

**Developing an Undue Influence Screening Tool for Adult Protective Services**

**Final Report to the Borchard Foundation Center on Law and Aging**

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## **Developing an Undue Influence Screening Tool for Adult Protective Services (APS) Professionals Final Report**

On February 1, 2015, the Borchard Foundation Center on Law and Aging awarded a grant for “Developing an Undue Influence Screening Tool for Adult Protective Services”: the project was administered by The California Elder Justice Coalition (CEJC) with Community Partners serving as fiscal agent to CEJC. The work builds on an earlier project, “Undue Influence: Definitions and Applications” (2008-2009) by the San Francisco Superior Court with the assistance of the California Administrative Offices of the Court, which was also supported by the Borchard Foundation Center on Law and Aging. That study explored undue influence as it relates to conservatorship of estate in California law and suggested the need for a new statutory definition of undue influence (Quinn, Goldman, Nerenberg & Piazza, 2010).

In January 2014, California law was changed to add a new statutory definition of undue influence, replacing a definition that was enacted in 1872 that appears in the California Civil Code. Although there were over 20 references to undue influence in the California Probate Code, there was no definition of the term prior to 2014, when the new law went into effect. The new definition can be found in California Probate Code §86 as well as in California Welfare and Institutions Code §15610.70. (See Appendix A) The new definition identifies four components or elements of undue influence: victim vulnerability, alleged influencer authority, tactics, and outcomes.

In an effort to make the new definition operational and useful to Adult Protective Services (APS) professionals, who see a significant number of undue influence cases, Mary Joy Quinn, Director (ret.) of the San Francisco Probate Court, assembled a Project Team to develop an undue influence screening tool. Ms. Quinn served as the Team’s Project Director. Other members included Lisa Nerenberg, Executive Director of the California Elder Justice Coalition; Adria E. Navarro, Assistant Professor at Azusa Pacific University (Ms. Navarro assumed the position of Assistant Professor of Clinical Family Medicine at the University of Southern

California during the project period); and Kathleen H. Wilber, the Mary Pickford Foundation Professor of Gerontology at the USC School of Gerontology.

Specific objectives of the project were to:

- Achieve a clearer understanding of APS professionals’ experiences with and perceptions of undue influence and the vulnerability of their clients.
- Develop and pilot an undue influence screening tool that reflects California’s newly adopted statutory definition of undue influence that can aid in detecting and responding to undue influence and enhance referrals for conservatorship to the Probate Court.
- Increase awareness among APS management and training staff of the legal definition of undue influence and APS personnel’s experiences with the new tool that can be integrated into agency policy, procedures, and training of APS personnel.

The study drew from Rogers’s diffusion of innovations theory (Roger, 2003) to examine the “diffusion of knowledge” about undue influence among APS personnel in two California county-based service organizations. Roger’s theory posits that determining how people adopt innovations requires identifying factors that pose challenges to the adoption of new technology or methods and factors that facilitate their adoption. This analysis provided guidance for exploring current APS knowledge and determining the “challenges and facilitators” to adopting an undue influence screening tool.

Project methods included:

- I. Focus groups (4) of APS personnel in two California locations
- II. Literature review to examine the need for the screening tool, elements to include, and how a new tool would “fit” in relation to existing tools used by APS
- III. Development of a draft undue influence screening tool
- IV. Field testing of the draft tool by focus group participants
- V. Review of draft screening tool by Panel of Experts and APS leaders
- VI. Completion of final tool

## **I. FOCUS GROUPS**

Focus groups of APS personnel were conducted at the start of the study to 1) to learn about APS workers' experiences and practice with respect to undue influence, 2) to determine if there is a need for an undue influence screening tool for APS workers, and 3) to get APS workers' views and experiences with the four components of undue influence contained in the new law. Focus groups further provided insights into “facilitators and challenges” to the adoption of a new tool.

### **Methods**

#### *Recruitment*

Focus groups were conducted with APS personnel in San Francisco County in northern California ( $n=16$ , 48%) and San Bernardino County in the southern portion of the state ( $n=17$ , 52%); both are urban settings. Sites in the northern and southern portions of the state were selected to represent knowledge and understanding among workers statewide. The protocol was developed by the Project Team and approved by Azusa Pacific University's Institutional Review Board.

APS supervisors were contacted and informed about the goals of the project. Once they agreed to participate, they were instrumental in recruiting employees to participate and arranging convenient times and locations for focus group meetings. Participants were informed that there was no obligation to participate and that the meetings would be recorded. The four focus groups were conducted on-site at APS offices. In southern California, APS workers came from different branch offices within the county and not all were acquainted with one another. The only incentives for participation were lunch refreshments; no monetary compensation was provided.

#### *Protocol*

Rogers's theory provided a framework for exploring APS personnel's practice knowledge and to determine the “facilitators and challenges” to integrating a screening tool into their practice. The theory guided the development of a semi-structured protocol (see Appendix B) consisting of seven questions.

At the beginning of the focus groups, participants were informed about the project and the aim of the meeting. They were asked to sign consent forms to participate, after which they were asked a few demographic questions. Two members of the Project Team, both experienced social workers, facilitated the sessions, which began by asking participants to define undue influence.

Using a list of probes, the facilitators invited participants to describe their knowledge and understanding of undue influence based on their work with clients and their approaches for handling those situations. Following the discussions, the facilitators provided participants with copies of the new definition of undue influence.

### *Analysis*

The focus group discussions were recorded, transcribed by a professional transcription company, and analyzed with the aid of NVivo10 software. Two raters independently coded the transcripts using a thematic analysis approach. A top down analysis relied on the California statute for defining undue influence. Thematic domains corresponded to the four components of undue influence: vulnerability, apparent authority, tactics, and consequences. A fifth domain captured suggestions for the undue influence screening tool itself. Reviewers included the project's Research Director, who attended each focus group, along with a doctoral student who had not attended the focus groups and was experienced with applied research involving APS personnel. The raters met initially to develop the analysis strategy and again to integrate the coding and establish the codebook (see Appendix C). Once both reviewers had each coded the four focus groups, data was aggregated and divided into the five domains. These were individually reviewed again across the four focus group transcripts to determine main themes within each domain. A final meeting between reviewers occurred to discuss and generate findings.

### **Findings**

Of the 33 APS personnel (line staff and supervisors) who participated in the focus groups, nearly three quarters were female (73%), just over half identified as Caucasian (55%), a fifth as African American (21%), and the remainder were of Hispanic (15%) and Asian (9%) descent. The majority had Masters level education (82%) with several years of APS experience (M 9.3 years, range 0.5 to 28 years). When asked about previous training on undue influence, 94% indicated they had received some previous training. Overall awareness and understanding of undue influence as an elder abuse process was high among all participants, while knowledge of the revised legal definition of undue influence (effective in California the previous year) was low (6%). Focus group members were then asked to comment on how the four domains for undue influence defined in California law related to their practice:

## **1. Vulnerability Domain**

Each group showed strengths in identifying vulnerabilities that make their clients susceptible to undue influence. The vulnerabilities included biological, psychological, sociological, and cultural factors that are commonly assessed in the field. Impaired functional abilities were discussed in relation to situations and challenges across these domains. Primary themes identified within the domain of vulnerability included: dependency, isolation, and/or fear.

### Dependency

APS personnel frequently mentioned dyads in which clients were dependent on others for care and assistance, as well as for emotional and/or social supports as a result of physical and cognitive impairments. Although some participants shared the belief that undue influence could only occur if the client was experiencing cognitive impairment, others disagreed, with one stating emphatically “anyone can be unduly influenced!” The participants described clients experiencing various emotional states such as grief, loneliness, and depression and how these emotions can impact judgments or decisions, including diminished ability to recognize and/or resist undue influence. Being monolingual in a non-dominant language also led to culturally-related dependencies.

Although dependency was typically described in relation to disabled or older adult victims, focus group members also noted situations in which abusive adult children were dependent on their victims. Many agreed with the comment, “...specifically we see it a lot between adult children and their aging parents, where the parent is sort of manipulated into thinking that it’s their obligation or lifelong duty to support their adult children.” Examples cited included victims being asked to provide for influencers’ transportation, medical bills, or college tuition. Focus group participants also indicated that there were many instances in which cultural beliefs and expectations about caregiving played a role.

*“My experience is dealing with clients, particularly when they’re at their most vulnerable point, say, transitioning from a hospital and they receive a new caregiver. This person becomes their lifeline, or so they think, because now they are able to return home.”*

### Isolation

Dependency and isolation often set the stage for undue influence. The breakdown of social networks resulting from such population trends as smaller family size and increased divorce

rates, as well as age related disabilities that reduce mobility, may lead to a greater willingness to accept relationships that may not be ideal.

*“[The victim thinks] I know he’s taking advantage of me, but I like having him around, yes sometimes they’re even aware that they’re being taken advantage of and they’re voluntarily entering into it [to avoid isolation].”*

*“So, she’s lonely, she’s tired, she wants to be around people, she’s got some symptoms of depression. Then as you go down, the person that is influencing is a caretaker, a private caretaker, but this caretaker is providing a sense of social companionship for the client, is providing a service, transportation in which the client just recently lost her ability to drive.*

*So, her grief of not being able to drive and go do her own thing is affecting her a great deal.”*

*“...you just go back to that beginning and pinpoint and it’s like [they say], ‘Oh, I met this person at the store and I needed help with my groceries and so they came home with me,’ and it starts with this little, non-significant life event and before you know it, it’s magnified itself [and becomes elder abuse].”*

### Fear

APS workers described how clients’ fears about dependency and isolation may contribute to vulnerability. This might involve the fear of losing one’s independence or control or of losing a cherished relationship. Fear may also be related to impending changes, such as the need for more care or the expense it engenders, or the prospect of a nursing home. Fear can also be related to a serious threat of harm or death for not following the wishes of the perpetrator.

*“So it’s like in order to gain the person’s trust and be able to get into the person’s life, even a family member or someone from the outside, the person – the perpetrator being very friendly, very helpful to the victim, and then to gain the trust, and then later on start to impose like some isolation, some element of isolation or fear tactics to make the person - the victim comply.”*

*“...It could be even physical dominance though. I mean you can have a client who’s very vulnerable who’s aged, she’s frail and may have a caretaker or a younger relationship that is physically imposing. This adds to the element of fear.”*

## **2. Apparent Authority Domain**

Focus group participants described how the role of power fits into the process of undue influence. Authority or power may be based on the abuser's professional knowledge or role (e.g., doctor, financial adviser, contractor) or it may stem from their role in providing physical and/or psychological support. Authority may develop from the sense of trust developed in the relationship, whether it is a romantic relationship, a friendship, or a long-term relationship from earlier days in the victim's life.

*"I've had a case where the Catholic Church was the place where the perpetrators – actually, even a defrocked priest, came from. So they utilized the client's faith in Catholicism as a way to really get into her life.*

*"We've recently had some cases with real estate agents kind of coming into the picture, which I think is pretty relevant concerning the situation in San Francisco right now, coming in, offering to assist with taking care of properties or providing home care, they come and visit. I mean sooner than later, they're on the deed and are now owning this house of this person. How did it happen?"*

Focus group members also described authority drawn from cultural norms or obligations, such as religious faith that was exploited when lucrative opportunities presented, such as the arrival of an inheritance. Authority or power may also be derived from victims' reliance on abusers for knowledge or care, such as those relationships which may enable victims to live in their own homes and prevent them from being institutionalized.

## **3. Tactics Domain**

APS personnel were adept at discussing the tactics used to unduly influence elder abuse victims describing a multitude of scenarios all resulting in benefits to abusers. Each focus group described innocuous situations and relationships in which perpetrators gradually "wiggled into" positions of control and began unduly influencing victims. Overarching themes that APS personnel reported under this domain of tactics include: manipulation, processes occurring over time, isolation, and exploiting vulnerabilities.



## Manipulation

Manipulation was the most frequently cited tactic used in undue influence according to focus group participants. Influencers manipulated victims by exploiting their vulnerabilities and seizing opportunities to get what they wanted.

*“The first thought that comes to me [when asked, what undue influence is?] is manipulation in maybe a more covert way.”*

*“...it is a form of manipulation, a form of deception. It’s usually a situation where an opportunity presents itself due to frailty, either cognitively or physically, or both. It could be brought on by anger, retribution, settling a score with a family member, and it usually involves an abuse of power where a person is starting to lose their power of self-determination, agency, their ability to carry out their activities of daily living; and the person that’s come in as a trusted soul to the system, in one form or another, uses that opportunity to their advantage and to the detriment of the client.”*

*“I think also another example is with attorneys utilizing their – they are the professional experts and so that’s their way of sort of leading a client in a certain direction, manipulation with being the professional, knowing best, knowing the information...”*

## Processes Over Time

There was general agreement among focus group members that there is a temporal component to undue influence—that it frequently occurs over time. Those that unduly abuse others often “groom” their victims for months and sometimes years.

*“Yes, I would say like a perpetrator kind of reads the situation; that’s the process. They start to kind of read a person, what does that person need, what’s the best way to weasel into this person’s life.”*

*“I have a case right now where I think it’s called a black paper scam, where a client has been manipulated over a long period of time to think that money is going to be coming back to him at some point, and he keeps doling out the money in hopes that this larger sum is going to come.”*

## Isolation

Focus group participants described isolation in relation to two domains: as a vulnerability and as a tactic. Examples were given of how an abuser would work to isolate victims by “poisoning” existing relationships with negative talk. Other examples of isolation as a tactic

included firing established caregivers, canceling medical appointments and trips for medicine or care, and finding ways to tarnish the victim's reputation.

Group members pointed out that abusers may figure out the vulnerabilities of their victims and adjust their undue influence tactics accordingly. They may play upon victims' trust, physical decline/impairment, or psychological stress or use important knowledge or private information they have about victims to heighten vulnerability. They may also exploit victims' fears, love, guilt, happiness, loneliness, shame, and/or humiliation.

*"This made me think about a couple of cases that I have. One where – and both has to do with isolation, where one is isolated already and they're relying on this one person for everything, and then I think about another case I have where they have a rich family and social life, and had a sweetheart scam, and that person changed a lot, where they start to cut off those other social and family members from the person's life, and purposely isolating them."*

*"What I really don't like is the coercion that occurs on all these different levels whether it's nonverbal, whether it's physical invading the other person's body, that kind of stuff, not leaving them alone and isolating."*

*"Many times the undue influence is coming from caregivers and family members, and they may be isolated as well. So when this person has them isolated, they can influence them but again the core of it usually for me has been fear, fear that something is not going to stay the same, even if it's not in their best interest. [Victims] want to know that things will remain the same."*

#### **4. Consequences Domain**

When asked to describe the consequences of undue influence, focus group members described situations in which victims were experiencing, or at risk for, severe neglect, losses, or deprivation.

