

Human Side of Estate Planning: Psychology of Estate Planning

L. Paul Hood, Jr., JD, LL.M., CFRE, FCEP

paul@paulhoodservices.com

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Quote of the Day

• *Judge a man by his questions
rather than his answers.*

• **Voltaire**

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Introduction

- For starters, I'm **no expert** on this subject, but I'm not sure that anyone is an expert on this subject
- My thoughts come from a significant amount of research and from having made **lots of mistakes** along the way (hence, my matriculation in the School of Hard Knocks) and having been often put into emotional situations and psychological positions by clients that I **wasn't taught** to handle in law school

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Introduction

- Why the title? What is the human side of estate planning? These are fair questions.
- I call it the human side to distinguish it from the **quantitative** side of estate planning, e.g., asset values and taxes. Welcome to the **qualitative** side of estate planning!!!
- I maintain that the qualitative work is the **mortar** that holds the "bricks of estate planning," e.g., wills, trusts, entities, etc. together. I further maintain that without the mortar, the bricks will fall apart with the slightest amount of stress.
- Have you ever wondered **why clients don't sign the estate planning documents** that you feel that they desperately need to execute? Tired of your files being littered with unsigned documents. Stay tuned.

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Agenda

- After a baker's dozen of quotes from science and literature about the human relationship with property, death and life, we'll discuss the wide gap of knowledge between the estate planner and the client and what it can mean in the estate planning process.
- We'll examine our proper role in the estate planning process.
- We'll explore my Path of Most Resistance?© graphic to explain the difficulties of getting to a "good estate planning result," which I define a little differently than most.
- Then, we'll take up a trio of psychological terms: transference, countertransference and triangles.

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Agenda

- We'll then consider death anxiety and its role in the estate planning process.
- I'll then introduce a new term for many of you, and that is mortality salience, which is the fear of discussing death.
- We'll then discuss the 12 separate and distinct fears that clients can have in estate planning.
- We'll briefly take up two very important matters, cognitive distortions and the effects of death anxiety and mortality salience on clients.
- I'll then explore the three core issues in estate planning for the client.
- We'll then examine one man's theory on why families fight over estates and trusts.
- We'll then close out our session with an introduction to motivational interviewing.

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Psychology of Estate Planning

- What follows is a “baker’s dozen” of quotes from literature that bear upon the subject of how humans think about **life, death, and property**
- What should be clear from this collection of quotes is that humans have a **strange relationship with death and with our belongings**, despite death’s familiarity with and applicability to every human being

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Quotes about Life, Death, and Property

- *Americans think that death is optional.* Jane Walmsley, ***Brit-Think, Ameri-Think*** (2003)
- *I would there were no age between sixteen and three-and-twenty, or that youth would sleep out the rest; for there is nothing in the between but getting wenches with child, wronging the ancients, stealing, fighting.* William Shakespeare, ***The Winter’s Tale*** (1623)
- *...[L]ife of man solitary, poor, nasty, brutish, and short.* Thomas Hobbes, ***Leviathan*** (1651)

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Quotes About Life, Death, and Property

- *When it comes to divide an estate, the politest men will sometimes quarrel.* Ralph Waldo Emerson, ***Fortune of the Republic*** (1879)
- *But Jesus when you don't have any money, the problem is food. When you have the money, it's sex. When you have them both it's health, you worry about getting rupture of something. If everything is simply jake then you're frightened of death.* J.P. Dongeavy, ***The Ginger Man*** (1955)
- *A man's dying is more the survivor's affair than his own.* Thomas Mann, ***The Magic Mountain*** (1924)

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Quotes About Life, Death, and Property

- *The totality of my possessions reflects the totality of my being. **I am what I have.** What is mine is myself.* Jean-Paul Sartre, ***Being and Nothingness*** (1943) [Emphasis added]
- *Neither the sun nor death can be looked at steadily.* Francois de la Rochefoucauld, ***Maxims*** (1665)
- *All men think all men are mortal but themselves.* Edward Young, ***Night Thoughts on Life, Death and Immortality*** (circa 1742)

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Quotes About Life, Death, and Property

- *Our own death is indeed quite unimaginable, and whenever we make an attempt to imagine it we can perceive that we really survive as spectators....[A]t bottom no one believes in his own death....in the subconscious everyone of us is convinced of his own immortality.*
Sigmund Freud, ***Thought for the Times on War and Death*** (1915)[Emphasis added]

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Quotes About Life, Death, and Property

- *I'm looking forward to the most fascinating experience in life, which is dying. You've got to approach your dying the way you live your life—with curiosity, with hope, with fascination, with courage and with the help of your friends.*
Timothy Leary, interview in the ***New York Times***, November 26, 1995.

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Quotes About Life, Death, and Property

- *The idea of death, the fear of it, haunts the human animal like nothing else; it is the mainspring of human activity...of all things that move man, one of the principal ones is the terror of death.* Ernest Becker, ***The Denial of Death*** (1973).

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Quotes About Life, Death, and Property

- *A man's self is the sum total of all that he can call his, not only his body and his psychic powers, but his clothes, and his house, his wife and children, his ancestors and friends, his reputation and works, his lands and yacht and bank account. All these things give him the same emotions. If they wax and prosper, he feels triumphant; if they dwindle and die away, he feels cast out.* William James, ***The Principles of Psychology, Vol. I*** (1990).

