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Undue Influence and Written Documents: Psychological Aspects

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Abstract

Experts investigating a purported undue influence situation need to study the mental and physical condition of the influencee, general social influence techniques, tactics of thought reform, and responses and behavior found in other high-control, intense influence situations ranging from the Stockholm syndrome to abused women and the methods of corrupt caretakers. The case of the "evil nurse" is discussed to illustrate these factors. In addition the following conditions of influence are discussed in their relationship to undue influence: isolation, creating a siege mentality, dependency, sense of powerlessness, sense of fear and vulnerability, and being kept unaware.

The law gives special attention to the issue of the fairness of the balance of power between the signer and the person(s) who obtained the signature on the document (Dawson, 1947). When the issue of undue influence in securing the signatures on documents is raised, the court is asking: What was the process which constituted the undue influence? What is the history of how this document and signature came about? What were the circumstances -- psychological, social, physical, medical, and so forth -- which have bearing on how free, informed, and capable the signer was at the point of signing the designated documents to freely express his or her own desires? What undue influence (improper, exploitative persuasion) was exerted on the signer?

A physician needs a thorough medical, social, and environmental history to properly diagnose a patient. The investigator analyzing the circumstances surrounding the signing of a document in which the issue of undue influence is raised must secure a thorough, multifaceted history and integrate the processes, interactions, and conditions that impinged on the signer. What, if any, effects did the circumstances and conditions produce? What has subsequently transpired?

The most frequent situations in which the issue of undue influence is raised are in the obtaining of signatures to wills and the signing of documents transferring money and property.

As Nievod (1992) noted, courts will consider at least six factors influencing the signing of legal documents: the state of mind, the "freedom of will" of the signer of a contract or will, the imbalances of power or the unfairness shown to a weaker party in the transaction, the lack of independent advice, the susceptibility of the weaker party to the importuning of the stronger, and a lack of time on the part of the signer to reflect and consider the consequences of all actions.

In addition, four sets of factors are crucial to consider in such cases. Those investigating a purported undue influence situation need to (1) evaluate the mental and physical condition of the signer, including psychiatric, psychological, and neuropsychological assessments of the person; (2) be cognizant of general social influence techniques (Cialdini, 1984); (3) be aware of brainwashing tactics, thought reform programs, and various systematic manipulation programs (Boulette & Andersen, 1986; Lifton, 1961, 1989; Ofshe & Singer, 1986; Schein, 1961; Singer, 1987; Singer and Addis, 1992; Singer & Ofshe, 1980, 1990); and (4) be aware of responses and behavior found in other high-control, intense influence situations ranging from the Stockholm syndrome to abused women and the influence of caretakers on their charges (Fulton, 1987; Graham & Rawlings, 1991; McGuire & Norton, 1988; Nash, 1976; Strassman, Thaler, & Schein, 1956; Strentz, 1980; Ursano, 1981; Ursano, Boysun, & Wheatley, 1981). The investigator should consult with experts in the just cited fields of social and psychological influence about what to look for in the way of documents and observers. The latter can be of great usefulness in reconstructing what was occurring at or near the point of the signing and may provide invaluable information about relevant conditions. These experts may have suggestions about whom to interview and whom to have examine the victim of the undue influence (if the person is still living--for often the maker of the

will is deceased).

The forms of control and the kinds and extents of deception--the psychotechnology of undue influence range from blatant and overt to prolonged, subtle, and covert. But most improper influence situations considered here are organized, planned influence programs which have been exerted by the stronger party on the signer of legal documents. How did the stronger party elicit the compliance of the weaker party?

First, let us consider how compliance in general is obtained. How does one person go about getting another to do his or her bidding?

How Is Compliance Induced?

Compliance is produced by three general methods of persuasion-- reason, coercion, or subterfuge--used singly or in various combinations. Each and combinations of these methods can be involved in the obtaining of signatures on documents.

Coercion can be actual or threatened; it can be physical, social, psychological, or financial in nature. Physical coercion is blatant, while the other forms of coercion are more covert. However, most coercive methods can be more easily noted by the intended victim and detected by investigators. Thus, corrupt persuaders resort to subterfuge and deception (Nash, 1976). They seek to gain compliance without fully informing the intended signer of the consequences of his or her act of signing. The exploitative persuader tries to keep the pawn unaware of his intention to elicit compliance and keeps the person less than fully aware that he or she is being moved along a preplanned course of action designed to benefit the persuader and to bilk or to gain control over the person, funds, and property of the other.

