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## Conspiracy Theory Belief and the Case for Abolishing the Insane Delusion Doctrine

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# CONSPIRACY THEORY BELIEF AND THE CASE FOR ABOLISHING THE INSANE DELUSION DOCTRINE

PAYTON YAHN

In the months following January 6, 2021, there was a story that overtook American journalism:<sup>1</sup> a person with warm, loving relationships falls through their phone screen and down a rabbit hole, emerging as a “ghost” of their former self and an ardent believer in QAnon. Their belief in QAnon devastates their relationships with family and friends. Parents refuse to attend their child’s wedding,<sup>2</sup> children report their parents to the FBI for attending the Capitol riot,<sup>3</sup> brothers stop speaking,<sup>4</sup> and wives consider leaving their husbands.<sup>5</sup> In these stories of broken relationships, there is a common refrain. Family and friends of Q believers lament that they have spent hours “arguing over basic facts [they] considered indisputable” and are at a loss for what to do to help their loved ones “get out.”<sup>6</sup>

To understand the discord that arises between Q believers and their loved ones, a basic understanding of the conspiracy theory is helpful. When QAnon emerged on message boards in 2017, it held that certain elite Americans were Satanic pedophiles. Since then, the theory has evolved to encompass an ever-expanding set of beliefs—former President Donald

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<sup>1</sup> Ashitha Nagesh, *The Moment Q-Anon Took the Person I Love Most*, BBC NEWS (Sept. 17, 2021), <https://www.bbc.com/news/world-us-canada-57369349>; Anastasiia Carrier, ‘*This Crap Means More to Him Than My Life*’: *When Q-Anon Invades American Homes*, POLITICO (Feb. 2, 2021, 5:26AM), <https://www.politico.com/news/magazine/2021/02/19/qanon-conspiracy-theory-family-members-reddit-forum-469485>; Albert Samaha, *My Mom Believes in QAnon. I’ve Been Trying to Get Her Out*, BUZZFEED NEWS (Mar. 12, 2021, 10:43AM), <https://www.buzzfeednews.com/article/albertsamaha/qanon-parents-millennial-children>; Cecelia Saixue Watt, *The QAnon Orphans: People Who Have Lost Loved Ones to Conspiracy Theories*, THE GUARDIAN (Sep. 23, 2020, 5:00PM), <https://www.theguardian.com/us-news/2020/sep/23/qanon-conspiracy-theories-loved-ones>.

<sup>2</sup> Nagesh, *supra* note 1.

<sup>3</sup> Carrier, *supra* note 1.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Samaha, *supra* note 1.

Trump is waging a secret war against the Satanic pedophiles, Joe Biden's presidency is illegitimate, Covid-19 is a hoax, and vaccines are instruments of mind control.<sup>7</sup> Believers think these secrets will one day become known, and in the reckoning that will follow, prominent people, like Hillary Clinton, will be executed.<sup>8</sup> A common cause for estrangement between believers and their loved ones is the extent to which the friend or family member is complicit in upholding the immoral, illegal conduct of the elite—either through their conduct or by their inability to see the “truth.”<sup>9</sup>

Belief in QAnon is popular enough that most Americans likely know someone who is an adherent. Fifteen percent of Americans agree with QAnon's premise: “the government, media, and financial worlds in the U.S. are controlled by a group of Satan-worshipping pedophiles who run a global child sex trafficking operation.”<sup>10</sup> The same percentage believe that “true American patriots” may have to resort to violence to save the country.<sup>11</sup>

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<sup>7</sup> Nagesh, *supra* note 1.

<sup>8</sup> *Id.*

<sup>9</sup> *See, e.g.*, Nagesh *supra* note 1 and Samaha *supra* note 1.

<sup>10</sup> Public Religion Research Institute, *Understanding QAnon's Connection to American Politics, Religion, and Media Consumption*, PRRI (May 27, 2021), <https://www.prii.org/research/qanon-conspiracy-american-politics-report/>. This survey is among the most commonly cited for measuring belief in QAnon, but it should be noted that different surveys have found substantially different results.

Recent polling from June shows [American's support of QAnon to be] around 15 percent. But wait, a poll from last October found it was 7 percent. But even that is high compared to a rolling survey that pegged it at 4 percent earlier this month.

Why the disparity? Maybe, in an attempt to minimize the power of QAnon, a secretive clique of polling elites signed a contract with Satan and Marina Abramović to offer wildly different survey results ... or maybe it's just difficult to poll about QAnon.

Kaleigh Rogers, *Why It's So Hard to Gauge Support for QAnon*, FIVETHIRTYEIGHT (June 11, 2021, 6:00AM), <https://fivethirtyeight.com/features/why-its-so-hard-to-gauge-support-for-qanon/>.

<sup>11</sup> Public Religion Research Institute, *supra* note 10. It should also be noted that QAnon is not an aberration in its popularity. Since the 1970's, well over half of all Americans have consistently believed that the assassination of President John F. Kennedy was a conspiracy, and a recent survey from Pew Research Center suggested that 25% of people say it is “definitely true” or “probably true” that powerful people intentionally planned the coronavirus. Katherine Schaeffer, *A look at the Americans who believe there is some truth to the conspiracy theory that COVID-19 was planned*, PEW RESEARCH CENTER (July 24, 2020), <https://www.pewresearch.org/fact-tank/2020/07/24/a-look-at-the-americans-who-believe-there-is-some-truth-to-the-conspiracy-theory-that-covid-19-was-planned/>.