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Psychology of Estate Planning

- Clients usually have a lot at stake **financially** and **emotionally** when they engage an estate planner-so there is already pressure on the situation, brought on by its gravity-others may have an intense interest in the outcome
- Some people subconsciously view their wealth as their **identity** and **source** of sexual attractiveness; thus, the thought of parting with that wealth often is not an agreeable task
- Further complicating things is usually a **wide gap** between the knowledge of this mixed and difficult field of law and estate planning of the lawyer compared to that of the client

Wide Gap in Knowledge of Estate Planning

- What does this **wide gap** in the knowledge about estate planning of the estate planner and the client mean?
 - The estate planner is in a unique **position of confidence**-is “one who knows”-there are **legal and psychological burdens** that come with this position
 - The estate planner must be **circumspect** in his use of the power brought about by this wide gap-often **ceded** in toto by the client

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Role of the Estate Planner

- What exactly is the **estate planner's role**?
 - To do **exactly** what the client says that they want?
 - To **educate** the client?
 - To be a **zealous advocate**?
 - To be the **messenger of mortality**?
 - To transmit property with the **lowest possible tax consequences**?
 - To help the client put together a **legally binding estate plan** that can withstand attack by disgruntled folks?

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Estate Planner's Role in Estate Planning

- It's **some of all of the above**-surely, the estate planner shouldn't just be a pawn of the client, but **taxes are the easiest piece of the puzzle**-this mixed bag includes parts where the estate planner actually is **opposed** to the interests of the client-there are some things in estate planning that **can't legally be done**, even if that's what the client wants-the estate planner often has to get the client to face **mortality**
- Estate planners also **charge for their services**, which sets up a **conflict**
- There is a **big** difference between being an **estate planner** in the truest sense of the term and an **estate technician**
- Given the client's expectations, it has been written that the transferential supposition that the estate planner "**knows**" is infectious

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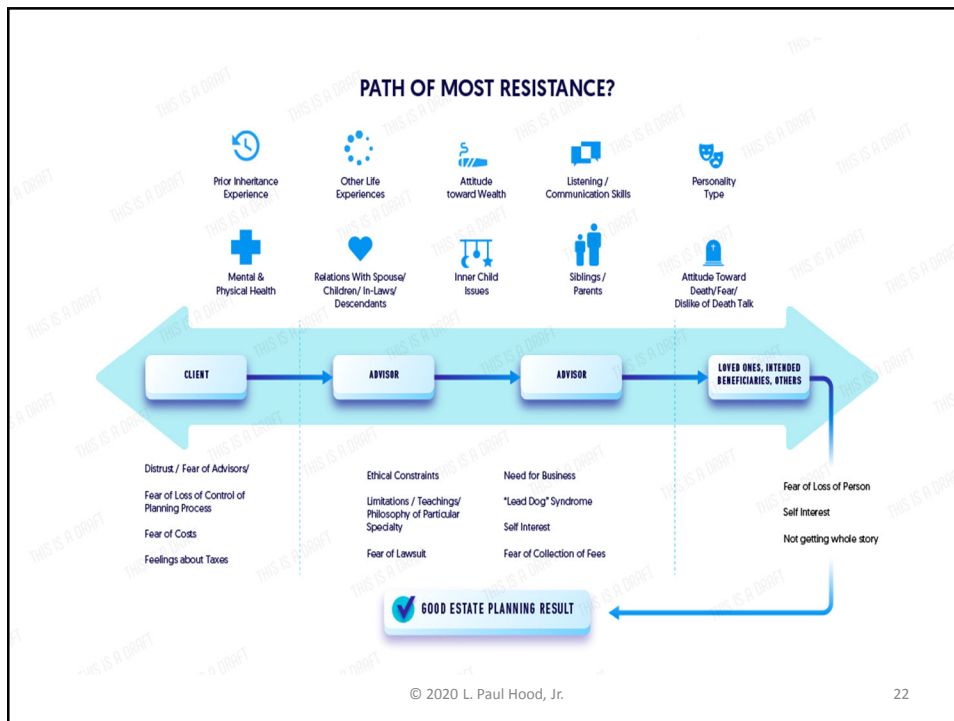
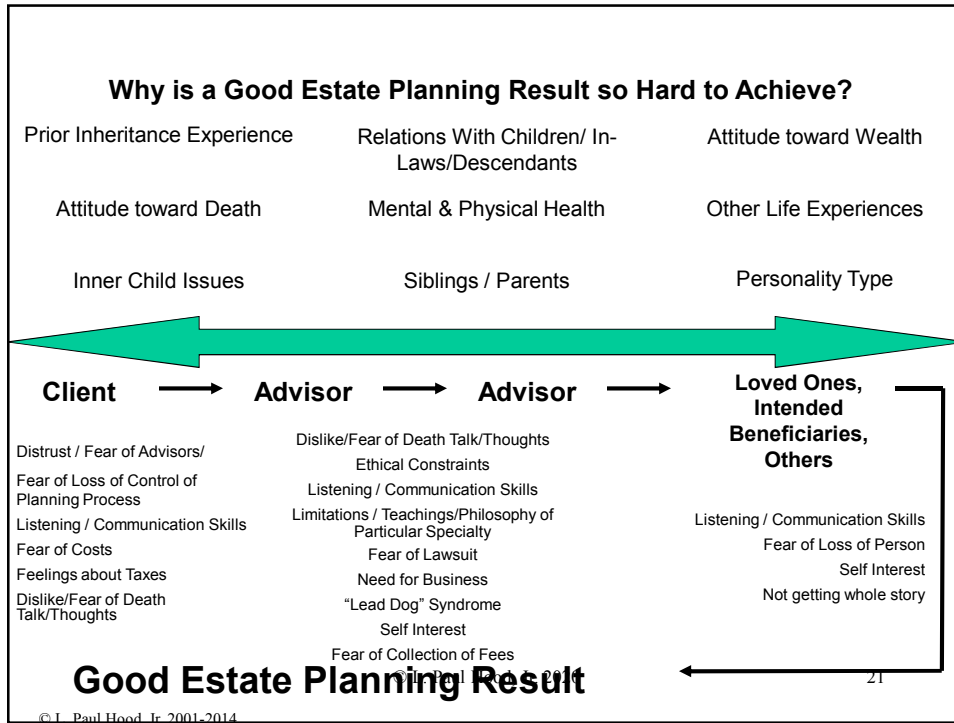
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Good Estate Planning Result

