Lawyers’ Attitudes Toward Death and Toward Planning in Anticipation of Death

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In December, 1979, the writer, a lawyer and a clinical psychologist, taught a brief course called “The Psychological Aspects of Estate Planning” in the graduate program on Estate Planning at the Law School of the University of Miami. Twenty six students were enrolled in the course. At the beginning of the course, each completed the following questionnaire by noting whether they agreed or disagreed as to each item.

1. It is the prospect of estate taxation that motivates most persons who do so to engage in estate plans.
2. Most persons who don’t make wills are simply unaware of the need or desirability to do so.
3. Lawyers prefer to deal with the economic rather than the emotional aspects of estate planning.
4. Most testators would prefer to preserve and arrange for proper management of their assets rather than distribute them.
5. Attitudes toward death have little to do with planning or not planning for the disposition of one’s assets after death.
6. Lawyers who engage in substantial amounts of work in will preparation and estate planning have no more feelings and thoughts about death than do lawyers who do not do much wills and estates work.
7. The typical client does not want the lawyer to help him to deal with his attitudes about death but only wants a good business document with a hopefully fool proof legal result.
8. The typical client does not want the lawyer to explore his feelings about family members with him as a basis for drafting wills or estate plans.
9. As between lawyers, doctors and religious ministers lawyers feel most comfortable in talking about death.
10. Dealing with property matters is more important to

most persons engaged in will-making and estate planning than dealing with feelings and attitudes of family matters.

11. Guilt plays a large part in matters of will making and estate planning.

12. Most people expect to make more than one will in their lives.

13. People with young children think less about making a will than do people in late middle age.

14. Jurisprudentially, the biggest issue in planning in anticipation of death is the mental competence and intention of the planner.

15. In all will-making and estate planning there should be some outside judgment of the competence of the planner/donor at the time an appropriate and binding instrument is drafted and signed.

16. Most lawyers have or develop opinions as to what a client should do with his wealth after death.

17. Most lawyers do not have pre-set judgments as to how families and different family members should be protected by a testator or estate planner.

18. Most lawyers are very uncomfortable in the process of making out a will with a dying testator.

19. The greater his wealth the less an estate planner cares about the distribution of his worldly goods or what his family thinks of him after his death.

20. The old fashion of putting a blue ribbon around a will or placing an “official” emblem upon it still has psychological importance to the testator.

21. Substantially more persons would make out wills if they weren’t apprehensive about coming to lawyers.

22. The process of making out a will should be as streamlined and automated as possible (including the liberal use of “boilerplate”) in order to keep down the expenses of the legal client.

23. In drafting instruments regarding future interests, most lawyers are not skillful in the utilization of plain language.

24. Fact finding in legal counseling on will preparation or estate planning should spend more time on client attitudes than on determining what the client owns.

25. Legal counseling on wills and estate matters should focus relatively more on the attitudes and circumstances of family members than on the characteristics of the client’s property holdings.

26. Most persons do not have strong feelings of personal
attachment to their property.

27. "Caretakers" after death should be chosen more in terms of their economic responsibility than in terms of their psychological acceptability.

28. The biggest psychological obstacle to trust planning and preparation is the issue of revocability or ultimate control.

29. Sexist attitudes, in either lawyer or client, are not a significant occurrence in will-making.

30. Lawyers should attempt to deal with feelings of depression or attitudes of anger displayed by a client during the course of will-making.

31. The most important skill of the lawyer in will-making and estate planning is his knowledge of and ability to research the law.

32. A lawyer in estate planning should zealously represent the interest and outlook of his client more than he should attempt to be a conciliatory and reflective "lawyer for the situation."

33. The lawyer's morality is irrelevant to client choices in will-making and estate planning.

The results were tabulated in different ways and the analysis follows:

I. Characteristics of the Student Population

All twenty six students were enrolled graduate students in the Estate Planning Graduate Program at the University of Miami Law School, under the direction of Professor Philip E. Heckerling.

Of these twenty six graduate students, twenty two were male (85 percent) and four were female (15 percent).

Sixteen students (64 percent) were in the age range of 24 through 30. Seven (28 percent) were in the age range 31 through 40. Two (8 percent) were over 40 years of age. One did not list his or her age.