QAnon belief has also been validated by a small minority of politicians. In 2020, President Donald Trump told a reporter, "I don't know much about the movement other than I understand they like me very much, which I appreciate," even though the FBI had declared QAnon a domestic terrorism threat.<sup>12</sup> U.S. House Representative Marjorie Taylor Greene has also publicly embraced QAnon,<sup>13</sup> and the Texas Republican Party gave an apparent dog-whistle to the group when they adopted the motto "we are the storm," echoing the Q prediction that a "storm" will come to sweep away corrupt elites and restore America's rightful leaders.<sup>14</sup>

The popularity of QAnon belief and the social discord it has caused mean that the conspiracy theory will inevitably receive attention in the justice system. Cases have already begun to emerge. In *Doe v. Google LLC*, the plaintiffs allege that major social media sites have come under government control, so that when these sites remove content supportive of QAnon, they engage in a state action which violates the creators' First Amendment right to free speech.<sup>15</sup> QAnon theories also played a prominent role in the criminal trial of Jacob Chansley, the "QAnon Shaman," who stormed the Capitol on January 6, donning a horned headdress, a fur pelt, and red, white and blue face paint.<sup>16</sup> After Chansley pled guilty to one count of obstructing an official proceeding before Congress, his attorney argued for leniency saying, among

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<sup>12</sup> Shirin Ghaffary, *Trump Just Embraced Followers of the QAnon Conspiracy Movement*, Vox (Aug. 19, 2020, 10:40PM), <https://www.vox.com/2020/8/19/21376639/trump-qanon-conspiracy-theory-appreciate-support-comments-fbi-domestic-terrorism>.

<sup>13</sup> Matthew Rosenberg, Astead W. Herndon, and Nick Corasniti, *Marjorie Taylor Greene, a QAnon Supporter, Wins House Primary in Georgia*, N.Y. TIMES (last updated May 25, 2021), <https://www.nytimes.com/2020/08/11/us/politics/marjorie-taylor-greene-qanon-georgia-primary.html>.

<sup>14</sup> Patrick Svitek, *The Texas GOP's New Slogan Echoes a Conspiracy Group. Its Chair Says There's No Connection*, TEXAS TRIBUNE (last updated Aug. 23, 2020), <https://www.texastribune.org/2020/08/21/texas-gop-slogan-storm/>. The chair of the party states that the inspiration for the slogan comes from an unattributed quote: "The devil whispers to the warrior slyly can it withstand the coming storm. The warrior responds, 'I am the storm.'" *Id.*

<sup>15</sup> Complaint for Breach of Contract, Breach of the Covenant of Good Faith and Fair Dealing and Violation of the First Amendment, *Doe v. Google LLC*. 2020 WL 6460548 (2020) (No. 5:20-cv-0750).

<sup>16</sup> Alan Feurer, *Jan. 6 Defendant Known as QAnon Shaman Sentenced to 41 Months*, N.Y. TIMES (last updated Nov. 17, 2021), <https://www.nytimes.com/2021/11/17/us/politics/qanon-shaman-jan-6-sentenced.html>.

other things, that Chansley had lived with mental illness, invoking the popular sentiment that conspiracy beliefs are symptomatic of underlying mental health issues.<sup>17</sup>

In the context of wills jurisprudence, QAnon has the potential to provoke important questions about the intersection of belief, sanity, and public policy — how can we distinguish conspiracy belief from other unpopular beliefs, especially in areas where evidence is necessarily scarce? Should extreme conspiracy belief ever be sufficient to set aside a will or devise? Such contests would likely rely on the insane delusion doctrine, (“the Doctrine”), which allows courts to set aside devises made as a result of “a belief so against the evidence and reason that it must be the product of derangement.”<sup>18</sup> This, in turn, brings up further questions about where delusion ends and rational belief begins, a line which has been blurred by post-truth culture.

Ultimately, exploring these questions allows an opportunity to move wills jurisprudence forward, to better comport with a culture that has serious disagreements about what is true and what is false in areas of significant importance. Current grounds of wills contests are underpinned by the belief that all persons can come to an understanding of truth through the application of reason. Conspiracy theories challenge this belief because they mark areas where capable individuals, presented with identical evidence, come to different conclusions. The application of wills jurisprudence to conspiracy belief is useful, then, because it provides a case study in when our current principles won’t work and what problems they leave unresolved.

This paper is principally concerned with the insane delusion doctrine because it is the contest ground that is most related to conspiracy belief. By exploring this doctrine, reviewing its history, and its potential application to conspiracy belief, this paper hopes to illustrate that the insane delusion doctrine has become redundant if not harmful. The doctrine is harmful because it is overinclusive and cannot achieve the degree of nuance required to adequately address issues of belief and sanity. The doctrine makes minority beliefs vulnerable, providing grounds for setting aside devises and estate plans that do not comport with the decision-maker’s world view, especially where there is any indica of mental impairment or illness. There are not significant benefits to granting courts this dangerous discretionary

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<sup>17</sup> *Id.*

<sup>18</sup> Restatement (Third of Prop.: Wills and Other Donative Transfers § 8.1 cmt. S (Am. L. Inst. 2003).

power. The doctrine is not capable of setting aside anti-social or potentially destructive conspiracy beliefs, and the wills may invalidate, could be successfully challenged on other grounds.

This paper proceeds in three parts. The first presents a summary of psychological and rhetorical theories of conspiracy belief to demonstrate that conspiracy belief is not exclusively the product of mental illness or social insecurity, but a system of understanding the world and an expression of that understanding. This conception of conspiracy theories is useful to the study of wills jurisprudence because it provides a theoretical foundation for approaching atypical devises differently, allowing us to step beyond the inexact science of deducing a testator's state of mind. Second, the paper discusses the application of the insane delusion doctrine to this conception of conspiracy belief, concluding that the doctrine cannot adequately address the negative implications of devises motivated by conspiratorial thinking, and further, that the doctrine should be abolished because of its potential for inconsistent and subjective application. Finally, the last section of this paper considers how the existing grounds for wills contests can address the problem of conspiracy belief in wills, without carrying the same risks as the insane delusion doctrine.

#### I. CONSPIRACY THEORIES: PSYCHOLOGICAL AND RHETORICAL APPROACHES

Conspiracy theories generally hold that a group of evil agents have assumed (or is trying to assume) control over an institution, region, nation, or the world.<sup>19</sup> Conspiracy theories did not emerge with the rise of the internet or mass media, but have been part of American culture and politics since the Puritans first arrived in Plymouth.<sup>20</sup> The academic study of conspiracy theories is relatively new, dating back to only the 1960's, but in that time two veins of study have emerged as vital to conspiracy theory research—searching for the psychological factors that contribute to one's predisposition to conspiracy belief and understanding conspiracy theories as a distinctive rhetorical style.