- Every estate planner and client should be in pursuit of a **"good estate planning result,"** whatever that looks like for the particular client
- I define a **good estate planning result** where **property** is properly transmitted as desired **and** family relations among the survivors are not **harmed** during the estate planning and administration process- **why is this so hard to achieve? Note that taxes are not included**
- The following graphic illustrates the reasons

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Good Estate Planning Result

- As the graphic illustrates, there are several “players” in the estate planning “play”
- The matters **above the green line** that flows in both directions represent views and common experiences in the past with life and estate matters among all of the “players,” and the items **below the green line** are witnessed in each of the respective various players in the “play”

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Good Estate Planning Result

- What the graphic is intended to show is that there is a **lot** that has to happen for a good estate planning result to occur
- Stated another way, there are a lot of moving parts, and lots of opportunities for the process to go **awry**
- The graphic illustrates that the planning process can go **backwards** too if the wrong events occur at the wrong time
- It is **critical** to highlight and acknowledge that estate planners bring their own personal “baggage,” including **fear of talking about death**, into their clients’ estate planning processes

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Important Terms of Psychology of Estate Planning

- At this point, I'm going to introduce and briefly discuss three psychological "phenomena" (for lack of a better or more descriptive term) that can be important for estate planners: **transference**, **countertransference** and **triangles**
- I'm **not** discussing these phenomena as an academic exercise: **I'm not qualified to do that.** However, based upon my considerable practice experience working with clients, **I have witnessed firsthand the existence of each of these phenomena in action in real life-this is intended to be a practical consideration of these phenomena**

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Transference

- The phenomenon of **transference** is fairly easy to illustrate in a few examples, but you should know that psychologists frequently disagree over the meaning of the term "transference."

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One Definition of Transference

- *a phenomenon in which people **transfer** feelings and attitudes, often subconsciously, from a person or situation in their past on to a present person or situation. It involves the **projection** of a mental representation of a previous experience or person on to the present situation or person with whom they are interacting. The recipients of the **transference** usually play an important role that is necessary for the projected relationship. There are subtle, usually subconscious, encouragements by the projecting individual of the recipient to take on their feelings or beliefs about the situation or person.*

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Transference

- **Transference** often is witnessed in situations where one party is in a **position of confidence**, e.g., psychologists, doctors, lawyers, etc.-it is **common**
- It involves **projection** of feelings about some event or person from the client's **past** onto the estate planner and the **present** situation
- **Transference** can be a **bad** thing, but it **doesn't have to be**

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Transference

- The person in a position of confidence plays an **important role** in the **transference**- is the estate planner the **rescuer** or an **exhibitionist** of their skills? At times, some of both
- The adversarial nature of the ethics rules that govern most estate planners set up an “us versus them” mentality where the client is “good” and all others are “bad”-this is a **delusion** upon which **many** estate planning relationships are based- fostered by ethics rules

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Transference in Estate Planning

- Let's consider a few examples of how the phenomenon of **transference** can occur in estate planning:
- **Example 1:** Assume that you are in your office waiting for your client, who is late for his appointment. The client, who is late because of **his own fault**, about which he is upset because he **prides himself on punctuality**, snaps at you when he comes in because he also has **trouble taking personal responsibility** for matters for which he is to blame. You have done nothing to deserve the curtness of your client's behavior. What has happened is that the client has **“transferred”** his feelings of **anger** against himself to you, compounded by his inability to be able to admit fault or take personal responsibility.

