

Human Side of Estate Planning: Psychology of Estate Planning

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Disclaimer

- The information given in this presentation is not intended as specific legal or medical advice. Caution is advised. The materials are large, so we might not get to every slide.

Why Care About This Subject?

- It is ubiquitous and involves everyone.
- A working knowledge of the psychology of estate planning:
 - Helps spot issues where referrals are advisable.
 - Can explain why a client/donor or family is stuck.
 - Can help the planner guide the client/donor or family toward a good estate/charitable planning result.
 - Equips the planner with knowledge and tools, including self-reflection and self-realization.

Agenda

- I'll begin with a story about Pablo Picasso and a “baker's dozen” of quotes about we humans' relationships with life, death, and property. (Slides 9-19)
- I'll cover the usual wide knowledge gap and what it means in the planning process as well as the planner's role in the process. (Slides 21-28)
- I'll go over a model of the obstacles and path toward a “good estate planning result.” (Slides 29-35)

Agenda

- I'll lay out the reasons why clients pass on making otherwise advisable large gifts. (Slides 36-38)
- I'll introduce three psychological phenomena in estate planning: transference, countertransference, and triangles. (Slides 39-65)
- I'll discuss death anxiety and mortality salience as well as 12 distinct fears in the planning process. (Slides 67-82)

Agenda

- I'll consider cognitive distortions and how they impact death anxiety. (Slides 83-94)
- I'll discuss the three factors in planning: mortality, property, and attitude toward giving, as well as why families fight. (Slides 95-113)
- I'll introduce two tools that can assist planners: Motivational Interviewing and Appreciative Inquiry. (Slides 114-146)
- Finally, I included some resources in this area. (Slides 147-156)

Introduction

- For starters, I'm ***no expert*** on this subject, but I'm not sure that anyone is an expert on this subject.
- This subject is vast, and I couldn't cover it all in two hours. Or 20 hours. For example, I don't have time to get into personality types/disorders, sibling position, differences in receiving and processing information, or any abnormal psychology issues like substance abuse.

Introduction

- My thoughts come from a significant amount of research and thought 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 that *law school didn't teach me how to handle.*

Psychology of Estate Planning

- What follows are a “ baker’s dozen” 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 we humans have a *strange relationship with death and with our belongings*, despite death’s familiarity with and applicability to every human being thus far.

Quotes about Life, Death, and Property

- *Americans think that death is optional.* Jane Walmsley, ***Brit-Think, Ameri-Think*** (2003).
- *...[L]ife of man solitary, poor, nasty, brutish, and short.* Thomas Hobbes, ***Leviathan*** (1651).

Quotes about Life, Death, and Property

- *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. Hark you now!* William Shakespeare, ***The Winter's Tale*** (1623).

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).
- *A man's dying is more the survivor's affair than his own.* Thomas Mann, ***The Magic Mountain*** (1924).

Quotes About Life, Death, and Property

- *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. Donleavy, **The Ginger Man** (1955).*

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]*

Quotes About Life, Death, and Property

- *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).

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, ***Thoughts for the Times on War and Death*** (1915) [Emphasis added].*

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.

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).*

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).

First Poll Question

Which of the following statements most closely approximates your feelings about the subject of the psychology of estate planning?

- A. Interesting subject, but I am **having trouble** seeing its **relevance** since it's outside of my practice area.
- B. I am unsure of the relevance of the topic, but I have an **open mind** about it.
- C. I believe that the subject is **very important**, but I just **don't know much about it** or what to do with it.
- D. I believe that this subject is **more important** than the substantive part of my practice or work.

What's At Stake?

- Clients usually have a lot at stake *financially* and *emotionally* when they engage an estate/charitable planner-so there is already pressure on the situation, brought on by its gravity-*others may have an intense interest in the outcome.*

Relationship of Wealth to Self

- Many people subconsciously view their wealth as their *identity* and *source* of sexual attractiveness as Sartre and James suggest; thus, the thought of parting with that wealth often is not an agreeable or easy task. I discuss why more people don't make large gifts in a bit.

Knowledge Gap and Planner Baggage

- Further complicating things is usually a **wide gap** between the knowledge of this mixed and difficult field of law and estate/charitable planning of the planner compared to that of the client. This gap can be problematic.
- ***Estate and charitable planners bring their own biases and psychological baggage into our work, whether we want to admit that or not.***

Wide Gap in Knowledge of Estate Planning

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

Role of the Planner

- What exactly is the *estate/charitable planner's role*?
 - To do *exactly* what the client says that they want?
 - To *educate* the client?
 - To be a *zealous advocate*?

Role of the Planner

- What exactly is the *estate/charitable planner's role (cont.)*?
 - 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?

