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if the *pseudoscientificus* aspect were never mentioned or expounded during the trial.

It is also apparent that the possibility of admission would be increased if narcoanalysis were included in a long term examination as opposed to one or two brief interviews. This would afford the expert other data on which to base his opinion, thus constructing a sounder foundation and diverting the spot-light which now seems to be focused on the reliability of truth drugs.²⁰

In conclusion, narcoanalysis seems to be generally recognized by the courts and favored by legal writers when utilized in cases of insanity. There is conflict, however, in relation to milder mental conditions. Some courts seem to be willing to extend the use of such drugs into the area of credibility and character evidence both of the accused and of the witness; while others, as indicated, are not so willing. In addition, local rules pertaining to exclusion of evidence will continue to be an important variant in regard to the use and acceptance of narcoanalysis, in that such rules will encourage greater court discretion.

J. N. GOLDING.

Guardian and Ward—Dissent by an Incompetent Widow Through Her Guardian

The guardian of an incompetent widow has many problems, a few of which may best be pointed out in a hypothetical situation. Assume a seventy-year old incompetent widow has a personal estate of \$100,000.00. The husband left no children or collateral heirs. His estate, valued at \$500,000.00, is predominantly personalty such as stock in his family corporation. Under his will the widow is to receive the income from one fourth of this estate for life. The residue of the estate is devised to what had been the widow's favorite charity before she became incompetent. She did not make a will while she was competent. She has a brother living who has not seen her for 10 years. What should the widow's guardian do in regard to the will—should he dissent for her, or should he elect for her to take under the will? What standard should govern him in making this decision? As her brother will be her heir upon her death,¹ how can the guardian be sure that he has protected himself against suit by the brother since upon her death intestate the brother would have an interest sufficient to sue?²

²⁰ *State v. Sinnott*, 43 N. J. Super. 1, 127 A. 2d 424 (1956); STANSBURY, EVIDENCE § 136 (1946).

¹ N. C. GEN. STAT. § 29-1, Rule 5 (1950).

² N. C. GEN. STAT. § 1-57 (1953). The amount that the brother would receive upon his sister's death would very possibly bear a direct relationship to the amount which the widow received from her husband's estate.

Prior to 1849 a widow in North Carolina was required to dissent from her husband's will in person and this could not be done for her by an attorney or, if she had one, by her guardian.³ If she was a lunatic, no dissent could be made. In that year a statute was passed to allow the guardian of an incompetent widow to dissent for her.⁴ Were the widow competent, she could elect to take under the will or to dissent for numerous and unknown personal reasons without having to answer to anyone for her decision. The exercise of the right by the guardian to dissent for the incompetent should be subject to discretionary standards, but *quaere* as to the standard to be applied? The statute is silent on this point.

Two tests have been evolved elsewhere to determine when the right of election should be exercised for an incompetent widow.⁵ The first is based solely on the monetary benefit to the widow. If under a dissent she would be entitled to a larger share than she would get under the will, then the guardian *must* dissent.⁶ The second test repudiates the monetary benefit as the sole test, and considers it only as one of the many broad factors to be taken into account in reaching the decision.⁷

It seems to be a settled proposition in North Carolina that a guardian must make certain that he receives from the administrator of an estate the full share to which his ward is entitled.⁸ In managing his ward's estate a guardian must act in good faith and with the care and judgment that a man of ordinary prudence exercises in his own affairs.⁹ The general rule is that in determining whether election by the guardian should be for or against the will, financial benefit should be considered as a strong, but not conclusive, reason for electing to renounce.¹⁰ No cases have been found which state the North Carolina view on this point.

In a 1953 Oklahoma case,¹¹ the testator left his eighty-four year old

³ Lewis v. Lewis, 29 N. C. 72 (1846); Hinton v. Hinton, 28 N. C. 274 (1846). See Bell v. Wilson, 41 N. C. 1 (1849).

⁴ This provision may now be found in N. C. GEN. STAT. § 30-1 (1950).

⁵ See 39 VA. L. REV. 717 (1953).

⁶ Wentworth v. Waldron, 86 N. H. 559, 172 Atl. 247 (1934); Matter of Hills, 157 Misc. 109, 283 N. Y. Supp. 733 (Sup. Ct. 1936); German's Case, 318 Pa. 200, 178 Atl. 38 (1935).

⁷ Estate of Kees, 39 Iowa 287, 31 N. W. 2d 380 (1948); Hogan v. Roche, 95 N. H. 368, 63 A. 2d 794 (1949); Brooklyn Trust Co. v. Dais, 122 N. J. Eq. 182, 192 Atl. 849 (1937); Hamilton Nat'l Bank v. Haynes, 180 Tenn. 247, 174 S. W. 2d 39 (1943).