*"I got called because the utilities were being shut off at her house. So they were going to be without electricity or gas for about two and a-half weeks until she got her next Social Security check. She's paying because the young man is expecting her to make the \$600-monthly car payment."*

*"...that person who's gaining is benefitting, but there is a loss for the individual we're working with. So they're not getting the care that they need or being severely neglected or their bank accounts are being cleaned out and they don't have the money to afford their bills and those things. So when it affects them that way, I think that that's some of the consequences – or even before that."*

### ***APS Suggestions for the California Undue Influence Screening Tool***

Group members overwhelmingly indicated that a screening tool to detect undue influence in APS cases would be helpful, especially in communicating their findings to others. They further expressed benefits to tying their findings to statutory definitions when referring to other providers such as psychologists, law enforcement, public guardians, and attorneys; as these professionals may not view undue influence as “actionable.”

Focus group members identified a wide range of potential applications for an undue influence screening tool but also noted limitations.

#### **Participants’ Views on the Potential Applications for a Screening Tool:**

- *“...the tool would help a lot to organize our thinking and organize our documentation for presenting to the public guardian or to somebody else.”*
- *“...besides organizing information, it would be helpful to include some day-to-day function of the client, financial management of the client’s information.”*
- *[the tool] could serve as a precursor to the neuropsych evaluation, so vulnerability of the victim, evidence of vulnerability may be included and then we could give one or two sentences of what we have observed, the evidence that we have that this person is vulnerable...”*
- *“...and then the influencer’s apparent authority, again one or two sentences, brief so that this could serve as a framework to provide maybe some guidance for the person that’s going to administer a neuropsych.”*
- *“I think having a screening tool is helpful because like when you do the GDS (Geriatric Depression Scale) with a client, they might not identify as depressed, but once you do the screen and kind of talk about it, it opens up that light a little more and it’s kind of I think similar with undue influence. It might not be the immediate result but overtime it might bring back the conversation to, “We talked about this before.”*
- *“Yes, they’ll listen to things like that. I think the police, when you show them this, Oh, look overtime, we’ve screened for this, as you have to show proof of what did you do, What did you ask? Overtime, how they look – I think that helps paint a tangible picture.”*
- *“It would be great if we had a tool for undue influence that we could fill out for every client that gave us a score or gave us language suggesting the need to ask specific questions.”*
- *“Maybe this is something that needs to be watched or flagged or as you were saying... We can’t keep it open but we can definitely track it in some way like in the closure summary that there’s more of a uniform language that we use, that would be very helpful. With recurrent cases, we look at past history. We’d look at the closure summary, at least we’d like to.”*
- *“We already have what we call a RAT, a risk assessment tool that we use and I can just see it as a part of that tool I think. You’re not really giving it. I mean you’re kind of assessing for it, and then the social worker comes back and completes it in the office so it’s not something you’re communicating with the client. It’s electronic.”*

- *“Well, there is just a small area where it said, Observe behavior or write up... so you can indicate right there, ‘SSP suspects there is some undue influence towards the client’.”*
- *“I think taking a look at their physicality, where they’re living, the location, do they see family members, are they being isolated, is the caregiver controlling their money? These are the types of question that would come up with undue influence.”*
- *“Right. The tool that triggers people documenting these four pieces would be really helpful, I think in the long run in terms of taking to law enforcement, taking it to your supervisor, explaining why it’s undue influence.”*
- *“Just trying to get people to start using those four categories and documenting something in each of the four categories would be helpful...”*
- *“You’ve got to check out a box – they’re vulnerable, there’s a part of the issue, there’s actions, and there are – well do they meet all these four criteria?”*
- *“Short and sweet (laughter). Not complex in that we will be talking with law enforcement in regards to the information that we glean from this and educating them so not really complicated and short so the new line officer off the beat will understand.”*
- *“That’s one of the tools we have here [pocket guide] that we utilize and that every one of the practitioners has taken a responsibility to go to the different law enforcement sites and give, again some education, it’s short but gives training to the different law enforcements officers here in West Valley.”*
- *“If that’s going to help us somehow in court – I mean realistically I know none of us want more paperwork if this is just going to be another form going into our folder and nothing is going to be done with it, but if there’s a way that a form could help us be like, Okay, we’ve passed this onto the court,” and that makes a person’s case stronger when they go in or something, then I think that would be worth it. That’s my personal stand.”*
- *“I attach that to my referral whether it’s to law enforcement or a referral to a public guardian to for things to consider. I think that a tool of undue influence could be used kind of in that way to where I can say, Yes, I suspect some undue influence...”*
- *“At the bottom [RAT], it does indicate if there was a high risk, low risk, or medium risk for this person to be psychologically taken advantage of...”*
- *“..I think I would want to envision a tool or a form more along the lines of let’s say a tool we use now, not always, but depending on the need, depending on the case where we’re trying to go with it whether it’s a PG or a court or whatever it might be of like let’s say the SLUMS (Saint Louis University Mental Status) test, right?”*
- *“Maybe something as simple as our PC 368 card. That little tri-fold thing. The National Association on [Unintelligible], so we’ve got two national awards over the same little pocket card for law enforcement. It explains what abuse is and it explains legalities...what we can do and what we cannot do, legally speaking. It’s just a little pocket card.”*
- *“Perhaps even if they weren’t weighted, perhaps if it was just a checkbox and you counted the number of check boxes.”*
- *“Is this WIC & probate code going to be on the tool? ... Just like that pamphlet, that’s something that they’ll look at.”*

**Participants' Views on the Limitations of a Screening Tool:**

- *“..this is something I need to do more in-depth but not on every case obviously.”*
- *“They [APS] probably will use the same tools that they’re going to do their assessment with but it might help tighten their focus on the assessment and make a determination whether or not those domains are being impacted or not based on what our first test will be.”*
- *“That’s why it always has to do with the allegation. I think also that if we – like have a gut feeling. The allegation says something, then we go in; we see that there’s a very unequal relationship going on.”*
- *“Maybe on a regular basis you could just have one question that could suggest something in any case, but to have a screening tool for undue influence where we have a feeling that there is something fishy going on would be helpful and not a long tool ...not a three-hour tool.*
- *Don’t say never, but to me, a formal kind of screening would be a second step for me because maybe the AA’s right there. Maybe the AA’s in the next room. And even if the AA is sitting right there and directing the conversation, I can say, Oh my gosh, you guys get along so well. How long have you known each other? Three days? You met in the parking lot at Kaiser when she was discharged? Oh my, that is so cool, how did you happen to be there? ...[Laughter]. The more I do that, the more I am joining with them and getting the information.”*
- *“My client yesterday, you can’t really get this information from him because he’s so impaired and it’s not clear so that’s a house that I will need to continue going back. When there’s that much secrecy and that much lack of clarity about what’s going on, that’s a big indicator of risk.”*
- *“Well, see but you don’t use it on every client. So I could see this, their tool being an enhancement to your assessment but not mandatory. I wouldn't want to see our risk assessment as mandatory for each client. I wouldn't want to see this because not all cases involve undue influence. They had nothing to do with that. I wouldn't want to see either incorporated in the current risk assessment tool where there might be an added part to it because we heard that there was going to be a state developed risk assessment tool. Have you heard that?”*
- *For me, what’s important is we can see it and we can identify it when we see it. What’s challenging is getting other authorities, departments to actually recognize why it’s such a problem. If there’s some threshold that can be shown like this person is vulnerable, unduly vulnerable, like this individual because they meet a certain threshold, whatever it is, then maybe law enforcement will say, this is important because it’s serious now or because there has to be some threat. They all respond to threat. There has to be some threat that law enforcement responds to, that the courts responds to.”*
- *“It’s like there has to be a cognitive impairment for anyone to take the next step or level to protect the client. When they say, they have capacity, it’s their right to choose what is good or bad, and then nothing happens from there.*

## II. LITERATURE REVIEW

The literature review was conducted by Lisa Nerenberg, in consultation with the other members of the Project Team, to examine the need for an undue influence screening tool for APS, elements to include, and how the tool relates to other screening tools currently in use (See Appendix D). The review builds on *Undue Influence: Definitions and Applications* (Quinn, Goldman, Nerenberg & Piazza, 2010). It provides a brief overview of APS practice and describes screening tools that are currently used by APS professionals that are relevant to undue influence. These include tools designed to identify risk factors for elder abuse with an emphasis on financial abuse and undue influence screening tools and models used in other settings. The literature review provides a rationale for the development of an undue influence screening tool for APS in California that reflects APS' critical involvement in elder financial abuse and conservatorship (California's term for adult guardianship). It describes the circumstances in which undue influence is identified and how the findings of a tool could be used.

The review concludes that although a few models and tools have been developed that serve to heighten general awareness and understanding of undue influence, they are limited in scope and application, failing for example, to adequately screen for the broad range of conduct and situations that APS workers commonly encounter. These include undue influence by family, caregivers, professionals, and scammers. Suspicions of undue influence also arise in situations involving questioned adult adoptions and marriages, professional misconduct, and the violation of personal freedoms and rights (e.g. the right to decide where to live, with whom to associate, and to consent to or withhold consent for social services or medical treatment). As a result, existing tools fail to elicit information that could identify the need for interventions and services. Another shortcoming of existing tools is their failure to highlight emergent patterns or vulnerabilities that could potentially signal the need for preventative approaches such as monitoring caregivers or developing estate plans, advance directives, or prenuptial agreements that can circumvent problems. In light of these limitations, the literature review concludes that an undue influence screening tool is needed that:

- Reflects APS mandates and roles in investigating and responding to abuse, which includes contacting public guardians, responsible family members, attorneys, police, professional associations, and Long Term Care Ombudsmen.

- Reflects new statutory definitions of undue influence as codified in Probate Code §86 and Welfare and Institutions Codes §15610.30 and §15610.70.
- Reflects other relevant civil statutory definitions and criteria that may suggest heightened risk for undue influence, including Probate Code §811 (2-4), which address deficits in understanding and appreciating quantities, abstract reasoning, the ability to plan, organize, and carry out actions in one’s own rational self-interest, and the ability to modulate mood.
- Considers relevant criteria contained in California Jury Instruction (CALJIC) No 1.23, which is used to instruct jurors in criminal cases of theft in about how to interpret “consent.”
- Highlights patterns of undue influence that jeopardize clients’ safety and independence, which can be addressed through non-legal remedies and interventions.
- Suggests the need for safeguards to prevent undue influence abuse and exploitation.

### **III. DEVELOPMENT OF A DRAFT UNDUE INFLUENCE SCREENING TOOL**

Drawing from the literature review, comments from the focus groups, and existing risk assessment tools used in the two counties in which the focus groups were held, a draft tool was developed. The following factors guided its development:

1. The screening tool needs to be easily and quickly completed.
2. A one-page screening tool is desirable, if possible.
3. The screening tool needs to focus on the four components of undue influence: victim vulnerability, alleged influencer authority, tactics, and outcomes.
4. It is likely that the screening tool will not be used exclusively in determining the need for conservatorship. Rather, it could potentially be used to support referrals to law enforcement, as an aid to elder law attorneys preparing estate planning documents, and in signaling the need for referrals to neuropsychologists for in depth testing.
5. The new law does not reflect all of the situations and circumstances investigated by APS personnel in which undue influence may be a factor (e.g. sexual exploitation). The screening tool therefore needs to be broader in focus.
6. The language of the tool needs to be clear and free from jargon to the extent possible.
7. The findings of the 2010 undue influence project need to be considered.

#### **IV. FIELD TESTING OF THE DRAFT TOOL BY FOCUS GROUP PARTICIPANTS**

Focus Group participants were informed during the face-to-face meetings that once the screening tool was developed, they would be asked to pilot the first draft and provide feedback. Eight months after the final focus group, the Project Team contacted APS supervisors to inform them that the tool was ready and ask for their help in piloting it. The supervisors asked focus group participants to administer the tool to two or more current or recent clients who were believed to be victims of undue influence. The goal was to determine the tool's effectiveness in identifying factors suggestive of undue influence, its ease of use, and to determine how well the tool itself aligned with current practice. Two weeks after the tool was provided, an online survey was sent using the Survey Monkey application. Participants were asked to complete five questions which took approximately 10 minutes to answer. They were informed that their answers would be confidential and only reported in the aggregate to encourage candid feedback.

##### ***Feedback from Pilot of Draft Screening Tool***

Of the total sample of APS Focus Group participants ( $n=33$ ), three were no longer employed with the programs. Several supervisors who had participated in the focus groups were excluded because they did not carry client caseloads (one supervisor, however, did complete the survey). Of the participants with caseloads to draw from ( $n=19$ ), 58% ( $n=11$ ) completed the survey. To encourage response, the deadline was extended from two to four weeks and supervisors were asked to remind participants to complete the survey. Table 1 provides the survey questions (shaded areas), the answers received (bolded), and a brief summary of the results (right column). Where possible, the survey asked for narrative explanation of answers (denoted with \*) to encourage more feedback and achieve better clarity about APS personnel's perspectives.