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Transference in Estate Planning

- **Example 2:** You are meeting with a new client who is appearing **extremely anxious** during the meeting and checking her watch repeatedly as you talk to her. Unbeknownst to you, the client's last experience with an estate planner went badly due to a misunderstanding about the size of the estate planner's fees and the hourly rate. The client has **"transferred"** her anxiety, which was caused by a bad experience with a **past** estate planner, onto her **current** advisor-client relationship

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Transference in Estate Planning

- The **transference** can arise in many other different contexts in estate planning. For example, a client who had a bad experience with probate of a family member's estate may be hell bent on not using a will alone in her estate planning
- About the best that we lay estate planners can do is to acknowledge that the projecting person's feelings are **not our fault** and **do our best to not take on the projecting person's invitation to engage**
- However, what is behind and giving rise to the **projected** feeling may indeed be critical information for us to determine, as in the most recent example dealing with antipathy toward "probate"

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Transference in Estate Planning

- In **Example 1**, we might simply let the curt behavior go and indicate to the client that you weren't offended and won't hold his tardiness against him and not engage the client
- In **Example 2**, we can ask the client what she is anxious about and soothe her by having a frank and open discussion about both of your expectations concerning your fees and the other terms of your relationship and by following up with an "engagement letter" that confirms what you have discussed
- In both examples, the estate planner reacted appropriately to the projection of feelings by the client

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Countertransference

- Again, just like with **transference**, psychologists can and do differ about the definition of **countertransference**
- Indeed, there is at least one school of thought in psychologists that **denies** the very existence of **countertransference**, opting to call it all **transference**, either belonging to the client or the therapist

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One Definition of Countertransference

- *the often subconscious response of the recipient advisor to the client's actions **or** perceived actions. **Countertransference** responses can include both the professional's **conscious** and **unconscious** feelings and associated thoughts **from the advisor's past** on things that the client says or does. **Countertransference** involves displacement and projection onto the client.*

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Countertransference in Estate Planning

- There are all sorts of possible examples of how **countertransference** can arise in estate planning, but we will discuss three different examples.

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Examples of Countertransference in Estate Planning

- **Example 1:** Suppose your client, who is the youngest child in her family, expresses strong negative feelings about an oldest child automatically being designated as executor just because that child was the oldest child. Suppose further that the advisor is an oldest child who feels strongly that oldest children should automatically be considered for such a fiduciary position and routinely drafts wills naming the oldest child as executor where a client says nothing to the contrary. When the client states she wants a middle or youngest child to be her executor, such an advisor may view the client in a somewhat negative light, particularly since the advisor also holds his own youngest sibling in contempt for actions that the youngest sibling engaged in and was allowed to get away with just because the youngest sibling was the “baby” of the family. The advisor has allowed his decades old disdain for his youngest sibling to color his judgment about the client.

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Examples of Countertransference in Estate Planning

- **Example 2:** Suppose that your client has mannerisms that remind you of someone whom you loved, like your late brother, of whom you were very protective. Because of the good feelings that you have toward your client, which are because of your late brother and not because of any action by the client, you are overly protective of the client and tolerate much more out of this particular client than just about every other client, even turning a blind eye toward some warning signs of a conflict of interest that could eventually cause you some ethical difficulties in the future.

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Examples of Countertransference in Estate Planning

- **Example 3:** Your new client identifies herself as an engineer. The advisor then thinks to herself (“engineers are always problem clients because they ask too many questions, reduce everything to black and white and think that they know it all”) and immediately gets a little defensive, condescending and short with the client about the proper estate planning process

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Countertransference in Estate Planning

- **Countertransference** also can manifest itself in **biases** by the advisor either in favor of or against certain **estate planning techniques**
- Additionally, estate planners can be morally opposed or outraged by their clients’ behavior to the extent that it impacts the estate planner’s ability to work for the client effectively

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Triangles

- A **triangle** is a three-person relationship system. The late Murray Bowen, MD, a psychiatrist and professor of psychiatry and a pioneer in the area of family systems theory back in the 1950's, developed the **triangle** as part of an eight concept family systems theory (one of approximately 12 major schools of family therapy)
- Dr. Bowen argued that the **triangle** is considered the base building block of larger human emotional systems because he asserted that a three-person **triangle** is the smallest **stable** human relationship system

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Triangles

- According to Dr. Bowen, a two-person system is unstable because it tolerates little tension before one or both participants "**triangle in**" a third person to reduce their anxiety that the tension between the participants caused
- Dr. Bowen reasoned that a **triangle** can withstand much more **tension** than a two-person relationship because the tension **can be shifted** between three relationships (A-B, A-C and B-C) instead of just one, and the parties subtly shift back and forth between each other during the course of their relationship **triangle**
- In fact, Dr. Bowen further reasoned that when even the **triangle** anxiety becomes unbearable to one or more of the participants, a series of "**interlocking**" **triangles** can develop

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Triangles in Estate Planning

- I often witnessed **triangles** in families
- I even unwittingly participated in some of these **triangles** as an estate planner
- **Triangles** can involve not just living persons-it can involve someone who is **deceased**
- **Triangles** also can involve **inanimate objects**, e.g., a certain bedroom in an antebellum home
- **Triangles** can exist between the client and two estate planners-I've been involved in some of these

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Examples of Triangles in Estate Planning

- **Example 1:** You are meeting with a husband and wife about their estate planning, when they start to squabble over which of their children should be the successor executor. Frustrated, the wife turns to you, attempting to **"triangle"** you into the conversation on her side of the argument by commenting with a loaded question like "what's your opinion?" or "don't you think that he [the husband] is being hardheaded?"

