides a general definition. The PowerPoint slides and teaching points may need to be revised to match your state definition. A sample handout on consent that was used in Omaha can be found on page 1b of the Resource section.
- To present Module 5 (Legal Framework), you must research your state's statutes, case law, and jury instructions to adapt the teaching plan and create PowerPoint slides and handouts. See section two of the Resources section for sample materials from Omaha. Pages 23-25 of this Teaching Plan provide guidance for conducting the needed legal research. Ideally, a prosecutor or attorney would teach this section.
- In Module 6, there is a brief discussion of how the Supreme Court's *Crawford* decision affects UI cases. That Module provides guidance on how to obtain updated information on the implications of *Crawford* decision. An attorney or prosecutor should teach this content.
- A sample evaluation can found in the Resources section, (page 1e).

Recommended Background Reading

Amnesty International. (2005). *Biderman's chart of coercion*. Retrieved on June 30, 2005, from <http://www.nwrain.net/~refocus/coerchrt.html>

Barron, T. (1998). Financial exploitation of infirm adults: A prosecutor's perspective. *Violence Against the Elderly and Disabled, 1*, 53 – 64. (Copy provided in Resources section.)

Bancroft, L. (2002). *Why does he do that? Inside the minds of angry and controlling men*. New York: Berkley Books.

Blum, B., & Feledy, T. (2002). *Undue influence worksheets for police, APS, and probate investigators*. (Copy provided in Resources section.)

Brandl, B., Heisler, C., & Stiegel, L. (2005). *The parallels between undue influence, domestic violence, stalking, and sexual assault*. (Provided in Introduction.)

Brandl, B. (2000). Power and control: Understanding domestic abuse in later life. *Generations, XXIV*.

Herman, J. (1997). *Trauma and recovery*, (2nd Edition). New York: BasicBooks.

National Center on Elder Abuse. (2005). *NCEA the source of information and assistance on elder abuse*. Retrieved on June 30, 2005 from <http://www.elderabusecenter.org/>

National Center for Victims of Crime. (2005). *Stalking resource center*. Retrieved on June 30 from <http://www.ncvc.org/src>

National Clearinghouse on Abuse in Later Life. (2005). *National clearinghouse on abuse in later life*. Retrieved on June 30, 2005 from <http://www.ncall.us/>

National Sexual Violence Resource Center. (2005). *National Sexual Violence Resource Center*. Retrieved on June 30, 2005 from <http://www.nsvrc.org/>

Nerenberg, L. (2000). Forgotten victims of financial crime and abuse: Facing the challenge. *Journal of Elder Abuse and Neglect*, 12, 49-73.

Quinn, M. J. (2001). Undoing undue influence. *Journal of Elder Abuse and Neglect* 12, 9-17. (Copy provided in Resources section.)

Salter, A. (2003). *Predators, pedophiles, rapists and other sex offenders: Who they are, how they operate, and how can protect ourselves and our children*. New York: Basic Books.

Singer, M. T. (1992). Undue influence and written documents: Psychological aspects. *Journal of Questioned Document Examination*, 1, 4-13. (Copy provided in Resources section.)

TRAINING OVERVIEW

Target Audience: Primarily law enforcement, although prosecutors, judges and other court personnel, APS workers, and advocates may also benefit.

Training Purpose And Goals

- Enhance victim safety by identifying and responding effectively to cases of UI.
- Hold abusers accountable through investigation and prosecution of UI cases.
- Recognize the parallels between UI, domestic violence, stalking and some sexual assault cases.
- Understand how to effectively investigate UI cases.
- Recognize the benefits of a multidisciplinary response to cases of UI.

How this training will help criminal justice professionals

- Provide information about additional indicators to investigate in cases that “don’t seem right,” such as cases where the victim says that he/she agreed to actions that appear not to be in the victim’s best interest.
- Provide an explanation for victim behaviors and assist law enforcement in determining that a crime, such as theft, may have occurred.
- Assist with disproving suspects’ justifications/excuses and show victim only “appears to be a willing participant.”
- Demonstrate that expertise and strategies used effectively in domestic violence, stalking or grooming in sexual assault cases may also be useful in cases of financial exploitation.
- Recognize the relevance of investigating the pattern of behaviors that led to the current incident(s).
- Recognize which professionals in other systems may have information that can help build cases to hold the perpetrator accountable or provide services that may enhance victim safety and support or both.

Undue Influence: The Criminal Justice Response

Agenda

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

MODULES AT A GLANCE

Modules	Time	Videos/DVD	Exercises	Slides	Handouts
Overview — 1	30 mins	None	1 small grp	1 – 9	1a
• Welcome/intros	15 mins		Warm-up	1 – 2	
• Defining UI	10 mins			3 – 6	
• Purpose, goals and agenda	5 mins			7 – 9	1a
Abuse, Neglect, and Exploitation – 2	30 mins	1 film – 2 clips	1 large grp 1 small grp	10 – 21	2a – e
• Defining	25 mins	I'd Rather Be Home	Large group shout out	10 – 20	2a – d
• Barriers victims face	5 mins		Small grp	21	2e
Dynamics of UI – 3	75 mins	2 films – 5 clips	1 small group	22 – 34	3a – f
• Defining UI	15 mins	Gaslight		22 – 28	3a – c
• Targeting victims	10 mins	Gaslight		29	
• Suspect's campaign	20 mins	Gaslight		30	3d
• Indicators	30 mins	I'd Rather Be Home	Small grp – report back	31 – 34	3e – f
Consent/Other Suspect Justifications – 4	45 mins	None	2 shout outs	35 – 44	4a – c
• Suspect justifications	10 mins		Large grp shout out*	35 – 36	4a
• Consent	25 mins			37 – 43	4b
• Countering justifications	10 mins		Large grp shout out	44	4a, 4c
Legal Framework – 5	25 mins			TBD	TBD**
• Statutes/jury instructions	10 mins			TBD	TBD

• Elements of UI	15 mins			TBD	TBD
Investigation – 6	90 mins	1 clip on DVD	1 small grp 1 large grp	47 – 62	6a – c 3g, 4b, 4c
• Sources of evidence	15 mins		Large grp	47 – 49	6a
• Case building	35 mins	Omaha case (on DVD)	Thompson case	50 – 54	6b
• Interviewing	15 mins			55 – 58	3g, 4b, 4c
• Expert witnesses	25 mins			59 – 63	6c
A Multidisciplinary Response – 7	45 mins		Panel with Q and A		7a
• Panel presentation	30 mins		Panel		
Q and A and wrap up	15 mins		Large grp		

*Large group shout out describes an interactive process where the trainer asks the entire audience a question and participants are encouraged to “shout out” as many answers to the questions as they can.

**TBD means to be developed in your state, region, or community.

MODULE 1

OVERVIEW

MODULE 1

Overview

SYNOPSIS

This **30-minute** module introduces participants to UI and to each other. Following a brief welcome and introductions, participants introduce themselves to other members of the audience at their table. Undue influence is defined. The course purpose and goals are described.

PERFORMANCE OBJECTIVES

- Participants will understand the concept of UI and format of the training.

MODULE AT A GLANCE

Module	Time	Videos	Exercises	Slides	Handouts
Overview	30 mins	none	1 small grp	1 – 9	1a
• Welcome/intros	15 mins		Warm-up	1 – 2	
• Defining UI	10 mins			3 – 6	
• Purpose and goals	5 mins			7 – 9	1a

Equipment: Microphones, LCD player, laptop, and screen are required. Paper and pens should be at all tables. If conducting a pre- and post-test, be sure pre-tests are distributed to all participants before the event starts.

PRESENTATION OUTLINE

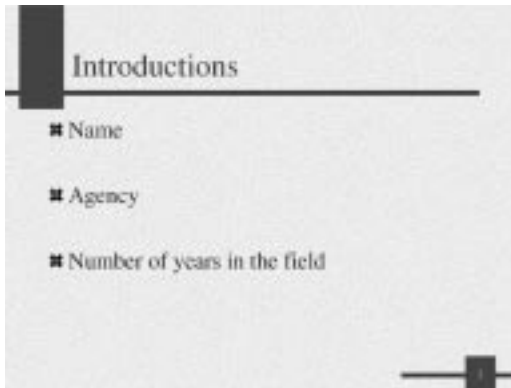
WELCOME AND INTRODUCTIONS

Module	Time	Videos	Exercises	Slides	Handouts
Welcome/intros	15 mins		Warm-up	1 – 2	

Overview

This segment includes a welcome from a local dignitary or the event organizers, house-keeping announcements (e.g., location of bathrooms, turn cell phones off) and introductions. A warm-up exercise is run. The pre-test is conducted (optional).

Training Content



After the welcoming remarks and housekeeping, the training begins with a warm-up exercise where participants introduce themselves to everyone at their table and state how long they have worked in their field. Next, give participants a few minutes to complete the pre-test (optional).

Exercise	Warm-up
Purpose	Give participants an opportunity to meet others at their table.
Equipment needed	Pen and paper at each table
Teaching method	Small group exercise
Slide	1 – 2
Handout	

Trainer Directions to Audience

You have been assigned to tables so you can work in multidisciplinary groups throughout the day. To start this training, please take a few minutes for introductions. Tell each other your name, agency, and the number of years you’ve worked in the field. Choose one participant to total the number of years of service at your table. Write the number on a slip of paper. Someone will come to each table in a few minutes to collect the slip of paper.

Directions Following Introductions

(Optional) Now that you have completed introductions, you will find a pre-test on the table. Please take a few minutes to complete the pre-test. Do not put your name on the test. This purpose of the test is to measure the effectiveness of the training.

DEFINING UNDUE INFLUENCE (UI)

Module	Time	Videos	Exercises	Slides	Handouts
<ul style="list-style-type: none"> Defining UI 	10 mins			3 – 6	

Overview

Have someone add the number of years of experience in the room while one trainer starts this segment.

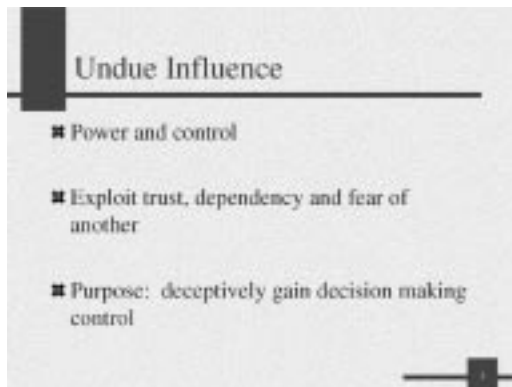
To ensure that the audience has a common understanding of the focus of this training, briefly define UI and why it is important to determine if a crime has been committed.

Next, briefly describe the case that will be used at the end of the day during the multidisciplinary panel discussion. If possible, use a local case. Or the case of Martha Bedford can be used. Details of the Martha Bedford case can be found on page 41 of this Teaching Plan.

Finally, learn about the various professionals in the room by having participants raise their hands by discipline. Then announce the total number of years of experience in the room.

Training Content

Defining UI



Undue Influence

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

Undue influence occurs when people use their role and power to exploit the trust, and emotional and physical dependency of an older person. They use this power to deceptively gain control over the decision making of the victim (Singer, 1996). Anyone, even the many older persons who have the ability to make decisions about their finances, may become victims of UI.

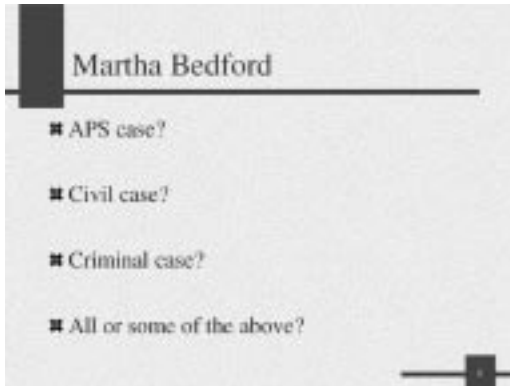
Undue influence is more than persuasion or good salesmanship. It is a pattern of manipulative behaviors that leads to an exploiter getting a victim to do what he or she wants, even when this goes against the person’s previous beliefs and wishes. The tactics are similar to brainwashing techniques used in cults or with hostages or prisoners of war.

Undue Influence may be a method to commit a crime and therefore a consideration in financial exploitation. As this training will illustrate, the pattern of tactics suspects use in cases of financial exploitation are very similar to the strategies used by domestic violence batterers. They are also similar to the stalking, targeting, and grooming tactics used by some sexual predators, such as pedophiles. Criminal justice professionals may be able to employ strategies used to investigate and prosecute domestic violence, stalking, and some sexual assault cases when investigating cases of financial exploitation involving UI.

