

# Undoing Undue Influence



# About Undue Influence

- Undue influence occurs when one person takes over the decision making of a victim and benefits, while harming the victim.
- Historically poorly understood
- Occurs behind closed doors with no witnesses.
- Determined by considering circumstantial evidence
- Can occur when people have full capacity
- A process, not a one time event.

## About Undue Influence (cont.)

- Adults with impaired judgement and insight more easily influenced.
- Historically known as a legal issue
- Usually financial abuse but can be for sexual activity or when younger people move in elder's home under guise of 'taking care of you and keeping you out of a nursing home.'

# Impetus for Exploring Undue Influence

- Curiosity
- Criteria for conservator of estate (California Probate Code §1801(b) “unable to resist fraud or undue influence”
- Term mentioned over 25 times in Probate Code (gifts, wills, trusts, conservatorships) No definition.
- California Civil Code §1575 enacted in 1872. Only statutory definition until 2014.
- Judges relied on case law & Civil Code §1575

# Civil Code Section 1575

- Elements
  1. 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 unfair advantage over him;
  2. In taking an unfair advantage of another's weakness of mind; and
  3. In taking a grossly oppressive and unfair advantage of another's necessities or distress.
- Applicable to all civil matters including Probate from 1872 to 2014
- Still used for contract law disputes where undue influence is involved

# Exploring Undue Influence

- 2010 Study: Undue Influence: Definitions and Applications  
[www.courts.ca.gov/documents/UndueInfluence.pdf](http://www.courts.ca.gov/documents/UndueInfluence.pdf)
- Funded by the Borchard Foundation Center on Law and Aging
- Several elements
  - Conservatorship case reviews (25)
  - Law review of California statutory law and case law on undue influence
  - Review of other state laws on undue influence
  - Literature review of social services literature
  - Focus groups of professionals

# Social and Psychological Literature Perspective

## Coercive persuasion

- Totalitarian regimes
- Prisoners of war
- Cults
- Domestic Violence
- Caregiver
- Hostage situations
- Professionals who don't adhere to accepted professional laws and standards
- Con Artists e.g. telemarketers

## Commonalities in Legal Arena and Social Service Literature

- Victim characteristics
- Influencers' power
- Improper actions or tactics
- Unfair, improper, “unnatural” or unethical transactions or outcomes



# 2014 California Legislation

New definition of undue influence January 1, 2014

California Probate Code §86 and California Welfare and Institutions Code § 15610.70

“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.”

Four factors: victim, influencer authority, tactics, outcome

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

- The 2010 study calls attention to the need for a screening tool.
- The 2014 legislation made it possible to consider developing a screening tool because it spelled out specific factors and behaviors.
- Adult Protective Services (APS) sees the most undue influence cases: first responders.
- Also funded by Borchard Foundation Center on Law and Aging

## Elements of 2017 Study

- Focus Groups with APS Personnel (4)
- Literature Review
- Draft undue influence tool
- Field testing of draft tool with APS
- Review of draft tool by experts
- Creation of California Undue Influence Screening Tool (CUIST) with Instructions

# Focus Groups

*“the tool would help a lot to organize our thinking and documentation for presenting to the public guardian or to somebody else.*”

*“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 language suggesting the need to ask specific questions.”*

*“...there’s more of a uniform language that we use, that would be very helpful.”*

*“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.”*

*“[A] tool that triggers people documenting these four [categories] 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.”*

*“To get people to start ... documenting something in each of the four categories would be helpful...”*

*“What’s challenging is getting other authorities...to actually recognize why it’s such a problem. If there’s some threshold that can be shown .., then maybe law enforcement will say, this is important””*

## APS Field Testing of the Draft Tool

- Asked Focus Groups participants to complete the draft tool
- Nineteen people could potentially complete the survey: they had caseloads.
- Of that number 58% (n=11) completed the survey for a total of 15 cases.
- Provided comments

## Comments from Experts & APS Administrators

- “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 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.”