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Examples of Triangles in Estate Planning

- **Example 2:** Your clients, a husband and wife who are getting up in years, are concerned about which of their children should handle their affairs when they are no longer able to do so. They decide on one of their children to be their agent under their powers of attorney and tell all of their children of their decision. Not long after this, you receive a phone call from a child who was not selected, who expresses concern that his parents “may not be thinking clearly” in their selection of his sibling as agent, intimates his belief that his sibling has unduly influenced his parents and attempts to **triangle** you into the conversation—here the parents are viewed as one person in the **triangle**

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Triangles

- For more information about the applicability of triangles to family systems, see:
- *The Eight Concepts of Bowen Theory: A New Way of Thinking About the Individual and the Group* by Roberta M. Gilbert, M.D. (Leading Systems Press 2006)
- *Working With Relationship Triangles: The One-Two-Three of Psychotherapy* by Philip J. Guerin et al. (Guilford Press 1996)

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Death Anxiety

Psychiatrists have determined that there are at least seven distinct reasons **why** people have **death anxiety**:

- No more life experiences
- Fear of what will happen to their bodies post-death
- Uncertainty as to fate if there is a life after death
- No longer be able to care for their dependents
- Death will cause grief to relatives and friends
- All their plans and projects will come to an end
- The process of dying will be painful

Death Anxiety

- Defenses to **death anxiety**:
 - **Avoidance** of talk about mortality and other reminders of mortality (called **mortality salience**)
 - **Minimization** of mortality through jokes about death and feeling that the concern about mortality is not pressing enough for action at the moment
 - **Symbolic** immortality-which is a form of **autobiographical heroism**

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Mortality Salience

- Psychologists refer to reminders about mortality and death as **mortality salience**
- **Mortality salience** plays a role in estate planning by causing people often to **put off** their estate planning for another day, despite its apparent glaring need in a particular situation
- Given this fact, it is worthwhile to study **mortality salience** a bit

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Mortality Salience

- According to the research, **mortality salience** causes **increases** in the following:
 - Desire for fame
 - Perception of one's past significance
 - Likelihood of describing positive improvements in writing an autobiographical essay
 - Interest in naming a star after one's self
 - Perceived accuracy of a positive personality profile of one's self

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Mortality Salience

- According to Russell James and the research, **mortality salience** is a psychological attack and results in greater attachment to and support of one's **community** and **community values** and **against outsiders**, including:
 - Increased charitable contributions to U.S. charities over foreign charities
 - Increase in predicted number of wins by local NFL team
 - Increase in negative ratings by Americans of anti-U.S. essays

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Mortality Salience

- There have been hundreds of studies that have proven that when confronted with **mortality salience**, humans adhere even more passionately to their view of the world
- Humans resort to lots of artifices to avoid the fear brought on by **mortality salience**, including religion, work, relationships, exercise and wealth accumulation

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Mortality Salience

- According to James, **external realities** occasionally break through avoidance of **mortality salience**, including illness, injury, advancing age, death of a close friend or family member, travel plans and intentionally planning for one's death through estate planning, which cause people to tend to their estate planning, but these are unpredictable and sporadic

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Forms of Avoidance of Mortality Salience

- According to James, the forms of avoidance of **mortality salience** are:
 - **Distraction**-“I’m too busy to worry about that right now.”
 - **Differentiation**-“It doesn’t apply to me because I come from a family of actuarial longevity.”
 - **Denial**-“These death worries are overstated.”
 - **Delay**-“I plan on worrying about death...later.”
 - **Departure**-“I’m going to stay away from death reminders.”

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Common Fears of Estate Planning

12 **Common Fears** Associated with Estate Planning that prevent clients from moving forward:

- Fear of contemplating death (**Death Anxiety**)
- Fear of **not doing the right thing**
- Fear of the **unknown**
- Fear of **hurting someone’s feelings/creating animosity/post-death squabbles**
- Fear of **estate planners**
- Fear of the **estate-planning process**

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Common Fears of Estate Planning

12 Fears of estate planning (cont.):

- Fear of **running out of money/losing security**
- Fear of **law changes**
- Fear of **facing reality**
- Fear of **loss of flexibility**
- Fear of **loss of privacy**
- Fear of **probate**

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Consequences of Estate Planning

- Most of these fears are **irrational** and can be safely and properly addressed in a well-constructed estate plan
- Estate planning has **therapeutic** and **anti-therapeutic** consequences, the latter of which the estate planner must identify and work to ameliorate—chief among the anti-therapeutic consequences are **death anxiety** and fear of an estate **dispute/squabble**
- Estate planning, once done and finalized, is known to **reduce death anxiety**, e.g., Ishmael from *Moby Dick* about his will signing

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Effects of Death On Behavior