Case Illustration

Case Example: Martha Bedford

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



Describing a real case is often the easiest way to comprehend definitions. This case will be examined in more detail during the multidisciplinary panel discussion this afternoon. Use a local case or the Omaha case below.

Martha Bedford was 73 years old. She and her husband had lived in the same house for 50 years. Martha was insistent on remaining in her own home and capable of living independently. She was legally blind and had some difficulty with mobility.

About a year after her husband’s death, she needed some repairs done around the home. She hired a handyman, Larry Reynolds. Larry fixed her roof and then suggested other repairs that needed to be done around the home.

Larry learned that Martha had several trusts worth more than \$1 million dollars. Within a few months, Martha was no longer seeing friends or family. Larry convinced Martha to sell her home and move away from her friends and family. His name was put on the condominium even though he did not live with Martha, who believed that she and Larry were going to get married.

Martha’s former attorney told an APS worker he was concerned that Larry was withdrawing significant amounts of money from Martha’s accounts. Larry, who had few assets but had made large purchases like a new truck and television, changed banks and later tried to liquidate the account. Family and friends became concerned about Martha and involved the police and APS.

Ask the audience: Is this an APS case? Civil case? Criminal case? All of the above? The answer is that it could be all of the above, which is why we need to work collaboratively.

Multidisciplinary Response and Expertise in the Room

Find out who is attending the training by a show of hands by discipline or introductions to the whole audience if the group is small. Will all the law enforcement officers raise their hands? APS? Advocates? Health care? Social Services? Mental health? Others?

Note the wonderful mix of professions and experience in the room today. This is important because UI cases are often so complex that multiple systems need to work together to be effective. This training will help participants build on their expertise to learn to be more effective when investigating and intervening in cases of financial exploitation that may involve UI.

Announce the number of years of experience working in the field in the room (from slips of paper collected earlier).

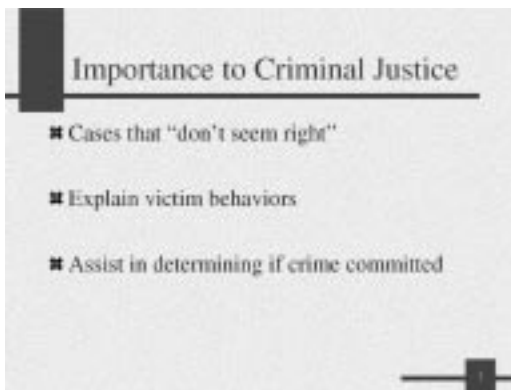
OVERVIEW OF THE TRAINING

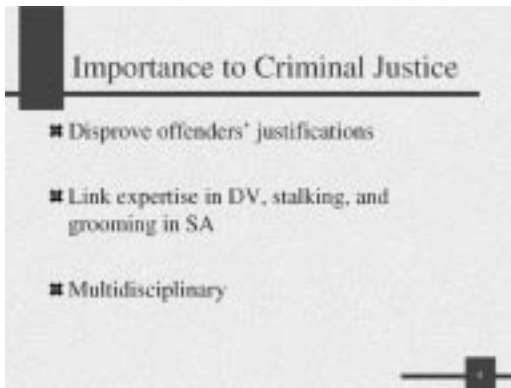
Module	Time	Videos	Exercises	Slides	Handouts
Purpose and goals	5 mins			7 – 9	1a

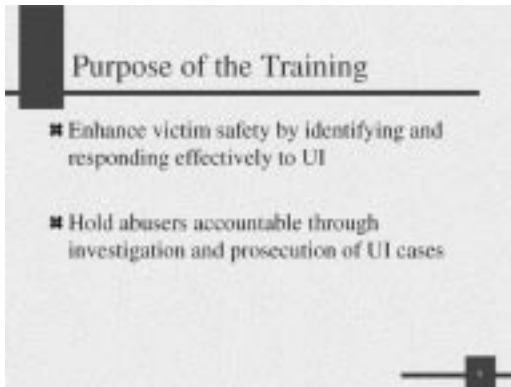
Overview

Next, describe how this training will assist criminal justice professionals and the goals for the day.

Training Content







How this training will help criminal justice professionals

- Provide information about additional indicators to investigate in cases that “don’t seem right,” where the victim says that he/she agreed to actions that appear not to be in the person’s best interest.
- Provide an explanation for victim behaviors and assist law enforcement in determining that a crime, such as theft, may have occurred.
- Analyze suspect justifications to see if they are valid and if not, identify ways to disprove them and show victim only “appears to be a willing participant.”
- Link expertise in domestic violence, stalking or grooming in sexual assault with strategies that can be used effectively in financial exploitation cases.
- Recognize which professionals in other systems may have information that can help build cases and/or services that may enhance victim safety and support or hold the abuser accountable.

Training Purpose And Goals

- Enhance victim safety by identifying and responding effectively to cases of UI.
- Hold abusers accountable through investigation and prosecution of UI cases.
- Recognize the parallels between UI, domestic violence, and some sexual assault cases.
- Understand how to effectively investigate UI cases.
- Recognize the benefits of a multidisciplinary response to cases of UI.

Close Session And Go On To Module 2 on Abuse, Neglect and Exploitation.

MODULE 2

ABUSE, NEGLECT, AND EXPLOITATION

MODULE 2

Abuse, Neglect, and Exploitation

SYNOPSIS

This **30-minute** segment will briefly define elder abuse and financial exploitation and describe the pattern of tactics used in domestic violence, stalking, and grooming in sexual assault cases. Barriers victims face to living free from abuse will be described.

PERFORMANCE OBJECTIVES

Participants will:

- Be able to define elder abuse and financial exploitation.
- Be able to describe patterns of behaviors in domestic violence, stalking, and grooming in sexual assault cases.
- List barriers victims face to living free from abuse.

MODULE AT A GLANCE

Modules	Time	Videos	Exercises	Slides	Handouts
Abuse, Neglect, and Exploitation	30 mins	1 film – 2 clips	1 large grp 1 small grp	10 – 21	2a – e
• Abuse, neglect and exploitation	6 mins			10 – 15	2a – c
• Pattern of coercive tactics	9 mins			16 – 18	2d
• Case illustration	10 mins	I’d Rather Be Home	Large group shout out	19 – 20	
• Barriers victims face	5 mins		Small grp & report out	21	2e

Equipment: Microphones, LCD player, laptop, and screen are required. Paper and pens should be at all tables. A VHS player and television are necessary if the LCD player cannot play VHS tapes.

PRESENTATION OUTLINE

DEFINING ABUSE, NEGLECT AND EXPLOITATION

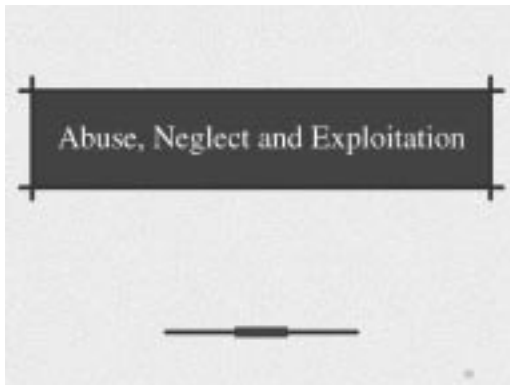
Modules	Time	Videos	Exercises	Slides	Handouts
Abuse, neglect, and exploitation	6 mins			10 – 15	2a – c

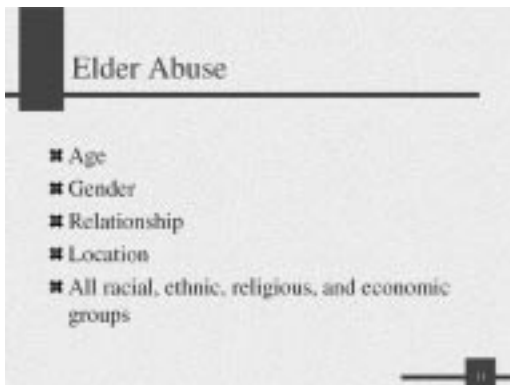
Overview

Using lecture, this segment briefly defines abuse, neglect and exploitation. Participants should already have a base knowledge of elder abuse so this is meant to be a brief refresher.

Training Content

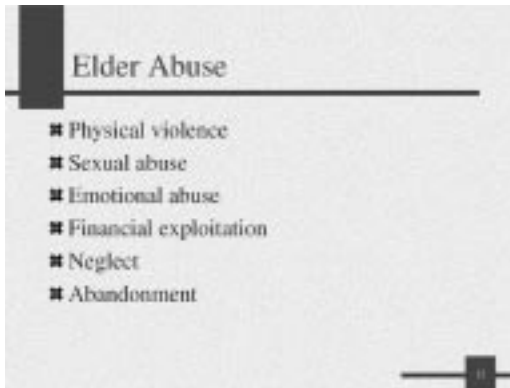
Abuse, Neglect, and Exploitation





Handout: Elder abuse (2a)

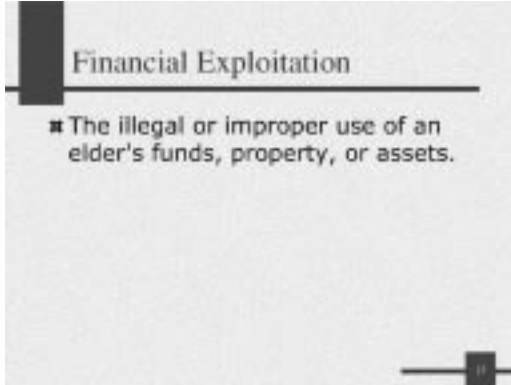
- Victim is older (age 60 or 65 and older)
- Female and male victims and perpetrators
- Abusers generally know the victim, such as spouse/partners, family or caregivers
- Occurs in community and long-term care facilities
- Occurs in all racial, ethnic, religious and economic communities



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:

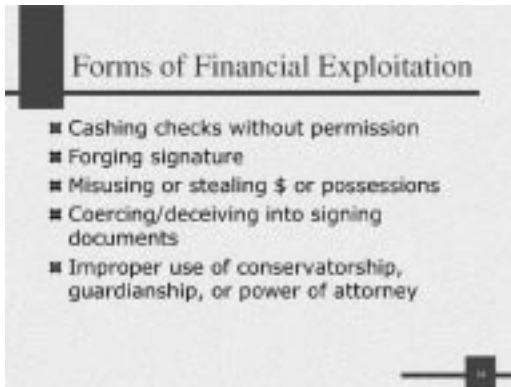
- **Physical Abuse** - Inflicting, or threatening to inflict, physical pain or injury on a vulnerable elder, or depriving them of a basic need.
- **Emotional Abuse** - Inflicting mental pain, anguish, or distress on an elder person through verbal or nonverbal acts.
- **Sexual Abuse** - Non-consensual 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. (NCEA website, 2005)

Financial Exploitation



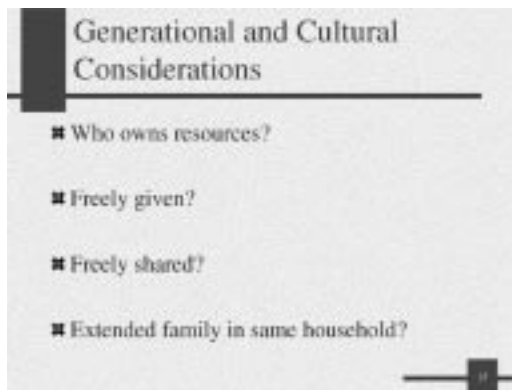
Handout: Financial exploitation (2b)

Financial or material exploitation is defined as the illegal or improper use of an elder's funds, property, or assets.



Forms include but are not limited to:

- Cashing an elderly person's checks without authorization or permission
- Forging an older person's signature
- Misusing or stealing an older person's money or possessions
- Coercing or deceiving an older person into signing any document (e.g., contracts or will)
- Improper use of conservatorship, guardianship, or power of attorney (NCEA website, 2005).



Handout: Cultural considerations (2c)

When financial exploitation occurs in ongoing relationships (e.g., such as family or caregivers), the question of how the victim defines who owns the resources may pose a challenge to investigators. Some cultural groups pool resources to be used by anyone in the household or family and may not define taking money or possessions as stealing.