Seven students (28 percent) had no previous experience in the practice of law. Ten (40 percent) had six months through three years of experience in law practice. Eight (32 percent) had four or more years of practice in law (of these eight, two had more than ten years of practice). One student did not list his or her law practice experience.

Not surprisingly the median age was highest for those with the most experience in the practice of law and lowest for those with no law practice experience. Those with four or more years of experi-
ence had a median age of 35, those with six months through three years of experience had a median age of 28, and those with no experience had a median age of 25.

II. Method of Analysis

Each item was analyzed for degree of consensus or conflict among the respondents. Where 80 percent or more agreed in their response to an item, this was regarded as strong consensus. Where 60 percent to 80 percent agreed in their response to an item, this was considered a weak consensus. Where there was less than 60 percent agreement, this was viewed as evidencing strong conflict of opinion.

Findings were determined in three different ways. First, for the total respondent population, all items were categorized as to those which evoked strong consensus, those which showed weak consensus and those which evidenced conflict. Findings were then analyzed on the same basis but by separating the responses of males and females to determine if there was a sex difference. Finally, responses were analyzed to determine if there were differences in attitude between those with no law practice experience, those with some but less than four years of experience, and those with four or more years of experience. (It was decided that, since there was such a high observable correlation between age and years of experience, an independent analysis in terms of age differences would not be made.)

III. The Findings

A. General Findings for the Total Lawyer Population

The following items elicited a very strong consensus:

1. It is the prospect of estate taxation that motivates most persons who do so to engage in estate plans - Disagree
3. Lawyers prefer to deal with the economic rather than the emotional aspects of estate planning - Agree
5. Attitudes toward death have little to do with planning or not planning for the disposition of one's assets after death - Disagree
9. As between lawyers, doctors and religious ministers lawyers feel most comfortable in talking about death - Disagree
16. Most lawyers have or develop opinions as to what a client should do with his wealth after death - Agree
19. The greater his wealth the less an estate planner cares about the distribution of his worldly goods or what his family thinks of him after his death - Disagree

20. The old fashion of putting a blue ribbon around a will or placing an "official" emblem upon it still has psychological importance to the testator - Agree

21. Substantially more persons would make out wills if they weren't apprehensive about coming to lawyers - Agree

23. In drafting instruments regarding future interests, most lawyers are not skillful in the utilization of plain language - Agree

26. Most persons do not have strong feelings of personal attachment to their property - Disagree

28. The biggest psychological obstacle to trust planning and preparation is the issue of revocability or ultimate control - Agree

30. Lawyers should attempt to deal with feelings of depression or attitudes of anger displayed by a client during the course of will-making - Agree

33. The lawyer's morality is irrelevant to client choices in will-making and estate planning - Disagree

Interpretation of these responses suggests some interesting and significant insights. Of course, the interpretations and insights are tentative, because only twenty six lawyers have here rendered an opinion, but there is pertinent suggestion in their responses.

Lawyers seem to agree that personal and psychological considerations (items 5, 19, 21, 26, 28, 30) are very important in estate planning, but they seem to be reluctant to become involved with clients on a personal level (item 3). They prefer to deal with the "hard data" and the economic aspects of estate planning (item 3). One may even speculate that potential clients are hesitant to come to lawyers for estate planning (item 21) precisely because they may not be treated in a comfortable way as human beings (item 3). Curiously, lawyers can and do contemplate estate plans for clients (item 16) even though lawyers are not significantly comfortable in facing matters of death (item 9) and even though they believe that attitudes toward death are important in estate planning (item 5). It is also significant to note the perception that clients are likely to have strong feelings about or personal attachments to their property, at least to some of it (item 26), and that a primary concern for clients is giving up control (item 29) and distributing their wealth (item 19). Withal, the lawyer feels that he must reflect or at
least be cognizant of his own morality in estate planning (item 33) and that it is still important to impress the client with the solemnity, tradition and importance of estate planning (item 20).

These observations and interpretations lead to speculation as to whether attorneys who engage in will-making and estate planning are adequately sensitive to issues of death and to their own feelings about death and the estate planning process. In view of the fact that attorneys appear to eschew emotionally-laden matters in favor of economic matters in consultation, one may speculate whether attorneys have adequate sensitization and training in the personal counseling process in will-making and estate planning. The matter may be of critical importance, not only in terms of competence in the estate-planning process, but also in terms of the favor with which attorneys are held by their clients and the general reputation of the profession.