- Death of a loved one or a friend conjures up two **fears** in most of us
 - Loss of a source of **safety and security**
 - A fear of our **own mortality**
- These fears can cause people to act **differently** than they normally would under different circumstances, even **irrationally**
- This often leads to **conflict**, because the survivors joust for a piece of the decedent's property, persona or symbolism, which people seek to assuage their fears and to give themselves comfort for their loss

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Effects of Fear of Death

- Psychologists posit that all humans develop an innate ongoing **existential fear of death** from a relatively early age
- This often causes a **split in the ego**, as people trick themselves through a **cognitive distortion** into thinking that their own death is not something that they need concern themselves with at present, which normally results in **repression** of death thoughts-the thought of death simply is too painful to be allowed into a person's **conscious** thoughts

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Cognitive Distortions

Examples of **cognitive distortions**:

- Humans often compare themselves to persons who are known to have abused their bodies and survived, e.g., Keith Richards, and say that if he can live that long after having done what he did, they'll survive too until at least his age or older
- Older persons, whose death is more impending, focus on medical research or make deals with themselves to get healthier, and, by so doing, believe that they will live longer, etc.

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Effects of Death Anxiety

- One potential consequence of **death anxiety** is the deterioration of the testator's decision-making capabilities-the fear forces people into making short-sided or ill-advised decisions that will have a lasting impact on their loved ones
- Fear of making these types of bad decisions also flows out of **death anxiety**, as people are reluctant to act on their estate planning for fear that they will make a bad decision

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Effects of Death Anxiety

- People often cope with **death anxiety** by making difficult decisions quickly, thereby abbreviating the stressful experience-these swift decisions often are bad ones
- This oft-truncated decision-making process usually involves an erratic method of selecting information for consideration, an inadequate amount of time spent considering that information and evaluating alternatives, and a lack of willingness to reevaluate after the decision is made-**getting done is more important that how or what was done**-this resonates with me as I hearken back to some former clients who had a very difficult time starting and finishing their estate planning

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Effects of Death Anxiety

- A big reason why some people don't engage in the estate planning that they need to get done is **a fear that their families will fight after their death**, during which their motives and activities will be subjected to intense scrutiny
- Because it provides a medium for the public airing of the "dirty laundry" and family secrets of testators and their families, **the mere possibility of an estate squabble may cause clients stress and anxiety** during the estate planning process and may cause them to put it off for that reason alone.

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Psychological Paradox

- Humans are the only species of creature that know **cognitively** that life is finite and that we are mortal
- However, that **cognitive knowledge**, combined with the desire to procreate and survive, create what Mikulincer, Florian and Hirschberger call “**an irresolvable existential paradox**”
- A human’s **survival mode** causes him to put off thoughts of his own demise because **survival** is the goal

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Terror Management Theory

- **Terror management theory** (inspired by the work of Becker and Rank) instructs that humans dislike mortality salience and grasp for **any kind of immortality** to put up against **mortality salience**, including **symbolic immortality**
- **Symbolic immortality**, which is a form of **autobiographical heroism**, includes our belief in an afterlife, our descendants, our favorite institutions, and our body of work and accomplishments, including **estate planning**

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Effects of Separation Anxiety

- **Separation anxiety**, which is articulated in **attachment theory**, also contributes to inheritance conflict- separation anxiety is easily witnessed in newborns who often cry when his or her parent puts them down and leaves-these fears of being separated from a loved one persist throughout lifetime
- Grieving loved ones often scramble for and squabble over items that **symbolically resemble** the decedent's persona or successes to which they can remain associated, e.g., grandma's china, dad's watch, family portraits, etc.-the financial value of these items often is **irrelevant**

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Post-Self

- According to the late Edwin Schneidman, the closest that most people get to acknowledgment of their own mortality is a view of the world after our death and how we will be remembered-which he called the **"post-self"**
- Schneidman viewed each person's property as an **extension of self**-in line with Sartre

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Post-Self and Symbolic Immortality

- Estate planning is viewed as one of the last opportunities to foster one's **post-self**
- As mentioned previously, estate planning, once faced, confers a form of **symbolic immortality** on the testator, who in essence gets to continue to influence and participate in the lives of the beneficiaries after death and exert some indirect control over his property
- But fewer than half of Americans make a will- why? Go back to the 12 fears of estate planning

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Post-Self and Symbolic Immortality

- People who are incapable of doing estate planning or who are indifferent to doing it under the guise of “Who cares-I’ll be dead” are said to engage in an **act of self-negation**, which is a form of **post-self suicide**
- Estate planning often is viewed as the last explicit **act of parenting**

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Affluenza

- Another reason for reticence about estate planning is a concern that too much wealth given to their loved ones will blunt their self-esteem and personal drive-there is ample evidence of this in some families
- Warren Buffett said that he wanted to give his children enough that they can do something but not so much that they would have to do nothing

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Issues in Estate Planning

- What does one consider when contemplating estate planning? Professor Shaffer says that it is three distinct things:
 - The person's **mortality**
 - The person's **property**
 - The client's **attitude toward giving**, i.e., the relationship between what he has and his loved ones

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Estate Planner's Participation

- In his seminal 1982 article "Lawyer as Will Maker," Professor Shaffer lays out the following points as his thesis:
 - The client's "pay off" in making a will is purely **psychological**
 - The lawyer is in control of what the client does
 - Despite everything, the process of estate planning generally is a positive experience for clients
 - The elements of will-making are death, property and people