**PATTERNS OF COERCIVE TACTICS:
DOMESTIC VIOLENCE, STALKING, AND GROOMING**

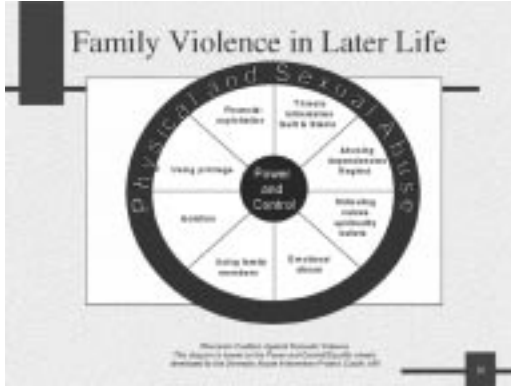
Modules	Time	Videos	Exercises	Slides	Handouts
Pattern of coercive tactics: DV, Stalking, and Grooming	9 mins			16 – 18	2d

Overview

Domestic violence, stalking and grooming involve a pattern of coercive tactics used by the suspect to achieve his or her objective. Parallels to domestic violence, stalking, and grooming behavior will be explored in Module 3 so this segment provides a brief overview of the patterns of behavior.

Training Content

Domestic violence

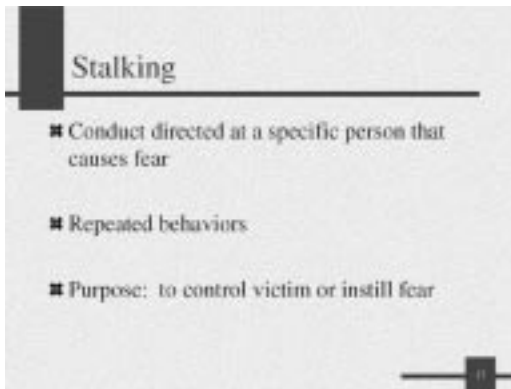


Handout: Family violence in later life wheel (2d)

Domestic violence in later life is a pattern of coercive tactics used by an abuser to gain and maintain power and control over the victim. Most often the victim and perpetrator have an ongoing, trusting relationship such as a spouse/partner, family member such as adult child, or caregiver.

Show the Family Violence in Later Life Wheel and describe how the goal of the abuser is power and control (as shown in the middle circle). The tactics the abuser uses to gain and maintain power and control are the forms of abuse seen in the pie slices and outer rim of the wheel (www.nccall.us).

Stalking



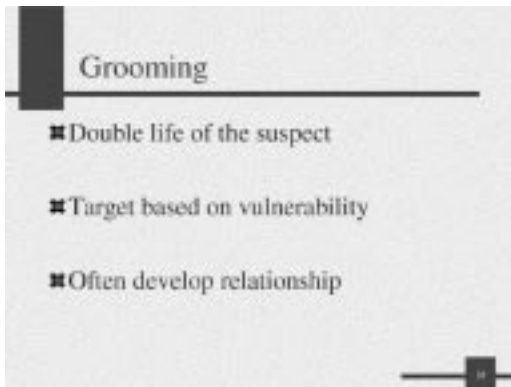
Stalking is defined as “a course of conduct directed at a specific person that would cause a reasonable person to feel fear” (www.ncvc.org).

Stalking involves repeated behaviors such as:

- Following a person
- Appearing at a person’s home or business
- Making harassing or repeated phone calls
- Leaving written or phone messages
- Leaving objects at the person’s work or home
- Vandalizing the victim’s property (www.ncvc.org).

The purpose of stalking is to control the victim or instill fear.

Grooming behavior by sexual predators



Sexual predators may target victims of any age – including elder victims. In cases of UI, “grooming behaviors” such as those used by pedophiles to engage in sexual contact with minors may be used. Suspects may live a “double life,” posing as upstanding citizens who work with children or help the elderly. However, these predators use jobs or volunteer opportunities to find vulnerable victims to prey on (Salter, 2003). Grooming an elder victim to engage in a sexual relationship may be a method by which a perpetrator commits financial exploitation.

Summary Point

There may be overlap between elder abuse, financial exploitation, domestic violence, stalking, and sexual abuse. Many older victims experience more than one form of abuse. Therefore, when investigating one form of abuse, look for other forms that may be occurring simultaneously. Additional charges may be possible if new crimes are uncovered.

ELDER ABUSE: CASE ILLUSTRATION

Modules	Time	Videos	Exercises	Slides	Handouts
• Case illustration	10 mins	I’d Rather Be Home	Large group shout out	19 – 20	

Overview

The purpose of this segment is to show the story of an actual elder abuse victim to highlight the overlapping forms of abuse and the barriers victims face to living free from violence. A recommended video clip is “I’d Rather Be Home” (a.k.a. Norman’s story) by Terra Nova Films because another segment of this tape can be shown in Module 4 to connect UI and elder abuse.

Training Content

Choose a video clip or elder abuse story to illustrate various forms of abuse and barriers victims face to living free from abuse. If using “I’d Rather Be Home,” show the first segment with Norman at the police station and then show Norman walking down the street. Skip the segment in the restaurant. Ideally, have two copies of the tape and switch tapes instead of fast-forwarding through the restaurant segment.

Exercise	I’d Rather Be Home
Purpose	Discuss key dynamics of elder abuse linking definitions in previous segment to a case example.
Equipment needed	Video or case example
Teaching method	Following the video or case description, large group discussion of the questions listed in trainers’ directions.
Slide	Exercise: I’d Rather Be Home
Handout	None

Trainer Directions to Audience:

- Ask the audience the following questions:
- What forms of abuse or tactics used by abusers did they identify?
 - How is this case similar to traditional domestic violence?
 - Is this an APS case? A civil case? A criminal case? All of the above?

Key Training Points

What forms of abuse or tactics used by abusers are present in “I’d Rather Be Home”?

- Physical
- Emotional/psychological abuse
- Financial exploitation
- Maybe neglect
- Isolation
- Intimidation, threats
- Using privilege
- Using family members

Note to trainer: Remind audience that forms of abuse are often used in combination.

Is this domestic violence in later life?

It could be. The sons are using power and control to get their way and using many of the tactics on the Family Violence Power and Control Wheel. Norman expresses hope that things will change and returns to live with his family.

Systems involved

Norman’s case could involve adult protective services and the civil and the criminal systems. Domestic violence programs may be able to assist with safety planning and legal advocacy.

BARRIERS TO LIVING FREE FROM ABUSE

Modules	Time	Videos	Exercises	Slides	Handouts
Barriers victims face	5 mins		Small grp and report out	21	2e

Overview

This segment briefly highlights the barriers victims face to living free from abuse. This interactive exercise can be done in approximately 5 minutes.

Exercise	Two Minute Barriers Drill
Purpose	Participants will identify as many barriers victims face to living free from abuse as they can in a relatively short time frame. Many of these barriers are present in cases of UI.
Equipment needed	Pen and paper at each table
Teaching method	Small group exercise with a report back to the large group
Slide	Exercise Barriers
Handout	Barriers to living free from abuse (2e)

Trainer Directions for Audience

Often victims of elder abuse, domestic violence, and UI have ongoing, trusted relationships with the suspect. They may face barriers to living free from the abuse or disengaging from a suspect who is using UI. Justice professionals who recognize these barriers understand common victim responses that may occur during investigation.

In your small group at your table, have one person find a pen and piece of paper. This person will be your scribe. In a moment, I will start my watch and you will have two minutes to list as many barriers older victims face to living free from abuse as you can. You are competing with the other tables so come up with as many challenges to living free from abuse or reasons victims stay with or return to abusers. Ready, set, begin.

Note to Trainer: Start a stopwatch or look at a clock with a second hand. Give the audience 2 minutes to complete their lists. A warning with 30 seconds remaining is often helpful.

Trainer Directions after the 2 minutes are up

Ask the scribes to raise their hands if their table has more than 10 barriers. If more than one table has more than 10 barriers, move on to 15 and then 20 until you've identified the group with the most barriers listed. Ask this group to read out loud the barriers they identified. Ask other groups to listen closely to this list because you want them to add any that their table identified if the winning group did not mention them. After the list has been read, ask for any other barriers not mentioned.

Close session by summarizing key points and announcing a 15-minute break.

MODULE 3

DYNAMICS OF UNDUE INFLUENCE

MODULE 3

Dynamics of Undue Influence

SYNOPSIS

This **75-minute** segment defines UI and patterns of tactics used by a suspect against a victim, highlighting parallels with domestic violence, stalking, and grooming.

PERFORMANCE OBJECTIVES

Participants will:

- Be able to define UI
- Recognize the parallels between domestic violence, stalking, and grooming behavior used in some sexual assault cases
- List indicators of UI
- List non-leading questions to identify potential UI
- Recognize UI may not be immediately identified therefore further investigation may be required.

MODULE AT A GLANCE

Modules	Time	Videos/DVD	Exercises	Slides	Handouts
Dynamics of UI	75 mins	Gaslight/I'd Rather Be Home	1 small group with report back	22 – 34	3a – f
• Defining UI	15 mins	Gaslight		22 – 28	3a – c
• Targeting victims	10 mins	Gaslight		29	
• Suspect's campaign	20 mins	Gaslight		30	3d
• Indicators	20 mins		Small grp – report back	31	3e – f
• Case illustration	10 mins	I'd Rather Be Home		32-33	

Equipment: Microphones, LCD player, laptop, and screen are required. Paper and pens should be at all tables. A VHS player and television are necessary if the LCD player cannot play VHS tapes. A DVD player is also required if Gaslight is on DVD and the available laptop cannot play the DVD.

Prior to this session beginning, place an index card or post-it note on each table that has one slice of the UI wheel listed on it. For example, “isolate from others and information” or “create fear.”

PRESENTATION OUTLINE

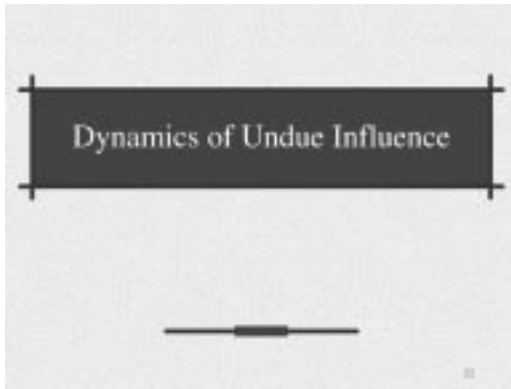
DEFINING UNDUE INFLUENCE

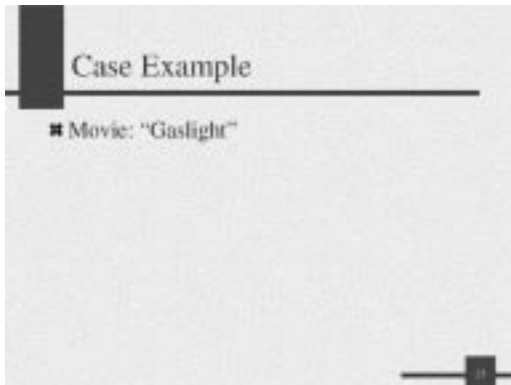
Modules	Time	Videos/DVD	Exercises	Slides	Handouts
• Defining UI	15 mins	Gaslight		22 – 28	3 a – c

Overview

This segment of the module focuses on defining UI and victim and suspect characteristics. The segment is taught using a 1944 movie titled “Gaslight.” The segments of this module using “Gaslight” are written in a script form to help illustrate how the material can be presented. The text is meant to serve as a guide – not a script to be read to the audience.

Trainers Content





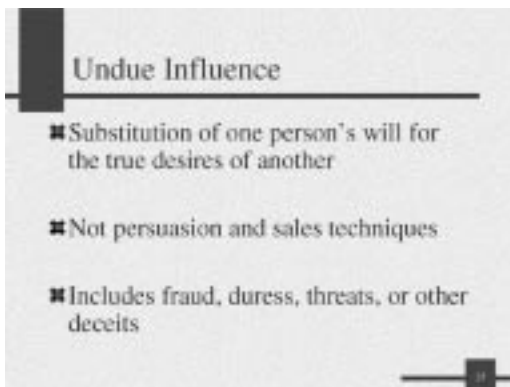
To define UI, clips from several movies will be used to illustrate key training points. The first short clip is from a 1944 movie named “Gaslight.” For the purposes of this exercise, imagine that you are a law enforcement officer in 1944. You receive a call from a neighbor who is concerned about a young, recently married woman. The neighbor tells you that the woman was kind and friendly when they first met but now seems odd and frightened. When you arrive on the scene, this is what you witness.

Note to trainer: Start DVD at Chapter 18 “Staying and Going.” Show approximately 1:30 minutes of the DVD, until Gregory starts down the stairs leaving Paula alone.

Ask audience what they think of Paula’s behavior. Possible answers could include mental illness, substance abuse or domestic violence or trauma victim.

Explain that sometimes victims of UI may seem as if they are confused, have dementia, or have a mental illness. Do not dismiss potential victims too quickly because of odd behavior. In fact, as we will discover Paula (Ingrid Bergman’s character) is the victim of a pattern of behaviors to undermine her judgment and confidence. Recommend that the audience rent this movie to learn more about DV and UI. Several more clips will be shown to illustrate the stealth tactics often used in cases of UI.