The following items elicited a strong conflict of opinion among respondents:

10. Dealing with property matters is more important to most persons engaged in will-making and estate planning than dealing with feelings and attitudes of family matters.
11. Guilt plays a large part in matters of will making and estate planning.
12. Most people expect to make more than one will in their lives.
14. Jurisprudentially, the biggest issue in planning in anticipation of death is the mental competence and intention of the planner.
18. Most lawyers are very uncomfortable in the process of making a will with a dying testator.
25. Legal counseling on wills and estate matters should focus relatively more on the attitudes and circumstances of family members than on the characteristics of the client’s property holdings.
27. “Caretakers” after death should be chosen more in terms of their economic responsibility than in terms of their psychological acceptability.

Some interpretation of these findings may be more in order later, after we have considered the apparent impact of sex and practice experience on responses.
B. Differences in Findings Based on Sex of the Respondent

Because of the small number of women respondents, any even tentative creditable interpretation should contemplate only substantial extremes in response. Two items are significant in this regard:

Item #10. Whereas the male population are in serious conflict about the proposition that "dealing with property matters is more important to most persons engaged in will-making and estate planning than dealing with feelings and attitudes on family matters," the women respondents unanimously disagree with this statement.

A fair interpretation of this finding may be that women lawyers in the trusts and estates area are indeed more sensitive to emotional and human relations considerations in estate planning than are men. Men, perhaps more acquainted with and oriented to the business world, are inclined to be more responsive to property matters. This may well be a cultural phenomenon reflecting the sexual differences in upbringing and social role in our society. There might also be the inference that women lawyers are better personal counselors. Given a greater range of cultural experiences for the woman as emancipation increasingly occurs, the distinction between men and women may not survive.

Item #15. Whereas men show a strong consensus (85 percent) in disagreeing that "In all will-making and estate planning there should be some outside judgment of the competence of the planner/transferor at the time an appropriate and binding instrument is drafted and signed," a substantial consensus of women (75 percent, three out of four) agree with this statement.

The difference suggests that women lawyers are more inclined to seek outside help or use outside consultants in their work, and they may feel less certain or self-assured in making judgments about such matters as emotionality and mental status. Male lawyers, on the other hand, appear to be more self-assured or feel highly knowledgeable about such matters as determining personal competence. Might one speculate that women, being generally more attuned to emotional matters, appreciate the complexity or difficult of properly assessing such matters, whereas men, for whatever reasons, dogmatize more?
C. Differences in Findings Based on Degree of Law Practice Experience of the Respondents

Again, because of the relatively small number of respondents in the categories of no experience (seven), six months to three years of experience (ten), and four or more years of experience (eight), only items in which there were substantial differences in response are offered as a basis for some creditable interpretation.

Item #2. There is weak consensus among the most experienced attorneys (four years of practice or more) that “Most persons who don’t make wills are simply unaware of the needs or desirability to do so,” whereas those attorneys with limited experience (six months to three years) show weak disagreement with the statement and those attorneys without any law practice experience express strong disagreement.

Item #4. There is a weak consensus among the most experienced attorneys that “Most testators would prefer to preserve and arrange for proper management of their assets rather than distribute them,” whereas those attorneys with limited experience strongly disagree, and those with no law practice experience mildly disagree.

Item #12. The most experienced attorneys weakly agree that “Most people expect to make more than one will in their lives.” whereas attorneys with limited experience and those with none mildly disagree.

Item #13. The most experienced attorneys are in disagreement as to whether “People with young children think less about making a will than do people in late middle age,” whereas attorneys with less or no experience strongly disagree with the statement.

Item #15. The most experienced attorneys strongly disagree that “In all will-making and estate planning there should be some outside judgment of the competence of the planner/transferor at the time an appropriate and binding instrument is drafted and signed,” whereas those with limited experience mildly disagree, and those with no experience are in conflict.

Item #25. The most experienced attorneys fairly substantially disagree (72 percent) that “Legal counseling on wills and estates matters should focus relatively more on the attitudes and circumstances of family members than on the characteristics of the client’s property holding” whereas those with limited practical experience substantially agree (78 percent) with the statement, and
those with no practical experience are in conflict as to their views.