**Table 1. Survey following Pilot of Draft Undue Influence Screening Tool**

Questions	Answers	Summary & Comments
<p><b>1.</b> Please indicate how many times you completed the UI Screening Tool.</p>	<p>Screening tools completed:</p> <p><u>0 1 2 3 4</u></p> <p><b>4 2 3 1 1</b></p>	<p>APS pilot with 15 cases of suspected abuse by 7 APS personnel (M=2 cases each), 4 workers answered survey without using the screening tool.</p>
<p>Please explain:</p>		<p>* 2 former clients. Why are there no instructions?            * No opportunity for use at this time.            * I only had one client recently that I was concerned re: undue influence.            *Few cases as supervisor.            *Report of financial abuse.            *Unfortunately, due to the cases received during the pilot, I was unable to use the tool.            Note: 3+= 3, 4</p>

2. Please provide your general feedback to the following statements:	Strongly Disagree-Strongly Agree				Results:
	1	2	3	4	
a. After discussing undue influence in the focus group, this UI Screening Tool met my expectations.	1		7	2	Majority felt tool met their expectations (90%).
b. I found the UI Screening Tool to be clear and easy to complete	1		5	4	Majority found it clear and easy to complete (90%).
c. This screening tool is a useful addition to the risk assessment I am currently using.	1		4	5	Majority agreement that the tool is a useful addition to their APS assessment (90%).
d. The UI Screening Tool can increase the likelihood of detecting undue influence			6	3	Unanimous support that the tool would increase detection (n=9, no answer by 2).
e. I am satisfied with the project's UI Screening Tool.	1	1	6	2	High satisfaction with first draft of screening tool (80%).
f. I feel my input and needs have been considered in the development of the tool.		1	6	2	Majority felt their input and needs were considered (89%).
g. Please explain:					<p>*No instructions to score the measures.</p> <p>*Gave input during screening tool development.</p> <p>*For some reason I was expecting some sort of numbered ranking to help decide on rating the undue influence.</p> <p>*The tool is user friendly, captures many 'red flags'.</p>

3. Do you have suggested edits for the UI Screening Tool?	No changes-Major edits needed 1 2 3 4				Results:
	6		4		Feedback for edits provided by over a third of those surveyed (40%, n=10).
Please explain:					<p>*Instructions.</p> <p>*More streamline: less pages.</p> <p>*Question 4--directions would be helpful.</p> <p>*Not sure, since social workers might give more input.</p> <p>*I did not get to spend enough time to suggest edits.</p>
4. Please comment on your readiness and willingness to use the UI Screening Tool:	Strongly disagree-Strongly Agree 1 2 3 4				Results:
a. APS training is needed to detect undue influence situations.	6 5				Unanimous agreement that APS needs training to detect undue influence (n=11).
b. Directions are needed to clarify how to use this UI Screening Tool.	1 6 3				Majority indicated directions are needed (90%).
c. I suggest this UI Screening Tool be used routinely in APS practice.	1 8 1				Majority indicated the tool be used routinely in APS practice (90%, n=10).
d. Please comment on how you think the tool can be useful:					<p>*Training and scoring instructions.</p> <p>*For new APS workers I think it can be valuable in trying to assess those types of cases.</p> <p>*In working with possible conservatorship cases.</p> <p>*It's a good tool for allegations of financial abuse.</p> <p>*Undue influence can be hard to detect and it is helpful to have things to look for to cue you it may be a factor in the case.</p> <p>*Just use on cases where capacity is in question.</p>

<p><b>5. Please indicate any other comments:</b></p>		<p>* Unfortunately, I have not utilized the undue influence screening. Thus, I am unable to give detailed feedback.  *There may be need to fine tune the screening tool which may include providing directions but as it is, it's a great start out the gates. I like it very much so I anticipate using it regularly.  *I am sorry that I did not have an opportunity to use the tool, however, looking back at previous cases, I am sure having something like this to reference as appropriate would be helpful.</p>
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\*Denotes direct respondent comment

As shown in Table 1, seven APS personnel piloted the draft screening tool with 15 cases of suspected undue influence (M=2 cases each). Four respondents did not pilot the tool for a variety of reasons, including not having cases involving suspected undue influence. Feedback on the screening tool itself was very positive. The majority felt the tool met their expectations (90%), it was clear and easy to complete (90%), and overall, it would be a useful addition to their APS assessments (90%). Suggested edits involved the addition of instructions for better clarity and keeping the tool as brief and efficient as possible.

The survey was also instructive in identifying “facilitators and challenges” (Rogers, 2006) to adopting an undue influence screening tool in APS practice. There was strong agreement that the tool would increase detection of undue influence (n=9, no answer by 2) and unanimous agreement that APS needs training to detect undue influence (n=11). The overwhelming majority indicated that the screening tool should be used routinely in APS practice (90%, n=10).

Feedback from the pilot was used in revising the screening tool and identifying contextual considerations for integrating it into APS practice through instructions and training. Caution was taken when interpreting feedback from the survey, as only one third (33%) of Focus Group participants completed the survey. Of these, just under two thirds (64%) piloted the tool with APS case(s).

## **V. REVIEW OF DRAFT SCREENING TOOL BY EXPERTS AND APS LEADERS**

In December 2015, Project Personnel conducted structured interviews with four professionals in the field of elder abuse prevention who have specialized expertise in topics pertinent to the project. The Expert Panel included a licensed psychologist who specializes in forensic neuropsychology; an expert in the criminal prosecution of elder abuse; a probate attorney with extensive experience with conservatorships, estate planning, and undue influence; and a professor of gerontology with expertise in elder abuse, APS, and the development of assessment and screening tools. The purpose of the interviews was to solicit feedback on the draft screening tool. An interview protocol was developed to capture the panelists' general impressions, specific feedback on format and content, suggestions for other groups that stand to benefit from the tool or adaptations to it, and other concerns or recommendations (see Appendix F). Panelists received copies of the interview protocol and drafts of the tool in advance of the interviews. Two members of the Project Team conducted each interview. Following the interviews, a member of the Project Team contacted the APS Liaison at the California Department of Social Services and the supervisors of Focus Group participants to request clarification and additional input on concerns raised by the panelists.

At the beginning of the interviews, the expert panelists were given the chance to make general comments about the tool. Several offered additional general impressions during and at the close of interviews as well. All agreed that the tool would contribute to APS workers' understanding of undue influence and could potentially have far-reaching applications and impact.

Comments about the tool and its benefits included:

- *“I wish I’d had this tool 20 years ago when I was first starting.”*
- *“The content is “spot on” as to what I see.”*
- *“Even if you don’t find UI, (the tool) may get people thinking about undue influence.”*
- *“I would absolutely would use the tool as evidence in criminal cases— —it would strengthen the case.”*
- *“Really interesting. There will be broad interest in the field of aging.”*
- *“(The tool) puts parameters on an issue we all need to know more about”.*
- *“The categories make sense given the literature on undue influence. They are clear. Everything is there. Succinct. “*
- *“(It would) help attorneys present cases by giving them categories to work from.”*

The experts were then asked to comment on specific sections of the tool relating to the four components of undue influence. All offered suggestions for specific changes to the wording, formatting, and scoring of the draft tool. A recurrent theme was the need for more thorough instructions for completing the screening tool. In particular, they called for greater clarity and guidance in how to use the rating systems (the draft tool included scales to indicate the relative strength of specific indicators) and suggestions for modifying the scales.

Two of the Expert Panel members expressed concerns that some of the terminology used in the tool may not be understood by all APS workers, potentially leading to errors and inaccuracies in how the forms are completed and the conclusions drawn from them. Both suggested replacing terms that may be unfamiliar to APS with lay language (e.g. replacing “cognitive deficits” to terms like “memory problems”). They pointed out that APS personnel have varying levels of education and training, with one observing that in her own teaching, she “teaches to the person I think has the least amount of knowledge on a subject,” suggesting that this may be an appropriate standard to apply to the tool as well. The same panelist further observed that there is a dearth of research on APS workers’ understanding of core concepts and terminology used in practice and that more research in this area is needed.

Concerns about potential inaccuracies in completing the tool and how they might impact conclusions prompted questions about how the tool would potentially be used and the need for clarification in this regard. One panelist suggested that if the tools were subpoenaed in criminal cases or submitted to courts (e.g. included in petitions for conservatorship), inaccurately completed tools or unsubstantiated conclusions could negatively impact case outcomes and reflect poorly on workers and their agencies. Of particular concern was the use of the rating scales to indicate if undue influence was occurring based on APS workers' impressions. Panelists further raised concerns about the extent to which workers' appraisals of situations vary and suggested the need for additional research on the reliability of the tool, the consistency of findings by workers, and the extent to which the tool reflects current understanding of undue influence by professionals, courts, and researchers. Despite these concerns, the experts agreed that the tool could be valuable to professionals beyond the field of APS and in other settings. The prosecutor on the panel, who is active in the California District Attorneys' Association (CDAA), suggested that the Project Team conduct a training on the tool at the next annual CDAA conference and offered to assist in making arrangements.

Experts Panel members identified the following groups that they believed could benefit from the screening tool:

- Public officials involved in elder abuse cases, including city attorneys, public defenders, district attorneys, public guardians, and probate court investigators;
- Private attorneys and others involved in estate planning; and
- Law enforcement personnel, including detectives who investigate crimes with an eye towards prosecution.

The experts further offered comments on the need for changes to California law with respect to undue influence. Referring to the fact that the term "undue influence" is currently mentioned in the criteria for conservatorship of estate but not in the criteria for conservatorship of person, one expert suggested that undue influence also be considered in relation to conservatorship of person. Two others expressed support for defining undue influence as a factor in criminal elder financial abuse. Although these comments do not pertain to the screening tool directly, they suggest that additional applications of tool may be considered in the future.

Following the panels, the Project Team sought additional information and insights pertaining to concerns raised during the interviews. Discussions were held with the APS Liaison at the

California Department of Social Services (CDSS) and previously a member of the state's Regional APS Training Academies, and the supervisor of the San Francisco Focus Group members, to discuss the expert panelists' concerns about APS workers' level of comprehension. Specifically, they were asked to comment on the extent to which terminology and concepts used in the tool conformed to that currently used in APS practice. They were further asked for suggestions for needed modifications. Some differences were observed in their appraisals of APS workers' level of comprehension, thereby supporting the need for further discussion and research. Recommendations made by these experts were subsequently used in revising the draft tool.

CDSS' policy with respect to APS workers involvement in legal proceedings (e.g. conservatorships) and the use of their records and documentation was also explored. The following provision in the state's Welfare and Institutions Code (WIC) is instructive:

*W&I §10850 (e). In the context of a petition for the appointment of a conservator for a person who is receiving or has received aid from a public agency, as indicated above, or in the context of a criminal prosecution for a violation of Section 368 of the Penal Code both of the following shall apply:*

*(1) An adult protective services employee or ombudsman may answer truthfully at any proceeding related to the petition or prosecution, when asked if he or she is aware of information that he or she believes is related to the legal mental capacity of that aid recipient or the need for a conservatorship for that aid recipient. If the adult protective services employee or ombudsman states that he or she is aware of such information, the court may order the adult protective services employee or ombudsman to testify about his or her observations and to disclose all relevant agency records.*

*(2) The court may order the adult protective services employee or ombudsman to testify about his or her observations and to disclose any relevant agency records if the court has other independent reason to believe that the adult protective services employee or ombudsman has information that would facilitate the resolution of the matter.*

The APS Liaison offered to assist in arranging for training APS workers in the use of the tool once it is completed. Possible venues for training include the state's four regional academies, which CDSS oversees.



Feedback from the expert panel members and APS leaders was used in developing a final draft of the tool (see below). It further served to suggest future enhancements. As one panelist pointed out, “This is the first time a tool has been constructed. It can be validated and refined later, perhaps for various potential user groups.” Suggestions for specific steps in validating the tool and approaches and resources for doing so were also provided, such as the use of “cognitive interviewing” techniques to assess what individuals think words or terms mean and resources for converting technical terms into lay language. It was pointed out that as APS personnel increasingly interface with the civil and criminal justice systems, the extent to which they understand the meaning of legal terminology and concepts is particularly important.

The experts suggested potential applications for the tool, including its use in estate planning and criminal investigations. As thought leaders in their respective fields, the expert panelists may serve as catalysts for future inquiry, public policy, and innovation. Their interest and endorsement can potentially facilitate the expanded use of the tool.

## **VI. COMPLETION OF FINAL TOOL**

The Project Team drew from the findings of the focus groups, the APS Survey, feedback from the experts, the literature review, and California’s new definition of undue influence to create the California Undue Influence Screening Tool (CUIST). Considerations applied to the crafting of the draft tool remained the same with special attention paid toward refining the terminology used in the final tool to achieve greater accuracy, consistency, and ease of use.

A major modification to the final tool was the removal of the rating system indicating APS workers’ perceptions of the strength of the evidence relating to the four elements or categories of undue influence (client vulnerability, power of influencer, tactics used, and unfair outcomes). A question indicating users’ conclusions about whether undue influence had occurred was also removed. It had been assumed that these conclusions could potentially be helpful in determining what interventions would be appropriate when undue influence was suspected and the urgency of the response. The strength of the elements might further suggest noteworthy relationships among them that could have relevance for practice. For example, one might expect that the greater the vulnerability of a client, the less power the influencer might need to influence him or her. Similarly, the extent of the losses or the level of unfairness or impropriety might suggest the level of resources that APS or others would be justified in expending.

Despite these potential advantages, the rating system was removed pending further study. This decision was made in response to the concerns described in the methodology section, including concerns about the consequences of inaccurate or unjustified findings if the tools were subpoenaed or included in legal actions (e.g. petitions for conservatorships). In the absence of testing to guide the development of a rating system and substantiate its reliability and validity, the inclusion of a rating scale was deemed premature.

As an alternative, CUIST was revised to instruct users to: 1) check a box following each of the four categories indicating whether or not there is evidence present in the category, and 2) complete a summary, indicating whether there are positive findings in one or more of the 4 categories. Follow up steps that may be taken (in accordance with agency policy and protocols) were also added. The Project Team also developed Instructions for completing CUIST (See Appendix G).

## **VII. CONCLUSIONS AND RECOMMENDATIONS**

The following conclusions and recommendations are based on the findings of the literature review, focus groups, survey of Focus Group participants, Expert Panel interviews, and discussions among Project Team members. They are divided into 1) research, 2) practice, 3) education, 4) dissemination, and 5) policy.

### **1. Research**

The enthusiastic response of focus group and Expert Panel members suggests that an undue influence screening tool will be a welcome addition to APS practice and potentially, to practice in related fields. Both groups found the elements contained in the draft tool to be consistent with their understanding of, and experiences with, undue influence.

The need for further testing of CUIST, however, is clear. In particular, the low number of cases reviewed in the pilot (15 cases) and the low number of surveys returned clearly speaks to the need for larger studies. Further research is also needed to substantiate and quantify the strength or severity of the elements of undue influence and the relationships among them. Also needed is further testing of CUIST's reliability and validity in identifying and predicting undue influence.

Rigorous research is also needed to explore user comprehension of terms and concepts used in the tool. While efforts were made to ensure that the language contained in CUIST reflects that used in the field, concerns remain regarding APS workers' understanding of certain terms and concepts, particularly those pertaining to cognition and its relationship to undue influence. As Project Team members explored worker comprehension with respect to undue influence, they learned that it reflected broader concerns in the APS field. For example, the Protective Services Operations Committee of the County Welfare Directors Association of California (CWDA) is currently exploring workers' comprehension of multiple terms and concepts commonly used in APS assessment tools and practice. These concerns have further raised questions about variations in the educational levels of APS frontline workers in the state. It has been observed, for example, that APS personnel in urban areas of California are likely to have graduate degrees (82% of the focus groups members have masters degrees in social service-related fields), while those in smaller counties are more likely to have bachelor degrees.