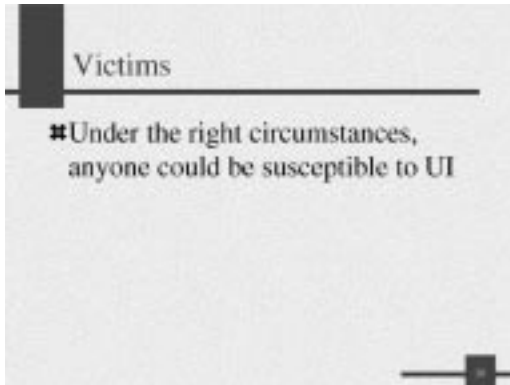
Defining UI

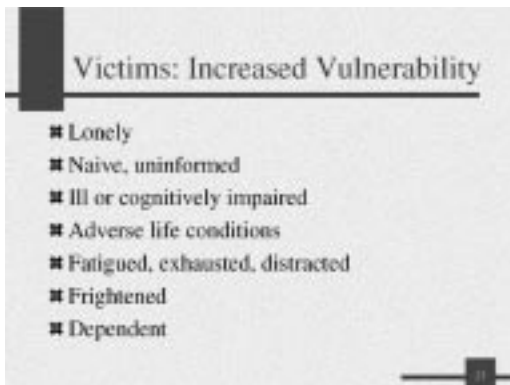


Handout: Undue influence (3a)

- Substitution of one person’s will for the true desires of another.
- Unlike common persuasion and sales techniques, fraud, duress, threats, or other deceits are often features of UI.

Victims of UI





Handout: Victims (3b)

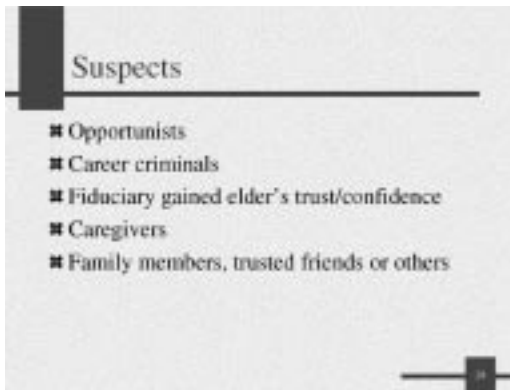
Anyone can be victim of UI. Anyone can experience the circumstances that can enhance vulnerability to UI (Singer, 1992). These include:

- Medical condition(s)
- Cognitive impairment(s)
- 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 factors, including geographical locality
- Educational achievement
- Language deficits
- Financial expertise

- Loneliness
- Naive, uninformed
- Fatigued, exhausted, distracted
- Frightened
- Dependence on others (Singer, 1992)

In Gaslight, Paula is a young woman whose parents are dead and the aunt who raised her was recently murdered.

Suspects



- Opportunists
- Career criminals
- Fiduciaries who have gained the elderly person’s trust and confidence
- Caregivers
- Family members, trusted friends or others with an ongoing relationship with the victim

In the Gaslight clip, we learn that Gregory is a career criminal who has married Paula.

TARGETING VICTIMS

Modules	Time	Videos/DVD	Exercises	Slides	Handouts
Targeting victims	10 mins	Gaslight		29	

Overview

This section illustrates how exploiters, who use a “con” or “hustle” to ensnare their victims, often target and groom their victims. Perpetrators use a pattern of tactics, similar to those used by some sexual predators, to target their victims. Perpetrators then groom their

victims so that they will not report the abuse/assault. A second clip of Gaslight will be shown to highlight the difference between Paula’s calm and rational behavior in the beginning of the movie and her hysterical and strange behavior after her marriage to Gregory.

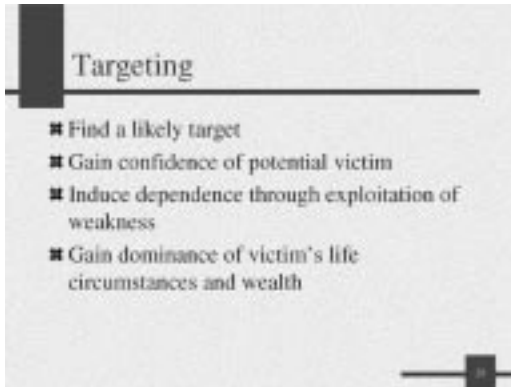
Trainers Content

Handout: Overview of models (3c)

Several excellent models exist describing the behaviors and strategies that perpetrators use to unduly influence or brainwash their victims. See Handout 3c. These models are described and cited in the participant handouts. This segment of the training will draw on the commonalities from the various models to assist justice professionals in identifying and investigating cases of UI.

Undue influence is a pattern of behaviors. As with stalking, investigators must examine the various tactics and the cumulative effect of these strategies on the victims.

In many cases, the victim knows the suspect and they may even be related. But in other cases, suspects target elderly persons, develop a relationship with them, and begin the process of exploiting them. Often UI is the result of an opportunistic suspect who finds a situation where it is possible to take advantage. For example, in the Omaha case described earlier, the perpetrator took advantage of an opportunity that presented itself when Martha Bedford was looking for a contractor.



Targeting and grooming behaviors include:

- Finding a likely target
- Gaining the confidence of the potential victim
- Inducing dependence through exploitation of the victim’s weaknesses
- Gaining dominance over the victim’s life circumstances and wealth (Singer, 1998)

In many situations, the suspect has screened victims for vulnerability. For example, imagine that you are continuing your investigation of the 1944 case in Gaslight. You would learn that Gregory selected Paula for his bride because he had killed her aunt and wanted to get back into the house to find jewels he wanted to steal.

Show Chapter 5 of the Gaslight DVD (Paula and Gregory on their honeymoon).

SUSPECT’S CAMPAIGN

Modules	Time	Videos/DVD	Exercises	Slides	Handouts
Suspect’s campaign	20 mins	Gaslight		30	3d

Overview

This segment describes the tactics exploiters use to financially exploit their victims using UI. The segment illustrates the key points by showing two additional clips from Gaslight.

Trainers Content



Handout: UI Wheel (3d)

Please turn to page 3d in your participant handouts. Here you will find a diagram with a similar format to the Family Violence Power and Control Wheel we discussed earlier. This diagram will help us understand the tactics often employed by exploiters to unduly influence their victims.

The small center circle represents the goal of the suspect. The purpose of the manipulation may vary. Some suspects want to financially exploit the victim. Other perpetrators are attempting to dominate or gain and maintain power and control over the victim.

The outer spokes illustrate common tactics. These tactics combine research by Singer, Blum, Bernatz, Biderman, and Herman. The wheel format reminds us that UI is generally not accomplished in a linear fashion where one tactic is used and completed and then another tactic is tried. Rather, several tactics may be used simultaneously against victims. Like stalking and domestic violence, a pattern of tactics is used to accomplish a specific goal – in this case financial exploitation. Undue influence, stalking, and domestic violence

do not involve an isolated incident. Rather, each of them is a process over time. Therefore, an investigator needs to examine a victim's behaviors before the suspect entered his or her life and compare them to the victim's behaviors since the suspect entered his or her life. Discuss each spoke of the wheel and learn more about Paula's experience in Gaslight.

Isolate from others and information:

Gregory sent away any visitors who tried to visit. He made Paula feel so unstable that she was afraid to leave her home. *Show scene 15* (No visitors).

Create fear of others and outside world:

Gregory portrayed outsiders as the enemy who were after her wealth. Paula heard noises at night in the house and the lights would dim. Gregory and the staff would claim not to see the lights dimming or hear the noises, increasing her fear and anxiety.

Create dependency:

As Paula became more isolated, she was increasingly dependent on Gregory for everything – including making decisions for her.

Create lack of faith in own abilities:

Gregory gave her a family heirloom – a brooch – and told her not to lose it like she had lost so many other things. She put it in a special place in her purse and when she looked for it later a short time later, it was gone.

Let's see another example of Gregory undermining Paula's confidence in herself. *Show scene 17* (about the little picture). Discuss.

Reinforce feelings of helpless and powerlessness

Gregory constantly reminded her that she lost things and could not remember details accurately.

Induce shame and secrecy:

Gregory suggested that Paula would not want others, especially the staff to know how forgetful she was becoming. So instead of asking the neighbor or staff for help, she kept her fears to herself.

Intermittent Acts of Kindness

Gregory tells Paula that they have been invited to a party. She is very excited about the opportunity to go out of the house. But then he accuses her of moving the small picture and convinces her she is not well enough to go out. He suggests he is protecting her by insisting that she stay at home. If we had the time to show this part of the movie, you would see that she is very dejected and has little emotional affect before he tells her about the party, she then gets very happy and excited about the party, then he immediately pulls the picture trick on her and she becomes even more dejected than before. He's playing her like an emotional yo-yo.

Keep unaware:

Gregory keeps Paula unaware of his intentions, which were to get into the house and find the jewels he was unable to steal when he killed her aunt. He goes out every

evening and sneaks back into the attic of the house, where he turns on the lights and searches for the jewels. His behavior in the attic explains why Paula hears noises and sees the gas lamps in the house dim.

Stop and ask for questions and comments.

INDICATORS

Modules	Time	Videos/DVD	Exercises	Slides	Handouts
Indicators	30 mins	I'd Rather Be Home	Small grp – report back	31 – 34	3e – f

Overview

This section will help participants use the UI wheel to identify potential indicators of abuse and ask non-leading questions.

Training Content

The next exercise will have participants working in small groups with the UI wheel identifying potential victim and suspect behaviors and develop non-leading questions.

Exercise	UI Indicators and Questions
Purpose	Identify victim and suspect indicators of UI. Develop non-leading questions to use during investigation to learn about these indicators.
Equipment needed	Participants will need a copy of the UI wheel. Each table will need paper and a pen. Card on each table with a title for a slice of the wheel.
Teaching method	Small group work for 5 – 7 minutes followed by large group report back. Depending on the size of the group and timing, determine how many groups report back and what is discussed.
Slide	Exercise: Indicators/Questions
Handout	Indicators (3e) Non-leading questions (3f)

Trainer Directions for Audience

Next, we will do a small group exercise working with the UI wheel. First, assign one person at your table to be the scribe and spokesperson. Next, pick up the index card in the middle of your table and turn it over. On the card is the heading of one of the slices of the

wheel. Your table will focus on indicators related to this segment of the wheel. Take 5 – 7 minutes to conduct the following exercise:

- List 2 – 4 victim indicators related to your segment of the wheel (e.g., “isolates” could be “does not have access to phone or mail.”)
- List 2 – 4 suspect indicators related to your segment of the wheel (e.g., “create fear of others” could be “says family and friends want to put you in a nursing home.”)
- Develop 3 – 5 non-leading questions for victims, suspects or both to learn about these indicators as part of an investigation.

Following the small group work, we will report back some of the indicators and questions you’ve discussed.

Note to Trainer: Give the groups 5 – 7 minutes to work on these 3 items. Have PowerPoint slide ** on the screen with the instructions listed so groups can refer back to them. Walk through the room to determine if groups are done early or need more time. When ready, close the small group and ask for large group report-backs. Based on the size of the audience and time available, determine how many groups to include and which questions to ask. For example, half the tables may report one or two victim indicators and the other half report one or two suspect indicators. Then ask all tables to list one or two non-leading questions.

Answers can be documented on a flip chart. Following this exercise, pass out the handout on indicators (pages 3e in the Participants Handouts.) This handout lists some indicators for both victims and suspects. Add any key indicators missed during the large group discussion. The Sample Non-leading Questions handout lists additional questions (Handout 3f).

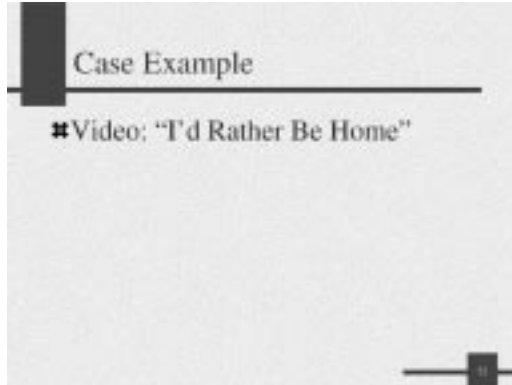
CASE ILLUSTRATION

Modules	Time	Videos/DVD	Exercises	Slides	Handouts
Case illustration	10	I’d Rather Be Home		32 – 33	

Overview

Returning to Norman, this case illustration will highlight how suspects lie and manipulate to get their way. It will also show that victims often use mirroring language.