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Lawyer's Participation

- In that article, Professor Shaffer explains that lawyer dominance of the estate planning process forms one end of the **tension** between the three elements of will-making:
 - That tension is **personal** for the lawyer because most lawyers are uncomfortable being in charge of a client's estate plan
 - The tension is **professional** because the ethics rules teach that lawyers should not be in control of what the client does
 - That tension is **interpersonal** in that most clients don't like being dominated
 - That tension is **economic** because the evidence is clear that clients who aren't dominated by lawyers in their estate plans get better service at lower prices and at a higher economic gain to their loved ones
- On the other side of the equation is the estate planner's aspirations of being a **counselor**, and most estate planners also are uncomfortable talking with the client about **death**

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Estate Planner's Participation

- Estate planning is full of **conventions**, over which lawyers have control, including:
 - It is immoral to divide an estate unequally among children
 - It is immoral to disinherit a child
- These conventions get brought into the client's estate plan when the client asks the lawyer **"how do most of your other clients do this?"**

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Estate Planner's Participation

- Lawyers and other estate planners must learn to **deflect these questions** with probing questions of their own that are designed to ferret out the client's estate planning needs and desires
- *It is the **quality** of our **questions**, not the **quantity** of our **words**, that generally convinces a patient that the [estate planner] knows something that might help. [Emphasis added]*
- When we ask the **right questions**, the client is far more likely to know that we are on the **right track** with them

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Estate Planner's Participation

- The term "**unipolar blending**" has been used to describe the situation where one of the parties to the interview established what that party perceived as good blending, but the other party did not
- Every estate planner probably can recall at least one past experience where the planner thought that he or she got on well with a particular new client, only to have that client either never come back after the initial interview or opt to go to another estate planner
- When we ask the **right questions**, we are **far more likely** to get the client to **closure** on the estate plan, thereby **reducing the number of unsigned documents** that litter our files, and we will reduce **unipolar blending**

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Why Families Fight

- According to P. Mark Accettura, families fight over inheritance for five basic reasons: (1) humans are **predisposed** to competition and conflict; (2) our psychological self is intertwined with the **approval** that receiving an inheritance confers; (3) humans are genetically predisposed toward **looking for exclusions**; (4) the death of a loved one is mortality salience triggers the accompanying **death anxiety** in humans; and (5) the possibility of existence of a **personality disorder** that causes family members to distort and escalate natural family rivalries into personal and legal battles

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Tools to Use

- There are a number of tools that estate planners can use to assist in assessing clients' psychologically, including, without limitation:
 - Reflective listening
 - Appreciative inquiry
 - Motivational interviewing
- We will focus on just **motivational interviewing**, since reflective listening is used in motivational interviewing

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Motivational Interviewing

- Motivational interviewing was primarily developed in the 1980's to assist patients who had chemical dependency problems
- It is a simple and elegant system whereby the client, who wants to change at some level, finds the reasons to change within **himself or herself**, with the therapist merely acting as a **guide**
- It has application to estate planning, where clients often are ambivalent about doing their estate planning. By asking the right questions, we can guide the client to the conclusion that they need to get their estate planning done and we are the right people to guide them through this process

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Righting Reflex

- Motivational interviewing is based upon the assumption that the **righting reflex** (that reflex that causes people to tell someone else when he or she is on the wrong track), which humans have and helpers have often to a greater degree, is **counterproductive** as it encourages the other person to take up the **opposing** side of the argument
- All advisors have a tendency to go to this righting reflex quickly because we assume that clients want our help and opinion because they are in our offices-this often is **not** true

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The Four Processes of Motivational Interviewing

- Motivational interviewing is based upon four processes:
 - **engaging** (establishing a helpful connection and working relationship)
 - **focusing** (developing and maintaining a specific direction in a conversation about change in behavior)
 - **evoking** (eliciting the client's own motivations for change, which lies at the heart of motivational interviewing) and
 - **planning** (developing a commitment to change and a concrete plan of action)

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The Skills Required in Motivational Interviewing

- Motivational interviewing involves the following skills:
 - Asking **open-ended questions**
 - **Affirming** the other person
 - **Reflective listening**-this is very important
 - **Summarizing**
 - **Informing and advising**
- Motivational interviewing is not a hoax or cruel trick where the therapist tricks the patient into taking a course of action-there's a **spirit** to it

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Reflective Listening

- Thomas Gordon set out 12 of what he calls roadblocks to effective listening, which are responses of people that don't constitute what he calls active listening:
 - Ordering, directing, or commanding
 - Warning, cautioning, or threatening
 - **Giving advice, making suggestions, or providing solutions**
 - **Persuading with logic, arguing, or lecturing**
 - **Telling people what they should do; moralizing**

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Reflective Listening

- 12 roadblocks to effective listening (cont.):
 - Disagreeing, judging, criticizing, or blaming
 - Agreeing, approving, or praising
 - Shaming, ridiculing, or labeling
 - Interpreting or analyzing
 - Reassuring, sympathizing, or consoling
 - **Questioning or probing**
 - Withdrawing, distracting, humoring, or changing the subject