⁸ Alexander v. Alexander, 120 N. C. 472, 27 S. E. 121 (1897); Culp v. Lee, 109 N. C. 675, 14 S. E. 74 (1891). See LAKE, NORTH CAROLINA PRACTICE METHODS § 523 (1952).

⁹ N. C. GEN. STAT. § 33-20 (1950); Luton v. Wilcox, 83 N. C. 21 (1880).

¹⁰ In re Connor, 254 Mo. 65, 162 S. W. 252 (1914); Van Steenwyck v. Washburn, 59 Wis. 483, 17 N. W. 289 (1883). See 74 A. L. R. 464; 147 A. L. R. 349; 57 AM. JUR., WILLS § 1528. See also ATKINSON, WILLS § 138 (2d ed. 1953); 4 PAGE ON WILLS, § 1363 (Lifetime edition).

¹¹ Turner v. First Nat'l Bank and Trust Co., 262 P. 2d 897 (Okla. 1953).

incompetent widow one half of his estate of approximately \$600,000.00. Her personal estate was valued at about the same amount. Since the testator left no children, parents, brothers, or sisters, his widow would have been entitled to the whole estate in case of intestacy under the Oklahoma law.¹² For that reason the incompetent widow's guardian filed a dissent to the will. The county court, however, ruled that the widow should take under the will instead of by intestacy. Upon the guardian's appeal, the Oklahoma Supreme Court said:

"We cannot agree with the argument that the election of the court that Mrs. Turner take under the will is illegal in that it gives her less than she would take under the law. If, when the surviving spouse is unable to elect, the court must elect for the incompetent survivor solely upon the basis of which election would render greater material value, then the matter of election would be merely a question of mathematics, a task for appraisers and accountants. The word 'Election' means the right and power to choose without restrictions."¹³

An earlier case in Florida¹⁴ had reached the same result. Although the guardian had filed a dissent for his ward, an incompetent widow, the Florida Supreme Court affirmed the lower court's decision that the widow take the income from \$400,000.00 for life as provided under her husband's will. Her share under the intestacy laws amounted to \$2,000,000.00. In reaching this decision the court said:

"In determining what is for the best interest of the afflicted widow, the chancellor will generally be influenced by these considerations: (1) The husband's right to dispose of his estate is limited by the right given the widow to renounce the provisions of the will in her behalf and take under the statute but the sole reason in law for giving the widow the right to renounce is to insure ample provision for her personal needs and comforts. (2) Her personal needs and comforts may not be confined to pure

¹² 84 OKLA. STAT. § 213 (1951).

¹³ *Turner v. First Nat'l Bank and Trust Co.*, 262 P. 2d 897, 903 (Okla. 1953).

¹⁴ *First Nat'l Bank v. McDonald*, 100 Fla. 675, 130 So. 596 (1930). In rejecting the monetary test, the court said: "An insane widow or one acting for her does not come into a court of equity for the purpose of renouncing her husband's will on like terms and in the same legal status as if she were sane. As to the sane widow we have shown that the act of renunciation is personal, absolute, and incontestible. The same right might be exercised by her guardian for her if specifically directed by statute; but our statute not having so directed she is left to her remedy in a court of equity. When made by a court of equity election is no longer personal and voluntary but must be predicated on some ground of equity shown to exist in favor of the widow, and of which she is deprived by the will. In determining whether such equity exists the chancellor will be guided by what is to the best interest of the afflicted widow." *Id.* at 681, 130 So. at 598.

monetary considerations. (3) The matter of enriching the widow's estate and passing something to her kinspeople has no place in the chancellor's consideration. (4) The kinspeople of the wife have no claim direct or indirect on the estate of the husband. (5) The fact that a permanently insane widow knows nothing of the value of money, cannot use it with discretion, and has no need for money nor property save to furnish ample comforts and needs may be considered. (6) It may also be borne in mind that when the husband has made ample provision for his insane wife he has an inherent right to dispose of his property as he pleases, provided the disposition will not be contrary to public policy. Other considerations will no doubt arise from time to time."¹⁵

A Virginia case¹⁶ gives an interesting twist to this problem. There also the incompetent widow would have taken less under the will than under the law of intestacy. The devisees and legatees, however, made a compromise with the widow's guardian which increased the widow's share, although it was still smaller than her intestate share. The lower court approved the compromise, but upon appeal the Virginia Supreme Court said that the widow's guardian could either accept or dissent, but that it would be beyond the power of the court to sanction a compromise.

