

The “Undue Influence Worksheet” and “IDEAL” Protocol – An Introduction by Bennett Blum MD

Introduction:

Disputes involving wills and trusts, pre-nuptial agreements, elder abuse, domestic violence, fraud and financial exploitation, many sexual offenses, and homicide - often involve issues of coercion, duress, inappropriate manipulation and undue influence. If you work on such cases, the “Undue Influence Worksheet” may be of help. Since its release in 2002, the “Worksheet” has been used by hundreds of lawyers, Court investigators, law enforcement personnel, and Adult Protective Services evaluators.

The “Worksheet” is essentially a database that helps clarify complex situations. Users are given a brief review of five main categorical headings and several subdivisions, a sample case, and blank pages for your own case. A software version is planned that will further simplify the process of data input. The “Worksheet” is a qualitative tool, so there is no score. The document clarifies for the user whether excessive manipulation is present, and, based upon current understanding of perpetrator tactics and behavior, its specific form. As a tool, the conclusions of the “Worksheet” are always subservient to local statutes and case law; nonetheless, this method of analysis has proven to be so effective that it is used in several countries in addition to the United States.

The “Worksheet” is based upon the IDEAL protocol, which combines knowledge from the fields of psychiatry, psychology, and sociology regarding the mechanisms of human manipulation, with extensive review of statutes, case law, and legal theory. IDEAL describes those psychological and social factors that commonly co-exist in undue influence situations. These factors are: **I**solation; **D**ependency; **E**motional manipulation and/or **E**xploitation of a vulnerability; **A**cquiescence; and **L**oss. The simple and basic description of each follows:

“Isolation” – This refers to isolation from pertinent information, friends, relatives, or usual advisors. Causes include: medical disorders; a history of poor relationships with others; perpetrator interference; geographic changes (e.g. travel); and technological isolation (e.g. loss of telephone services).

“Dependency” - This refers to dependence upon the perpetrator, such as for physical support, emotional factors, or information.

“Emotional manipulation” - This usually manifests as promises, threats, or a combination of both, regarding issues of safety and security, or companionship and friendship. “Exploitation of a vulnerability” may overlap with emotional manipulation,

and also includes behaviors such as providing alcohol to an alcoholic in exchange for benefits; having a vision-impaired person sign a legal document; or misrepresenting documents and their consequences to the cognitively impaired.

“Acquiescence” - This refers to the victim’s apparent consent or submission.

“Loss” – In cases involving monetary assets, this refers to *inter vivos* financial loss. In cases involving violence, this refers to physical harm.

Results of Using the Protocol:

To date, hundreds of cases have been evaluated using IDEAL. In cases brought to civil litigation and probate, all of the first four factors (I-D-E-A) were found to co-exist more than 95% of the time when there was a finding of undue influence. This may reflect, in part, the understanding that if any single factor is lacking, the combination of any remaining three may reflect a socially acceptable relationship. In such cases, idiosyncrasies in local statutes and case law have sometimes nonetheless provided for a finding of undue influence. The fifth item, “loss,” has been a component in some civil and probate cases, and appears to be a necessary component in criminal prosecution when undue influence is also considered a matter of criminal law.

Case Example:

The following is a true case, although extreme in its clarity. The issue of undue influence is obvious, but the case is presented to help show how a fact pattern is considered within the IDEAL protocol:

Mr. Jones is an affluent, 88 year-old retired professor. His beloved wife of 60 years died two years ago, and since then he has been very lonely. Mr. Jones has a good and loving relationship with his three adult children, and though they live in other States he speaks with each every week. Mr. Jones moved to a retirement community four years earlier, and because of his wife’s illness and subsequent death, he has no significant social contacts in his current community. His long-time friends live several hundred miles away. Mr. Jones has multiple medical problems – diabetes, heart disease, high blood pressure, and difficulty walking due to arthritis – but has no apparent cognitive impairment.