Vulnerability to Influence Varies

While everyone is influenced and persuaded daily in various ways, vulnerability to influence fluctuates. The ability to fend off persuaders is reduced when one is exhausted, rushed, stressed, uncertain, lonely, indifferent, uninformed, aged, very young, unsophisticated, ill, brain- damaged, drugged, drunk, distracted, fatigued, frightened, or very dependent. Each of these states should be considered when evaluating the state of mind of a signer of a document.

One of the first questions is: How vulnerable to influence was the person at the time of the signing? Why? What types of influence, behavior control, and methods to increase vulnerability to persuasion were present at the point of signing? Were conditions "constructed" to increase vulnerability to persuasion? Often these reach outrageous proportions.

Evaluating the Circumstances Preceding and Related To the Signing of the Documents

A brief example of a common situation in which undue influence is generated to obtain signatures is illustrated by the following example, which I name "The Case of the Evil Nurse." This case has the basic components of many undue influence cases and illustrates the process of undue influence. The term is not meant to indict nurses or females. Rather both historically and in the writer's experience, the person in the caretaker's role, or, in actuality, in the role of a gatekeeper, can set the stage and create the circumstances in which a person's vulnerability to persuasion can be increased or preyed on by an artful person. The term "artful and designing persons" has a longstanding legal use as well as being descriptive of the person frequently seen in the generic role of the "Evil Nurse."

The Case of the Evil Nurse

Ms. Rose, an 80-year-old spinster, lived alone. She had worked hard, and acquired considerable property and money, which she always stated was to go to her niece and her children upon her demise. They were her only surviving relatives and lived several hundred miles away. Formerly, they lived nearby. Since moving, their contact with their aunt was less frequent, but the contacts were warm, established, and intact. They called, visited, and wrote. At some point they learned that Ms. Rose had fallen and that one of her tenants, "a practical nurse" who rented a house owned by Ms. Rose, had moved into Ms. Rose's large, elegant home to care for her. Shortly, when they phoned they never got to talk with Ms. Rose. The "nurse" always gave an excuse: Ms. Rose was asleep, did not want to be disturbed, was out at a doctor's appointment, was off with a friend in a nearby town, and so on. The relatives no longer received replies to their letters. When they visited, they were turned away at the door. The nurse would say that Ms. Rose had said she was too tired and did not want visitors, or gave some other excuse.

Eventually, they became alarmed and through legal help ascertained that much of Ms. Rose's considerable wealth had been taken over. The nurse led Ms. Rose to believe that a former friend of hers to whom she had loaned money had come back and secretly stolen most of her money. The nurse further led Ms. Rose to believe that she and her nephew had saved her life after a fall and had taken her into their place, actually one of Ms. Rose's own properties. The nurse and her nephew represented that they were needed to protect her from marauders, drunks, and drug users supposedly threatening her home. Sometime later, Ms. Rose was induced to marry the nephew, a man 40 years younger, so he could "protect" her as her husband. He then "managed" her money and property, and as her spouse stood to inherit Ms. Rose's considerable wealth and properties. The relatives were told they could only visit if accompanied by a lawyer. This was a puzzling situation because it was not clear whose lawyer was intended.

The niece secured legal help and investigation revealed that to accomplish these ends, the Evil Nurse had been in collusion with a corrupt accountant and renegade attorney who had represented Ms. Rose for some years and in whom she had trust. The case was a complicated one and is disguised here to protect identities. Here is where understanding the "program" of influence to which Ms. Rose was subjected becomes important.

Those investigating the situation (lawyers, investigators, psychologists, psychiatrists, geriatric and other physicians) produced data that indicated a chronology of interrelated factors that revealed the progressive building of a pseudoworld Ms. Rose was led to accept and obey.

In retrospect, the crucial turning point in the building of greater control grew out of the fall. In that accident, the old lady suffered a mild sprained foot and a bump on the head which were considered medically nonsignificant by treating physicians at the hospital to which Ms. Rose was taken. It appeared that the old lady might have been overmedicated and pushed or tripped to produce some fear and transient incapacities. The Evil Nurse and her nephew played upon Ms. Rose's transient foot and head problems, and solicitously cared for her. History brought out that they spoke and treated her in ways to exaggerate her weakness, to infantilize her, and to promote her dependence on them. They convinced her that going out was dangerous, not only because "she couldn't walk," which hospital and physicians

refute for this time period, but they further convinced her that drug addicts and thugs were right outside her house and that potential robbers stalked the areas. In reality, the house was near a recreation yard used by law enforcement personnel during their rest periods, and the neighborhood was well patrolled by the police because of the nearby homes of foreign diplomats.