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<sup>19</sup> MICHAEL BUTTER, *PLOTS, DESIGNS, AND SCHEMES: AMERICAN CONSPIRACY THEORIES FROM THE PURITANS TO THE PRESENT* 1 (Peter Auer et al. eds., 2014).

<sup>20</sup> *Id.*

Conspiracy theories first received academic attention in Richard Hofstadter's seminal work, *The Paranoid Style in American Politics*.<sup>21</sup> In the essay, published in 1964, Hofstadter provides a history of American conspiracy belief from the anti-Masonry movement of the early 19<sup>th</sup> century<sup>22</sup> to the McCarthyism of the 1960's.<sup>23</sup> After reviewing this history, Hofstadter draws two conclusions. First, that conspiracy belief emerges when "persistent psychological phenomenon" experienced by a minority of Americans becomes inflamed by social conditions, specifically "a confrontation of opposed interests which are (or are felt to be) totally irreconcilable, and thus by nature not susceptible to the normal political process of bargain and compromise."<sup>24</sup> Second, Hofstadter concludes that conspiracy belief is a rhetorical style, "more to do with the way in which ideas are believed and advocated than with the truth or falsity of their content."<sup>25</sup>

Contemporary research is primarily concerned with Hofstadter's first observation and the cause of individual difference in conspiracy belief. The shift in America's public perception of conspiracies, from fringe fantasies to common catalysts of political belief, has likely provoked our growing interest in what creates conspiracy theorists.<sup>26</sup> Sociopsychological explanations are common. These theories argue that conspiracy belief fulfills certain needs, like understanding, control, or maintaining a positive image of the self or

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<sup>21</sup> Richard Hofstadter, *The Paranoid Style in American Politics*, HARPER'S MAGAZINE, Nov. 1964, available at <http://users.clas.ufl.edu/burt/spaceshotsairheads/HofstaderparanoidstyleHarpers.pdf>.

<sup>22</sup> Anti-masonry spread from a fear of German Illuminism, a utopian movement "to bring the human race under the rules of reason." The fear, articulated by Scottish scientist, John Robison, was that Illuminism's purpose was to "root[] out all religious establishments, and overturn[] all the existing governments of Europe" (quote was emphasized in upper-case text in the original). *Id.* at 78.

<sup>23</sup> The conspiracy theory which informed McCarthyism held that Communists had infiltrated American government and were selling out American national interests and undermining free capitalism. Communist agents were active in all areas of American life—schools, religious institutions, the press, and mass media—and were working to hamper the resistance of "loyal" Americans. *Id.* at 82.

<sup>24</sup> *Id.* at 86. If this is true, QAnon's rise in the wake of the 2016 presidential election is hardly surprising.

<sup>25</sup> *Id.* at 77.

<sup>26</sup> Karen M. Douglas et al., *The Psychology of Conspiracy Theories*, 26 CURRENT DIRECTIONS IN PSYCHOLOGICAL SCI. 538, 538 (2017).

group.<sup>27</sup> Other theories which account for individual predisposition to conspiracy belief rely on purely psychological, or even pathological explanations. These theories rely on evidence which suggests a link between conspiracy belief and schizotypal personality disorder and related tendencies of suspiciousness, social anxiety, and eccentricity.<sup>28</sup>

Another body of scholarship is concerned with Hofstadter's second observation—that conspiracy theories are a rhetorical style, a “shared endeavor and social activity.”<sup>29</sup> Under the rhetorical approach, conspiracy theories are located within a tradition, marked by shared ways of believing and speaking.

The “tradition” of conspiracy belief becomes apparent when we compare old conspiracy theories with the new. Q's pedophilic cabal that we hear of today is not markedly different from a popular conspiracy from 1836, which posited that Catholic priests were baptizing and immediately killing infants.<sup>30</sup> Nor is the theory that President George W. Bush planned the terrorist attacks on 9/11 too different from an older theory which held that President Franklin Roosevelt planned the attack on Pearl Harbor. Hofstadter identified features of this shared paranoid style: apocalyptic thinking, the enemy as “a perfect model of malice, a kind of amoral superman,” an elevation of renegades from the enemy cause, and an “almost touching concern with factuality.”<sup>31</sup>

QAnon provides an illustration of these concepts. QAnon is apocalyptic in its prediction of the end of a liberal political order, on an ever-adjusting timeline, reminiscent of figures like Harold Camping, a fundamentalist Christian, who predicted the end of the world three times.<sup>32</sup>

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<sup>27</sup> *Id.*

<sup>28</sup> Joshua Hart & Molly Graether, *Something's Going on Here: Psychological Predictors of Belief in Conspiracy Theories*, 39 *J. OF INDIVIDUAL DIFFERENCES* 229, 230 (2018). Interestingly, some scholars have “re-evaluate[d] paranoia with regard to the present age, suggesting that under the conditions of postmodernity there are, unlike before, good reasons to be paranoid... [T]hey contend that since the 1960s, it is has become a perfectly rational way of thinking totality and imagining social relations.” Butter, *supra* note 19, at 4.

<sup>29</sup> JOVAN BYFORD, *CONSPIRACY THEORIES: A CRITICAL INTRODUCTION*, 8 (Palgrave Macmillan ed., 2011).

<sup>30</sup> Hofstadter, *supra* note 21, at 81.

<sup>31</sup> Hofstadter, *supra* note 21, at 85.

