rejected the Valles' claim that said training inadequacies were a "moving force" in the constitutional violation and that the city had been deliberately indifferent—that is, conscious of the fact that its policies were jeopardizing constitutional rights. The court pointed out that the SWAT captain who authorized the forcible entry had been trained in CIT tactics and that the on-site CIT officer later testified that if she had been asked at the time of the decision to forcibly enter the home, she would not have disagreed with the decision. Summing up, the court held that "it is difficult to show deliberate indifference in a case such as this one where the City has implemented at least some training" (*Valle*, p 542).

Discussion

Throughout the opinion, the court of appeals emphasized its consensus against endorsing municipal liability. Near the end of its opinion, the court asserted its wariness in relation to municipal liability findings, relating that the "court has been wary of finding municipal liability on the basis of a single incident to avoid running afoul of the Supreme Court's consistent rejection of respondeat superior liability" (*Valle*, p 543). This seems to be a question of administrability. Indeed, an appellate endorsement of municipal *respondeat superior* liability would be likely to lead to a civic liability free for all and many bankrupt municipalities.

However, the very existence of CIT tactics indicates that progress is being made at the ground level on the problems at the heart of this case. The court of appeals endorsed the basic aims of CIT training and even suggested that if more of the officers had been trained in CIT tactics, the tragedy might have been avoided (*Valle*, p 540). Research is under way to determine whether CIT improves outcomes in incidents in which the police encounter severely mentally ill clients (see Compton MT, Bahora M, Watson AC, *et al*: A comprehensive review of extant research on crisis intervention team (CIT) programs. *J Am Acad Psychiatry Law* 36:47–55, 2008). At the very least, CIT training appears to improve rates of diversion to mental health services in those arrestees with severe mental illness (Compton *et al*, p 52). Forensic psychiatrists can, and we think should, advocate at the community level for improved acceptance and more comprehensive implementation of CIT training in their own municipal police forces.

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Testamentary Capacity

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The Presence of Mental Illness Does Not Preclude Testamentary Capacity

At issue in *In the Matter of the Estate of Berg*, 783 N.W.2d 831 (S.D. 2010), is whether a trial court erred in its finding that Mr. Berg, who had a history of schizophrenia, had the capacity to write a will and was not subject to undue influence in executing such.

Facts of the Case

After being discharged from the U. S. Army in 1943, Fred Berg had visual and auditory hallucinations, which were controlled by electroconvulsive therapy (ECT) for several years. He began refusing ECT and, in 1950, underwent a bilateral prefrontal lobotomy. After his lobotomy, Mr. Berg was able to engage in social and recreational activities for the remainder of his life.

In 1967, the Veterans Administration found that Mr. Berg lacked the capacity to contract or to manage his own affairs, including the disbursement of funds, and was incompetent "for the limited purposes of insurance and disbursement of benefits" (*Berg*, p 834). A court order appointed American National Bank and Trust Company as a guardian to dispense benefits.

In 1991, Mr. Berg was visited by his nephew Roger Berg (Roger), and a friendship began that lasted until Mr. Berg's death. Roger called his uncle regularly, and they saw each other one to two times per year for the next 16 years. The director of social services at Mr. Berg's nursing home noted that Mr. Berg would "light up" when Roger was expected for a visit and that he spoke about these visits with great enthusiasm. She also noted that very few other family members visited. Mr. Berg and Roger took several trips together. In 1995, Roger was given Mr. Berg's power of attorney.

In 1996, Roger became aware that Mr. Berg had $500,000 in the bank but did not tell the rest of Mr. Berg's family. In 1997, upon Roger's recommendation, Mr. Berg met with an attorney to draft a will.

While Roger waited outside, Mr. Berg estimated his assets at $100,000 and designated Roger and Mr. Berg's two sisters as objects of his bounty. Mr. Berg received a draft of the will. In 1998, Mr. Berg was taken to his lawyer's office by a staff worker from the nursing home to sign the will.

The director of social services at the nursing home reported that Mr. Berg claimed that the late actor Fred MacMurray was his father. She also reported that Mr. Berg was very intelligent and typically oriented in all three spheres. The activities director at Mr. Berg's nursing home noted that he enjoyed playing two-card bingo and participating in discussion groups on current topics. A staff member at the nursing home administered a Mini-Mental State Examination to screen for cognitive impairment the day after Mr. Berg signed his will, and he scored 28 of a possible 30.

Mr. Berg died on November 5, 2006. On April 10, 2007, Mr. Berg's brother's daughter, Carol Opdahl, filed a petition asserting that Mr. Berg lacked the capacity to execute his will. She also alleged undue influence by Roger and sought an equal distribution of Mr. Berg's estate. During the trial, Ms. Opdahl called on Dr. Manlove, a forensic psychiatrist, to testify on her behalf. Dr. Manlove opined that, because of his schizophrenia, Mr. Berg was more susceptible to undue influence than are those with no mental illness. He also opined that the record contained evidence that Mr. Berg was "probably" thought disordered and psychotic on the day that the will was made, given his static delusion that Fred MacMurray was his father. As a basis for his opinion, Dr. Manlove read medical records and read deposition transcripts given by Mr. Berg's nursing home personnel and his attorney. Dr. Manlove did not interview Mr. Berg's treating doctors or nursing staff personnel. Ms. Opdahl testified that she had known that, since 1954, Mr. Berg had been of "unsound mind" and had been "essentially a human robot." Ms. Opdahl had last visited Fred Berg in 1994, 12 years before his death.