The lack of a standard¹⁷ other than perhaps the monetary one greatly hinders the effective use of estate planning in North Carolina by a man who is married to an incompetent. He must leave her at least her intestate share of his estate or else her guardian will probably be compelled to dissent for her. Upon her death this estate will go to her heirs—who might well not be the persons the husband would desire to inherit any of his estate. This is particularly burdensome to a husband whose main assets are personalty, such as stock in a family corporation. If the incompetent has a separate estate of any great size, the inclusion in her estate of the share received from her husband will greatly increase the taxes to be paid.¹⁸

Perhaps the safest way for the guardian to protect himself would be for him to bring an action seeking the advice of the court.¹⁹ In such

¹⁵ *Id.* at 681, 130 So. at 598.

¹⁶ First Nat'l Exchange Bank v. Hughson, 194 Va. 736, 74 S. E. 2d 797 (1953).

¹⁷ ATKINSON, WILLS § 138 (2d ed. 1953) suggests three possible ways for making the election: (1) have a judicial hearing to approve the guardian's determination; (2) have an independent decision of the court; or (3) refer the entire matter to a master for investigation and report.

¹⁸ Int. Rev. Code of 1954, § 2001 and § 1. N. C. GEN. STAT. § 105-5, § 105-6 (1950).

¹⁹ Johnson v. Wagner, 219 N. C. 235, 13 S. E. 2d 419 (1941); In re Reynolds' Guardianship, 206 N. C. 276, 173 S. E. 789 (1934); Commercial National Bank v. Alexander, 188 N. C. 667, 125 S. E. 385 (1924). See McINTOSH, NORTH CAROLINA PRACTICE AND PROCEDURE § 168 2d ed. 1956). See also footnote 17, *supra*.

action the heirs apparent of the widow should be parties. Any decision given would then become *res adjudicata* as to the parties.²⁰

HENRY M. WHITESIDES.

International Law—The High Seas, The Continental Shelf, and Free Navigation

Few principles of International Law have been more fully recognized and accepted than free navigation on the high seas! Professor Colombos of the Hague Academy of International Law states, "Today it is universally recognized that the open sea is not susceptible of appropriation and that no state can obtain such possession of it as would legally be necessary to give rise to a claim of property. The high sea cannot be subject to a right of sovereignty for it is the necessary means of communication between nations and its free use thus constitutes an indispensable element for international trade and navigation."¹

I

Though the seas are free today, this was not always so, nor were they set free without a struggle. From the tenth to the sixteenth century, English kings made sovereign claims to all seas.² During the fifteenth century Pope Alexander, by a Papal Bull of September 25, 1493, partitioned the Atlantic Ocean between Portugal and Spain. Denmark, Genoa, Sweden, Russia, and many other states asserted similar claims of sovereignty over the high seas. This tide of sovereign claims, however, soon receded when Queen Elizabeth proclaimed, "The use of the sea and air is common to all; neither can any title to the ocean belong to any people or private persons forasmuch as neither nature nor regard of the public use and custom permitteth any possession thereof." Twenty-five years later, in 1609, the Dutch publicist Grotius (Hugo de Groot), traditionally considered the founder of International Law, stated as a basic principle, "The open sea cannot be subject to the sovereignty of any state, access to all nations is open to all, not merely by the permission but by the command of the Law of Nations."³ Justice Story, in *The Marianna Flora*,⁴ stated the American view—" . . . [U]pon the

²⁰ *In re Morris*, 224 N. C. 487, 31 S. E. 2d 539 (1944); *Cameron v. McDonald*, 216 N. C. 712, 6 S. E. 2d 497 (1940); *Ludwick v. Penny*, 158 N. C. 104, 73 S. E. 228 (1910).

¹ HIGGINS & COLOMBOS, *INTERNATIONAL LAW OF THE SEA* § 50 (3d ed. 1954).

² For a historical outline of these British claims, see FULTON, *THE SOVEREIGNTY OF THE SEA* (1911).

³ GROTIUS, *MARE LIBERUM* (1609), contained in c. 12 of GROTIUS, *DE JURE PRAEEDIAE* (CLASSICS OF INTERNATIONAL LAW, Scott Trans., 1950).

⁴ 24 U. S. (11 Wheat.) 1, 42 (1826). To the effect that "International Law is a part of our law, and must be ascertained and administered by the courts of justice . . ." see Justice Gray's opinion in *The Paquete Habana*, 175 U. S. 677