<sup>32</sup> Robert D. McFadden, *Harold Camping, Dogged Forecaster of the End of the World, Dies at 92*, *N.Y. TIMES* (Dec. 17, 2013),



QAnon believers first predicted President Donald Trump's reinstatement into office would occur on Inauguration Day. When that day passed, March 4<sup>th</sup> was predicted instead, as it was when the inauguration occurred before 1933. When March 4<sup>th</sup> also passed without incident, the date was pushed to later in March because of a prior complex counting error. Now, the date seems to be attached to work being done by Mike Lindell, a pillow manufacturer, who has written a complaint alleging unproven election fraud.<sup>33</sup>

QAnon is also formed around the prediction of a renegade insider. The theory originates from the posts of an anonymous account "Q Clearance Patriot," who claimed to be a high-ranking government official with access to classified information.<sup>34</sup> Q's postings on message boards like 4Chan, are coded, making them deeply participatory in nature. Believers are invited into a shared reality with characters, story lines, and "intricate puzzle-solving quests." This perhaps marks a key difference from conspiracy theories of the past because participants not only believe QAnon, but create it, helping it adapt to new information and justify its flaws. This is another way the theory is a shared, social activity, but also another reason why QAnon is impervious to evidence of its own falsity.

The belief of the enemy as an amoral superhuman does not require significant discussion in the context of QAnon. It is hard to construct a less controversial picture of superhuman evil than the most elite members of society worshipping Satan and sexually exploiting children—but Hofstadter's observation that conspiracy theorists are deeply attached to "evidence" is important in our current discussion because it illustrates the difference between conspiracy theory and delusion.

Psychological approaches to conspiracy theories focus on individual belief and often rely on frameworks of delusion and pathology. Under these frameworks the central question to understanding conspiracy belief is what has gone wrong. Pathologizing conspiracy belief by labeling it delusional implies that the believer is reaching an erroneous result despite clear evidence to the contrary. Surely this is part of conspiracy belief, but it is not its entirety.

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<https://www.nytimes.com/2013/12/18/us/harold-camping-radio-entrepreneur-who-predicted-worlds-end-dies-at-92.html>.

<sup>33</sup> Ryan Bort, *A Guide to All the Times Mike Lindell and QAnon Promised Trump Would Definitely Be Back in the White House*, ROLLING STONE (Nov. 25, 2021), <https://www.rollingstone.com/politics/politics-news/trump-reinstatement-mike-lindell-thanksgiving-1262796/>.

<sup>34</sup> Kevin Roose, *What Is QAnon, the Viral Pro-Trump Conspiracy Theory?*, N.Y. TIMES (Sept. 3, 2021), <https://www.nytimes.com/article/what-is-qanon.html>.

Conspiracy belief, Hofstadter points out, “begins with certain broad defensible judgements.”<sup>35</sup> He notes how the anti-Masonry movement held a valid concern about the impact a secret sect of influential men could have on civil society, or how the Protestants who fueled papacy conspiracies were, in part, motivated by the principles of individuality and freedom.<sup>36</sup>

QAnon too is based on a broad defensible judgment—namely the need to protect children from harm. Further, while QAnon’s claim of a Satanic pedophilic cabal is entirely unsupported by evidence, the underlying concern about the abuse of children at the hands of the powerful is not unfounded. The years preceding QAnon’s were haunted by revelations that powerful figures had been committing pedophilia, undeterred, for decades. In the case of the Catholic Church sex abuse scandal, perpetrators were protected by a powerful organization, their misdeeds kept secret, and their victims kept quiet.<sup>37</sup>

This tenuous relationship to real issues, paired with the self-reinforcing nature of conspiracy belief makes them incompatible with our understanding of delusion. Delusion requires belief against the weight of evidence usually relating to impairment or illness. For conspiracy theorists, their belief is necessarily based on “evidence” and many are completely capable and healthy in other aspects of their lives.

A final important rhetorical feature of conspiracy theories is their location within an argument.<sup>38</sup> Though not mentioned by Hofstadter, Michael Billig, a renowned professor of rhetoric and psychology, has noted how conspiracy theories represent a stance in an argument. For Billig, conspiracy theories are never “merely an expression of personality” but always a position in a controversy, with believers arguing against conventional explanations of politics.<sup>39</sup> This is an important feature of conspiracy theories,

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<sup>35</sup> Hofstadter, *supra* note 21, at 86.

<sup>36</sup> *Id.*

<sup>37</sup> Another example worth noting is the link between African American identity and greater belief in health-related conspiracy theories, which are founded on well-documented instances of extensive and exploitive exploitation in research and clinical settings, eugenic control of reproduction, and radiation experiments. Jennifer Rae Myers et al., *Medical Mistrust, HIV-Related Conspiracy Beliefs, and The Need for Cognitive Closure Among Urban-Residing African American Women: An Exploratory Study*, J. OF HEALTH DISPARITIES RSCH. & PRAC. 138, 138-148 (2018).

<sup>38</sup> Byford, *supra* note 29, at 7.

<sup>39</sup> *Id.* (quoting MICHAEL BILLIG, ARGUING AND THINKING: A RHETORICAL APPROACH TO SOCIAL PSYCHOLOGY, (J. Richard Eiser & Klaus R. Scherer eds., 1987).

if only because it reminds us of what we risk by labeling conspiracy theories delusional. When we allow the definition of “conspiracy theory” to subsume all beliefs that are counter to generally held beliefs and label them delusional, we risk erroneously suppressing beliefs because they do not comply with the narratives of existing power structures.<sup>40</sup>

Understanding conspiracy theories rhetorically, rather than as products of individual delusion, is essential for the discussion of conspiracy belief in wills jurisprudence. It creates a uniform definition and purpose of conspiracy theories which provides a sturdier foundation for constructing solutions. The psychological approach, on the other hand, has yielded inconsistent results, leading one study to conclude that “conspiracy theories may not be as cognitively distinct as it is sometimes tempting to think.”<sup>41</sup> This inconsistency makes developing concrete solutions more difficult.

By conceptualizing conspiracy theories as a way to understand the world and express that understanding, the rhetorical approach avoids tricky questions of the truth and causation of a belief, and instead focuses on what the belief is doing in the world.<sup>42</sup> This lends itself better to the legal system which gives great weight to reviewable evidence. The challenge presented to wills jurisprudence is then narrower than originally constructed, it is simply how to protect unjust outcomes originating from conspiracy devises, while protecting the principle of testamentary freedom and honoring minority beliefs.