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Reflective Listening

- The concept of reflective listening is easy to understand; its application to real life conversations can be **difficult** because of our tendency to go down the road of one or more of the 12 roadblocks set forth in the last slides
- You simply **mirror back and summarize** for the client what the client just said
- This is more than a mere echo; it demonstrates that you are **paying attention** and can give the client a feeling that you **understand** him or her and what they are going through

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Change Talk and Sustain Talk

- People who are thinking about making a change in their lives are ambivalent: part of them wants to change and part of them wants to maintain the status quo
- If you listen to ambivalent people talk about making that change, they often will engage in **change talk** (where they are in favor of change) and **sustain talk** (where they are in favor of maintaining the status quo) during the same conversation
- By gently guiding clients in conversation, the therapist has the clients **convince themselves** that the change is in their best interests

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Applied Motivational Interviewing

- Estate Planners can use the principles of motivational interviewing to guide clients toward closure in the estate planning process
- Most clients are ambivalent about doing their estate planning and engage in change talk and behavior and sustain talk and behavior
- By properly responding to the **sustain talk** and encouraging the **change talk**, the estate planner can play a role in assisting clients to get them the therapeutic benefits of finishing their estate planning

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90

For More Information...

- Shaffer, *Death, Property, and Lawyers* (Dunellen Press 1970).
- Hood, "From the School of Hard Knocks: Thoughts About the Initial Client Interview," *27 ACTEC Journal* 297 (2002); rewritten and republished in 2014 as "Back to the School of Hard Knocks: Thoughts on the Initial Client Interview-Revisited."

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91

For More Information...

- Zaleskiewicz et al., "Money and the Fear of Death: The symbolic power of money as an existential anxiety buffer," *36 Journal of Economic Psychology* 55-67 (2013)
- Hamel and Davis, "Transference And Countertransference in the Lawyer-Client Relationship: Psychoanalysis Applied in Estate Planning," *25 Psychoanalytic Psychology* 590-601 (2008).

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92

For More Information...

- Roth, *The Psychiatry of Writing a Will* (Charles C. Thomas 1989).
- Hughes, *Family Wealth: Keeping it in the Family* (Bloomberg 2004).
- Fithian, *Valued-Based Estate Planning: A Step-By-Step Approach to Wealth Transfer for Professional Advisors* (Wiley 2000).

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93

For More Information...

- Collier, "A 'Family Systems' Approach to the Estate Planning Process," 30 *ACTEC Journal* 146 (2004).
- Guerin and Hood, "Psychological Factors In Estate Planning," Chapter 18, *Financial Behavior* (Baker, Filbeck and Ricciardi ed.)(Oxford University Press 2017).

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94

For More Information...

- Levy, *Inherited Wealth: Opportunities and Dilemmas* (BookSurge Publishing 2008).
- Hendlin, *Overcoming the Inheritance Taboo: How to Preserve Relationships and Transfer Possessions* (Plume 2004).
- Shea, *Psychiatric Interviewing: The Art of Understanding*-2nd Ed. (Saunders 1998).

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95

For More Information...

- Glover, "A Therapeutic Jurisprudential Framework of Estate Planning," 35 *Seattle University Law Review* 427 (2012).
- Glover, "The Therapeutic Function of Testamentary Formality," 61 *Kansas Law Review* 139 (2012).
- Cooperrider, et al., *Appreciative Inquiry Handbook*-2nd Ed. (Crown Custom Publishing/Berrett-Koehler Publishers 2008).

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96

For More Information...

- Nichols, *The Lost Art of Listening*-2nd Ed. (Guildford 2009).
- Rollnick and Miller, *Motivational Interviewing-Helping People Change*-3rd Ed. (Guildford 2013).
- Accettura, *Blood & Money: Why Families Fight Over Inheritance and What to Do About it* (Collinwood Press 2011).

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97

For More Information...

- Rollnick, et al., *Motivational Interviewing in Health Care* (Guildford 2008).
- May, et al., *Appreciative Inquiry in Healthcare* (Crown Custom Publishing 2011).
- Davis, *Psychological Aspects of Will-Making and Estate Planning* (Ph.D. dissertation-University of Kentucky 1990-available through UMI).

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98

For More Information...

- Durham, “When the Milk of Human Kindness Does Not Flow: To Give or Not to Give, and if Give, Then When?” *30 University of Miami School of Law Philip E. Heckerling Institute on Estate Planning, Chapter 4* (Matthew Bender 1996).
- Schaffer, “The Lawyer as Will Maker,” *5 Marriage and Family Review*, No. 2, pp. 87-103 (1982).
- Dole, Silbert, Mann and Whitney, *Positive Family Dynamics* (Taos Institute Publications 2008).

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99

For More Information...

- Solomon, Greenberg and Pyszczynski, *The Worm at the Core: On the Role of Death in Life* (Random House 2015).
- James, *Inside the Mind of the Bequest Donor* (Russell N. James III 2013).
- Morrison, *The First Interview-4th Ed.* (Guildford 2014).
- www.purposefulplanninginstitute.com

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- Have a great rest of your day!!!