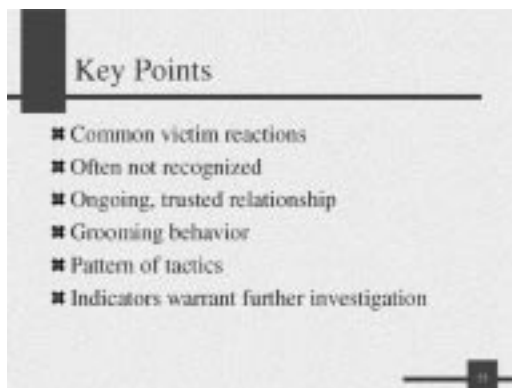
Training Content

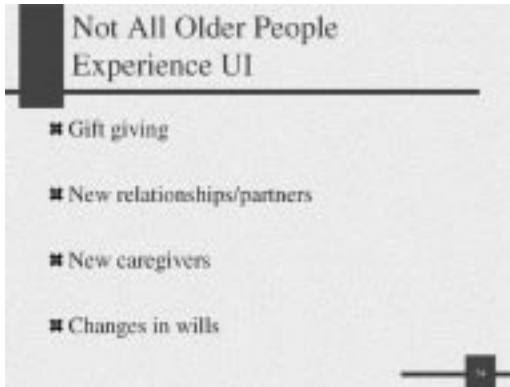


Key indicators of UI may be that the victim and suspect stories do not match. For example, victims may not know where their money is going or how much as been taken. Or the victim and suspect's stories may match too perfectly because the victim has been coached. Going back to "I'd Rather Be Home" shown earlier this morning, show another segment with Norman where he is wearing the plaid shirt and his wife joins the conversation. Show that entire segment, which lasts for ___ minutes.

Potential Discussion Points Following the Video Clip

- Notice how Norman did not have key information, e.g., he did not know that his son was living at home again.
- Discuss where Norman says, "he fell" instead of "I fell." This type of language often indicates that the victim has been coached how to respond if asked about abuse or financial exploitation.





Key Summary Points for this Segment

Some elder abuse cases may involve UI because some victims are vulnerable and may be isolated. As we have discussed earlier, there are numerous parallels between UI and tactics used by batterers, stalkers, and sexual predators. This knowledge base can help justice professionals work with victims of UI and investigate and prosecute suspects. Specifically,

- Like stalking and DV, UI is a pattern of tactics and cannot be seen if only isolated incidents are investigated.
- Like sexual assault, many suspects target their victims and some grooming type behavior may occur.
- Common reactions to victimization and trauma may be confused with mental illness or substance abuse, and therefore not investigated.
- Suspects use various tactics to accomplish their goals – often in combination.
- Isolation and victim behavior changes are key red flags that suggest further investigation is warranted.
- Often these cases involve family members with differing versions of events and complex motives.
- Investigating financial exploitation, especially where UI is present, can lead to the discovery of domestic violence, sexual abuse, or both.
- Investigating suspected domestic violence or sexual abuse could lead to the discovery of financial exploitation – often involving UI.
- Not all changes in wills or new relationships raise the specter of UI. Unhappy family members may accuse others of influencing their relative regarding changes in wills and other legal documents. Older people have the right to make their own decisions, even stupid ones, if they have decision-making capacity and are free of UI. UI is present only if the suspect has substituted his or her judgment for that of the victim.

Close this session by noting that suspect’s often justify or explain away their actions. We will examine potential justifications, including consent, and ways to counter those justifications after the 15-minute break.

MODULE 4

CONSENT AND OTHER SUSPECT JUSTIFICATIONS

MODULE 4

Consent and Other Suspect Justifications

SYNOPSIS

This **45-minute** segment will focus on a fundamental issue that must be addressed when investigating and prosecuting cases of UI: consent and other suspect justifications. Decision-making capacity is a critical element of consent and will be addressed in this module.

PERFORMANCE OBJECTIVES

Participants will:

- Identify suspect justifications.
- Understand the elements of consent and their relationship to UI cases.

FACILITATING THE MODULE

Modules	Time	Videos/DVD	Exercises	Slides	Handouts
Consent/Other Suspect Justifications (4)	45 mins	None	2 exercises	35 – 44	4a – d
• Suspect justifications	10 mins		Large grp shout out	35 – 36	
• Consent	25 mins			37 – 43	4a – c
• Countering justifications	10 mins		Large grp shout out	44	4d

Equipment: LCD player/screen/laptop, flipchart, markers and tape

PRESENTATION OUTLINE

SUSPECT JUSTIFICATIONS

Modules	Time	Videos/DVD	Exercises	Slides	Handouts
Suspect justifications	10 mins		Large grp shout out	35 – 36	

Overview

Participants will list potential suspect justifications using a large group “shout out” or large group discussion. Methods to counter these justifications will be discussed at the end of this module.

Training Content

One of the challenges of proving UI in cases of financial exploitation is that suspects use various justifications or excuses for their behavior. This segment of the module is a large group shout out exercise listing suspect justifications. At the end of the module, participants will discuss methods to counter these justifications.

Exercise	List Suspect Justifications
Purpose	Identify suspect justifications. Methods to investigate and counter these justifications will be explored in the afternoon session.
Equipment needed	Flipchart and pens to document answers. Tape to post list on the wall for reference in Module 6.
Teaching method	Large group shout out.
Slide	Consent and other Suspect Justifications Exercise: Justifications
Handout	

Trainer Directions To Audience: Name some common suspect justifications, especially for financial exploitation cases.

Notes to Trainer: Ask someone to scribe the justifications on a flip chart.

Sample answers may include:

- Denying abuse or exploitation happened
- Minimizing
- “I’m the only one who cares about her.”
- “It’s what s/he wanted.” (Consent)
- “It was a gift.” (Consent)
- “He’s so difficult to take care of.” (Stressed caregiver)
- “Medical/mental/meds made me do it.” (Organic/health issues for the caregiver/family member)
- “The senior said it was a loan.” (Consent)
- “This is how I was paid for services rendered.” (Consent)
- “He was doing me a favor. I plan to pay him back.” (Consent)
- “I didn’t know that taking this was against the law.”
- “I’m the guardian/conservator.” (Legal authority)
- “I have his power of attorney.” (Legal authority)

Many suspect justifications focus on the issue of consent. This module will first address consent and then discuss investigative strategies to counter suspect justifications.

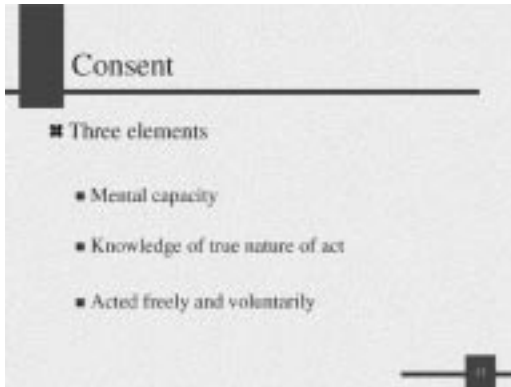
CONSENT AND DECISION-MAKING CAPACITY

Modules	Time	Videos/DVD	Exercises	Slides	Handouts
Consent	25 mins			37 – 43	4a – c

Overview

This section will discuss the elements of consent. The module lists three common elements used to determine if consent was given. After the three elements are described, an interactive exercise allows participants to apply the knowledge.

Training Content



Handout: Consent Definition

Consent and decision-making capacity are key issues in the evaluation, investigation, and prosecution of UI cases. This segment will address each of the components of consent as they relate to UI and provide a brief explanation of decision-making capacity.

In a case involving elder abuse, just like a case involving sexual assault, the suspect may claim that the victim consented to the action in question. So we must ask, “what is consent?”

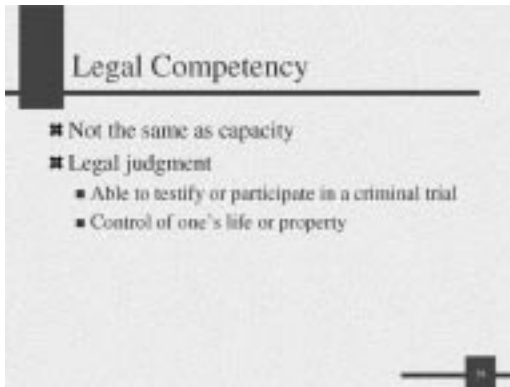
Consent means that a person must have:

1. Possessed sufficient mental capacity to make an intelligent choice whether or not to do something proposed by another person;
2. Had knowledge of the true nature of the act or transaction involved; and
3. Acted freely and voluntarily and not under the influence of threats, force or duress.

(NOTE TO TRAINERS: If your state has a legal definition of consent, either from statute,

case law, or jury instructions, that differs from the definition provided above, use that definition instead and modify the remainder of this section accordingly.)

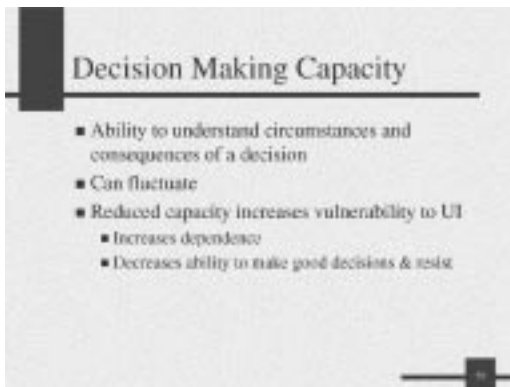
The first element, capacity, generally means the ability to do things such as take care of oneself or make decisions. For purposes of discussing UI, we focus on decision-making capacity.



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

Decision-making capacity is not the same thing as “competency” although sometimes the terms are used interchangeably by professionals and in statutes. Competency is a legal judgment relating to a person’s ability to participate in a criminal proceeding or to legal rights related to control of one’s life and property.



Decision Making Capacity

- Ability to understand circumstances and consequences of a decision
- Can fluctuate
- Reduced capacity increases vulnerability to UI
 - Increases dependency
 - Decreases ability to make good decisions & resist

Decision-making capacity is generally recognized as the ability to understand the circumstances and consequences of a decision.

Determining whether someone has decision-making capacity is not a simple matter. Capacity may fluctuate due to disease, the use or abuse of chemical substances, nutritional status, prolonged lack of sleep, and other things. Abuse or neglect may cause a victim’s capacity to become temporarily impaired, often improving with proper sleep, food and hydration. Capacity may fluctuate at various times of the day; for example, older persons

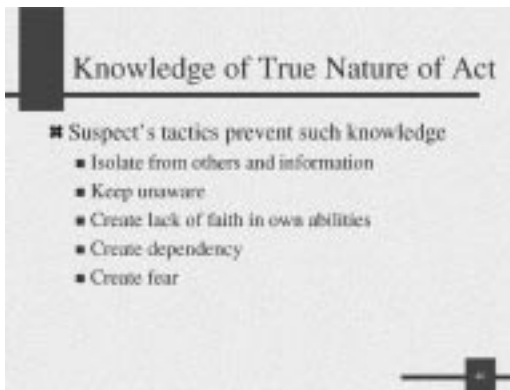
living with dementia may experience “sundowning,” which means that they have diminished capacity in the late afternoon or early evening. Persons with closed head injuries may function better later in the day than in the morning. A person may be capable of making certain types of decisions, but not others. For example, a person may be able to make decisions about health care, but not about financial matters.

A trained mental health specialist with expertise in geriatrics is probably best suited to assess the capacity of an older person. Indicate how a law enforcement officer in the jurisdiction might have a victim’s capacity assessed or determine whether an assessment has already been conducted. Discuss what role APS, health care, or other systems in the community might play in meeting the need for an assessment.

Briefly discuss the relevance of capacity to the role of law enforcement:

- Capacity affects the ability of law enforcement to interview a victim and conduct an investigation
- Capacity may be an issue at the time that the events associated with the crime took place in addition to being an issue at the time of the investigation. A capacity assessment conducted at the time of the investigation may not indicate what the victim’s capacity was at the time of the incidents in question.

A person can become a victim of UI if the person has full capacity, diminished capacity, or no capacity. It is easier to exercise UI if a person already lacks capacity to some extent. Therefore, the real focus of an investigation should not be the victim’s capacity, but instead should be whether (1) the victim had knowledge of the true nature of the act and (2) acted freely and voluntarily.



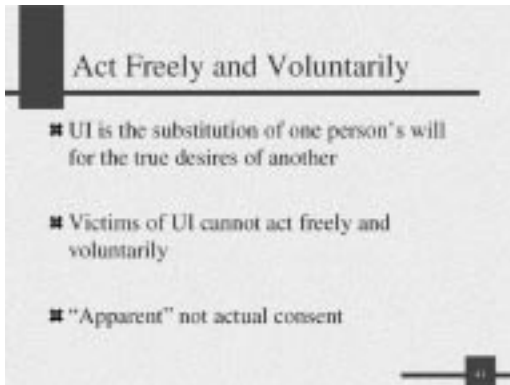
The second element is knowledge of the true nature of the transaction.

