

competent to make a will, then the will fails. Furthermore, over the years the chancery courts, the equity courts in England and the United States have developed a doctrine of undue influence and under that particular doctrine a person who is in a fiduciary relationship to another and that certainly would be an attorney with respect to his client principle, who apparently takes advantage of that relationship, may have that transaction set aside because that person has exercised undue influence and there are cases in this state where people have challenged attorney beneficiaries under wills and has said simply that the will was a product of overreaching on the part of the attorney and the old common law doctrine of undue influence did very nice. It worked well to set aside the bequest to the attorney so that the attorney would not receive it. Now we all know that Dr. C.C. Criss and his wife, Mabel, built Mutual of Omaha over the last sixty years and we know that when Mrs. Criss died recently she died a multimillionaire. I note in the newspaper that one of the beneficiaries of her will was a lawyer, Bill Day, who received a specific bequest under her will, I believe of \$10,000. I could be incorrect. I would not be in the least bit surprised if his law firm prepared her will. Now here is a woman, here is a woman who is in business every day of the week, who builds a fortune in an insurance company and who decides in the end to make a small bequest, it is large to me but small to her, to a person who probably has been a very faithful retainer over the years, provided that woman, I assume, services, legal services, counsel and the like and receives a small bequest because she wants to do that and under the Wesely amendment, because that attorney would never receive any portion of her estate, he is not entitled to any intestate succession. Her intent would be totally and absolutely defeated even though she was (a) mentally competent, (b) knew exactly what it was she wanted to do, (c) intended to do exactly what she did. Nonetheless, her will would not be carried out under the Wesely amendment. Furthermore, the Wesely amendment doesn't reach, doesn't even begin to reach the kinds of transactions that can occur when someone violates that trust responsibility that that person has to another. There is no reason, for example, why the ninety-two year old somewhat senile person could go to some faithless lawyer and the lawyer could persuade that person not to write a will at all but instead to transfer all of her property during her life to the lawyer. This amendment doesn't reach that but the common law doctrine of undue influence will reach that and that transaction will be set aside or the common law doctrine of mental competency will reach that and that transaction will be set aside. We have adequate tools at this juncture to deal with this problem. In my opinion this amendment is one that we truly ought not to adopt because it defeats the