Although the need for greater attention to APS workers' comprehension levels and variations in education exceeds the scope of this project, the concerns raised by CUIST may underscore key challenges for the future as more cases of elder abuse reach the criminal and civil justice systems, given the potential applications of CUIST.

## **2. Practice**

Despite CUIST's limitations, focus group and Expert Panel members' enthusiasm for the tool suggests that even in its current form, it will be useful in guiding investigations, assisting APS personnel assess situations, document findings and impressions, and signal the need for follow up. As the first step in creating an undue influence screening tool for APS personnel, CUIST provides guidelines, a framework, and a starting point for tackling this perplexing subject.

Incorporating CUIST into routine APS practice will require changes to APS policy and protocols. Some of the issues that will need discussion and resolution are:

- a. When should CUIST be used? Should CUIST screenings be conducted with all new clients or only when undue influence is suspected? If it is discretionary, what would trigger its use?
- b. Are modifications to CUIST needed to conform to other formats or forms currently in use?

c. Are electronic formats the easiest way for APS personnel to complete CUIST?

Focus Group and Expert Panel members also identified additional groups that can potentially benefit from the tool. Because APS clients may require conservatorship, and APS workers lack standing to petition on clients' behalf, those sources to whom APS workers typically refer these clients are among those who stand to benefit from CUIST. These include public guardians, professional conservators who work for non-profit agencies or are in private practice, and professionals who advise families on legal matters, including estate planners. Others who stand to benefit, as suggested by Expert Panel member, include police investigators, prosecutors, estate planners and other lawyers, and judges.

### **3. Education**

Both the Focus Group participants and the Expert Panel members stressed the need for education about CUIST for line APS personnel. Specific issues include:

- How much education will be required to introduce CUIST to APS line personnel?
- What other groups can benefit?
- Who will develop the instructional manuals and who will do the teaching?
- What methods are available or needed to help APS personnel understand the difference between capacity and undue influence?

Training in CUIST should be designed with input from potential users to reflect their preferred formats and trusted sources of information. Methods of instruction may include webinars, teleconferences, regional and state conferences. The CDSS APS Liaison has offered to facilitate trainings through the CDSS regional training program and the CWDA. Eventually, training on undue influence will be available for continuing education units (CEUs) for those who assist vulnerable adults. The training could be made available online or in seminar format.

The use of multidisciplinary training can foster a common understanding about undue influence and build relationships. Professional groups that can benefit include law enforcement, the Public Guardian, probate court investigators, physicians, dentists, nurse practitioners, hospital discharge planners, and long term care ombudsman. Personnel from community

agencies, including day care centers, home health agencies, “Villages” and others may also benefit.

#### **4. Dissemination**

The high level of interest in *Undue Influence: Definitions and Applications* (Quinn, Goldman, Nerenberg & Piazza, 2010) suggests that interest in CUIST will also be high. The Project Team will build upon these earlier experiences and opportunities to disseminate CUIST.

Publications that are likely to be receptive to information about CUIST include the National College of Probate Judges; *BIFOCAL* (a publication of the ABA Commission on Law and Aging); the newsletter of the National Adult Protective Services Association; the *Journal of Elder Abuse and Neglect*; and *Victimization of the Elderly and Disabled*. The Team will also use social media, including listservs, Facebook, Twitter, and others to publicize CUIST.

The California Elder Justice Coalition (CEJC) will use its communication channels to disseminate CUIST, including its website, its bi-monthly News & Updates, and social media. Members of CEJC’s Steering Committee will also assist in dissemination.

CUIST will also be introduced through presentations at professional forums and conferences. Whenever possible, sessions will be interactive to provide audience members with opportunities to try CUIST using case examples. Recent and upcoming presentations include:

- Presentation by Research Director Adria Navarro at the Gerontological Society of America on November 15, 2015.
- Workshop by Mary Joy Quinn and Lisa Nerenberg at the American Society on Aging annual conference on March 23, 2016.
- Presentation planned for California District Attorney Association held in December 2016.
- NAPSA’s annual conference in August 2016.

#### **5. Legislation**

Two legislative issues were mentioned in the focus groups and by the Expert Panel members. As described earlier, there is no specific mention of undue influence in the Probate Code criteria for the appointment of a conservator of person (§1801(a)), which addresses non-financial matters. It was noted that undue influence can be a factor in inducing a vulnerable individual to marry, to adopt another adult, to engage in exploitive sexual activity, and to engage in other

detrimental activity. Including the term undue influence would address those non-financial situations.

Focus group and Expert Panel members also recommended adding undue influence to the definition of financial elder abuse contained in California Penal Code sections 368(d) and 368(e). Although *People v. Brock* (2006) 143 Cal. App. 4th 1266 established that undue influence is not a crime under Penal Code §368, the appellate court that ruled in the case noted that “legally supportable theories that vitiate the consent of an elder or dependent adult would support the legislature's previously stated intent to provide special consideration and protection to elders and dependent adults because of their increased vulnerability.” An attempt to affect this change failed in 2008 (SB 1259); however, with the advent of the 2014 civil law more closely defining and describing undue influence, the criminal system may take notice and act.

## **References**

- Quinn, M. J., Goldman, E., Nerenberg, L., & Piazza, D. (2010). *Undue influence: Definitions and applications*. San Francisco: San Francisco Superior Court. Retrieved from <http://www.courts.ca.gov/documents/UndueInfluence.pdf>
- Roger, E. M., (2003), *Diffusion of Innovations*, Fifth edition, New York: Free Press.

## **APPENDICES**

- A. California Definition of Undue Influence
- B. Protocol for Focus Group Interviews
- C. Codebook from Analysis of Focus Group Interviews
- D. Literature Review
- E. Project Team and Expert Panel Members
- F. Questions for Experts
- G. California Undue Influence Screening Tool and Instructions

**APPENDIX A. Definition of Undue Influence (Probate Code §86 and Welfare and Institutions Code §15410.70\***

“Undue influence” means excessive persuasion that causes another person to act or refrain from acting by overcoming that person’s free will and results in inequity. In determining whether a result was produced by undue influence, all of the following shall be considered\*\*:

<b>Vulnerability of the victim</b>	<b>Influencer’s apparent authority</b>	<b>Actions or tactics used by the influencer</b>	<b>Equity of the result</b>
Evidence of vulnerability may include, but is not limited to, incapacity, illness, disability, injury, age, education, impaired cognitive function, emotional distress, isolation, or dependency, and whether the influencer knew or should have known of the alleged victim’s vulnerability.	Evidence of apparent authority may include, but is not limited to, status as a fiduciary, family member, care provider, health care professional, legal professional, spiritual adviser, expert, or other qualification.	Evidence of actions or tactics used may include, but is not limited to, all of the following: a. Controlling necessities of life, medication, the victim’s interactions with others, access to information, or sleep. b. Use of affection, intimidation, or coercion. c. Initiation of changes in personal or property rights, use of haste or secrecy in effecting those changes, effecting changes at inappropriate times and places, and claims of expertise in effecting changes.	Evidence of the equity of the result may include, but is not limited to, the economic consequences to the victim, any divergence from the victim’s prior intent or course of conduct or dealing, the relationship of the value conveyed to the appropriateness of the change in light of the length and nature of the relationship. b. Evidence of an inequitable result, without more, is not sufficient to prove undue influence.

\*Probate Code §86 states that “undue influence” has the same meaning as defined in Section 15610.70 of the Welfare and Institutions code. The actual language contained in the chart can be found in that Welfare and Institutions code.

\*\*Not all four categories are required for a judicial determination of “undue influence”

**NOTE:** The law was put into chart format for your convenience.



## APPENDIX B: PROTOCOL FOR FOCUS GROUP INTERVIEWS

Thank you for joining us today. As your manager may have explained, we are studying the perspectives of Adult Protective Services (APS) personnel to learn more about their knowledge, practices, and responses to occurrences of undue influence. The study goal is to develop an APS screening tool focused on detecting undue influence. We think a screening tool could possibly make it easier to identify undue influence and help with risk assessments.

Today we will be talking with you about undue influence to learn more about how you experience it in your work. We will also ask you about how you respond to these issues and suspicions. You may be aware there is a new California law defining undue influence and we'll talk about that too. For this study, we will conduct a total of four focus groups: two here in San Francisco and two in San Bernardino County. We are recording your comments today so that we will have an accurate record of what you said rather than relying on our memory alone.

Following these focus group conversations our goal is to develop a first draft for a screening tool on undue influence. We have arranged to have experts in the field look over our work to provide input and advice. We are then asking APS practitioners such as yourselves to try the screening form in the field with two or three cases from their own caseloads, while (of course) keeping any client information confidential. Reflections on how the tool works will provide input for us to develop the final version of the screening tool, which we will make available to APS practitioners in California.

Our meeting will last no more than two hours. In that time, we have seven questions to ask and look forward to having a good discussion. Before we begin, we'd like you to look over the study's informed consent form, please ask any questions you may have and then please sign it and turn it in to one of us before we get started.

### Focus Group Questions:

1. Professionals and lay people tend to have different ways of understanding what undue influence means. Please tell us, from your perspective what undue influence is?

Probes, if not covered:

- Is this a topic you have had training on?
- Does a definition come to mind?
- Had you heard about the new legal definition (2014)?

2. When investigating the possibility of undue influence, what makes you think it is happening or could happen?

Probes, if not covered:

- Are there common situations where you see it?
- Do you see victims respond in a certain way?
- Any special questions used to detect undue influence?
- 

3. Have you found any cultural differences or patterns in cases of undue influence?

Probes, if not covered:

- Are there socioeconomic differences?
- Are there patterns according to race/ethnicity?
- Things you may do differently?

4. What actions can you take if you suspect undue influence is happening or could happen?

Probes, if not covered:

- Any special information you collect?
- Any historical information you check?
- What referrals might you make?
- Is conservatorship considered?
- Consultations with your supervisor?

5. What types of administrative support do you find helpful or do you need with cases that may involve undue influence?

Probes, if not covered:

- Supervision and training provided?
- Protocols or procedures?
- Input from specialists?
- 

6. Do you have suggestions on how APS personnel can best detect and respond to cases involving undue influence?

Probes, if not covered:

- Consider criteria for the screening tool?
- Tips for detection?
- Trainings or services needed?

7. Are there any other thoughts or input you might have for us?

## APPENDIX C: CODEBOOK FROM FOCUS GROUP ANALYSIS

The four Focus Group transcripts content were coded into eight domains consisting of the follows content:

<b>Vulnerability</b>	<b>Apparent authority</b>	<b>Tactics</b>	<b>Consequences</b>	<b>Detection</b>
Unexpected occurrence	Stranger	Secrecy	Quality of Life	Seeks approval from alleged abuser (AA)
Undocumented	Roommate	Scam	Inequitable outcome	Protecting the AA
Trust	Romantic relationship	Romance	Emotional Distress	Intuition
Poor Insight	Real Estate agents	Poisoning relationships		Incongruences
Physical Frailty	Physician	Physical harm		Finger-pointing
No relations	Other Relation	Over time		Evidence
Mental illness	Gender	Opportunity		Denial of access by AA
Low income	Family member	Manipulation		Denial despite evidence
Loneliness	Clergy	Isolation		Defer to others
Language	Caregiver	Deception		Clear Communication
Incapacity	Attorney	Control of person		Body Language
Health decline	Adult Children	Control of interactions		Behaviors
Guilt		Control of assets		AA Remains in the Room
Functional Ability		Caring		AA Reasoning
Fear		Befriending the victim		Uncooperative
Expectations		Threaten		
Economic				
Duty or Obligation				
Disability				
Dependency				
Confusion				
Cognitive Function				
Capacity				
Aware of being taken advantaged				
Age				
Vanity				
Affection				
Ability to protect self				

<b>Culture</b>	<b>Interventions</b>	<b>Tool Suggestions</b>
Southern U.S. Hispanic Chinese African American	Psych assessment Probate court Physician Legal services Law enforcement Forensic center Fiduciaries Community awareness Barriers Bank coordination Annulment Advocacy Support systems	Each listed as Findings

## APPENDIX D

### LITERATURE REVIEW:

#### **The Need for an Undue Influence Screening Tool for Adult Protective Services Personnel**

Lisa Nerenberg

##### **Introduction**

Undue influence, or the subordination of a person's will to more powerful individuals using unfair tactics, is a relatively new focus in the field of elder abuse and exploitation. It has, however, long been addressed in the legal arena with regard to will and trust contests and contract disputes. It has also been addressed in the fields of psychology, sociology, criminology, advertising, and law enforcement to explain such diverse phenomenon as social control by totalitarian regimes, hostages bonding with their captors, cult recruitment and retention, and confidence crimes.

Adult Protective Services (APS) personnel, who are often the first responders in elder abuse cases, are likely to observe undue influence used as a means to financially exploit older and dependent adults. Financial abuse is among the most frequently reported types of elder abuse and ranges from simple theft, robbery, and the misuse of powers of attorney, to complex scams, identity theft, and predatory lending. Financial abuse can be extremely difficult to evaluate and substantiate particularly when diminished mental capacity or undue influence is believed to play a role. A variety of risk assessment and cognitive screening tools are currently used by APS personnel to help them identify financial abuse. These tools do not, however, adequately address undue influence.

This literature review examines the need for an undue influence screening tool for APS. It describes indicators of undue influence drawn from various disciplines and sources, including financial elder abuse, undue influence in the legal context, how California law addresses undue influence, psychological dimensions of undue influence, tactics used by perpetrators, and models and screening tools that are currently in use to identify undue influence. It further describes situations in which a tool is needed and how an undue influence tool "fits" in relation to existing risk assessment and capacity screening tools. In doing so, the review provides a rationale for the development of an undue influence screening tool for APS personnel in California.

##### **Introduction to Adult Protective Services (APS)**

APS is a federal program charged to protect individuals who are endangered as a result of unsafe or hazardous living conditions, physical abuse, neglect, exploitation, or self neglect. APS programs are further mandated under state laws to accept and investigate reports of abuse and neglect to elderly and dependent adults (non-elderly adults who are vulnerable as a result of disabilities). APS services are voluntary as long as victims are capable of exercising informed consent (or conversely, of withholding consent). A first step in intervening is, therefore, determining whether an abused or vulnerable adult wants help and is acting freely when he or she gives or withholds consent for protective services. Questions about clients' capacity also arise in determining what interventions are available to stop abuse and the extent to which victims can participate in service planning. Barriers to acting freely include coercion, trickery or fraud, diminished mental capacity and undue influence.