The relevance of this element to law enforcement is that it will necessitate examination of two questions:

- Did the victim have any characteristics or circumstances that could have prevented him or her from having knowledge of the true nature of the transaction?

- Did the suspect do anything to the victim that could have prevented the victim from having knowledge of the true nature of the transaction?

To illustrate, a victim who has diminished capacity because of Alzheimer’s disease or a related dementia might be unable to fully understand the true nature of a transaction. A victim with full or diminished capacity who has been cut off from other family members and sources of information by a suspect, one of the tactics discussed earlier in relation to the UI Wheel, might also be unable to fully understand the true nature of a transaction.



Acting freely and voluntarily is the third element of consent. Once again, the relevance to law enforcement raises the following questions:

- Did the victim have characteristics or circumstances that could have prevented him or her from acting freely and voluntarily?
- Did the suspect do anything to the victim that could have prevented the victim from acting freely and voluntarily?

As discussed previously, diminished capacity can make a person more vulnerable to UI, which by definition (the substitution of one person’s will for the true desires of another) prevents that person from acting freely and voluntarily. But even a person with full capacity could be prevented from acting freely and voluntarily by the actions of another person. The UI Wheel discussed earlier demonstrates tactics that could be used to manipulate a victim.

Law enforcement officers need to understand that:

- What seems to be consent may not be
- They have to consider and investigate the possibility of UI in order to determine whether consent is real or only apparent.

Exercise	Consent and UI
Purpose	Analyze role of consent in UI cases.
Equipment needed	None
Teaching method	Small group discussion at tables. One half of the room works on consent. The other half of the room works on UI. Large group report back after small group discussion.
Slide	Exercise: Consent/UI (#1) Exercise: Consent/UI (#2)
Handout	Interviewing Questions on Consent Interviewing Questions on UI and Financial Exploitation

Trainer directions to audience:

You are investigating a report made by the adult daughter of Ms. B. She has learned that her mother has signed a deed and given her home to Ms. G, who has been her in-home care attendant for 6 months. Ms. B says she wants Ms. G to have her home.

One Group or Groups:

Develop questions to explore the elements of consent

Second Group or Groups:

Develop questions to explore the tactics of UI.

Give groups 5 minutes to develop questions. Put questions on flipchart and post.

Report back: Have each group select one person to report back

Teaching Points:

The group focusing on consent should discuss whether Ms. B understood the meaning of signing a deed, whether she understood that she might have to leave her house if she gave it away, whether she understood that she might have to find somewhere else to live, why Ms. B signed the deed, what was said before and after the deed was signed, and what was Ms. B’s decision-making capacity and functioning level.

The group focusing on UI should discuss whether Ms. B was isolated, rushed to act, had the opportunity to consult with independent advisors, was cut off from old friends and family, dependent on Ms. G, or had had changes to her long-standing attitudes about and relationships with friends, neighbors, family, or other associates, etc.

- Capacity is not the only focus in UI.
- Victims of UI may have full, diminished, or no capacity, but it is easier to manipulate a person who has diminished or no capacity.

- Question whether the suspect used tactics of UI so that the suspect’s desires were substituted for those of the victim.

COUNTERING SUSPECT JUSTIFICATIONS

Modules	Time	Videos/DVD	Exercises	Slides	Handouts
Countering justifications	10 mins		Large grp shout out	44	4d

Overview

This segment will explore investigative approaches to counter suspect’s justifications.

Training Content

Earlier in this segment (Module 4), the class listed common perpetrator justifications the actions in question. In this section, class members will devise approaches to use to overcome these justifications.

Exercise	Countering Suspect’s Justifications
Purpose	List potential investigative approaches to counter suspect’s justifications
Equipment needed	None – or flip charts and markers
Teaching method	Large group shout out
Slide	Suspect Justification
Handout	Suspect Justifications and Defenses

Trainer’s Directions to Audience:

Draw class’s attention to the suspect justifications posted on the wall. Ask the audience to “Develop questions that will develop and challenge the explanation” as a large group discussion.

Teaching Point:

The UI wheel should help guide development of questions for victims, suspects, and witnesses to describe the pattern of conduct that is UI.

Sample questions may include (see Handout 3f for complete list)

Isolate from Others and Information

- Prior to 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 you visited? Is there a reason you no longer visit?
- How is your life different now that (suspect) is part of your life?

Create Fear of Others and Outside World

- What are your fears?
- What do you think your family wants of you?
- Does anyone wish you ill? Who? What do they want to see happen?

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?
- 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?
- Do your opinions or desires matter?

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?

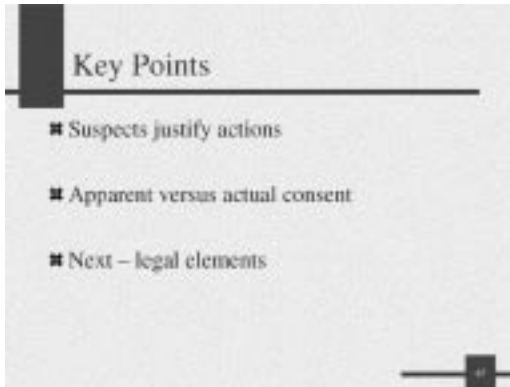
Intermittent Acts of Kindness

- 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?

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?



Summary of Module 4 and Transition

- Proving cases of financial exploitation involving UI can be challenging because suspects often insist the victim consented to the transaction.
- Countering these claims involves understanding the key components of consent.
- The next segment will discuss the legal elements that must be established to prove UI.

MODULE 5

LEGAL FRAMEWORK

MODULE 5

LEGAL FRAMEWORK

SYNOPSIS

This **25-minute** segment will link the tactics of UI to the elements of state law. It will provide a brief overview of the state’s case law and statutes related to UI.

PERFORMANCE OBJECTIVES

Participants will:

- Develop an understanding of their state’s law related to UI
- Learn how to relate their understanding of their state’s law to the tactics associated with UI
- Develop a foundation for understanding the following segments on investigating cases involving UI.

FACILITATING THE MODULE

Modules	Time	Videos/DVD	Exercises	Slides	Handouts
Legal Framework	25 mins			TBD	TBD*
Statutes/jury instructions	10 mins			TBD	TBD
Elements of UI and related tactics	15 mins			TBD	TBD

*To be developed by trainer or an attorney

Equipment/materials: LCD/laptop

PREPARING FOR THIS SESSION

Event planners and trainers must conduct state-specific research for this module before the training program. They must develop slides and handout materials based on state statutes, case law and jury instructions. A Legal Research Plan, which can be found at pages 23, 24, & 25 of this Teaching Plan, will guide trainers in conducting the legal research necessary to present this Legal Framework material.

It may be relevant to include and discuss statutes and information about mandatory reporting of suspected elder abuse to APS during this module.

Omaha Example Materials. As it was impossible to provide detailed instruction on how to present this Legal Framework material without the state-specific legal information to which it will be tied in states other than Nebraska, the Presenter Materials include resources

developed for the Omaha pilot programs to help inform and guide trainers in other states. Specifically, the Omaha example materials include: (1) the Legal Framework teaching plan, (2) the accompanying PowerPoint slides, (3) the Nebraska definitions of UI that were provided in the participant handouts, and (4) a few of the Omaha case summaries that were developed to inform the trainers as they prepared the Omaha teaching plan and that were contained in the participant handouts.

Note to Trainer:

The material covered in this module will be used in the following module on investigation. In the next module, the small groups and then the large group will discuss an actual case (the Thompson case). The small groups will identify potential sources of evidence and witnesses to determine if UI and financial exploitation occurred. As a large group, the participants will discuss the sources of evidence and witnesses necessary to prove the legal elements of UI. *Therefore, it is recommended that this material be taught immediately before Module 6 and that no break be given between the modules.*

PRESENTATION OUTLINE

STATUTES/CASE LAW/JURY INSTRUCTIONS

Modules	Time	Videos/DVD	Exercises	Slides	Handouts
<ul style="list-style-type: none"> • Statutes/case law/jury instructions 	10 mins			TBD	TBD

Overview

This segment provides an overview of state statutes, case law and jury instructions related to UI.

Training Content

Introduction

Briefly introduce this module by explaining that it will be devoted to an overview of the state’s statute(s) related to UI, a description of the elements of UI as defined by the state’s courts, and to establishing the connections between the tactics of UI that were presented in the morning and the elements of UI. Keep in mind the end user of this information is the jurors in the jury box. Therefore, the evidence to prove each element must be gathered thoroughly and presented by the prosecutor clearly.

Statute(s)

Briefly discuss pertinent provisions of state law that define UI. If state law treats UI as a crime, highlight that fact. In states where the statutes may not define UI as a crime, the presenter will need to reiterate the point made earlier that the concept of UI may be used to explain how the crime of financial exploitation was committed and counter suspect justifications that the victim consented to the suspect’s actions.

Jury Instructions

Discuss any pertinent civil or criminal jury instructions related to UI.

ELEMENTS OF UI

Modules	Time	Videos/DVD	Exercises	Slides	Handouts
Elements of UI and related tactics	15 mins			TBD	TBD

Overview

Based on state statutes, case law, and jury instructions, discuss the elements necessary to prove UI. Link each element to victim and suspect behaviors and tactics on the UI wheel.

Training Content

Elements of UI

Explain that the state’s courts have indicated that the person alleging that UI occurred must prove the following elements of UI and simply list those elements.

Linking the Tactics to the Law

Explain that the state’s court cases on UI provide guidance on the factors that courts consider when they evaluate whether the elements of UI have been proved.

Address the pertinent elements individually by (1) noting again the element and then indicating what the courts have said about the circumstances that they will consider in evaluating whether that element has been proved, and (2) relating those enumerated circumstances to relevant victim characteristics and to suspect tactics as illustrated in the UI Wheel.

Conclusion

The goal for this module was to help you understand that relating your state's law to the suspect tactics that were discussed earlier will provide a framework for your efforts to investigate and collect evidence. Doing so will help a prosecutor convince a judge or jury that UI has occurred. Integrating the law and tactics demonstrates how important it is to pay attention to victim and suspect characteristics, behaviors, or actions that you might not previously have noticed or considered relevant. But these characteristics, behaviors, and actions are critical to building a case of UI, which is the subject of the next section.

MODULE 6

INVESTIGATING CASES OF UNDUE INFLUENCE

MODULE 6

Investigating Cases of Undue Influence

SYNOPSIS

In this **90-minute** segment, an investigation of UI will be analyzed. The segment will highlight types and sources of evidence, address victim interviews, identify elements of an investigation, and describe the role of an expert witness. It will link case building to the legal elements of UI and the UI tactics wheel presented earlier.

PERFORMANCE OBJECTIVES

- Catalog sources of evidence in UI cases
- Develop an investigative plan for a financial exploitation case in which UI is present
- Identify the role of the expert in UI cases

FACILITATING THE MODULE

Module at a Glance

Modules	Time	Videos/DVD	Exercises	Slides	Handouts
• Investigation	90 mins	1 clip on DVD	1 small grp 1 large grp	47 – 62	6a – c 3g, 4b, 4c
• Investigation strategies and sources of evidence	15 mins		Large grp	47 – 49	6a
• Case plan and link to elements	35 mins	Omaha case (on DVD)	Thompson case	50 – 54	6b
• Interviewing	15 mins			55 – 58	3g, 4b, 4c
• Working with expert witnesses	25 mins			59 – 63	6c

****Note that slide numbers may need to be revised based on number of slides created for Module 5 on legal framework.**

Equipment/materials: Laptop Computer and LCD, remote mouse, flip chart, and pens

Video Clips: Short video clip of an interview of a victim who is legally incompetent (optional as segment can be taught without a clip).

PRESENTATION OUTLINE

INVESTIGATION STRATEGIES AND SOURCES OF EVIDENCE

Modules	Time	Videos/DVD	Exercises	Slides	Handouts
Investigation strategies and sources of evidence	15 mins		Large grp shout out	47 – 49	5a

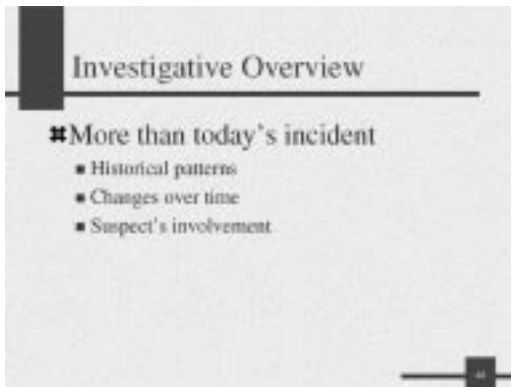
Overview

This segment will focus on conducting investigations and describe sources of evidence and potential witnesses to assist with UI case building.