Because of these efforts, her fears, and her heightened physical dependence, the nurse and nephew persuaded her to permit them to stay in her home, as they were now needed to care for and protect Ms. Rose who had been abandoned seemingly by the world. This had been engineered by the culprits who took over Ms. Rose's life. They induced her to think a man to whom she had in earlier years lent money had come back and surreptitiously drained her finances to indulge his drug and alcohol habits. Eventually, they convinced Ms. Rose that her niece was trying to put her in a rest home and take control of her money. Ms. Rose was told falsely that the niece and her offspring never wrote, called, or visited and that they had abandoned her. Likewise, neighbors and longtime friends who called or appeared at the house were turned away by the Evil Nurse and her nephew, who never told Ms. Rose these visitors had appeared. The program that the culprits set into play caused Ms. Rose to be reduced to a state of terror and dependency. They eventually conveyed to Ms. Rose that the only way for her to retain control of her property and money, to avoid being sent to a nursing home, and to be protected from the potential robbers and thugs was to marry the nephew of the Evil Nurse.

Even after a court-appointed lawyer guardian was appointed for Ms. Rose, the Evil Nurse, who knew Ms. Rose had a lifelong hatred of people who wasted their money on alcohol, kept on influencing Ms. Rose to turn her against the lawyer by offering him a glass of wine in front of Ms. Rose, and later speaking ill of him for drinking the wine. Space limits the detail that can be provided here, but this much of the case gives the reader a sense of the general situation, the programmed quality, and the tenacity of the Evil Nurse and her colleagues.

Evaluations were made of Ms. Rose's medical status, mental competency, neuropsychological status, and the social and psychological influence strategies seemingly brought to bear on her.

How the "Program" Worked

Below are illustrations of how certain mechanisms of influence and control were put into place by the Evil Nurse, her nephew, the renegade lawyer, and the accountant to achieve complete domination of Ms. Rose and to secure control over the old woman's property, money, and person.

These represent only a few of the many techniques, tactics, and strategies one finds in various undue influence situations. Though brief, the analysis conveys the essence of one of the most frequent patterns which applies to the above case and many others. This outline can help an investigator conceptualize and explore a suspected undue influence case, and can aid in presenting to the court the psychology of the processes frequently seen in such cases.

The programmed quality and sequencing may seem sophisticated and overly intentional. However, it is prototypical of such cases and illustrates the ever-present folk art of manipulation to gain compliance, which artful and designing manipulators down through the ages have come upon. Con games, street hustles, undue influence situations, brainwashing, and the Evil Nurse scenario represent forms of obtaining compliance deceptively in situations that benefit the manipulator at the expense of the complier, and follow patterns humans fall into when subjected to certain manipulative conditions.

Undue influence situations are not all the same, as was noted earlier, but the Evil Nurse scenario occurs so frequently that it can serve as a prototype of analysis in a number of similar situations.

Further, undue influence can be wielded in a far shorter time span than was the situation in this case. Most, but not all, Evil Nurse scenarios, however, involve a fair amount of time. A fair amount of time is usually necessary to set the stage for the "siege mentality." The following conditions are important components to set the stage for undue influence.

Conditions Facilitating the Work of the Influencer

Six factors are prominent in undue influence situations. They are the production of isolation, the creation of the "siege mentality," the fostering of dependence, the creation of powerlessness, the use of fear and deception, and the keeping the victim unaware of the manipulative program put into place to influence and control the person and to obtain the signing of documents which benefit the manipulators at the cost of the signer.

1. Isolation

Isolation is set into motion by the manipulator by controlling as closely as possible all avenues of communication to and from the intended victim. The manipulator desires to create and convince the potential signer of the existence of a pseudoworld. In other words, the manipulator creates a big myth that is supported by the surrounding events and conditions that the manipulator is able to put into place. The Evil Nurse and her collaborators used such tactics as sending family, friends, and neighbors away, censoring the mail, and controlling phone calls. The Evil Nurse effectively cut off outside information and support from coming to Ms. Rose. Simultaneously, she made others feel that Ms. Rose did not want to see or talk to them. Thus, Ms. Rose was walled away from incoming information and could send none out. The Evil Nurse, aided by the renegade lawyer and the accountant, became the sole source and channel of information from and access to the broader world. They were the "gatekeepers" controlling both incoming and outgoing information. The deceitful control and manipulation of information puts the victims in these situations at a great disadvantage.