In California, authority to investigate reports of abuse is granted under Welfare and Institutions Code §15600 *et seq*, which requires certain professionals to report suspected abuse of

people over the age of 65 and adults with disabilities. Abuse includes physical violence, psychological abuse, isolation, abandonment, abduction, false imprisonment, neglect by caregivers, and financial abuse (the unlawful taking of a senior's money or property). APS provides 24-hour emergency services, assesses risk, and connects clients to support services.

Until recently there was little federal guidance or regulation for state APS programs, resulting in variations in how programs are administered and funded, their policies and procedures, their educational requirements for APS personnel, and the tools they use to guide investigations and assess clients' needs. The Elder Justice Act (EJA), which was signed into law in 2010 as part of the Patient Protection and Affordable Care Act, called for the creation of a national structure and agenda for elder justice. The Administration for Community Living of the Department of Health and Human Services (ACL) has responsibility for implementing the EJA, which includes overseeing APS coordination, data collection, and training. A primary goal has been to achieve greater uniformity across the country. Steps toward achieving that goal include the National Adult Maltreatment Reporting System (NAMRS), which is being designed to collect information about states' APS programs and data on investigations, clients, and perpetrators. In 2015, ACL released *Voluntary Consensus Guidelines for State Adult Protective Services*, which addresses program administration, time frames for receiving reports of maltreatment, conducting investigations, service planning and intervention, training, and evaluation. The Guidelines are currently under review ([http://www.aoa.acl.gov/AoA\\_Programs/Elder\\_Rights/Guidelines/](http://www.aoa.acl.gov/AoA_Programs/Elder_Rights/Guidelines/)).

California's APS program is also in transition. The program has historically been county based, with key functions and procedures developed by county programs. Counties design their own protocols for handling cases and cross report to other agencies that have investigative or follow up responsibilities. They also have discretion in the screening and assessment tools assessment tools they use.

APS programs also vary widely in their resources, staffing patterns, educational requirements for employees, and the training they offer. In some counties, APS workers perform other social service functions in addition to APS, while other counties have dedicated APS workers some of whom may even specialize in specific forms of abuse such as financial exploitation (Mosqueda, et al., 2015)

Decentralization became even more pronounced in California when APS was "realigned" as part of a 2011-2012 state budget agreement, which transferred fiscal management for programs to county governments. The state, however, retained responsibility for ensuring that APS mandates are met and overseeing a statewide APS training program. In 2015, the California Department of Social Services received state funds for a full-time executive-level civil service position to oversee APS operations, provide liaison between county, state, and federal APS programs, and develop regulations and guidelines for APS programs in the state.

These efforts to standardize and professionalize APS practice at both the state and national levels create new opportunities for instituting promising practices that can result in greater uniformity and consistency. In light of the increasingly common and complex cases of financial abuse that APS personnel are encountering, as well as increased interest in undue

influence as a factor in financial abuse, the introduction of an undue influence screening tool for consideration within and beyond California is particularly timely.

### **Elder Financial Abuse**

APS in California receives up to 10,000 cases of abuse a month.<sup>1</sup> Between January 2006 and September 2011, new reports of elder financial abuse increased by 32%. Financial abuse includes theft and robbery; the misuse of powers of attorney, trusts, and deeds; fraudulent marriages and adult adoptions; “sweetheart scams;” telemarketing fraud; investment fraud; ponzi schemes; identity theft; predatory lending; and affinity scams (often against immigrants). Although people of all ages may experience exploitation, older Americans are primary targets and are likely to suffer greater consequences. Estimates of the aggregate losses incurred as a result of elder financial exploitation range from \$2.9 billion (MetLife Mature Market Institute, 2011) to \$36.48 billion (True Link, 2015). The average loss in money and assets to individual victims has been estimated at \$87,967 (Jackson & Hafmeister, 2010). Elder financial abuse and exploitation also have serious consequences for society. One in ten financial abuse victims turns to Medicaid (called “Medi Cal” in California) as a direct result of exploitation (Gunther, 2011).

Explanations for the increased incidence of financial abuse and exploitation have ranged from the recession (Maxwell, 2010) to an increase in reports from financial institutions, whose employees, since 2005, are required to report abuse under the state’s mandatory reporting law.

Financial abuse cases pose formidable challenges for APS. Evidence is often in the hands of abusers and financial institutions, and financial institutions often claim that federal privacy laws trump state mandates, restricting them from reporting abuse or providing critical evidence to investigators. Perhaps the greatest challenge is posed by cases involving victims with diminished mental capacity. Financial abuse frequently involves the transfer of assets through instruments such as wills and powers of attorney, which are improper or illegal if the older person does not understand the terms or appreciate their consequences (Naimark, 2001). Substantiating abuse is even more difficult when the alleged abuse involves transactions that occurred in the past, in which case, investigators must establish the progression of incapacity in relation to past events.

Professionals in the field of elder abuse prevention have increasingly observed that undue influence often occurs in concert with diminished mental incapacity in elder financial abuse and exploitation (Sheena, Horning, Wilkins, Dhanani, & Henriques, 2013). In some cases, however, seemingly competent victims appear to be acting voluntarily even as they make decisions that are contrary to their self-interests. This includes giving unscrupulous or predatory individuals access to their assets, marrying or adopting new acquaintances, purchasing useless or overpriced products, participating in lottery or other telemarketing scams, or giving gifts that are incommensurate with or inappropriate to the circumstances. These situations have prompted exploration into the fields of law, psychology, sociology, criminology, and elder abuse prevention for guidance and insight.

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<sup>1</sup> Based on information reported in SOC 242 reports from the counties available at <http://www.cdss.ca.gov/research/PG345.htm>”

## Undue Influence in the Legal Context

Undue influence has long been recognized by courts and legal professionals as a threat to the legitimacy of wills or contracts (Hall, Hall, Myers, & Chapman, 2009). The law recognizes that certain parties, by the nature of their relationships, are able to exercise unfair persuasion or influence on others. The Restatement of Contracts, a non-binding but widely recognized and cited legal authority in common law in the U.S., defines undue influence as “unfair persuasion of a party who is under the domination of the person exercising the persuasion or who by virtue of the relation between them is justified in assuming that that person will not act in a manner inconsistent with his welfare (Restatement [Second] of Contracts, 1981). A study of testamentary capacity (the capacity to make a will) that explored subjects whose capacity was in question found signs of undue influence documented in 56% of the cases (Shulman, Cohen & Hull, 2005).

Although multiple states have statutory provisions for undue influence in relation to financial elder abuse, the definitions of undue influence tend to be sketchy and fail to establish its elements in ways that clearly demonstrate criminal or civil wrongdoing (Stiegel & Klem, 2007).

In recent years, California updated the definition of undue influence in its civil code. Civil Code §1575, enacted in 1872 as part of contract law, provided for three circumstances that support a judge or jury finding of undue influence in contracts (it was later also applied to wills and trusts): 1) In the use, by one in whom a confidence is reposed by another, or who holds real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him; 2) In taking an unfair advantage of another’s weakness of mind; or, 3) In taking a grossly oppressive and unfair advantage of another’s necessities or distress.

In 2014, California enacted AB 140 to modernize the definition of undue influence and to reflect the increased knowledge about the phenomenon (Horwitz, 2013). It reads as follows<sup>2</sup>:

"Undue influence" means excessive persuasion that causes another person to act or refrain from acting by overcoming that person's free will and results in inequity. In determining whether a result was produced by undue influence, all of the following shall be considered:

- (1) The vulnerability of the victim. Evidence of vulnerability may include, but is not limited to, incapacity, illness, disability, injury, age, education, impaired cognitive function, emotional distress, isolation, or dependency, and whether the influencer knew or should have known of the alleged victim's vulnerability.
- (2) The influencer's apparent authority. Evidence of apparent authority may include, but is not limited to, status as a fiduciary, family member, care provider, health care professional, legal professional, spiritual adviser, expert, or other qualification.
- (3) The actions or tactics used by the influencer. Evidence of actions or tactics used may include, but is not limited to, all of the following:
  - a) Controlling necessities of life, medication, the victim’s interactions with others, access to information, or sleep.
  - b) Use of affection, intimidation, or coercion.
  - c) Initiation of changes in personal or property rights, use of haste or secrecy in effecting those changes, effecting changes at inappropriate times and places, and claims of expertise in effecting changes.

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<sup>2</sup> Probate Code §86 and Welfare and Institutions Code §15610.70.



- d) The equity of the result. Evidence of the equity of the result may include, but is not limited to, the economic consequences to the victim, any divergence from the victim's prior intent or course of conduct or dealing, the relationship of the value conveyed to the value of any services or consideration received, or the appropriateness of the change in light of the length and nature of the relationship.
- e) Evidence of an inequitable result, without more, is not sufficient to prove undue influence.

Although a substantial body of California case law addresses undue influence, much of it describes undue influence in concert with mental deficits or other barriers to free will such as coercion, duress, or fraud, leading many to assume that undue influence can only occur when these other factors are present. This assumption is also pervasive in the fields of elder abuse and APS.

Two examples of case law counter this thinking. In *Estate of Olson*, the California Court of Appeal stated that “Soundness of mind and body does not imply immunity from undue influence. It may require greater ingenuity to unduly influence a person of sound mind and body, and more evidence may be required to show that such a person was overcome than in the case of one weak of body and mind. But history and experience teach that minds of strong men and women have been overborne, and they have been by a mater mind persuaded to consent to what in their sober and normal moments, and free from undue influence, they would not have done.”<sup>3</sup>

*Odorizzi v. Bloomfield School District* went further in identifying specific indicators of undue influence. In 1964, Donald Odorizzi, a teacher, was arrested and jailed for homosexual activity. During the process of the arrest, police questioning, booking and release, he went 40 hours without sleep. Shortly after his release, the principal and superintendent of his school came to Odorizzi’s apartment on Sunday morning and told him that if he did not resign immediately, the school district would dismiss him and publicize what had happened. Odorizzi resigned and the criminal charges against him were dropped. He later filed suit against the school district alleging that he had been subject to undue influence and that his resignation was therefore invalid.

The California Court of Appeal, which ruled in Odorizzi’s favor, explained undue influence as “the use of excessive pressure by a dominant person over a servient person resulting in the will of the servient person being overborne.”<sup>4</sup> The court cited the following factors as indicative of excessive pressure: 1) discussion of the transaction at an unusual or inappropriate time, 2) consummation of the transaction in an unusual place, 3) insistent demand that the business be finished at once, 4) extreme emphasis on the untoward consequences of the delay, 5) use of multiple persuaders by the dominant side against a servient party, 6) absence of third-party advisors to the servient party, and 7) statements that there is no time to consult financial advisers or attorneys.

Courts also consider undue influence in determining the need for conservatorships of estate. Conservatorship is a process by which courts appoint trustworthy individuals or organization (called “conservators”) to care for other adults (called “conservatees”) who cannot

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<sup>3</sup> *Estate of Olson*, 19 Cal.App. 379, 386 (1912).

<sup>4</sup> *Odorizzi v. Bloomfield School District* (1966) 246 Cal.App.2d 123.

care for themselves or manage their own finances. Probate courts in California can appoint conservators of the person, conservators of the estate, or both, depending on the needs of the person. A conservator of the person is responsible for making sure that the conservatee has proper food, clothing, shelter, and health care. Depending on the conservatee's ability to understand and make decisions, the conservator may also be authorized to make medical choices. Conservators of estate handle conservatees' financial matters, such as paying bills, collecting a person's income, and handling investments and real estate.

In California, the state's Probate Code establishes legal criteria for determining the need for conservatorship based on proposed conservatees' functional ability, their mental capacity, and, in the case of conservatorship of estate, their ability to withstand undue influence (California Code Probate Code §§810-813, Probate Code §1801(b)).

"A conservator of the estate may be appointed for a person who is substantially unable to manage his or her financial resources or resist fraud or undue influence. Substantial inability may not be proved solely by isolated incidents of negligence or improvidence" (Probate Code §1801[b]).

Once petitions for conservatorship are filed, court investigators are assigned to interview proposed conservatees personally and to inform them that petitions have been filed and what they contain. They further advise proposed conservatees of their rights, which include: the right to object to the proposed conservatorship, the right to come to the court hearing, the right to be represented by an attorney, the right to request a person other than the petitioner to be the conservator, and the right to a jury trial to resolve the issue of whether there should be a conservator (Probate Code §1826). In the course of these activities, court investigators determine if less restrictive options to conservatorship will resolve the issues or problems raised in the petitions (Probate Code §1826). Court investigators also interview proposed conservators and other people or professionals involved in the case.

Although court investigators do not administer screening or assessment tools, they gather information about proposed conservatees' functional and cognitive capacity to act in their own interests based on the criteria set forth in the Probate Code, the contents of the petition, and the results of the interviews. They further investigate whether abuse, neglect, or exploitation has occurred; the risk for future mistreatment; what authority is needed to mitigate or prevent harm; and proposed conservators' appropriateness to serve.

Under certain circumstances, petitions for conservatorship must be accompanied by Capacity Declarations, which reflect the professional judgment of physicians, psychologists, or religious healing practitioners as to whether the requirements set forth in the Probate code are met. Capacity Declarations must accompany requests for exclusive medical decision making powers, dementia powers, and authority to change the residence of people under temporary conservatorship. When proposed conservatees' capacity is unclear or the conservatorship is contested, courts may order in-depth neuropsychological assessments, which are batteries of tests conducted by licensed clinical psychologists or neuropsychologists that fully explore cognitive deficits.

### **Undue Influence in the Psychological Context**

Undue influence has also been described by psychologists (typically referred to in the psychology literature as unfair or coercive persuasion) in a broad range of contexts. A literature review commissioned by the San Francisco Superior Court (Quinn, Goldman, Nerenberg, &

Piazza, 2010) identified the following contexts or settings that psychologists have focused on in explaining how people's free will is subordinated to others:

- a) How totalitarian regimes control populations, including thought reform used by the Chinese.
- b) How captors induce prisoners of war to denounce countries, collaborate with captors, turn on fellow prisoners.
- c) How cults recruit and maintain members.
- d) Why victims of domestic violence do not leave abusive relationships or take action against their batterers.
- e) How caregivers maintain control over those they care for.
- f) Why hostages bond with their captors (Stockholm Syndrome).
- g) How professionals exploit relationships of trust and confidence toward clients.
- h) How white collar criminals and con artists use manipulation and deception for financial gain.

