



Undoing Undue Influence

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Lisa Nerenberg

<http://www.lisanerenberg.com/>

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The Rev. Dan Rawls of Love's Lake Tahoe Wedding Chapel had a gut feeling something was wrong Sunday when he declared William von Weiland and Catherine Doliani husband and wife. He was 48. She was 93.

"In fact, I've been thinking about it ever since," Rawls said in a telephone interview. "Of all the thousands of weddings I've ever done, I did not want to do that one more than any of the rest. They had to prop the little old lady up, hold her up almost."



Chronicle // Brant Ward

Dr. Margaret Singer

Section 1575 of the California Civil Code (1872)

The use of one in whom a confidence is reposed by another or one who holds real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him, or in the taking of an unfair advantage of another's weakness of mind, or taking a grossly oppressive and unfair advantage of another's necessities or distress.



**Study 1: Defining Undue Influence
San Francisco Superior Court**

From the Psychology Literature

- How totalitarian regimes control populations
- How captors control prisoners of war (POWs)
- How cults recruit and maintain members
- Why victims of domestic violence don't leave
- How caregivers maintain control over those care for
- Why hostages bond with captors (Stockholm Syndrome)
- How professionals exploit relationships of trust/confidence
- How con artists use manipulation and deception

Lifton's Criteria of Thought Reform (by Chinese)

洗脑

- Milieu control
- Mystical manipulation
- Demand for purity
- Confession
- Sacred science
- Loading the language
- Doctrine over person
- Dispensing of existence

Tactics Used Against Prisoners in Korean War

- Dehumanizing by keeping in filth
- Sleep deprivation
- Partial sensory deprivation
- Psychological harassment
- Inculcation of guilt
- Group social pressure
- Withholding information

Singer's Conditions For Thought reform

- Keep person unaware
- Control person's time & environment
- Create sense of powerlessness, fear, & dependency
- Suppress old behaviors and attitudes
- Instill new behaviors and attitudes
- Closed system of logic; no real input or criticism

A woman with glasses and teal nail polish is speaking to a group of people. She is wearing a teal shirt and has her hand raised near her face. The background is blurred, showing other people in a group setting.

BITE Model (Steven Hassan): 4 Types of Cult Control

- **Behavior Control**
- **Information Control**
- **Thought Control**
- **Emotional Control**

Stockholm Syndrome

- Hostage depends on hostage-taker for life
- Captors control captives' basic needs and lives
- Hostages are isolated with only captors' perspectives available.
- Hostage takers threaten to kill victims
- Captives see the perpetrators showing some degree of kindness.

Battered Woman Syndrome

Victims:

- Believe violence is their fault. Unable to place responsibility elsewhere
- Fear for their lives and/or their children's lives
- Believe that abusers are omnipresent/omniscient
- Experience "flight" response
- Exhibit impaired cognitive ability and memory
- Exhibit "learned helplessness" (Seligman)

Cialdini's Principles

1. Rule of Reciprocity: Inclination to “repay” others.
2. Commitment and Consistency. The desire to appear consistent.
3. Social Proof. When prompted to behave in new and unfamiliar ways, people follow others' lead.
4. Liking. People more likely to comply with people they like.
5. Authority. Obedience is “correct” and people who have achieved authority are knowledgeable, wise, and powerful.
6. Scarcity. People assign greater value to opportunities and objects that are less available.