2. Creating a Siege Mentality

Creating a siege mentality is usually added once the isolation has been effected. That is, anyone other than the Evil Nurse and those few she needs to assist her to carry out her plan are spoken of in ways to convey that the outside world is threatening and menacing the well-being, even the life of the pawn. The niece and her children, friends, neighbors, and even the mythical thugs and drug addicts who might be prowling nearby were used as outer threats against whom Ms. Rose and the Evil Nurse must fortify themselves. The home was regarded as a safe fort, but always potentially threatened by sinister outside forces. The niece was turned into a greedy person trying to put Ms. Rose in a nursing home and take her money. The police in their exercise yard were labeled a group of thugs and addicts, and the patrolmen in the neighborhood as potential burglars. Ms. Rose was not taken for an eye examination and needed new glasses. She could not see clearly either to read or look about. To continue isolating Ms. Rose, the nurse placed a very large table in front of the window in Ms. Rose's room so that she could not get to the window to really see what was outside. Thus, she had no way of knowing that she was being deceived, nor could she call out to others below if she were so inclined.

3. Dependency

A sense of dependency on the nurse and her cohorts was fostered. Ms. Rose was led to see herself as alone, cut off, unable to walk easily. She was led to believe that these "helping" persons were the only trustworthy persons available. That only they, in effect, could preserve Ms. Rose's life.

4. Sense of Powerlessness

A sense of powerlessness was also created by the engineered isolation, the fostered dependency, and the siege mentality. The pawn is led to see that only the influencer or the one in charge has the power to do anything.

5. Sense of Fear and Vulnerability

A sense of fear and vulnerability was fostered by the exaggeration of her physical problems, making Ms. Rose feel vulnerable and feeble. False fears were instilled by telling her she was surrounded by menacing people, known and unknown. The Evil Nurse and her cohorts had convinced Ms. Rose that only they could preserve her life, property, and money.

6. Staying Unaware

Ms. Rose had to be kept unaware and uninformed about the construction of this false reality, that she was responding to an engineered or pseudoworld. She had to be kept unaware of the playing upon fear, the use of lies, exaggerations, deceptions, and manipulations that caused Ms. Rose to see only the constructed false world the deceivers allowed her to see. The designing band of the Evil Nurse, her nephew, the corrupt accountant, and the renegade lawyer colluded to make it appear they were the only protectors of Ms. Rose in the midst of a terrifying and threatening world. They managed to induce Ms. Rose to see them as her only support and protection in the seemingly menacing world produced by their tales and behavior. They had established the conditions under which highly stressed persons who are captives begin to form bonds and become dependent on their captors.

They literally had deceived her in many ways to make her so fearful and actually their captive, and thus vulnerable to manipulations that drove her to feel her survival depended on them. They had created conditions psychologically similar to, if not totally identical with, those conditions that produce the Stockholm syndrome (Strentz, 1980). This is a situation in which bonding between captives and captors occurs, as puzzling as it may sometimes appear to the ordinary citizen.

The Stockholm syndrome was identified in 1973 after four people held captive in a Stockholm bank vault for six days became attached to the bank robbers. The hostages came to see the police and the outside world as their enemies and dangerous. A bond developed between the hostages and their captors. Since then a number of similar situations have been described. Psychologists have become interested in a series of groups who form bonds with their captors (Graham & Rawlings, 1991), such as battered women (Boulette & Anderson, 1986), hostages, incest victims, abused children, cult members, prostitutes with pimps, prisoners of war, Chinese civilians imprisoned during Mao Tse-tung's reign, and between caretakers and their ill charges (Fulton, 1987).

Granted there are differences between Ms. Rose and the Evil Nurse example and some of the groups just listed, but it is similar to the conceptualizations of Fulton and Graham and Rawlings, who have looked at many groups and describe the isolation, fear, dependency, and eventual bonding. These writers have tied together some basic human patterns of survival compliance noted by psychologists and others in a number of situations.

It is of heuristic value to consider applicable aspects of the Stockholm syndrome psychology to Ms. Rose's circumstances and the conditions in which many vulnerable victims of undue influence find themselves. The four conditions that are said to lead to the development of the syndrome are (1) the captor threatens the woman's survival or she feels her survival is threatened; (2) the person is in a situation from which she cannot escape or at least thinks she cannot; (3) she becomes isolated from others; and (4) the captor shows some kindnesses. If these conditions exist, often a captive bonds to her captor.