### **Undue Influence in Elder Abuse**

Psychologist Margaret Singer was among the first in her field to recognize the relevance of coercive persuasion to elder abuse (Nerenberg, 1996). Drawing from her earlier work with cults, prisoners of war, hostages, and cults, Singer identified the following correlates of undue influence:

1. Isolation
2. Dependency
3. Creating a "siege mentality" (other individuals in victims' lives have malevolent motives and only the influencer can be trusted)
4. Sense of powerlessness
5. Sense of fear/vulnerability
6. Staying unaware

Singer's work has received widespread attention in the elder abuse field, and the factors described above figure prominently in articles and trainings on the topic. Singer worked closely with Bay Area lawyer and psychologist Abraham Nievod, who conducts neuropsychological examinations for Bay Area courts and has provided training in undue influence to APS personnel across the state.

Hall and colleagues (2009) drew from civil law and the literature on financial elder abuse to propose warning signs of undue influence, which they describe as an "interplay between psychological, social, and medical factors that render people susceptible to financial exploitation." They call for assessments of patients' financial decision-making capacity and susceptibility to undue influence whenever financial abuse is suspected.

### **Assessment and Screening Tools for Undue Influence**

Several efforts have been made to develop tools to assess undue influence. Most combine elements found in: 1) risk assessment tools for elder abuse (particularly as they relate to financial abuse; and 2) cognitive screening tools. A few draw from 3) tests and criteria used by courts to determine if undue influence has been exercised in legal transactions.

### ***Elder Abuse Risk Assessment Screening Tools***

Risk assessment and screening tools alert workers to physical, behavioral, and environmental indicators of elder abuse, which can range from injuries, to interactions between alleged victims and perpetrators, to questioned documents.

A variety of risk assessment tools are currently used by APS and others to determine whether clients are currently being abused or neglected, or if they are likely to be in the future (Austin, Anthony, Lehning, & Peck, 2007). A primary focus is determining whether clients are acting freely, which involves looking for evidence of fraud, coercion, cognitive impairment, or the inability to resist pressure or persuasion by others. These tools draw from the research on abuse as well as the insights of practitioners. Few, however, have been validated and their effectiveness in predicting abuse is not yet clear. One noteworthy exception that is receiving widespread attention is the Elder Abuse Suspicion Index (EASI), which is being tested to flag potential abuse cases for referral to APS (Johnson, Park, Bogie, Flasch, & Cotter, 2012; Burnes, Rizzo, & Courtney, 2014). Experts have called for continued research to improve the effectiveness of risk assessments in identifying and classifying risk and improve the accuracy and consistency of decisions made by APS caseworkers.

### ***Cognitive Assessment Screening Tools***

When APS workers suspect that an elder's victimization stems from impaired decision-making, they may look for evidence of cognitive deficits using screening tools. These tools may also be used to determine whether clients "have capacity" to give or deny consent for services and/or to meaningfully participate in care planning (Falk & Hoffman, 2014; Moye & Marson, 2007).

The ability to perform initial capacity assessments is among the core competencies that the National Adult Protective Services Association (NAPSA) has defined for APS workers (2012). The competency includes proficiency at knowing when and how to refer clients for professional capacity evaluations; interpreting and using assessment information; and assessing clients' strengths and social supports, their ability to perform activities of daily living, their past histories of making decisions, and their ability to make informed decisions. It further includes achieving an understanding of cultural influences on client decision-making and community standards, and the concept of "negotiated consent." *Recommended Minimal Program Standards* is a report published by the National Adult Protection Services Association highlighting the importance of APS training in evaluating clients' capacity to manage, use, and preserve assets and to recognize vulnerability to financial abuse (NAPSA, 2013).

There is no single, universally accepted assessment or screening tool that satisfies APS needs in the detection of cognitive impairment. Commonly used tools include the Mini-Mental State Examination (MMSE), the Montreal Cognitive Assessment (MoCA), the Saint Louis University Mental Status (SLUMs), and the Short Portable Mental Status Questionnaire (SPMSQ). The elements of cognition that these tools typically evaluate include orientation, word recall, language abilities, attention and calculation, and visuospatial ability (Austin, Anthony, Lehning, & Peck, 2007). Some assess for "executive function," which refers to higher level cognitive skills such as the ability to plan for the future or switch between cognitive tasks. In recent years, several researchers have focused on those cognitive abilities that play a role in financial decision-making (Wood & Liu, 2012; Triebel et al., 2009).

Cognitive assessments have several shortcomings or limitations in their ability to identify vulnerability and suggest subsequent interventions:

- They fail to translate the impact of cognitive deficits on decision-making, the standards for which vary depending on the type of decision that is required. For example, legal standards for executing wills differ from those required to make medical decisions. It is the capacity to make specific decisions that are typically of concern to APS and others in evaluating if abuse has occurred. This gap between clinical judgments and legal standards of decision-making capacity has been noted by professionals in both the fields of law and psychology. It prompted the American Bar Association, the American Psychological Association, & the National College of Probate Judges to produce a series of handbooks for judges, psychologists, and lawyers that explore the implications of cognitive deficits on legal standards of decision making, acquaint lawyers and judges to the field of neuropsychology, familiarize psychologists with legal concepts related to decision making, and provide an overview of scientific knowledge related to capacity and decision making (American Bar Association & American Psychological Association, 2006, 2008, & 2008). An online course for primary physicians and other clinicians was also developed to assist them in determining capacity [http://www.americanbar.org/content/dam/aba/administrative/law\\_aging/2013\\_Rush\\_press\\_release\\_1-16-13.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/law_aging/2013_Rush_press_release_1-16-13.authcheckdam.pdf). Some have suggested the need for similar guidance to APS personnel.
- Recent research suggests that mild cognitive impairment (MCI), which is believed to impair “financial capacity” and heighten the risk for financial abuse, often goes undetected in traditional screening tools (Marson et al, 2009; Denburg & Harshman, 2009). One study showed that 35-40% of older adults with no apparent neurological deficits have poor decision-making abilities (Denburg, et al., 2007).
- New studies have looked at emotional variables that may influence decision making, including risk tolerance, which are not evaluated in commonly used tools.

A variety of new tools have emerged that respond to the need for more guidance to APS with respect to financial decision making and financial abuse, including:

- The New York City Elder Abuse Center (NYCEAC) is developing a structured interview tool for APS workers called the *Interview for Decisional Abilities (IDA)*, which is based on the *Assessment of Capacity for Everyday Decision-making (ACED)*, a multidimensional construct that consists of four elements: (1) having basic monetary skills, (2) carrying out cash transactions, (3) managing a checkbook and bank statement, and (4) exercising financial judgment (Lai, Gill, Cooney, Bradley, Hawkins & Karlawish, 2008). The goal of the project is to develop an instrument for assessing financial capacity that can be used in standard practice for APS workers.
- The Financial Capacity Instrument tests 14 tasks of financial ability comprising 6 clinically relevant domains of financial activity: basic monetary skills, financial conceptual knowledge, cash transactions, checkbook management, bank statement management, and financial judgment (Marson et al., 2000). It has been tested with patients with Alzheimer’s disease and other dementias with good reliability.
- The Lichtenberg Financial Decision Rating Scale (LFDRS) (Lichtenberg, Stoltman, Ficker, Iris, & Mast, 2015) draws from earlier work on financial capacity and incorporates “person centered principles” to understand financial decision making and its relationship to elder financial abuse and exploitation. The scale and conceptual model underlying it posit that financial capacity depends on intellectual and contextual factors while also considering long-held values. The model emphasizes the primacy of intellectual factors, which include choice,

understanding, appreciation, and reasoning, but contends that contextual factors, including undue influence and psychological vulnerability, may overwhelm intellectual factors in making decisions. The model defines and measures undue influence based on answers to the following questions:

- ✓ Have you had any conflicts with anyone about the way you spend money or to whom you give money?
- ✓ Has anyone asked you to change your will?
- ✓ Has anyone recently told you to stop getting financial advice from someone?

A tool used to assess undue influence in the legal context (e.g., in contract law and will contests) is the four-pronged SODR model (SODR stands for Susceptibility of the supposed victim, Opportunity for the exertion of undue influence, Disposition to exert undue influence, and 4) Result of the undue influence). States apply SODR in various ways. Wisconsin, for example, uses the SODR model as one of two tests used to screen for undue influence in will contests. Contesters must prove the four elements by clear, satisfactory, and convincing evidence. However, once three of the elements are proven, there need only be a slight showing of the fourth (Quinn, Goldman, Nerenberg, & Piazza, 2010).

The International Psychogeriatric Association Task Force on Testamentary Capacity and Undue Influence, a group of professionals from the legal, medical, and psychology fields, attempted to reach consensus on the definition of undue influence and provide guidelines for assessing risk factors that builds upon earlier work addressing will contests (Peisah, et al., 2009). The group identified 3 areas of risk: 1) social or environmental risk factors such as dependency, isolation, family conflict and recent bereavement; 2) psychological and physical risk factors such as physical disability, deathbed wills, sexual bargaining, personality disorders, substance abuse and mental disorders including dementia, delirium, mood and paranoid disorders; and 3) legal risk factors such as unnatural provisions in a will, or provisions not in keeping with previous wishes of the person making the will, and the instigation or procurement of a will by a beneficiary.

### ***Screening Tools Used to Identify Undue Influence in Elder Abuse***

A few preliminary efforts have been made to customize a screening tool for undue influence in situations in which elder abuse is alleged or suspected drawing from the models or tools described above. They include:

- The SCAM Model, developed by psychologist Susan Bernatz, closely parallels the SODR model, focusing on susceptibility of victims, confidential relationships between victims and abusers, active procurement of assets, and monetary loss. Bernatz uses the SCAM model in clinical and forensic neuropsychological evaluations and within her role as a consultant to the Los Angeles County Elder Abuse Forensics Center. <http://bernatzexperts.com/areas-of-expertise/scam™-model>
- The IDEAL Model (isolation, dependency, emotional manipulation and/or exploitation of a vulnerability, acquiescence, and loss), which applies to undue influence used to exploit elders, was developed by physician and forensic psychiatric consultant Bennett Blum. It draws from the literature of human manipulation found in the psychiatric, psychological, and sociological literatures as well as statutes, case law, and legal theory. [http://www.bennettblummd.com/undue\\_influence\\_ideal\\_model.html](http://www.bennettblummd.com/undue_influence_ideal_model.html)

- The Undue Influence Wheel, developed by social worker Bonnie Brandl and attorneys Candace Heisler and Lori Stiegel, is a graphic representation of undue influence that is based on the assumption that undue influence is akin to domestic violence, stalking, and sexual assault in which predatory perpetrators “groom” victims to gain control. It has been used in training to APS and other professional groups (Brandl, Heisler, & Stiegel, 2006).
- As part of an effort by the San Francisco Superior Court to explore undue influence in conservatorships, researchers developed a four-pronged framework for assessing undue influence that draws from both the legal and psychosocial literatures (Quinn, Goldman, Nerenberg, & Piazza, 2010). It expands the contexts in which undue influence is considered and the outcomes. The framework informed the development of California’s new definition of undue influence (Probate Code §86 and Welfare and Institutions Code §15610.70). It defines the following and provides extensive examples of each:
  - Vulnerability of victim
  - Power of perpetrator
  - Tactics
  - Outcomes

In 2011, the British Columbia Law Institute issued a guide for attorneys and notaries that provides focus on recognizing undue influence and taking practical steps when preparing wills. The guide, *Recommended Practices for Wills Practitioners Relating to Potential Undue Influence: A Guide*, contributes to the body of knowledge on undue influence in legal contexts, as well as being instructive to other professionals concerned about undue influence. The authors also reference the following U.S. models of undue influence: Thaler, Singer & Nievod; Blum’s IDEAL; Bernatz’s SCAM; and Brandl, Heisler, & Stiegel. They list “red flags” in detail, describing dynamics of undue influence as typically a form of financial abuse within relationships of dependency, confidence, and trust. Some scenarios illustrating testamentary undue influence in different contexts are labeled: “The Officious Supporter”, “The Nefarious Caregiver”, and the “The Mercenary Late-Life Partner”. In addition to assisting the reader with recognizing undue influence, the authors describe practical steps that can be taken. A Reference Aid provides a checklist of recommended practices and a decision making flow chart (British Columbia Law Institute, 2011).

These tools and approaches are being introduced into practice to a limited extent. Anecdotal evidence suggests that neuropsychologists and others are increasingly citing risk factors or frameworks for undue influence in conservatorship petitions and other legal proceedings. Elder abuse multidisciplinary teams are also evaluating undue influence within the context of financial abuse (Horning, et al., 2013).

The models are also being used to train those involved in the investigation of elder abuse including APS and law enforcement. Project MASTER at San Diego State University, for example, has created a module on undue influence that is part of a training on financial abuse (<http://theacademy.sdsu.edu/mastercurriculum/undue-influence-mini-module-elearning/>). Another training module for APS developed by Project Master focuses on undue influence by professionals (<http://theacademy.sdsu.edu/mastertraining/undue-influence-committed-by-professionals-elearning/>).

### **The Role of APS Personnel in Responding to Undue Influence**

When APS personnel suspect that a client has been harmed or is at risk or harm as the result of undue influence, they may consider a variety of options to mitigate the risk, stop the harm, or

treat the effects. Perhaps foremost among these is determining when conservatorship may be needed, in which case, APS personnel may consider making referrals to Public Guardians (PGs) or other potential conservators. In fact, a review of 25 conservatorship petitions received by the San Francisco Superior Court in which undue influence was alleged during a one-year period revealed that APS was involved in 96% of the cases (Quinn, Goldman, Nerenberg, & Piazza, 2010). Because APS personnel in California lack legal standing to petition courts directly for conservatorship, these petitions were filed by others. The Public Guardian accounted for 32% of petitions, followed by private professional conservators (48%), and families (20%).

When initial APS investigations suggest the need for conservatorship, APS workers may discuss the option with trustworthy family members or make referrals to PGs, private professional conservators, or non-profit agencies. They often face challenges in doing so. There may be no relative willing or able to serve or those willing to serve may be believed to be complicit in the alleged abuse prompting the investigation. The assets of APS clients who need conservatorship may be minimal, reducing the likelihood that professional fiduciaries will agree to take their cases. APS personnel may also face challenges when referring cases to Public Guardians (PGs). The criteria used by PGs in determining whether to accept referrals is not statutorily defined and significant variations exist among PG programs with respect to their eligibility requirements. These variations likely reflect variations in resources.