Training Content

This module will apply the relevant laws, concepts, and dynamics discussed earlier to criminal case building and prosecution. The morning session provided the framework; the afternoon will focus on what law enforcement needs to do and collect to build a criminal case that the prosecutor can prove in court.

Conducting the Investigation



In most cases we focus on what happened at a particular time. Prior events are not usually important to understanding what happened when a person passed an insufficient funds check, broke into someone’s home, or stole a car.

In UI, what happened on a particular date is the endpoint of a series of actions undertaken by the suspect that quietly and steadily robs the victim of free will. In UI, what the victim does is a actually a reflection of what the suspect wants and has done, rather than an expression of what the victim wants.

Like cases of stalking and domestic violence, investigation and prosecution cannot be limited to what happened on a particular day. Instead, we must identify and prove a pattern of conduct undertaken by the suspect who has studied and built on the realities of who the victim is and their life situation.

Investigative Framework

Case building for UI requires identification of life patterns, knowledge of the critical persons and events in the victim’s life, changes over time, collection of many kinds of records and the participation of experts. While proof of the most immediate act is required, looking back over the relationship between victim and suspect from its inception to the present is also critical.

Earlier we looked at the UI tactics wheel and the legal elements of UI (which are state specific). These provide a useful framework for building the case and interviewing witnesses, including the victim.

Exercise	Sources of Evidence
Purpose	List as many potential sources of evidence in UI cases as possible.
Equipment needed	Flip chart and markers
Teaching method	Large group shout out
Slide	Sources of Evidence
Handout	Sources of Evidence and Potential Witnesses

Trainers Directions

Ask the audience: What are potential sources of evidence in an UI case?

Instructor should write them on a flipchart and post.

Evidence and Witnesses may include the following:

Selected Sources of Evidence

- Financial institutions used by victim and suspect 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

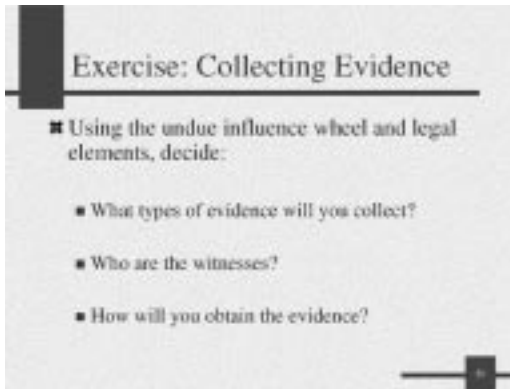
- Court order applications
- Civil litigation including interrogatories, answers, depositions, and discovery including facts supporting a claim or defense, witnesses and their locator information, and supporting documents and other evidence
- Medical and mental health and substance abuse records
- Employment records for suspect
- Deeds
- Credit card applications and history and records of purchase by suspect
- Prescriptions and prescription records for victim
- Toxicology screen for victim
- Bill 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 have or 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, social services workers, and case managers
- Medical or mental health professionals, including 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's historical behavior patterns and changes as well as recent losses and changes in health
- Friends, including neighbors, employers and clergy, to describe victim's historical behavior patterns and changes as well as recent losses and changes in health

- 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

Teaching Point: There are many kinds of evidence. Some are the same as those we use in other kinds of investigations. Others are more specialized.



CASE PLAN AND LINK TO ELEMENTS

Modules	Time	Videos/DVD	Exercises	Slides	Handouts
Investigation					
Case plan and link to elements	35 mins	Omaha case (on enclosed DVD)	Thompson case	50 – 54	3g, 4b, 4c

Overview

Based on an actual UI case, participants will list potential sources of evidence and witnesses needed to prove the elements of UI. Small group and then a large group report back will be used to facilitate the discussion. A DVD of a law enforcement officer discussing an actual UI case and the investigative process will be shown to conclude the segment.

Training Content

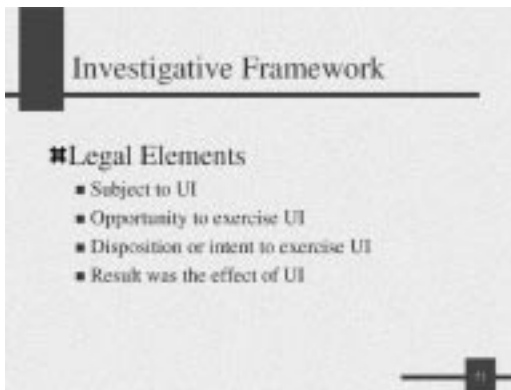
Refer students to handout: Thompson Case Facts

Exercise	Thompson Case
Purpose	Using an actual case, participants will describe potential sources of evidence and witnesses to prove the legal elements of UI
Equipment needed	Pen and paper at each table or flip chart and markers Handout copy of Thompson case DVD of Omaha case
Teaching method	Small group exercise with a report back to the large group
Slide	Investigative Framework (Legal Elements) Investigative Framework: Tactics (Wheel) Exercise: Collecting Evidence Proving Undue Influence
Handout	Thompson case (5b)

Trainers Directions

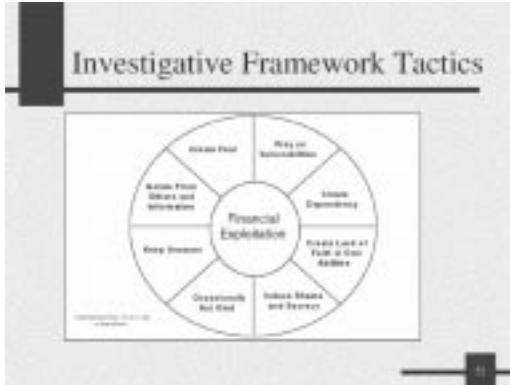
You have been assigned to investigate the Thompson case. Develop a case investigative plan by identifying the evidence and witnesses. Also decide how will you obtain the evidence.

Consider the legal framework of elements and the UI tactics wheel as you build your case.



The four elements of the legal framework: **(If your state’s legal framework differs, this must be changed. The following teaching points must be consistent with the material taught in Module 5.)**

1. The victim was a person subject to UI;
2. There was an opportunity to exercise UI;
3. Suspect had the opportunity or intent to exercise such influence; and
4. The loss was the effect of the suspect's use of UI.



Refer to the UI Tactics Wheel in your materials.

Exercise: Collecting Evidence

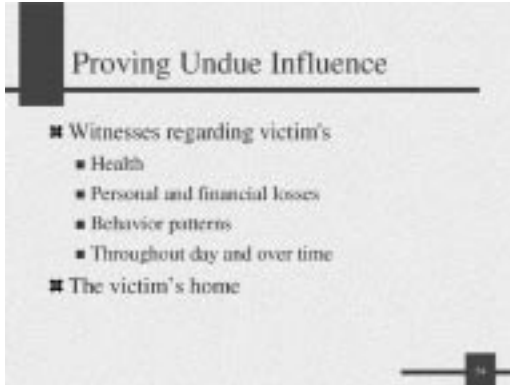
- Using the undue influence wheel and legal elements, decide:
 - What types of evidence will you collect?
 - Who are the witnesses?
 - How will you obtain the evidence?

- What types of evidence will you collect for each category?
- Who are the witnesses?
- How will you obtain this evidence?
- Place your answers on paper at your table or a flipchart and select a spokesperson to report to the group.
 - You have 10 minutes

The trainer should circulate among the table groups to assure that instructions are clear.

After 10 minutes or earlier if groups have finished sooner, conduct the report back segment. Ask each table to provide one type of evidence they identified. Direct each group to provide a different item from prior reports. Have an instructor write the answers on a flip chart.

When all tables have given their examples, move on to identifying the witnesses. Follow the same reporting back procedure with an instructor listing the responses.



Remind the participants that they are collecting evidence from persons who can address victim's health, personal and financial losses, and long standing behaviors such as gift giving and estate and financial planning. Such information should be over time (historical patterns) and at various times of the day (in case of sundowning or better and worse times of day for victim's functioning). Participants should also be reminded that a great deal can be learned from seeing the victim's home as it enables them to see what medications are in the house and assess the appropriateness of the residence for victim (e.g., has victim with mobility and vision problems recently moved to a home with stairs; is there access to a telephone and ability to summon help; is the plumbing in working order; is there evidence of neglect or hoarding of pets/animals; what is the state of the financial records).

Information on the final question (how will you collect the evidence) should begin with each group describing one way it will gather evidence. Answers may include: conduct witness interviews; subpoena; search warrants and other court orders; and obtain records, where authorized by law, from adult protective services when that agency has conducted its own independent investigation as part of a report of suspected neglect or abuse. (Teaching point: law enforcement may be unaware of this legal authority)

Stress to participants that many victims may not be able to give legal consent to authorize APS workers or law enforcement officers to obtain medical, financial, or other records because of cognitive or other impairments. A prosecutor who offers records as evidence that were obtained with authorization from a victim with questionable capacity to give consent may undermine the case. These circumstances may enable a defense attorney to argue that if the victim could consent to authorize disclosure of personal records, then the victim could consent to the supposedly illegal activity. In addition, if a defense attorney objects to the introduction of evidence obtained through the authorization of a victim with questionable capacity to give consent, a judge may exclude critical evidence because it was obtained illegally. Therefore, law enforcement officers should obtain critical records through appropriate legal process, such as a warrant, court order, or subpoena, even if APS workers have already obtained the records.

Trainer should then return to discussion of the legal elements of UI. The elements are:

1. The victim was a person subject to UI;
2. There was an opportunity to exercise UI;
3. Suspect had the opportunity or intent to exercise such influence; and
4. The loss was the effect of the suspect’s use of UI.

Let’s look at each element and the evidence and witnesses lists you have created.

Ask participants what evidence and witnesses will be helpful in establishing that element. Then discuss what else might be helpful or needs to be located.

Start with the first element. Have the participants look at the list of evidence and identify which items are relevant on “subject to undue influence.” What witnesses? Move on to the next element.

Refer the group back to the UI Wheel and show how the evidence and witness list support the tactics of the wheel.

TAKE A BREAK

Use the video clip of the Omaha case on the accompanying CD or use a local case example to show how an investigation was conducted, the complexities, and the value of working with other disciplines. The case discussion on the CD lasts approximately ___ minutes. It illustrates the importance of looking back at a suspect’s record and history, gathering good evidence, and interviewing witnesses, professionals, friends and family of the victim and the suspect.

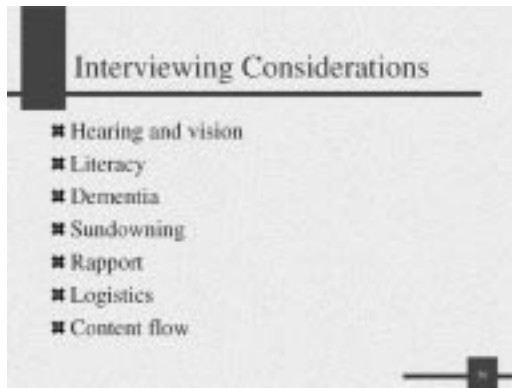
INTERVIEWING

Modules	Time	Videos/DVD	Exercises	Slides	Handouts
Interviewing	15 mins			55 – 58	3g, 4b, 4c

Overview

Training Content

While this is not a discussion of general interviewing techniques, it is helpful to quickly review issues that may be present when interviewing older persons before turning to the key questions to use when conducting interviews where UI is suspected.



Interviewing Older Adults

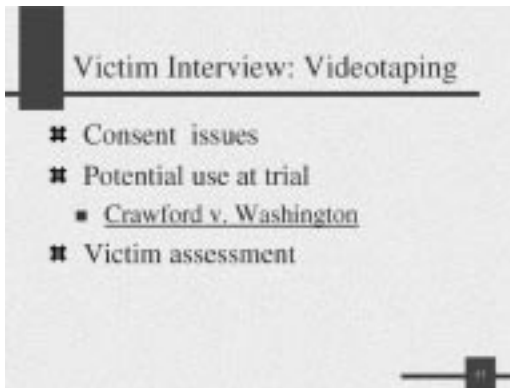
Discuss with the participants the following considerations when interviewing older adults: hearing and vision loss, dementia, and sundowning. Discuss the need to consider these issues when scheduling the time of the interview; placement of the victim to reduce glare and assist with lip reading; reduce distractions including noise. Investigators may want to do more than one interview; one at the time of day when key events occurred and one when victim is at his or her highest level of functioning to evaluate differences.