## II. CONSPIRACY BELIEF & THE INSANE DELUSION DOCTRINE

Conspiracy belief in wills would likely be challenged under the doctrine of insane delusion. The insane delusion doctrine allows courts to set aside a devise if the testator irrationally accepts a phenomenon as real that is

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<sup>40</sup> A powerful example of this was the Tuskegee Syphilis Experiments. The experiment denied widely available medical treatment to African American males who had contracted syphilis to study the effects of the illness’s progress. The experiment was believed to be a conspiracy theory for decades until the government admitted its involvement.

<sup>41</sup> Byford, *supra* note 29, at 7.

<sup>42</sup> As an aside, I would add that this approach actually allows for a deeper critique of conspiracy theories and the harm they cause. Psychological and pathological explanations remove the morality of the conspiracy theory itself by framing it as a symptom of an illness or erroneous cognitive reasoning. A rhetorical approach to conspiracy belief, by focusing on the belief’s effects, allows the harmful effects of belief on individuals and society to be more directly confronted.

not, and in contemplation of the phenomena, alters their testamentary plan.<sup>43</sup> An insane delusion is not merely imperfect reasoning, illogical conclusions, or eccentricity, but “a belief so against the evidence and reason that it must be the product of derangement.”<sup>44</sup> The application of the doctrine to conspiracy beliefs demonstrates a principle that is found in other critiques of the doctrine—that it justly resolves wills affected by particular delusions related to family members and acquaintances, but it is problematic when applied to larger social beliefs.<sup>45</sup> This section illustrates the doctrine’s problematic application to social belief through a hypothetical and case study.

The hypothetical involves a testator without close family, who is an active participant on QAnon message boards, where he repeats prophecies emphatically and denigrates non-believers. He is a lifelong Republican, and his anger is primarily directed at Democrats who he believes do not uphold traditional Christian values.

The testator has a few aunts, uncles, and cousins, with whom he was previously close, but after a few ugly Thanksgiving dinners, they now only exchange Christmas cards. Generally, the testator is a quiet man who regularly wins employee of the month at the bank where he is a teller. He marches with the county Republican group at local parades and gives talks to his church’s youth group on the importance of chastity.

Following the January 6<sup>th</sup> Capitol riots, the testator executes a new will. He disinherits his family in favor of two organizations—one which supports Donald Trump’s political career and another which fights childhood sex abuse. Following the testator’s death, his cousins challenge the will and introduce his message board posts to support their allegation that the will was the product of an insane delusion. What result?

This is a borderline case because there is ambiguity about whether the testator believed in a delusion so divorced from reality as to be the product of derangement, or rather he held extreme political beliefs that most would describe as eccentric or irrational. The court could hold that the testator’s activity on message boards constitutes an adherence to the Q delusion and caused his estrangement from his family. On the other hand, the court might

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<sup>43</sup> EUNICE L. ROSS & THOMAS J. REED, *WILL CONTESTS* § 2:7 (2nd ed. 2022).

<sup>44</sup> RESTATEMENT (THIRD) OF PROPERTY (WILLS & DONATIVE TRANSFERS) § 8.1 (Am. L. Inst. 2003).

<sup>45</sup> Kevin Bennardo, *The Madness of Insane Delusions*, 60 ARIZ. L. REV. 601, 611 (2018).

hold that it was not the delusional beliefs about political power that caused the estrangement, but merely ordinary political difference. It is not unlikely that the court's decision would be based on their perception of QAnon and Republican politics, with sympathetic judges being more likely to honor the new will.

In this context, it is perhaps easy to be apathetic as to the result. Distant cousins don't seem to be particularly worthy of inheriting, nor do the foundations. Also, being a Christian traditionalist is likely not a minority stance that will invoke substantial sympathy. To remove the issue from our current political context, a case from the 1940's puts the issue in a different perspective and highlights how this ambiguity in the insane delusion doctrine can cause unjust and arbitrary results for testator's holding minority beliefs.

The case concerned the disposition of the estate of Louisa Strittmater, which Louisa, an ardent feminist, had left to the National Women's Party. Her estranged cousins contested the will, alleging that she was insane.<sup>46</sup> Tellingly, the court begins their description of Louisa with the statement, "[t]he deceased never married," before proceeding to discuss her life chronologically.<sup>47</sup> The opinion focused on Louisa's "insane hatred" of men and evidence which supported the court's conclusion that she practiced "feminism to a neurotic extreme."<sup>48</sup> The court pointed to writings where Louisa stated she "looked forward to the day when women would bear children" without men and "all males would be put to death at birth."<sup>49</sup> The court also suggested that this hatred found expression in violent outbursts where Louisa smashed a clock, killed a kitten, or used "vile" language.<sup>50</sup> How these particular outbursts are related to men is unclear.

The only medical evidence submitted in the case was the testimony of Louisa's primary doctor, Dr. Sarah Smalley.<sup>51</sup> Dr. Smalley testified that Louisa suffered from "paranoia of the Bleuler type of split personality."<sup>52</sup> The court notes, regretfully, that they did not have the benefit of evidence from a specialist in neuroscience or psychology.<sup>53</sup> On the other hand, ample

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<sup>46</sup> *In re Strittmater's Estate*, 53 A.2d 205, 205 (1947).