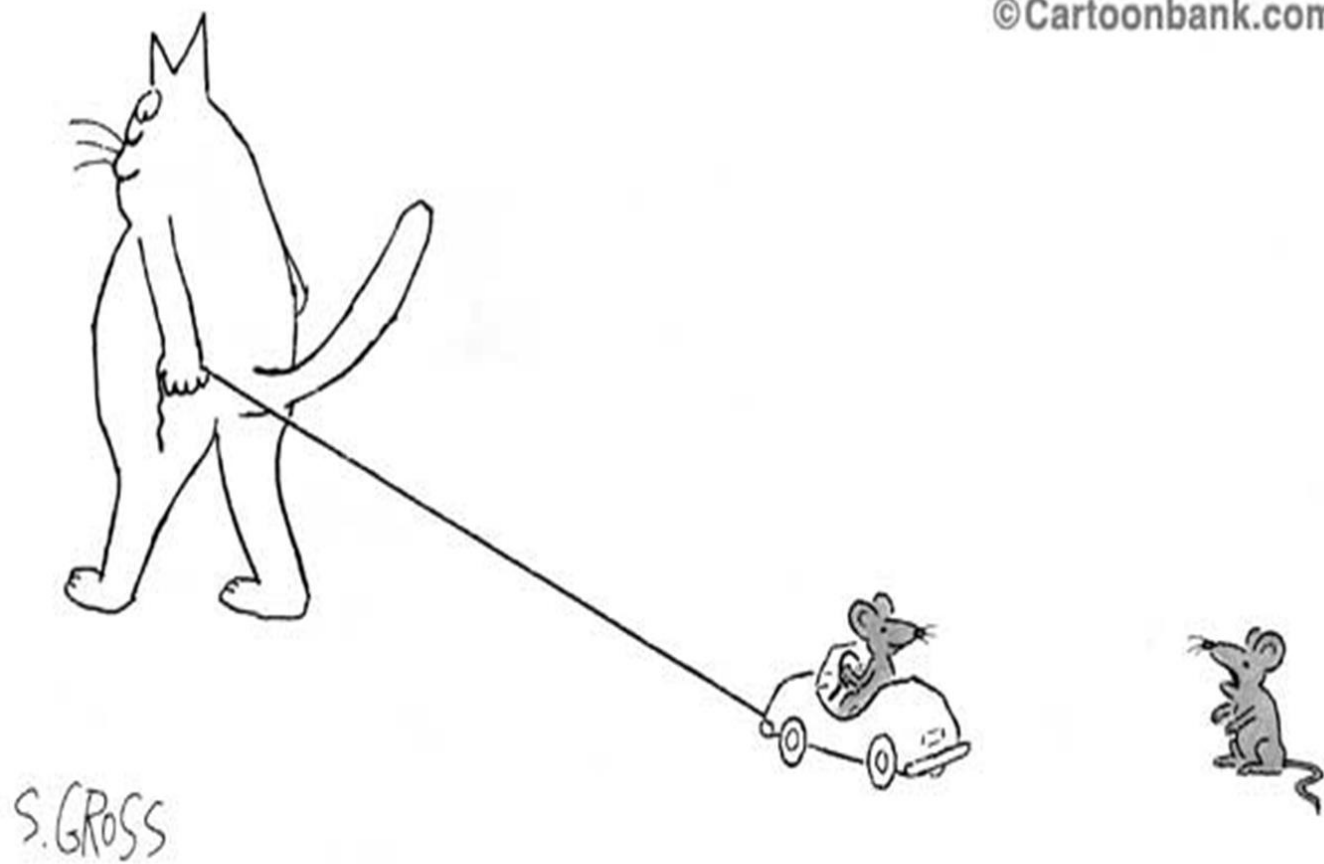
## Other Groups That Can Benefit

- Public officials, including city attorneys, public defenders, district attorneys, public guardians, and probate court investigators
- Private attorneys can use in estate planning
- Law enforcement personnel, including police detectives who investigate crimes with an eye towards possible prosecution
- Families who are concerned about a loved one
- Can be used in other states.

# CONCLUSIONS

- California Undue Influence Screening Tool:
  - Organizes thinking about undue influence
  - Provides guidelines
  - Contains elements consistent with California law
  - Is jargon free and in lay language
  - Has potential to create common language among various professionals





*"For God's sake, think! Why is he being so nice to you?"*

## References for CUIST

- Quinn, M. J., Nerenberg, L. Navarro, A. E., Wilbur, K. H.. (2017) Developing an undue influence screening tool for Adult Protective Services. *Journal of Elder Abuse & Neglect*, 29(2-3), 157-185.
- California Elder Justice Coalition
  - <https://www.elderjusticecal.org/undue-influence.html>  
California Undue Influence Screening Tool (CUIST),  
Instructions to complete CUIST, Final Report to Borchard  
Foundation Center on Law and Aging.