Literacy is important if the elderly witness will be asked to read and explain a document. Older persons have one of the highest rates of illiteracy in the country (Weinstein-Shr, Gail. (1995). If the case involves a legal document, assess whether the victim could read the words and understand the legal effect of its content.

Dementia must be assessed both in terms of current level of functioning and when the event(s) occurred. Even if the victim has obvious signs of dementia, consider conducting an interview anyway as it will allow investigators to gain a better understanding of the victim's ability to comprehend and function.

As with all interviews, building rapport can be crucial to success in gathering useful information. Older persons may need more time to feel comfortable so building rapport may take longer. Build rapport by learning about the person and his or her past, key figures in his or her life, interests, accomplishments, etc. This information will also help illuminate life patterns and potential witnesses.

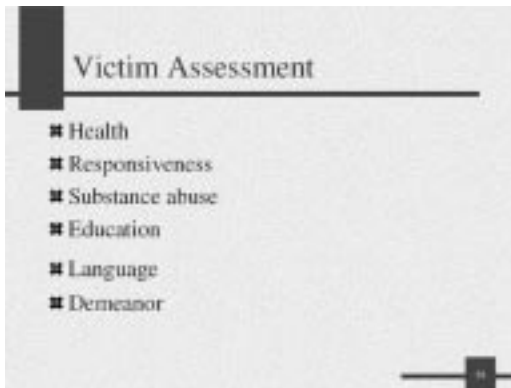
Logistics: Format of the interview is like an hourglass. Begin with the general and non-threatening, then move slowly to most uncomfortable and personal, and then conclude by returning to general, non-threatening topics. Explain to the witness what will happen next and what to do if witness recalls more information or wants to have further contact, and then thank the person for his or her help.



Note to Trainer: If you have a short clip of a videotaped interview with a person who has impaired decision-making capacity, play it. Then ask participants to shout out what they perceive to be the lesson of the tape. If there is no tape, lead a discussion asking, “what is the value of videotaping an interview with a victim who may or may not be capable of making decisions?”

Lead a discussion with the class. Some key points include:

- Value of videotaping—subtle behaviors, victim’s level of functioning, how obvious is any impairment?
- If the impairment is obvious, ask how this tape might be used in a case where the suspect claims she/he had consent to do what was done? (Answers: Lacked mental capacity to give consent, was unable to understand the true nature of the transaction, could not freely and voluntarily give consent.)
- Ask how this type of tape could be helpful in proving a case of UI. (Answers: Unable to understand the true nature of what was done, easier to confuse, easy to prey on vulnerabilities, easy to create or exploit dependence, easy to keep unaware, isolated already or easy to isolate.)
- Interview as close in time to events as possible—victim may still be in denial or isolated or both from accurate information and trustworthy persons
- Evidentiary value if victim unavailable at trial or for non-hearsay purpose
 - *Crawford v. Washington*, 541 U.S. 36 (2004) issues (in light of *Crawford*, cannot rely on hearsay statements of victims except if they are legally unavailable and at a prior time the defendant had a chance to cross examine, unless the unavailability is due to the suspect’s conduct)
 - After *Crawford* can still use a tape for a non-testimonial purpose (not for the truth), such as to show that no one could reasonably believe they had consent to do what was done.



Note to Trainer: For more information about the U.S. Supreme Court’s decision in the *Crawford* case and its implications, visit the Web site of the National District Attorneys Association/American Prosecutors Research Institute (NDAA/APRI) at <http://www.ndaa-apri.org/apri/index.html> and use the Web site’s search function to find publications about the case. Cases interpreting the *Crawford* decision are issued regularly. Visiting the NDAA/APRI Web site will ensure that you have the most current information available.

The interview is also an opportunity to assess the victim from many perspectives including: health and ability to come to court and testify; responsiveness; demeanor; and whether the witness, if called to testify, will be able to communicate effectively; any substance abuse issues; educational attainments; language capability (ability to speak English or other languages as well as language and communication deficits); willingness to participate; attitude towards the suspect and a prosecution; likelihood of recanting, etc.

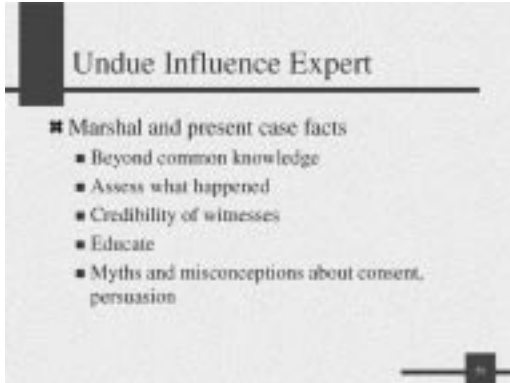
WORKING WITH THE UNDUE INFLUENCE EXPERT WITNESS

Modules	Time	Videos/DVD	Exercises	Slides	Handouts
Working with expert witnesses	25 mins			59 – 63	5c

Overview

This section will provide a brief overview of the role of an expert witness in UI cases.

Training Content



Direct class members to handouts on Overview of Models to Identify Undue Influence (3c) and Blum IDEAL Model.

All of these models look beyond the presenting event and examine the pre- existing patterns of financial planning and behavior of victim. The models also address what steps the abuser took to build trust and then exploit it to gain control of the victim’s assets.

In each model, key components include:

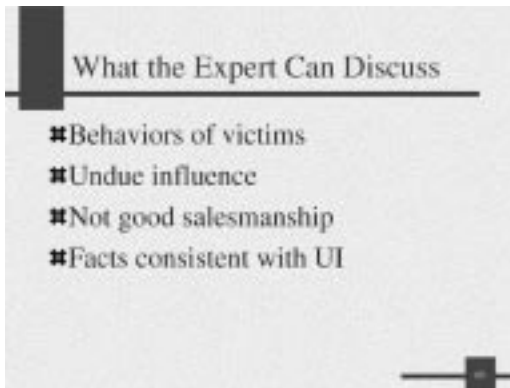
- Elements of isolation
- Exploiting victim’s dependencies and needs
- Defining reality for the victim
- Manipulation of power and authority

Different case facts may require the use of experts with varying expertise. All will need to be able to define UI and address key components. If the victim’s decision-making capacity is at issue, the expert may need particular expertise in neuro-psychology or related fields. If the victim seems to have capacity, then such expertise may be unnecessary. If the situation has components of domestic violence, it may be advisable to find an expert who can address both UI and its similarities to domestic violence.

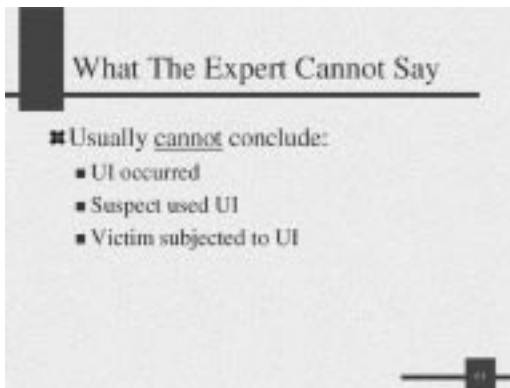
The role of expert is to advise if the elements of UI appear to be present and testify if possible. It is the judge or jury who will decide if a victim was subject to UI.

The expert witness can help to marshal and organize the facts to show how the exploiter’s tactics and deception resulted in the substitution of the suspect’s will for the victim’s. Expert testimony on UI is admissible and relevant because the subject is beyond the expertise of ordinary persons and without this information, the trier of fact cannot properly assess the credibility of the witnesses and assess what happened.

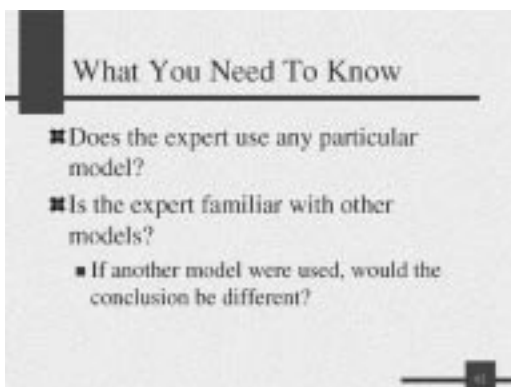
The expert witness can educate the jury and address myths and misconceptions about consent and persuasion.



In general an expert witness can: discuss the behaviors of victims of UI as a class or group (such as recanting, protecting the suspect, minimizing and denying, accusing others); define and explain UI and how it differs from good salesmanship; and indicate that the facts as suggested to the expert through a hypothetical question or other approach are consistent with the elements of UI.

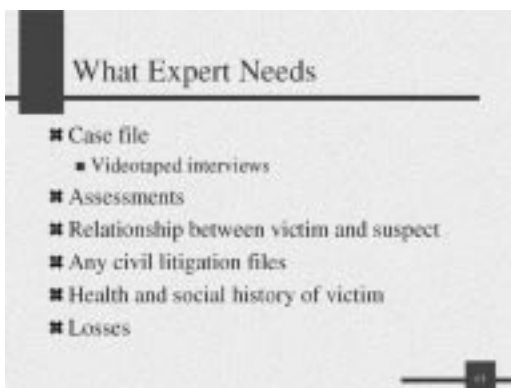


The expert witness generally cannot offer any opinion that UI actually has occurred in the case, that the suspect used UI, that a crime occurred, or that the victim was unduly influenced.



If you are interviewing or briefing an expert on UI, important questions to ask include:

- Do you use any particular model of UI?
- Are you familiar with other models and can you explain why you use one vs. another?



The UI expert should review everything known about the case, the defendant and victim, their relationship, and life patterns for each. Failure to provide adequate information may result in a flawed conclusion, an inadequate basis for a conclusion, an allegation of misconduct or hiding important contrary facts, or even all of these things. They will render the expert less effective and compromise the case. Therefore, it is preferable to err on the side of giving more, rather than less information. The expert will benefit from reviewing the following types of information:

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, 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 inability to talk freely

Information About:

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

Refer participants to handout on What the Expert Will Need

CONCLUDING THE MODULE

- As complex as UI cases can be, having an investigative framework will help: identify witnesses, direct the interviewing of witnesses, overcome defenses, and increase the likelihood of a successful prosecution.
- The stakes are high because failing to identify criminal acts of UI gives perpetrators a “license to steal.” When those perpetrators are involved in sweetheart scams, the stakes are higher. Some perpetrators, once they gain control of the assets, kill their victims either through direct acts of murder or through criminal acts of neglect.
- Because these cases are so complex and require many kinds of expertise, no single agency or discipline can successfully address all of the issues. Effective response requires a multidisciplinary response.
- In the final module, we will examine what other professionals and disciplines can do to provide evidence and expertise, bring civil actions to set aside financial transactions, and meet the on-going needs of victims.

MODULE 7

A MULTIDISCIPLINARY RESPONSE

MODULE 7

A Multidisciplinary Response

SYNOPSIS

This **30-minute** segment features a multidisciplinary panel responding to a case and describing their prospective roles. Panelists may include law enforcement, prosecution, advocacy, APS, health care and mental health professionals.

PERFORMANCE OBJECTIVES

- Recognize need for a multidisciplinary response to UI cases.
- Enhance understanding of roles of various professionals.

FACILITATING THE MODULE

Module at a Glance

Modules	Time	Videos/DVD	Exercises	Slides	Handouts
Multidisciplinary Panel	30 mins				7a
• Panel discussion	20 mins				
• Q and A for panel	10 mins		Large grp		

Equipment/materials: Table for panel members and microphones for each panelist.

Prior to the training, presenters will need to determine the format for running the multidisciplinary panel. An effective method is using an actual case, such as the one found at pages 7a - 1, 2, 3 of the Participant Materials and have each member respond to the case from his or her own discipline’s perspective. In Omaha, the prosecutor facilitated the panel. The presentation was presented as a role-play, with the various professionals bringing information to the prosecutor so she could decide if enough evidence had been collected to go forward with a trial. A draft script of the Omaha presentation can be found on pages 1d - 3 and 1d - 4 of Resources.

The panel may also be used as an opportunity for professionals to describe their role and services and answer questions from participants. See pages 1d - 3 and 1d - 4 of Resources for more information about how the panel was facilitated during the Omaha pilot programs.

WRAP-UP (30 minutes or less)

- If conducting a pre- and post-test, administer the post-test. If time permits, take questions from the participants.
- Remind participants to complete the program evaluation and indicate where the evaluation should be left.
- Thank the program presenters.
- Thank the program planners.
- If conducting a post-program evaluation, advise participants of that and when they can expect to be contacted.
- Thank the participants for the work they do every day and for taking the time from their busy schedules to come and learn about responding to UI. Tell them that you hope that what they have learned will help them look at their cases in a different way and have a better understanding of the other community agencies that can help them with cases that might involve UI.