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *In re Strittmater's Estate*, 53 A.2d 205, 205 (1947).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

evidence demonstrated that Louisa was entirely reasonable and normal in her interactions with her bank and lawyer.<sup>54</sup>

The court eventually concludes that Louisa's will must be set aside as a product of an insane delusion.<sup>55</sup> Despite a letter from Louisa stating that, "it remains for feministic organizations like the National Women's Party, to make exposure of women's 'protectors' and 'lovers' for what their vicious and contemptible selves are," the court concluded:

[Louisa] had been a member of the Women's Party for eleven years at that time, but the evidence does not show that she had taken great interest in it. I think it was her paranoiac condition, especially her insane delusions about the male, that led her to leave her estate to the National Women's Party. The result is that the probate should be set aside.<sup>56</sup>

Louisa's estate was subsequently distributed to relatives who were cousins of whom she saw very little during the last few years of her life.<sup>57</sup>

There are substantial similarities between Louisa's case and the hypothetical outlined here. In both instances, there was scant evidence that the testator actually engaged in delusional thinking. Both had produced writings that voiced a hyperbolic hatred of a particular social group, and the evidence from Strittmater's doctor could carry the same weight as the hypothetical testator's involvement in a community of conspiracy belief. In both cases, there was ambiguity about whether the disposition was based on a delusional belief or on a belief in a recognized social cause. In both cases, an unpopular belief had the potential to be portrayed as delusional by the decision-maker, and the testator's belief discarded.

The insane delusion doctrine cannot adequately provide protection for these minority beliefs because it relies on a judge's objective assessment, not of the facts of the case, but on the correctness of a testator's belief. Because the desire to protect testamentary intent is at the heart of wills jurisprudence, the unpopular beliefs of a testator should be allowed to survive a will challenge unless they violate grounds of undue influence, incapacity,

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<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 205-06.

<sup>56</sup> *Id.* at 206.

<sup>57</sup> *In re Strittmater's Estate*, 53 A.2d 205, 205 (1947).

or public policy. Such a proposal protects the testator's belief while avoiding unjust outcomes to both families and society at large.

### III. ALTERNATE GROUND FOR CHALLENGING CONSPIRACY BELIEFS

Focusing on testamentary freedom helps identify grounds of will contests which respect minority beliefs, while still ensuring just outcomes and giving due respect to existing wills jurisprudence. Testamentary freedom—the freedom to transfer one's post-death assets as one pleases—is foundational to American wills jurisprudence.<sup>58</sup> This freedom, however, is limited, and a validly executed will may be set aside upon a finding of undue influence or incapacity, or where a disposition violates public policy. The contest grounds are less subjective and place greater emphasis on respecting the testator's wishes than does the insane delusion doctrine. Each will be considered in turn, along with their application to conspiracy belief.

#### 1. Undue Influence

Undue influence occurs when one wrongly substitutes their own will for the will of the testator. A court will find undue influence where the testator was susceptible to influence, the influencer had an opportunity to exercise influence and was disposed to exercise such influence to gain an improper favor, and the resulting disposition was obviously affected by undue influence.<sup>59</sup> Undue influence's relationship to testamentary freedom is clear—it protects the testator's freedom to dispose of their assets according to their own will, not the will of another.<sup>60</sup>

Undue influence likely has limited application to conspiracy beliefs, but it would provide protection from unjust outcomes if the conspiracy belief emerges in a cult-like setting, where members can influence and be influenced by one another. Further, the confidential relationships that emerge in these settings create a presumption of undue influence. These cases would resemble those where a church group persuades a terminally ill testator to alter their will after isolating them from friends and family.

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<sup>58</sup> Thomas J. Reed, *The Stolen Birthright – An Examination of the Psychology of Testation and Analysis of the Law of Testamentary Capacity – A Modest Proposal*, 1 W. NEW ENG. L. REV. 429, 432 (1979).

<sup>59</sup> *In re Est. of Schoppe*, 710 N.W.2d 258 (Iowa Ct. App. 2005).

<sup>60</sup> *Id.*

## 2. Public Policy

Public policy can be used to invalidate wills, just like other contracts.<sup>61</sup> Currently the law on public policy in wills is primarily concerned with family choices and restraints on the beneficiary, but the general principle can be used to invalidate that which “conflicts with morals of the time and contravenes an established interest of society.”<sup>62</sup>

Will provisions influenced by conspiracy belief could be invalidated under the doctrine of public policy, especially where a conspiracy group promotes violence, and the devise would provide that group with funding. For example, QAnon being labeled a domestic terrorism threat may make devises to Q organizations invalid on public policy grounds because terrorist activity is clearly counter to the morals of our time.

Public policy is important in our current discussion because it could act as a counterweight to the greater protection offered to minority beliefs if the insane delusion doctrine were to be eliminated. Conspiracy belief has real potential to be violent and dangerous, and a will’s jurisprudence that does not protect against the consequences of these beliefs could create unjust results by exposing the public to unnecessary harm.

## 3. Capacity

The doctrine of capacity holds that a valid will can only be executed by an individual who knows the nature and extent of their property, can identify the natural objects of their bounty, and can put these two notions together to form a rational estate plan.<sup>63</sup> At first blush, capacity may appear to limit testamentary freedom rather than protect it, but a brief historical detour will hopefully dispel that impression.

Testamentary capacity emerged with the original Statute of Wills of 1534.<sup>64</sup> Under the statute, “wills or testaments made of any man . . . by any idiot, or by any person of non-sane memory [could] not be taken to be good

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<sup>61</sup> Martin D. Begleiter, *Taming the "Unruly Horse" of Public Policy in Wills and Trusts*, 26 QUINNIPIAC PROB. L.J. 125, 135–36 (2012).

<sup>62</sup> *Id.*

<sup>63</sup> Reed, *supra* note 58, at 432.

<sup>64</sup> *Id.* at 434.



or effectual in law.”<sup>65</sup> In the first case on capacity, the court invalidated a will in which the testator died leaving most of his assets to his illegitimate children. The court interpreted the statute of wills to require the testator to dispose of his property with “understanding and reason.”<sup>66</sup> This normative construction of capacity mirrors the current formulation of the insane delusion doctrine.