Ruling and Reasoning

The trial court concluded that Mr. Berg's caretakers and companions over the last several years of his life knew him best and were more credible and persuasive regarding Mr. Berg's competency to execute his will than was Ms. Opdahl's expert witness. The trial court gave little credence to Ms. Opdahl's testimony, as it was considered "mainly hearsay-upon-hearsay, conjecture, and speculation" (*Berg*, p 840).

The trial court concluded that Mr. Berg had testamentary capacity at the time his will was drafted and executed. It found that Mr. Berg was aware that he had a "sizeable" estate, that he knew to whom he wanted his money to go, and that there was no evidence of undue influence by Roger. The court also took note of Roger's decision to "formally disclaim before the will contest was filed" (*Berg*, p 841). Roger had renounced the inheritance, and it went to Mr. Berg's lone surviving sister.

Ms. Opdahl appealed this decision to the South Dakota Supreme Court asserting that the trial court erred in its conclusion that Mr. Berg had testamentary capacity and that Roger did not exert undue influence. The court found that the existence of undue influence was a question of fact for the trial court that had already been answered. The court concluded that Mr. Berg's static delusion that Fred MacMurray was his father "did not touch" his testamentary capacity, Mr. MacMurray was not named as an object of his bounty, and therefore the delusion did not materially affect the terms and provisions of the will. The court went on to say that "for purposes of testamentary capacity, we do not require the soundness of mind enjoyed by those in perfect health," (*Berg*, p 842) and "testamentary capacity is not determined by any single moment in time, but must be considered as to the condition of the testator's mind a reasonable length of time before and after the will is executed" (*Berg*, p 842).

Discussion

Testamentary capacity refers to an individual's capacity to make a will and the testator enjoys the presumption of competence until proven otherwise. To have testamentary capacity, testators must know a reasonable approximation of the overall worth of their estate and which individuals are the "natural objects" of their bounty, usually blood relatives. In addition, the will must be executed in the absence of undue external influence. In a will that is contested, the burden of proof in most jurisdictions is "clear and convincing" and rests with the party alleging deficiency.

At issue in this case, as in all competencies, is whether the signs and symptoms of a mental disorder interfered with the abilities needed to competently perform a specific task or function, making a will.

The criteria for possessing testamentary capacity are conceived of as lying at a low level, perhaps the lowest level, of any legal demands on an individual.

As testamentary capacity frequently arises in cases of organic brain dysfunction (e.g. dementia and delirium), the testator may possess capacity during a lucid interval; incompetence (intestacy in this case) refers to a current condition and does not necessarily imply an enduring status. In the case of an individual with a chronic mental illness, that individual may possess testamentary capacity so long as the signs and symptoms of that mental illness do not materially affect the abilities required for such capacity.

Forensic psychiatrists conducting an examination on testamentary capacity are advised to be aware that collateral information in the postmortem examination may be biased, given the often heated nature of contested wills. It is also advisable to consider testamentary capacity as a functional ability that may or may not be influenced by a given diagnosis or diagnostic finding. As with other competencies (although with a lower standard), it is the particular manifestation of an illness that is relevant and not the illness itself. If a testamentary capacity evaluation is requested at the time that an individual is executing a will, it is useful to make a video recording of the evaluation. A video recording can present compelling information that may be relevant to a court's effort in the future to determine if the person possessed testamentary capacity at the time of writing the will.

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Sexually Violent Predator

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Defendants Undergoing a Commitment or Recommitment Trial Under the Sexually Violent Predators Act in California Are Not Required to be Mentally Competent as Part of Due Process

In *Moore v. Supreme Court*, 237 P.3d 530 (Cal. 2010), the Supreme Court of California reversed the California Court of Appeal's ruling that the defendant had a constitutional right not to be tried as a sexually violent predator while mentally incompetent.

Facts of the Case

Ardell Moore was convicted twice for violent sexual offenses that included forcible oral copulation in 1978 and kidnapping and sexual assault in 1984. He was released from prison in 2000 and committed to Atascadero State Hospital as a sexually violent predator (SVP) under the Sexually Violent Predator Act. This case arose from his SVP recommitment hearing in which Mr. Moore was denied a motion to determine his mental competence to proceed by the Superior Court of Los Angeles County.

As a result of the 1978 charges, he was found to be a "mentally disordered sex offender" who was unamenable to treatment and was sent to prison to complete his sentence. In 1984, he was declared incompetent to stand trial and committed to Atascadero State Hospital, but later he was sentenced to 25 years in prison. During the commitment at Atascadero that started in 2000, he had many violations for sexual misconduct and rule violations that were outlined in the recommitment evaluations performed in January 2005 by Shoba Sreenivasan, PhD, and Elaine Finnberg, PhD. Their evaluations noted that Mr. Moore declined to participate in any of the five phases of intensive treatment that comprised the Sex Offender Commitment Program. Furthermore, Mr. Moore resisted taking medications that would decrease his sexual impulses. Both evaluators opined that he would be likely to engage in sexually violent criminal acts in the future without recommitment and treatment.

On February 5, 2007, Mr. Moore, through counsel, asked the county court judge to order an evaluation of his competence to participate in the recommitment proceedings and postpone the recommitment proceedings until a determination of competency could be made. Included in the defendant's request was an evaluation letter by Vianne Castellano, PhD, an evaluation not ordered by the court, in which Dr. Castellano opined that Mr. Moore "could not understand the nature and purpose of the proceedings, or cooperate in a rational matter with counsel or mental health experts" (*Moore*, p 535). The request for an evaluation and hearing regarding Mr. Moore's competence to pro-