It is easy to see the psychological similarities between Ms. Rose and her circumstances, which were engineered by the Evil Nurse, and the situation in which a hostage finds herself. While there are differences, the similarities and outcomes make psychological sense when we compare Ms. Rose and other captives, not necessarily those held at gunpoint, but those bonded to controllers as outlined in the literature cited. Ms. Rose was unduly influenced to marry and to sign over her property and control of her money and house in circumstances in which she had been maneuvered and manipulated by the Evil Nurse and the nephew. She felt isolated, feared for her survival, feared she could not escape the situation, and ended up bonding to the Evil Nurse and the nephew as a means of survival. Succumbing to undue influence under the circumstances as outlined here suggests that Ms. Rose fell into a common human survival strategy when so manipulated and deceived that she saw the world as the undue influencers had led her to see it. She felt isolated, powerless, surrounded by hostile forces which she did not have the power to prevail against, and responded to the false kindnesses and care of the Evil Nurse and the nephew, literally bonding with her captors.

Summary

There are infinite varieties of undue influence situations. Not all situations will include all the conditions outlined in the Evil Nurse, and most cases will have their own unique set of circumstances. However, the six factors of undue influence outlined in the Evil Nurse story will serve as guidelines to help evaluate whether undue influence is at work in the signing of documents. The case of the Evil Nurse serves to encourage the investigation of the social and psychological influences brought to bear on any person where the issue of undue influence is raised.

The six factors of isolation, creating a siege mentality, fostering near or total dependency, creating a sense of powerlessness, the use of fear and deception, and keeping the person in a state of ignorance by manipulating the environment are the basic components of many undue influence situations. These six factors serve as a pattern and as a starting point for the attorney, the investigator, and the psychologist to proceed with an investigation. The questioned document examiner, too, may be included in the investigation, because the attorney may not know at the outset whether a document was forged or signed while the person was unduly influenced. There will also be cases that will involve both forged documents and those signed under undue influence.

The analysis of a suspected undue influence situation rests upon excellent history gathering from as many sources as possible and the formulation of the psychological and social influence tactics brought to bear on the person. The condition of the person--physically, mentally, and emotionally--also needs inclusion in the analysis. The presentation to the jury needs to be conceptualized in ways that the jury can understand. The jury needs to hear about what occurred and its impact, and to have undue influence tactics explained in understandable ways. They need to know about how the signer was led to see the environment that was constructed through deception and about the social techniques used to instill fear and dependency. A jury needs to understand how a person comes to bond with another under certain conditions in order to survive, and that survival can be viewed by the victim in many ways--not just surviving a gunpoint hostage situation, but surviving

against a constructed, fearful world from which he or she sees only the options the influencer offers.

The example of what transpires between a captor and captive illustrates the position of the signer in the constructed environment that is often created by those who corruptly influence and manipulate the elderly, the infirm, foreigners, and others to sign documents that benefit the person in the role of Evil Nurse to the detriment of the signer.

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Psychological Distress in Former ICC. Psychological Issues of Former Fundamentalists. Psychological Makeup of a Pakistani Muslim Suicide Bomber. Psychological Manipulation, Hypnosis, and Suggestion. Psychologists Survey. Psychometric Properties of the Spanish Version of the GPA. Undue Influence Psychological Aspects. Urban Legends and Other Misconceptions. Using Legal Analysis to Address Claims of Spiritual Abuse. Undue influence is when the free will and judgment of an individual is tampered with through persuasion using devices such as trickery, insinuations, deception, and flattery. Overview of Undue Influence. When undue influence is being established, four elements must be present. 1. It must be shown that the victim was susceptible. Conditions such as a physical disability, physical dependency, and psychological or mental conditions may be used to show susceptibility. 2. The opportunity must exist for undue influence to take place. Undue influence has occurred between: Parent and child. Husband and Psychological Aspects of Destructive Information-Psychological Influence 455. Stolyarenko A.M. Doctor of Psychology. Professor, chief researcher of the research center, The Ministry of internal affairs of the Russian Federation, Moscow, Russia e-mail: amstol@mail.ru. Serdyuk N.V. PhD in Education, Professos, Chair of Psychology, Pedagogics and Personnel Management, Academy of Management of Ministry of internal Affairs of the Russian Federation, Moscow, Russia e-mail: natalyaserduk@inbox.ru. The article exposes the identity of the destructive psychological influence on the personality and offers directions and methods of information-psychological counteraction. Claims of undue influence can be difficult to understand and prove, both because of the lack of a definition in the Probate Code and because it occurs behind closed doors without witnesses (McNaughton, 2002). Increasingly, though, probate courts have staff such as investigators or visitors who go out and interview proposed conservatees and determine their circumstances, including the presence of apparent undue influence. Probate courts are also receiving more information from community practitioners such as Adult Protective Services social workers, physicians, and hospital discharge planners.