Almost two hundred years passed before the next landmark case on testamentary capacity, and in that time English political theory evolved.<sup>67</sup> Protecting an individual’s control over their own property became the primary purpose of the state, second only to prohibiting landowners from harming the safety, morals, and welfare of others.<sup>68</sup> In 1790, the court in *Greenwood v. Greenwood* first articulated the capacity standard that is still relied on today—“If [the testator] had a power of summoning up his mind so as to know what his property was, and who those persons were that then were the objects of his bounty, then he was competent to make his will.”<sup>69</sup> Capacity, then, protects testamentary freedom by ensuring a testator is able “knows his own mind” and, by extension, how he believes his estate should be distributed.<sup>70</sup>

Capacity is the most helpful doctrine in dealing with conspiracy devises, especially if altered to incorporate the insane delusion doctrine’s ability to address specific areas of incapacity. The doctrine of capacity is amenable to this alteration. As it stands, a finding of incapacity invalidates

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<sup>65</sup> *Id.* (quoting 34 & 35 Hen. 7 c. 5 (1534)).

<sup>66</sup> *Id.* at 435 (quoting 77 Eng. Rep. 287, 287–88 (K.B. 1601)).

<sup>67</sup> *Id.* at 437.

<sup>68</sup> *Id.* at 439–40.

<sup>69</sup> *Greenwood v. Greenwood*, English Reports Full Reprint Vol. 163 - Ecclesiastical (1752 to 1857), Admiralty (1776 to 1840), and Probate and Divorce (1858 to 1865) *Cf. In re Will of Khazaneh*, 834 N.Y.S.2d 616, 619 (N.Y. Sur. 2006) (“Specifically, if we were to start from scratch, asking what functions a testator needs to be capable of such that we have confidence in the instrument she signs, we would want to be assured that she was capable of knowing and appreciating that she was making a disposition of what she owned and/or controlled that would take effect upon her death, she was capable of understanding what she had, and what she was giving away, and she was capable of understanding to whom she was leaving her property, and why such a disposition might or might not comport with social norms and generally understood family values.”).

<sup>70</sup> An interesting corollary of this idea is that there is a point where incapacity renders the court better equipped to know the testator’s wishes than the testator themselves, which raises questions about the relationship between mental illness and the self which are beyond the scope of this paper.

the entirety of the will, but its definition does not necessitate this result. It is possible that the testator is unable to identify the object of his bounty or form a rational estate plan because of a particular delusion, which only effects some of his dispositions.

Take, for example, the relatively lighthearted conspiracy theory which posits that mattress stores are fronts for money laundering organizations. Imagine that a testator becomes seriously invested in this theory and places a provision in her will that disinherits one of her nieces who is married to a mattress salesman, writing that she will not give her property to a criminal. Here, there is a clear link between the conspiracy theory and the testamentary act, and the disposition is motivated by a personal allegation, rather than a belief. An argument could be made that the testator was unable to identify the niece as a natural object of his bounty because of his belief in the mattress store conspiracy theory, and set aside the provision, leading to a just result.

Importantly, this demonstrates how the doctrine of capacity is applicable to the cases where the insane delusion doctrine is currently at its best—when the testator holds a false, often paranoid belief, regarding an immediate family member. A classic example of this kind of case is *Dumas v. Dumas*.<sup>71</sup> There, the testator, Wray Dumas, disinherited his wife and daughter after becoming increasingly and obsessively convinced that members of his church had been watching him following his affair.

Wray married his wife, Leona, in 1928, and together they had one daughter, Cecil. Problems arose in their marriage, and in 1957 when Wray had an affair, Leona quickly forgave her husband, but Wray was unable to move on. Wray became increasingly concerned that his friends from church knew about his affair and were watching him.<sup>72</sup> He eventually demanded that his church host a meeting to apologize to him, and though the church agreed to do so, what they were apologizing for, they did not know. Members of Wray's church testified that there was no basis for any of Wray's concerns.<sup>73</sup>

In 1969, Wray's daughter sought to have him committed to the state hospital. Dr. Joe Rushton, Wray's longtime doctor, stated that Wray had a complete change of personality in 1969 and was diagnosed with paranoid schizophrenia. The hospital record from the period of Wray's commitment

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<sup>71</sup> *Dumas v. Dumas*, 547 S.W.2d 417, 417 (Ark. 1977).

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 418.

stated that Wray was in “an involuntional paranoid state” and could not separate the real from the unreal because he suffered from “delusions of persecution.”<sup>74</sup> Wray was later released from the hospital and reverted to his prior behavior.

In 1972, Leona filed for divorce. She could no longer stand Wray’s “drinking, cursing, and violent nature.”<sup>75</sup> The divorce was finalized in 1974. One month beforehand, after trying and failing to convince his wife and daughter to leave the church, Wray drafted his will, leaving his estate to his nephew and brother. He passed away less than a year later.

Wray’s will appeared before the probate court when Cecil contested the document alleging it was the product of an insane delusion held by her father. Wray’s brother, Austin, sought to have it upheld, arguing that there was no insane delusion, or in the alternative, that the will was not a product of that delusion.<sup>76</sup> In rendering their decision, the Arkansas Supreme Court relied on the testimony given by Wray’s doctor from the state hospital. The court wrote,

In summary, the doctor testified that the delusional system involved his church and his family and that to Wray, the trouble he was having at church and with his family was very real. However, the record

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<sup>74</sup> *Id.* Involuntional paranoia is a subgroup of paranoid diagnostic reaction. This type of paranoia often sets in around middle-age and is characterized by ideas of persecution, bitterness and hostility. Individuals with involuntional paranoia are plagued by the feeling that people are talking about them, looking at them, or intending to do them harm. Notably, “although patients experience hallucinations and delusions, they have a clear sensorium and are able to function in society when not overwhelmed by their obsessive delusional thoughts and behaviors.” Harold W. Jordan & Madeline W. Farmer, *Involuntional Paranoid Disorder: A Forgotten Syndrome*, 81 J. NAT’L MED. ASSOC. 950–52 (1989). Involuntional paranoia, by combining general awareness and specific delusions, is an ideal illustration of a condition that would leave the testator with the capacity to create a will, while creating an “insane delusion” that invalidates specific provisions.

<sup>75</sup> *Dumas v. Dumas*, 547 S.W.2d at 417.