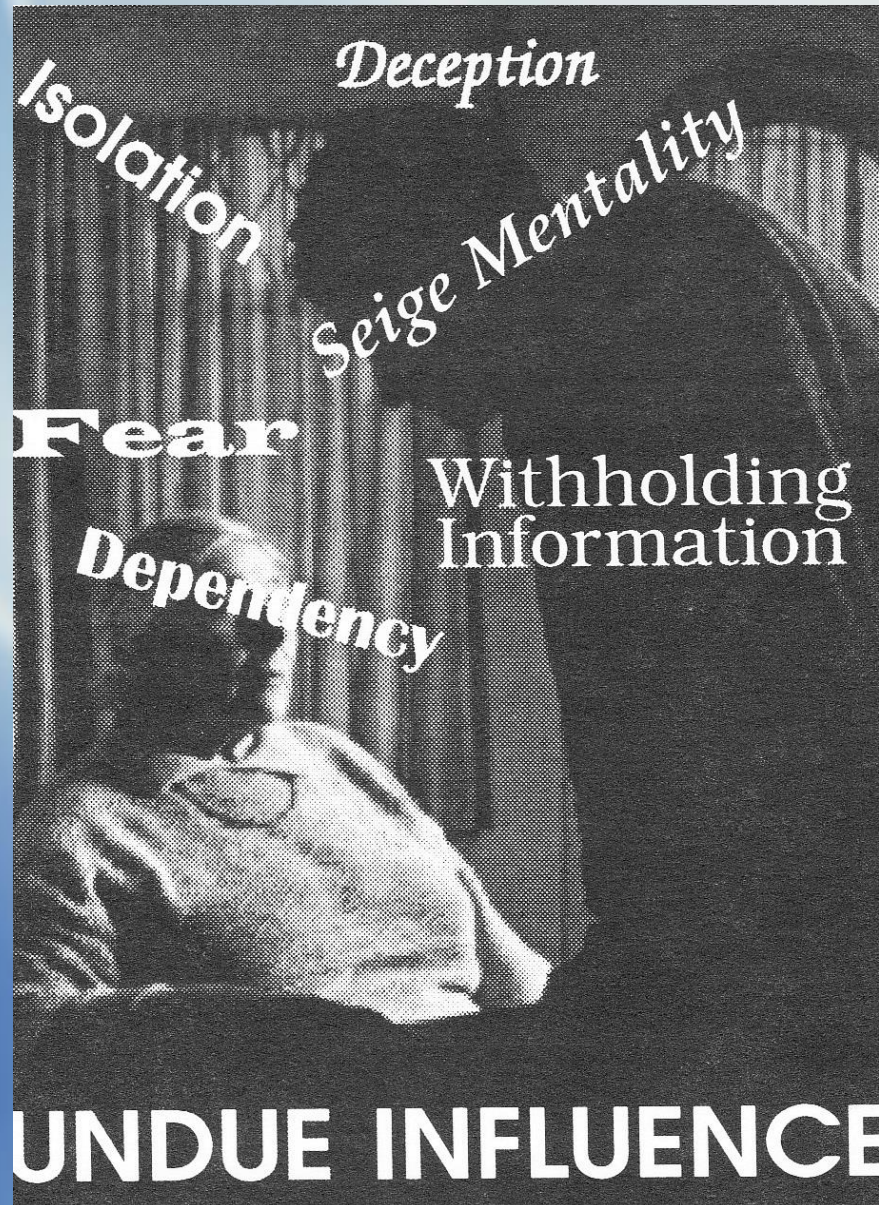
“Sustained Psychological Warfare” in Telemarketing Fraud

Jonathan J. Rusch, a litigator with U.S. DOJ and an expert in telemarketing, cited social influence theories and motivation research to explain the “sustained psychological warfare” used in telemarketing fraud.

Drawing from Cialdini’s principles, described how those experienced at deceiving others gradually gain the compliance of people who have little experience or skill in recognizing and protecting themselves against manipulation. This is accomplished through sustained, intensive personal contact and a three-stage process that includes:

- 1) Excitement. Criminals make prospective victims more susceptible by making statements at the outset of their interactions that trigger excitement. They may, for example, offer substantial prizes. The resulting surge of excitement may distract the victim from thinking rationally.
- 2) Authority. Social psychology experiments have shown that people are less likely to scrutinize persuasive messages closely when they perceive the source to have authority and to be honest.
- 3) encouraging victims to treat their relationships with scammers as family relationships.

Margaret Singer: UI in Elder Abuse



Undue Influence Models

- Hall, Hall, Myers, & Chapman
- Turkat
- Brandle/ Heisler/ Steigel
- Blum's "IDEAL" model
- Bernatz's "SCAM"

Legal Perspectives

- Sir Francis Bacon decision (1617)
- Odorizzi v. Bloomfield School District (1966)
- Maine's Improvident Transfers Act
- SODR



Will contest heard by Sir Francis Bacon, Lord Chancellor of England (1617)

A woman, having acquired an influence over an old and weak man, induced him by pretending affection for him and prejudicing him against his relatives to make a deed and a will in her favour, and thereafter by threats and cruelty prevented him from revoking these instruments, by virtue of which on his death she became possessed of his entire real and personal estate. In a suit by his next-of-kin against her and her husband: Held, that the deed and will should be made void; that the plaintiffs were entitled to the estate of the deceased; that they should have administration of the personal estate; and that there should be an inquiry as to all the personal estate and in whose hands all or any part thereof was or had been.

UI in Contract Law

- In contract law, if a contract is obtained by undue influence, the document is
- invalid and no contract has been formed (Nievod, 1992). In determining whether
- contracts are the products of undue influence, courts consider:
 - Imbalances in power between signers and beneficiaries
 - The circumstances in which the contracts were negotiated
 - Specific actions taken
 - The inherent fairness or “naturalness” of transactions

Odorrizi v. Bloomfield School District

246 Cal. App. 2d 123, 54 Cal. Rptr. 533 (1966)

“**Overpersuasion**” is generally accompanied by certain characteristics which create a pattern..that usually involves several of the following elements:

- (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 untoward consequences of delay
- (5) Use of multiple persuaders by the dominant side against a single servient party
- (6) Absence of third-party advisers to the servient party
- (7) Statements that there is no time to consult financial advisers or attorneys

Maine's Improvident Transfers Act

Shifts burden of proof from transferors to transferees by creating a presumption of undue influence under the following circumstances:

- Transferor was “elderly” (age 60 or older);
- Transferor was “dependent” on others;
- Transferor was in a “confidential or fiduciary relationship” with the transferee;
- Transferor did not have “independent counsel”
- Transfer was made for less than full consideration; and
- Transfer of assets was “major” (ten percent or more of the elder’s estate).

(33 M.R.S.A. Section 1021 and 1022.)

