



Psychiatry & Behavioral Sciences Section – 2011

I26 Testamentary Capacity and Undue Influence: Challenges and Opportunities for Experts and Attorneys

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The goal of this presentation is to present a summary of the current state of thinking on issues related to contested wills.

This presentation will impact the forensic science community by leaving attendees with a clearer knowledge on the topic of contested wills

As longevity increases, certain mental disorders also increase in frequency. Older testators may lack testamentary capacity or may be more susceptible to undue influence.

The first part of this presentation will focus on published papers of the Task Force, including contemporaneous and retrospective evaluations of cases, indicia of undue influence, and deathbed wills. Cultural and trans-national differences in approaching inheritance will be included. Other cultures and countries—even with the Anglo-Saxon system often allow less autonomy to the testator. Concepts of task-specific criteria for testamentary capacity, as situation-specific capacities will be described.

The second part of this presentation will focus on the challenges which experts face in working with attorneys, as well as issues that rise in the course of drafting wills, as well as litigating will contests.

The presentation will include risk factors for undue influence, including the social environment and circumstances, including isolation, change in family relationships and dynamics, recent bereavement, and family conflict. Moreover, there are circumstances in which the testator may be more vulnerable—including physical factors, loneliness, sexual bargaining, deathbed wills, dementing illness, substance abuse, personality disorders, mental disorders—including depression, mania, and psychosis. Ironically, certain personality traits and illnesses may render the testator as less vulnerable to undue influence.

The presentation will also compare contemporaneous reviews and retrospective reviews. In the former, assessments generally include: medical and psychiatric history, family input, mental status assessment, current cognition, and possible presence of psychiatric illness. How does the expert (or the attorney) determine that a testator is competent to execute documents? What are “insane delusions,” and what role do they play in executing or nullifying a will? When is videotaping the execution of the will desirable, and what are the potential pitfalls?

For the attorney—when does one work primarily with a family member? How does one ask about or interpret medical information? What do you need to know about delirium and deathbed wills? What is the relevance of prior wills? When and how does one approach a testator to obtain a professional consultation prior to the final execution of a will?

Regarding retrospective review, this author will describe methodological approaches—how does one assess medical charts and fact witness depositions? What methods can facilitate a testator’s level of cognition and capacity when the testator is demented? What are the challenges and pitfalls for the expert working with attorneys in cases of contested wills? What issues do many lawyers miss in which the expert can provide important assistance?

Among the cases, which will be discussed:

1. Two separate cases in which the testator left the entire estate to the government—in one case the expert was retained by the plaintiff; in the other by the defense.
2. A case of “undue influence,” in which the testator clearly had capacity.
3. Cases in which testators suffered from various severity of dementias.
4. Cases in which the testator disinherited the natural objects of one’s bounty to leave their estate to their stock broker or the attorney’s mother.
5. Cases in which a change of family dynamics resulted in a radical change in the final testament.
6. Cases of deathbed wills and delirium.

Testamentary Capacity, Undue Influence, Contested Wills