<sup>76</sup> *Id.* The Arkansas Supreme Court reviewed three consolidated cases arising after Wray’s death. In addition to Cecil’s attempt to set aside the will, the court reviewed two additional claims regarding a deed gifted to Austin by Wray shortly before Wray died. Cecil argued that the deed should be set aside as the product of insane delusion, while Leona alleged fraud. Leona’s fraud claim was based on the allegation that Wray had gifted the deed to avoid paying the alimony Leona had been awarded in the divorce. *Id.* at 418.

does not reveal any basis in fact for his feelings against his family and the members of his church...<sup>77</sup>

The court concluded that Wray was not merely an “eccentric” person out for revenge, but a sick man who became convinced that his family was against him after failing to convince them to leave the church, his commitment to a mental hospital, and divorce.<sup>78</sup> Accordingly, they upheld the probate court’s decision to set aside the will.<sup>79</sup>

The result of *Dumas* appears just, and the doctrine of capacity, if allowed to address only the incapacity to identify objects of one’s bounty, could lead to the same result. There was ample evidence presented that Wray suffered from delusions that rendered him unable to have a positive relationship with his wife and daughter, obscuring his ability to identify the natural objects of his bounty and “know his own mind” about how they were to be treated upon his death. This evidence did not point to an overarching social conspiracy, but a personal conspiracy, and so setting it aside does not expose future minority beliefs to greater vulnerability.

#### 4. A Final Hypothetical & Conclusion

The following hypothetical poses an extreme example of how conspiracy belief, specifically QAnon, could affect an estate plan. Multiple

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<sup>77</sup> *Id.* at 419.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* There is perhaps room to question the court’s conclusion that the will was “the product of the delusion,” as required under Arkansas law. The court recites the factors that caused the amendment of Wray’s will: his family’s failure to leave their church despite his pleas, his wife’s decision to divorce him, and his daughter’s efforts to have him committed to a mental hospital. While these are consequences of Wray’s condition, they are not the delusion itself. The opposite would be true, for instance, if Wray had removed a charitable bequest to his church, or disinherited members who he believed to be watching him. To address Austin’s argument that the will was not the product of Wray’s delusion, the court seems to rely on the following testimony from one of Wray’s physicians:

[Q.] If in fact Wray Dumas was operating with delusions that related to his daughter, could those delusions tend to play any part in his decision at the time he executed a Will?

A.: I think it would.

Because the delusion is built in the question, it is difficult to deduce how the court concluded “the record does not reveal any basis in fact for his feelings against his family,” especially in a family dynamic involving divorce, involuntary commitment, and religious disputes.

issues are raised which will demonstrate the versatility of undue influence, public policy, and capacity in handling the problem of conspiracy belief.

The testator is a man in his mid-seventies with two children. When his children were young, he and his wife executed a will, under which their estate would pass to the surviving spouse, and in the event of simultaneous death, to the children in equal shares. When the testator's wife passed, he began spending more time online. His children started receiving emails from the testator containing links to Q postings and predictions. His daughter wrote these off as symptoms of loneliness and age, but his son grew concerned and began arguing with his father, hoping to convince him that the conspiracies were false. Over time, the testator became increasingly fixated on his son's career as a journalist, often penning long emails accusing his son of covering up the sexual abuse of children. In one email, the testator states that he can "no longer leave anything to [his son] . . . knowing that [he gives] money to PEDOPHILES and LIZARDS." The son stopped speaking to his father following the exchange, but he heard from an aunt that his sister had been encouraging his father to distance himself from the son and helping him with his finances.

Around that time, the testator executed a new will. His daughter would receive her original half-share of the estate, and the son would receive only the book, *QAnon: An Invitation to the Great Awakening*. The remaining half-share would go to the Oath Keepers, a far-right militia group.<sup>80</sup>

Until his death, the testator lived independently, and his medical records show no sign of mental illness. The son eventually challenges the testator's new will. The son has multiple grounds on which to base his challenge, without having to address the validity of QAnon conspiracy theories.

First, there is a potential argument for undue influence. The sister's encouragement of the father's decision to disinherit the son could be evidence of the sister's proclivity for gaining an improper advantage and the son's estrangement provided an opportunity for the daughter to exercise undue influence. An undue influence argument would likely fail here, however, because the significant disagreements between the father and son would make it difficult for the court to conclude that the disposition was clearly the result of undue influence.

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<sup>80</sup> For more information on the Oath Keepers, see *Oath Keepers*, SOUTHERN POVERTY L. CENTER, <https://www.splcenter.org/fighting-hate/extremist-files/group/oath-keepers>.

The ultimate disposition to the Oath Keepers brings up concerns of public policy. As a violent, anti-government militia, the activities of the QAnon-inspired group are against the morality of our time. The testator's attempt to provide the group with funding through his will would likely be set aside as a result.

Finally, the details of the dispute between the father and son illustrate a case where belief in a conspiracy theory could lead to a finding of specific incapacity. The father's belief in QAnon moved beyond social explanation or belief and infected his perception of his son's beliefs and career. By influencing his ability to perceive the object of his bounty, QAnon rendered the testator incapable of forming a rational plan for his estate. The connection between the conspiracy belief and the testamentary decision is well-documented. There is no doubt that the testator's belief in specific tenants of QAnon and their relationship to his son was the basis for changing his estate plan.

Of course, there are limits to a discussion in which the author applies their theory to hypotheticals of their own creation, but this example demonstrates the flexibility of existing will doctrines and their ability to aptly manage questions of belief, sanity, and public policy, without entering the subjective realm of when social beliefs become delusions. There is a time and place for calling out the falsity of conspiracy belief, but a wills contest is not that place. Instead, wills jurisprudence is driven by respect for the testator and their wishes—even when they are wrong. Allowing undue influence, public policy, and capacity to assume the work of the insane delusion doctrine respects this testamentary freedom and provides minority beliefs with additional protection, while still ensuring loved ones and society are not harmed by the unjust results of certain conspiracy devices.