In some respects, older and more experienced practitioners appear to be distinguishable in their attitudes from their younger brethren with limited or no experience. At least in terms of their attitudes on matters of will-making and estate planning, the more experienced practitioners perceive their clients, and perhaps people generally, as somewhat sophisticated about will-making. They know enough to make a will and likely will make more than one will. Will-making clients will be concerned about retaining control and effective management of their assets. The clients of the more experienced attorneys may be the middle-aged who are more affluent or established in their circumstances. Finally, as regards the attitudes of experienced attorneys toward how they practice, they see little or no need for outside consultants, such as on the matter of personal competence, and they do not regard legal counseling that focuses on the feelings and attitudes of clients to be as important as dealing with the "hard" issues of property management and distribution. It may be that, in the course of their careers, experienced attorneys become hardened as to the way they practice, the amount of autonomy and personal authority they prefer, and the amount of tolerance they have for dealing with clients as sensitive and emotionally involved persons.

*Item #22.* Lawyers with limited experience differ in opinion as to whether, "The process of making out a will should be as streamlined and automated as possible (including the liberal use of "boilerplate") in order to keep down the expenses of the legal client," whereas those with no experience and those with substantial experience in the practice of law strongly disagree with this statement.

*Item #29.* Lawyers with limited experience also differ in opinion on the statement that "Sexist attitudes, in either lawyer or client, are not a significant occurrence in will-making." Lawyers with no experience and those with substantial experience, on the other hand, strongly disagree with the statement.

The implication of differences in attitude characterizing those with limited practical experience, compared with those with none or a great deal of experience, is that they are not as certain about important elements in client experiences or about proper modes of some elements of professional practice. Those with substantial experience, on the other hand, are more settled in their ways, and those with no experience bring their biases from their undergraduate legal education, in all likelihood. Those with none and those
with significant experience may agree on a matter such as sexism in law practice, perhaps for different reasons, but the attorney with limited experience is understandably feeling his way as he gains practical learning and experience.

**Item #31.** Lawyers with no experience, and presumably having just completed their undergraduate legal education, are not in agreement that “The most important skill of the lawyer in will-making and estate planning is his knowledge of and ability to research the law.” Those with some or a great deal of experience in law practice, on the other hand, strongly disagree. The inexperienced lawyer still appears to be clearly influenced by his legal education, with its emphasis on conceptualism and legal research, whereas those in practice place their legal education emphasis on researching the law in a different perspective and perhaps do not regard it to be as valuable in their practice.

### D. Items that Produce Strong Conflict of Opinion Among Respondents

It is now clear that some items that reflect a strong conflict of opinion among respondents may be further analyzed and observed to offer differences in response based on sex or on degree of law practice experience. For instance, men, more than women, believe that dealing with property matters is more important than dealing with feelings and attitudes on family matters. Experienced practitioners, more so than their brethren, believe that most people will make more than one will in their lives. It appears that male attorneys, more than female attorneys, may regard the matter of mental competence and intention of the planner as not being a very substantial issue. They may have clear ideas and conclusions on the matter. The most experienced attorneys clearly do not feel that focusing on attitudes and circumstances relating to the client’s family are as important as focusing on client property holdings.

There remain three items on which conflict of opinion persists among all attorney groups:

**Item #11.** Guilt plays a large part in matters of will making and estate planning.

**Item #18.** Most lawyers are very uncomfortable in the process of making out a will with a dying testator.

**Item #27.** “Caretakers” after death should be chosen more in terms of their economic responsibility than in terms of their psychological acceptability.”
Common to all of these items is the uncertainty or lack of knowledge about specifically psychological matters that pertain to will-making and estate planning.

It is, of course, proper to observe that the data offered here are sparse on which to offer firm conclusions, and the usual reminder that "more research is needed" seems well-founded. Notwithstanding, interesting questions are raised by the data. Do lawyers need to become more conscious, and perhaps be more continually conscious, of the psychological and human relations factors in will-making and estate planning? Do lawyers need to develop, either in law school or elsewhere, more skills in the techniques and perspectives of personal counseling with clients? Do experienced lawyers need to find some means to deal with—or at least be conscious of—the problems of hardening attitudes and perhaps a loss of interest as they add to and acquire long years of experience in practice? Do lawyers need to examine more deeply some of their own attitudes—their fears and discomforts especially—in a practice that is related to death and to making plans in contemplation or in the presence of death?