The presence of undue influence may suggest the need for other interventions such as revoking representative payeeships or powers of attorney. In these situations, APS workers may make referrals to legal aid programs or to private attorneys (although APS workers are restricted from making referrals to individual attorneys, they may make referrals to “brokers” of legal services such as the State Bar Association of California’s Volunteer Legal Service Program or California Advocates for Nursing Home Reform (CANHR). Although undue influence does not constitute a crime in California, it may be a factor in financial crimes. Factors suggestive of undue influence, for example, appear in California Jury Instruction (CALJIC) No 1.23, which is used to instruct jurors in interpreting consent in criminal theft cases. APS personnel may therefore include evidence of undue influence in reports to law enforcement. When APS workers suspect that professionals have committed undue influence, they may make referrals to professional associations or licensing agencies for further investigation.

### **Need for an UI Screening Tool for APS**

This critical involvement by APS personnel in conservatorships and other matters in which undue influence is suspected highlights the need for APS professionals to understand undue influence and to receive guidance in how to identify and document it. It further suggests that APS personnel stand to benefit from a screening tool to help them decide when referrals are warranted and to whom. In particular, APS personnel can potentially benefit from screening tools that suggest key features of undue influence, patterns of risk, and elements that need to be established to remedy or prevent it.

Existing models and tools exist that have heightened general awareness and understanding of undue influence provide useful frameworks for evaluating situations in which it is alleged. They are, however, limited in scope and application. For example, the SODR tool and the guidelines developed by the International Psychogeriatric Association Task Force on Testamentary Capacity and Undue Influence focus on undue influence as it pertains to wills and contracts. Because will and trust contests typically focus on past acts, the extent to which SODR



or the framework developed by the Task Force can be applied when undue influence is currently taking place or may take place in the future has not been explored.

No screening tool has been created to date that can adequately detect undue influence in cases involving the broad range of conduct and situations that APS workers commonly encounter, which includes abuse by caregivers, scams, questioned adult adoptions and marriages, professional misconduct, and the violation of personal freedoms and rights (e.g. the right to decide where to live, with whom to associate, medical treatment). As a result, they fail to elicit information that may be needed for the multiple interventions that may be appropriate. Another shortcoming of existing tools is their failure to highlight emergent patterns or vulnerabilities that can potentially signal the need for preventative approaches such as monitoring caregivers or developing estate plans or advance directives that anticipate future challenges and offer appropriate safeguards.

To overcome these limitations, a new undue influence screening tool is needed that:

- Reflects APS mandates and roles in investigating and responding to abuse, which includes making referrals to PGs, attorneys, police, professional associations, and others.
- Reflects new statutory definitions of undue influence as codified in Welfare and Institutions Code §§15610.30 and 15610.70 and Probate Code §86.
- Reflects other relevant statutory definitions and criteria that is suggestive of undue influence, including Probate Code §811 (2-4), which address deficits in information processing, (understanding and appreciating quantities, abstract reasoning, the ability to plan, organize, and carry out actions in one's own rational self-interest), reasoning, and ability to modulate mood. Also relevant are criteria contained in California Jury Instruction (CALJIC) No 1.23 which is used to instruct jurors in criminal cases of theft in about how to interpret "consent."
- Highlights patterns of undue influence that jeopardize clients' safety and independence, and which can be addressed through non-legal remedies and interventions.
- Suggests the need for safeguards to prevent abuse and means for doing so.

## **Conclusion**

APS personnel are facing increasingly complex forms of financial abuse and exploitation against older and dependent adults. Investigations and follow-up in these cases frequently require APS workers to consider whether alleged victims' free will has been compromised as a result of cognitive impairment or unfair influence by those in positions of power or trust. While a variety of screening tools are available to assist workers identify cognitive impairment and the risk of elder abuse, APS personnel lack tools that specifically screen for undue influence. APS workers in California can benefit from a tool that reflects the state's newly amended definition of undue influence as well as current understanding of undue influence by experts in fields of law, psychology, and elder abuse.

An undue influence screening tool can potentially be used to support referrals to PGs for conservatorship, other agencies or individuals that serve as conservators, and for referrals to attorneys or legal aid programs that can assist in recovering misappropriated assets or property. A screening tool for undue influence can further support police reports and suggest the need for preventative measures such as estate planning or enhanced monitoring of situations in which the risk of undue influence is high. The development of a tool for APS in California can also pave the way for the development of comparable tools for APS programs in other states and for

professionals in other fields who are likely to encounter undue influence against older and vulnerable adults.

## References

- American Bar Association & American Psychological Association. (2008). *Assessment of older adults with diminished capacity: A handbook for psychologists*. Washington D.C.: American Bar Association and American Psychological Association.
- American Bar Association & American Psychological Association. (2008). *Assessment of older adults with diminished capacity: A handbook for attorneys*. Washington D.C.: American Bar Association and American Psychological Association.
- American Bar Association, American Psychological Association, & National College of Probate Judges. (2006) *Judicial Determination of Capacity of Older Adults in Guardianship Proceedings: A Handbook for Judges*. Washington D.C.: American Bar Association and American Psychological Association.
- Austin, M. J., Anthony, E. K., Lehning, A. J., & Peck, M. D. (2007). *Instruments for assessing elder mistreatment: Implications for Adult Protective Services*. Berkeley: University of California at Berkeley, School of Social Welfare (BASSC). Retrieved from [http://cssr.berkeley.edu/research\\_units/bassc/documents/C61602\\_9\\_web.pdf](http://cssr.berkeley.edu/research_units/bassc/documents/C61602_9_web.pdf)
- Brandl, B., Heisler, C.J., & Stiegel, L.A. (2006). Undue influence: The criminal justice response. YWCA Omaha. Retrieved from [http://www.ncall.us/sites/ncall.us/files/resources/Undue\\_Infl\\_Trainer.pdf](http://www.ncall.us/sites/ncall.us/files/resources/Undue_Infl_Trainer.pdf)
- British Columbia Law Institute (2011, October). *Recommended Practices for Wills Practitioners Relating to Potential Undue Influence: A Guide*. Report no. 61 retrieved from <http://www.lawsociety.bc.ca/docs/practice/resources/guide-wills.pdf>
- Burnes, D.P., Rizzo, V.M., & Courtney, E. (2014). Elder abuse and neglect risk alleviation in protective services. *Journal of Interpersonal Violence Elder Abuse and Neglect Risk Alleviation in Protective Services*, 29(11), 2091-2113.
- California Elder Justice Coalition. (In press). From blueprint to benchmarks: Building a framework for elder justice.
- California Probate Code. (2015). Desktop Edition, Thomson Reuters, San Francisco.
- Denburg, N.L., Cole, C.A., Hernandez, M., Yamada, T.H., Tranel, D., Bechara, A., & Wallace, R.B. (2007). The orbitofrontal cortex, real-world decision making, and normal aging. *Annals of the New York Academy of Sciences*, 1121, 480–498.
- Denburg, N. & Harshman, L. (2009). *Why So Many Seniors Get Swindled: Brain Anomalies and Poor Decision-making in Older Adults*. The Dana Foundation. Retrieved March 5, 2012 from, <http://www.dana.org/news/cerebrum/detail.aspx?id=23106>
- Falk, E., & Hoffman, N. (2014). The role of capacity assessments in elder abuse investigations and guardianships. *Clinics in Geriatric Medicine*, 30(4), 851-868.
- Gardner, R., & Duff, L. (2014). Beneficiaries misbehavin': Legal developments in undue Influence. *Journal Of Financial Planning*, 27(4), 32-34.
- Gunther, J. (2011). *The Utah Cost of Financial Exploitation*. March, 2011. Utah Division of Aging and Adult Services. Retrieved from <http://victimsofcrime.org/docs/default-source/financial-fraud/2011-economic-cost-of-financial-exploitation.pdf?sfvrsn=2>
- Hall, R. C. W., Hall, R. C. W., Myers, W. C., & Chapman, M. J. (2009). Testamentary capacity: History, physicians' role, requirements, and why wills are challenged. *Clinical*

- Geriatrics*. Retrieved from <http://www.clinicalgeriatrics.com/articles/Testamentary-Capacity-History-Physicians'-Role-Requirements-and-Why-Wills-Are-Challenged>
- Harrison, R. C. (2014). Protecting the elderly from financial exploitation: The dilemma and solution, Part I. *Florida Bar Journal*, 88(6), 77-80.
- Horwitz, H. (2013). California's new statutory definition of undue influence-modernization or Game Changer? *California Trusts and Estates Quarterly* 19(3).
- Jackson, S.L. & Hafemeister, T.L. (2010). Financial abuse of elderly people vs. other forms of elder abuse: Assessing their dynamics, risk factors, society's response. Retrieved from <http://www.ncjrs.gov/pdffiles1/nij/grants/233613.pdf>
- Johnson, K., Park, K., Bogie, A., Flasch, S., & Cotter, J. (2012). Developing an actuarial risk assessment to inform decisions made by adult protective services workers. National Council on Crime and Delinquency. Retrieved from <https://www.ncjrs.gov/pdffiles1/nij/grants/240410.pdf>
- Karlawish, J. (2013). Elder abuse and neglect: Ethical consideration in research and care. Presented at Elder Abuse and Its Prevention: A Workshop. Institute of Medicine, Washington, DC, April 17.
- Lai, J. M., Gill, T., Cooney, L.M., Bradley, E.H., Hawkins, K.A., & Karlawish, J. (2008). Everyday decision-making ability in older persons with cognitive impairment. *American Journal of Geriatric Psychiatry*, 16(8), 693-696.
- Lai, J. M., & Karlawish, J. (2007). Assessing the capacity to make everyday decisions: A guide for clinicians and an agenda for future research. *American Journal of Geriatric Psychiatry* 15(2), 101-111.
- Lichtenberg, P. A., Stoltman, J., Ficker, L. J., Iris, M., & Mast, B. (2015). A person-centered approach to financial capacity assessment: Preliminary development of a new rating scale. *Journal of Elder Abuse & Neglect*, 38(1), 49-67.
- Marson, D. C., Martin, R. C., Wadley, V., Griffith, H. R., Snyder, S., Goode, P. S., ... Harrell, L. E. (2009). Clinical interview assessment of financial capacity in older adults with mild cognitive impairment and Alzheimer's disease. *Journal of the American Geriatrics Society*, 57(5), 806-814.
- Marson, D. C., Hebert, K., & Solomon, A. C. (2011). Assessing civil competencies in older adults with dementia: Consent capacity, financial capacity, and testamentary capacity. In *Forensic neuropsychology: A scientific approach*, edited by G. J. Larrabee (2nd ed.). New York: Oxford University Press. 401-437.
- Maxwell, C.D. & Stone, R.J. (2010). The nexus between economics and family violence: The expected impact of recent economic declines on the rates and patterns of intimate, child and elder abuse. Retrieved from <http://www.ncjrs.gov/pdffiles1/nij/grants/229913.pdf>
- MetLife Mature Market Institute, National Committee for the Prevention of Elder Abuse, & Center for Gerontology at Virginia Polytechnic Institute and State University. (2011). *The MetLife study of elder financial abuse: Crimes of occasion, desperation, and predation against America's elders*. Retrieved from <http://www.preventelderabuse.org/documents/mmi-elder-financial-abuse.pdf>
- Moye, J. & Marson, D.C. (2007). Assessment of decision-making capacity in older adults: An emerging area of practice and research. *Journal of Gerontology: Series B, Psychological Sciences and Social Sciences*, 62 (1), 3-11.
- Mosqueda, L., Wiglesworth, A., Moore, A. A., Nguyen, A., Gironda, M., & Gibbs, L. (2015). Variability in findings from adult protective services investigations of elder abuse in

- California. *Journal of Evidence-Informed Social Work*. Retrieved from <http://www.tandfonline.com/doi/full/10.1080/15433714.2014.939383>
- Naimark, D. (2001). Financial exploitation of the elderly: The evaluation of mental capacity and undue influence. *American Journal of Forensic Psychiatry*, 22(3), 5-19.
- National Adult Protective Services Association (2013). *Adult Protective Services Recommended Minimum Program Standards*. Retrieved from <http://www.napsa-now.org/wp-content/uploads/2014/04/Recommended-Program-Standards.pdf>.
- Nerenberg, L. (1996). *Hornswoggled? An interview with Margaret Singer on undue influence. Nexus 2* (1). Retrieved from <http://www.preventelderabuse.org/nexus/singer.html>
- Peisah, C. H., Finkel, S., Shulman, K., Melding, P., Luxenberg, J., ... Bennett, H. (2009). The wills of older people: Risk factors for undue influence. *International Psychogeriatrics*, 21, 7-15.
- Quinn, M. J., Goldman, E., Nerenberg, L., & Piazza, D. (2010). Undue influence: Definitions and applications. San Francisco: San Francisco Superior Court. Retrieved from <http://www.courts.ca.gov/documents/UndueInfluence.pdf>
- Quinn, M. J., & Nerenberg, L. (2005). Improving access to the San Francisco Superior Court (Probate and Unified Family Courts) for elders: Final report. San Francisco: San Francisco Superior Court.
- Sheena, M. Horning, S.M., Wilkins, S.S., Dhanani, S., & Henriques, D. (2013). A case of elder abuse and undue influence: Assessment and treatment from a geriatric interdisciplinary team. *Clinical Case Studies* 12, 373.
- Shulman, K. I., Peisah, C., Jacoby, R., Heinik, J., & Finkel, S. (2009). Contemporaneous assessment of testamentary capacity. *International Psychogeriatrics*, 21, 433-439.
- Shulman, K. I., Cohen, C.A. Hull, I. (2005). Psychiatric issues in retrospective challenges of testamentary capacity. *International Journal of Geriatric Psychiatry* 20(1). 63-69.
- Stiegel, L. & Klem, E. (2007). Explanation of the “undue influence: Context, provisions, and citations in adult protective services laws, by state.” Washington D.C.: American Bar Association Commission on Law and Aging. Retrieved from <http://www.abanet.org/aging/>
- Taylor, R.M.; Institute of Medicine (U.S.). Forum on Global Violence Prevention; National Research Council (U.S.). 2014. Elder abuse and its prevention: Workshop summary ( 2014 )Washington, D.C. : National Academies Press. Retrieved from [http://www.nap.edu/openbook.php?record\\_id=18518](http://www.nap.edu/openbook.php?record_id=18518)
- Triebel, K.L., Martin, D.R., Griffith, H.R., Marceaux, J., Okonkwo, O.C.,... Marson, D.C. (2009). Declining financial capacity in mild cognitive impairment: A 1-year longitudinal study. *Neurology*, 73, 928-934.
- Wood, S., & Liu, P. (2012). Undue influence and financial capacity: A clinical perspective. *Generations*, 36(2), 53-58.