Mr. Jones meets Ms. Smith, a 62 year-old divorced woman. She moves into his home six months later. She provides physical care in the form of preparing meals, cleaning the house, taking him to physician appointments, and ensuring he takes his medications properly. During the next six months, Ms. Smith begins asking for “tokens of appreciation” and purchases a new car, wardrobe, and jewelry with Mr. Jones’ money. She also demands that he give her his late wife’s jewelry, which he had intended to give to his grandchildren. At the same time, Mr. Jones stops telephoning his children, and they in turn find it more and more difficult to speak with him. Ms. Smith is now the only person to answer the telephone, and when the children call they often are told their father is unavailable or does not feel well enough to talk. Eventually, they are not allowed to speak to him at all. Two months later, after repeated angry exchanges with Ms. Smith, the eldest child receives a telephone message from

Mr. Jones. In the message, Mr. Jones says, "She says I cannot call any of you anymore. If I do she will leave me and she says that at my age no one else will care for me, and that I will be alone. The same thing will happen if I stop giving her money. I know what she is doing, but I was so lonely after your mother died. I couldn't bear to be that lonely again. I just hope that I can hold back enough money so she will stay until I die." These were Mr. Jones' last words to his children. He subsequently changed his estate plan – bequeathing everything to Ms. Smith.

Applying IDEAL to these facts:

Isolation – Mr. Jones' children and friends live far away, he has no significant social contacts in his current living environment, his mobility is limited due to illness, Ms. Smith intercepts his telephone calls, and he is not allowed to talk to his children.

Dependency – Mr. Jones is emotionally dependent upon Ms. Smith, and she provides for his physical needs (food, cleaning, appointments, medicine).

Emotional manipulation/Exploiting a weakness – Ms. Smith threatens to abandon Mr. Jones using his fear of loneliness.

Acquiescence – Mr. Jones agrees to Ms. Smith's demands because he is frightened of being lonely, dependent upon her, and isolated from other social contacts and family. As a result, he gives her money and property, and makes her the sole beneficiary of his estate.

Loss – Mr. Jones suffers financial losses because of Ms. Smith's threats and coercion. In this case, although criminal charges might have been pursued in some jurisdictions (ex. for elder abuse), the issue of "loss" was used only to support civil litigation.

Caveats and Suggestions:

1. Although it may seem obvious – do not rely only upon the litigants for information. The "Undue Influence Worksheet" and IDEAL are more effective if there are corroborating statements and observations by 3rd-parties, circumstantial evidence, and/or self-incriminating statements by the litigants. A case may be argued without such corroboration, but the use of IDEAL would be quite limited.
2. If more sophisticated analysis is needed, an expert should be contacted for advice regarding the development of both general and specific manipulation tactics, their relative impact, and assessment of pertinent cognitive issues (note: impaired cognition is common, but is not essential). These topics require extensive individual attention, and will not be presented in this introductory article.

Also, be cautious when retaining an expert on the issues of manipulation or undue influence. These are specialized fields and very few people are actual experts. Unfortunately, many well-intentioned mental health professionals claim this expertise without knowing how much training and knowledge is necessary.

3. Some attorneys report successful use of IDEAL without employing associated experts. In these cases, the attorney uses the information obtained through IDEAL and the "Worksheet" to craft a powerful and compelling argument – for either settlement or trial.

The "Undue Influence Worksheet" is available free of charge at www.bennettblummd.com.

For more information on the psychiatric aspects of undue influence, and the IDEAL protocol, please read:

1. Blum, B. "Forensic Issues: Geriatric Psychiatry." *Kaplan and Sadock's Comprehensive Textbook of Psychiatry, Eighth Edition*, B. Sadock and V. Sadock editors. Baltimore, MD: Lippincott, Williams and Wilkins, 2005.
2. Blum, B. "The "IDEAL" Protocol for Undue Influence – An Introduction" National College of Probate Judges NCPJ Life & Times, Vol. 2, Number 7, Spring 2003.
3. Blum, B. Testimony – 1999 U.S. Senate Committee Hearing: Fraud: Targeting America's Elderly: www.senate.gov/~commerce/hearings/0804blu.pdf.
4. Yarbrough, J. "Predators of the Elderly" (Videotape). Made for the Los Angeles County Sheriff's Department Los Angeles, California, January 1997.
5. Multiple articles in National Center on Elder Abuse: Clearinghouse on Abuse and Neglect of the Elderly (CANE) - Annotated Bibliography: www.elderabusecenter.org/default.cfm.
6. Mental Capacity, Consent, and Undue Influence. National Committee for the Prevention of Elder Abuse: www.preventelderabuse.org/issues/capacity.html.

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