SODR used primarily in contract law

S usceptibility of the supposed victim	O pportunity for the exertion of undue influence	D isposition to exert undue influence	R esult of the undue influence
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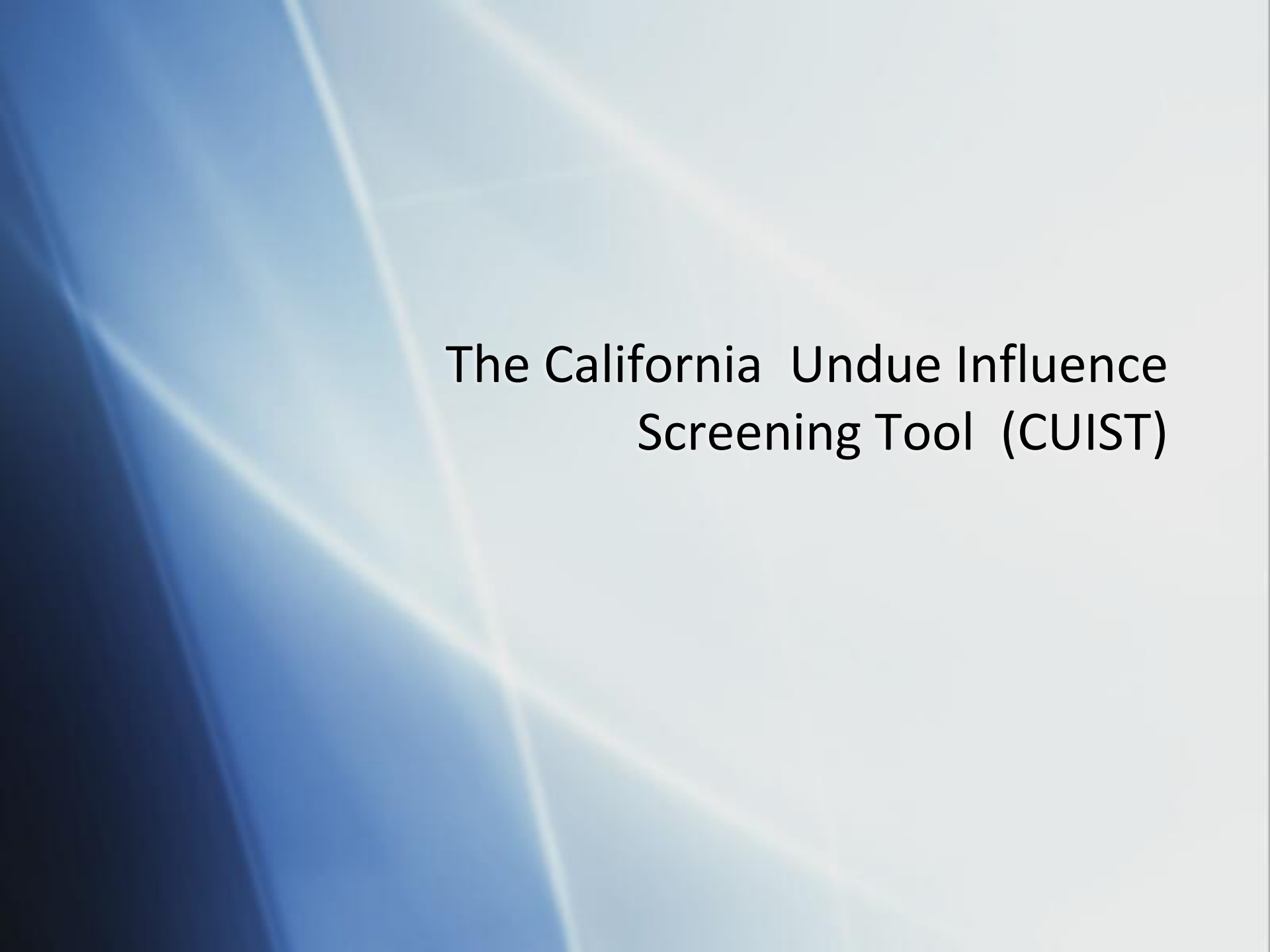
SODR + Categories of UI from Lit Review

Category I	Category II	Category III	Category IV
Victim characteristics contributing to vulnerability	Influencers' characteristics and source of power	Actions or tactics, including emotional and psychological, legal manipulation	Unfair, improper, "unnatural," or unethical transactions or outcomes

Probate Code §86 and W&I Code § 15610.70

(a) “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...
- (4) **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



The California Undue Influence Screening Tool (CUIST)

Elements of 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

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 detectives who investigate crimes with an eye towards prosecution (although UI not defined in criminal code, “UI-like” elements found in jury instruction (CALJIC) No 1.23), which pertains to consent.

Challenges

- Terminology may not be understood by all APS workers, leading to errors and inaccuracies in conclusions
- How will the tool be used (can it be subpoenaed or submitted to courts (in petitions for conservatorship)?
- Unsubstantiated conclusions may negatively impact outcomes and reflect poorly on workers & their agencies.
- Rating scales based on workers' impressions may vary, as appraisals of situations vary. Need for further research on reliability/validity and the extent to which the tool validates current understanding of undue influence by professional understanding, courts, and researchers.