## APPENDIX E: PROJECT TEAM AND EXPERT PANEL MEMBERS

### Project Team Members

**Mary Joy Quinn** is the Director of Probate (ret.) of California Superior Court, County of San Francisco. Ms. Quinn also served as a probate court investigator with conservatorships of adults. She is the co-author of the book *Elder Abuse and Neglect: Causes, Diagnosis, and Intervention Strategies* (1986; 1997) and the author of *Guardianships of Adults: Achieving Justice, Autonomy, and Safety* (2005). She is also the author of numerous articles on elder abuse, adult guardianship, and undue influence and has presented at numerous professional forums on those topics. She is the past president of the National College of Probate Judges and the National Guardianship Network. She is a state technical advisor with WINGS, a nationwide movement sponsored by the National Guardianship Network whose goal is to link courts and community agencies in order to improve guardianship of adults.

**Lisa Nerenberg** is the Executive Director of the California Elder Justice Coalition and an instructor of gerontology, elder abuse, public health and ageism at City College of San Francisco. She has served as a consultant to local, state and national organizations and has presented at hundreds of professional forums, testified before Congressional committees, served on governmental advisory committees, and written extensively about elder abuse and related issues. Her book, *Elder Abuse Prevention: Emerging Trends and Promising Strategies* (Springer, 2008) describes what agencies, communities, tribes, states, and national organizations can do to prevent abuse, treat its effects, and ensure justice.

**Adria E. Navarro** transitioned from Assistant Professor at Azusa Pacific University to Assistant Professor of Clinical Family Medicine at the University of Southern California during this project. She has worked in clinical and administrative roles for health care organizations for more than 25 years. Her published research primarily focuses on the prevention and response to elder abuse; with particular emphasis on the effectiveness of inter-professional models and teams. Current assignments include the National Center on Elder Abuse, workforce enhancement through a geriatric assessment clinic, and work on other grants related to maximizing the health of vulnerable adults. Navarro serves on the National Adult Protective Services Research Committee and actively participates in the Gerontological Society of America.

### Expert Panel Members

- **Susan Bernatz** is a licensed psychologist who specializes in forensic neuropsychology. She is the president of Bernatz Experts Inc., a forensic-based practice in Los Angeles, California. She is a founding member and serves as a consultant to the Los Angeles County Elder Abuse Forensic Center. She is a leading expert in the areas of undue influence and mental capacity in will and trust contests, contested conservatorships, and financial abuse where older adults and dependent adult are affected. She serves as an expert and consulting witness and provides litigation support to law firms and numerous public agencies throughout the United States. Dr. Bernatz is also a court appointed expert witness for the Los Angeles County Superior Courts.

- **Paul Greenwood** has served as the head of the Elder Prosecution Unit for the Office of the District Attorney in San Diego County since 1996 and is a nationally known expert in the criminal prosecution of elder abuse. He has been involved in over 500 felony prosecutions of physical and financial elder and dependent adult abuse, while prosecuting nine murder cases. He lectures and provides technical assistance and training across the United States and is frequently consulted. He has received state and national recognition for his work.
- **Nancy Rasch** is a probate attorney practicing in San Francisco with over 30 years of experience with probate conservatorships, elder abuse and neglect cases, estate planning, and undue influence. She works closely with Adult Protective Services and other community agencies and provided input on an earlier Borchard-supported research project on undue influence. She serves on the San Francisco Probate Court's appointed list for conservatorships and is often appointed to represent elders and dependent adults when they oppose conservatorship or when complex legal issues are involved. She is frequently involved in mediation and negotiations to limit the scope of conservatorships, identify alternatives, or tailor the conservatorship to the wishes of conservatees.
- **Kathleen H. Wilber** is the Mary Pickford Professor of Gerontology at the University of Southern California. She is a leading expert in elder abuse, working with Adult Protective Services among other organizations, and evaluating service delivery. Her recent research studied the prevalence of elder abuse among Latino residents of Los Angeles, CA, evaluating the effectiveness of the Elder Abuse Forensic Center model across four California centers, and developing a universal assessment for the State of California's in-home Medicaid programs.

## **APPENDIX F: QUESTIONS FOR EXPERTS**

### **Regarding the Draft Version of the California Undue Influence Screening Tool**

1. What is your overall impression of the draft screening tool?
2. Does the draft screening tool cover the basics of undue influence?
3. Is there anything you feel is missing in the tool?
4. Is the screening tool clear? Is it correct?
5. The screening tool is designed for Adult Protective Services Practitioners. In your opinion, would this screening of undue influence be helpful to other professions such as Public Guardian, Court Investigators, physicians, attorneys? If so, how?
6. Should elements of the tool be added to the Capacity Declaration? If so, which ones?
7. Based on your work with APS, have you noticed misconceptions about UI, gaps in information collected or reported, etc. Do you think the tool provides greater clarity and direction in those areas?
8. What are the circumstances in which APS personnel may be asked to weigh in on undue influence (e.g., making referrals to PGs, legal assistance programs, private attorneys, police, requesting restraining orders, referring to licensing boards or ethics committees of professional organizations)?

**APPENDIX G: CALIFORNIA UNDUE INFLUENCE SCREENING TOOL AND INSTRUCTIONS**

**California Undue Influence Screening Tool (CUIST)<sup>5</sup>**

**Client's Name:** \_\_\_\_\_

**Date:** \_\_\_\_\_

The purpose of CUIST is to aid Adult Protective Service personnel screen for suspected undue influence. Undue influence means excessive persuasion that causes another person to act or refrain from acting by overcoming that person's free will and results in inequity.<sup>6</sup> CUIST is divided four categories: Client Vulnerability, Influencer's Authority/Power, Actions/Tactics, and Unfair/Improper Outcomes. Check all the factors that apply to the victim's circumstances and provide examples. For more details and examples, see *Instructions for Completing California Undue Influence Screening Tool (CUIST)*.

Client's Vulnerability	Examples/ Comments
<ul style="list-style-type: none"> <li><input type="checkbox"/> Poor or declining health or physical disability</li> <li><input type="checkbox"/> Depends on others for help or care</li> <li><input type="checkbox"/> Problems with hearing, vision, or speaking</li> <li><input type="checkbox"/> Problems with memory</li> <li><input type="checkbox"/> Problems communicating and understanding</li> <li><input type="checkbox"/> Does not understand consequences of decisions</li> <li><input type="checkbox"/> Developmental disability</li> <li><input type="checkbox"/> Dependent or passive behavior</li> <li><input type="checkbox"/> Emotional distress (e.g., grief, anxiety, fear, depression)</li> <li><input type="checkbox"/> Language/literacy barriers</li> <li><input type="checkbox"/> Isolated from others</li> <li><input type="checkbox"/> Lives in chaotic or dysfunctional environment</li> <li><input type="checkbox"/> Influencer knew or should have known of person's vulnerability</li> <li><input type="checkbox"/> Other (please specify) _____</li> <li><input type="checkbox"/> No apparent vulnerability</li> </ul>	

<sup>5</sup> CUIST was developed under a grant from the Borchard Foundation Center on Law and Aging

<sup>6</sup> Probate Code §86 and Welfare and Institutions Code §15610.70



Influencer Authority/Position of Power	Examples/ Comments
<input type="checkbox"/> Stands in a position of trust, authority, or confidence resulting from: <ul style="list-style-type: none"> <li><input type="checkbox"/> Intimate/family relationship</li> <li><input type="checkbox"/> Caregiver</li> <li><input type="checkbox"/> Professional standing (e.g., legal professional, spiritual adviser, health care professional, real estate agent, banker, accountant)</li> <li><input type="checkbox"/> Legal authority (e.g., power of attorney, conservatorship, trust, representative payee)</li> <li><input type="checkbox"/> Controls elder's finances</li> <li><input type="checkbox"/> Immigration sponsor</li> <li><input type="checkbox"/> Landlord or long term care facility operator</li> <li><input type="checkbox"/> Predatory salesperson (e.g., telemarketer, annuity company, lottery)</li> </ul> <input type="checkbox"/> Has access to client's home/possessions, finances, documents, or private information (e.g., legal/immigration status, sexual orientation/identity) <input type="checkbox"/> Other (please specify) _____ <input type="checkbox"/> No apparent authority, power, or access to assets and information	

Actions or Tactics	Examples/ Comments
<input type="checkbox"/> Manipulates or controls the client's access to food, sleep, medication or personal care <input type="checkbox"/> Makes promises to help the client get rich <input type="checkbox"/> Makes false claims or promises, or misrepresents self (e.g. claims to be an expert) <input type="checkbox"/> Professionals or paid caregivers involve clients in their personal lives or ask for gifts/loans <input type="checkbox"/> Controls access to information <input type="checkbox"/> Isolates from visitors, telephone/computer, or mail <input type="checkbox"/> Instills distrust and fear (e.g., nursing home placement, abandonment, threats of violence, "poisons relationships") <input type="checkbox"/> Moves into client's residence or changes their residence <input type="checkbox"/> Changes client's usual providers (e.g. physicians, lawyers, bankers, accountants) <input type="checkbox"/> Makes frequent/repeated requests that benefit the influencer <input type="checkbox"/> Pressures during periods of distress, illness, transition <input type="checkbox"/> Uses affection, sex, intimidation or coercion <input type="checkbox"/> Rushes client to make decisions secretly and at inappropriate times and places <input type="checkbox"/> Solicits or encourages gifts, loans, bequests, or cash <input type="checkbox"/> Other (Please specify) _____ <input type="checkbox"/> No apparent use of actions or tactics described above	

Unfair or Improper Outcome(s)	Examples/ Comments
<ul style="list-style-type: none"> <li><input type="checkbox"/> Economic losses (e.g. money, property, investments)</li> <li><input type="checkbox"/> Changes in prior intent, conduct, or practices (e.g., new beneficiaries on wills; new signatories on bank accounts, changes in property ownership, changes to estate plans or charitable contributions)</li> <li><input type="checkbox"/> Excessive gifts, payments, or donations in light of length and nature of relationship</li> <li><input type="checkbox"/> Loss of home or residence, or eviction</li> <li><input type="checkbox"/> Deterioration of home and environment</li> <li><input type="checkbox"/> Loss of control of credit cards, bank accounts, or property</li> <li><input type="checkbox"/> Identity theft</li> <li><input type="checkbox"/> Unexplained physical decline or injury including weight loss, physical function</li> <li><input type="checkbox"/> Negative mental or emotional changes including depression, loss of will to live, suicidal thoughts</li> <li><input type="checkbox"/> Violation of rights (e.g., to live where one wants, to marry or divorce, agree to or refuse treatment)</li> <li><input type="checkbox"/> Other (please specify) _____</li> <li><input type="checkbox"/> No apparent unfair or improper outcomes</li> </ul>	

## Summary

Check the following boxes that you believe apply to this client:

- Victim appears to be vulnerable
- Suspected influencer appears to have power or authority over the client.
- Suspected influencer has taken steps suggestive of undue influence.
- Influencer's actions appear to have resulted in unfair, improper, or suspicious outcome.

Further steps may include but are not limited to: referral for conservatorship, neuropsychological evaluation, multidisciplinary team review, capacity assessment, or medical evaluation; interviews with friends, family, neighbors or professionals; maintain form in agency file for future reference; contact law enforcement to discuss case or client's bank to request information or monitoring. Specific action will depend on supervisor input and agency policy.

## Instructions for Completing California Undue Influence Screening Tool (CUIST)<sup>7</sup>

1. Complete the client's name and date.
2. Check all the factors that apply to the victim's circumstances.
3. Write in examples or comments that explain why you checked a box (see below for examples).
4. Complete the summary at the end of CUIST by checking the box(s) you believe apply to this client.
5. Specific actions taken after completing CUIST will depend on agency policy and in consultation with supervisors.

Client Vulnerability	Examples/Evidence
<input checked="" type="checkbox"/> Problems with memory	When I asked Mrs. H what bank she uses and how much money she has, she said she didn't know. Mr. S does not remember marrying his caregiver.
<input checked="" type="checkbox"/> Does not understand consequences of decisions	Mrs. G pays her caregiver \$2,000/mo. and her monthly income is \$1,800. When I told her that her savings will run out in two years, she told me I must be wrong.
<input checked="" type="checkbox"/> Dependent or passive behavior	Mrs. X insists that her niece answers questions for her.
Influencer Authority/Position of Power	
<input checked="" type="checkbox"/> Controls elder's finances	Mrs. E's granddaughter is her representative payee and also has the pin number to her bank accounts.
<input checked="" type="checkbox"/> Has access to client's home/possessions, finances, documents, or private information	Mr. T's neighbor knows that Mr. T is gay, and Mr. T is afraid that the neighbor will tell Mr. T's family.
Actions or Tactics	
<input checked="" type="checkbox"/> Professionals or paid caregivers involve client in their personal lives or ask for gifts/loans.	Mrs. C's caregiver brings her children to work and asked Mrs. C for a loan to pay for her daughter's piano lessons.
<input checked="" type="checkbox"/> Rushes client to make decisions secretly and at inappropriate times and places.	Mr. D's son pressured him to make him executor of his estate while he was in the hospital shortly after a stroke.
Unfair or Improper Outcome(s)	
<input checked="" type="checkbox"/> Changes in prior intent, conduct, or practices	Mr. G's niece was beneficiary in his will for 20 years. Now, his caregiver of two months is his new beneficiary.

<sup>7</sup> CUIST was developed under a grant by the Borchard Foundation Center on Law and Aging.

<input checked="" type="checkbox"/> Violation of rights	Mrs. A gave her best friend power of attorney (POA) for finances. Her nephew held the power in the past and knows about the change, but uses the old POA anyway.
<input checked="" type="checkbox"/> Excessive gifts, payments, or donations in light of length/nature of relationship	Mr. R. signed over his home to his attendant of 6 months
<input checked="" type="checkbox"/> Deterioration of home or environment	Ms. L's utilities have been cut off.