Role of the Planner

- It's *some of all of the above*-surely, the planner shouldn't just be a pawn of the client/donor, but *taxes are the easiest piece of the puzzle*.
- This mixed bag includes parts where the planner actually is *opposed* to the interests of the client-there are some things in estate/charitable planning that *can't legally be done*, even if that's what the client wants-the planner often has to get the client/donor to face *mortality*.
- Planners also often *charge for their services*, which sets up a *conflict*.

Role of the Planner

- There is a **big** difference between being an **estate planner** in the truest sense of the term and being an **estate technician**.
- Given the client's expectations, it has been written that the transferential supposition that the estate/charitable planner **"knows"** is infectious.

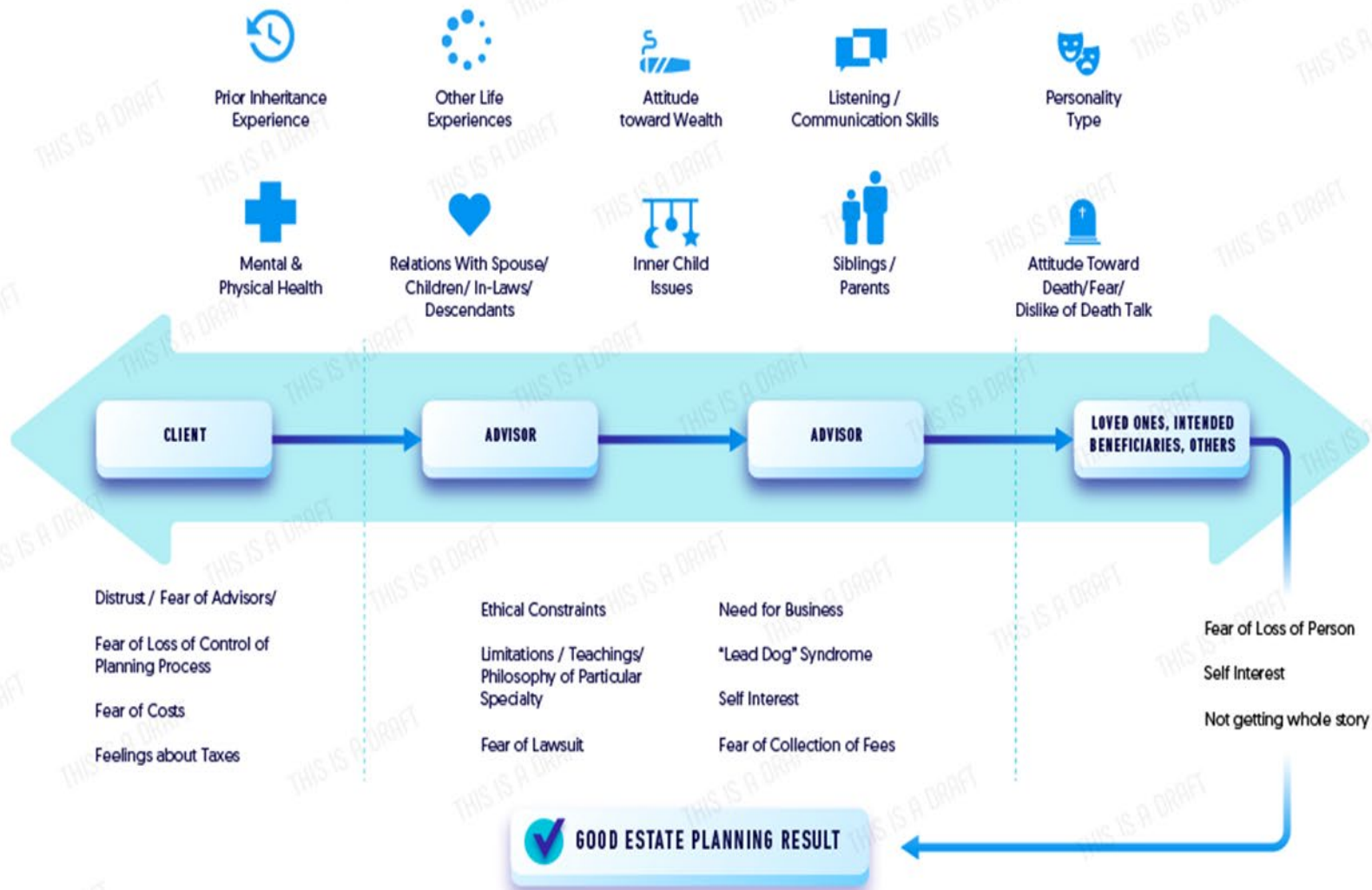
Good Estate Planning Result

- Every estate planner and client should be in pursuit of a *“good estate planning result,”* whatever that looks like for the particular client.
- The following model, named The Path of Most Resistance© (“Path”), attempts to illustrate the reasons.

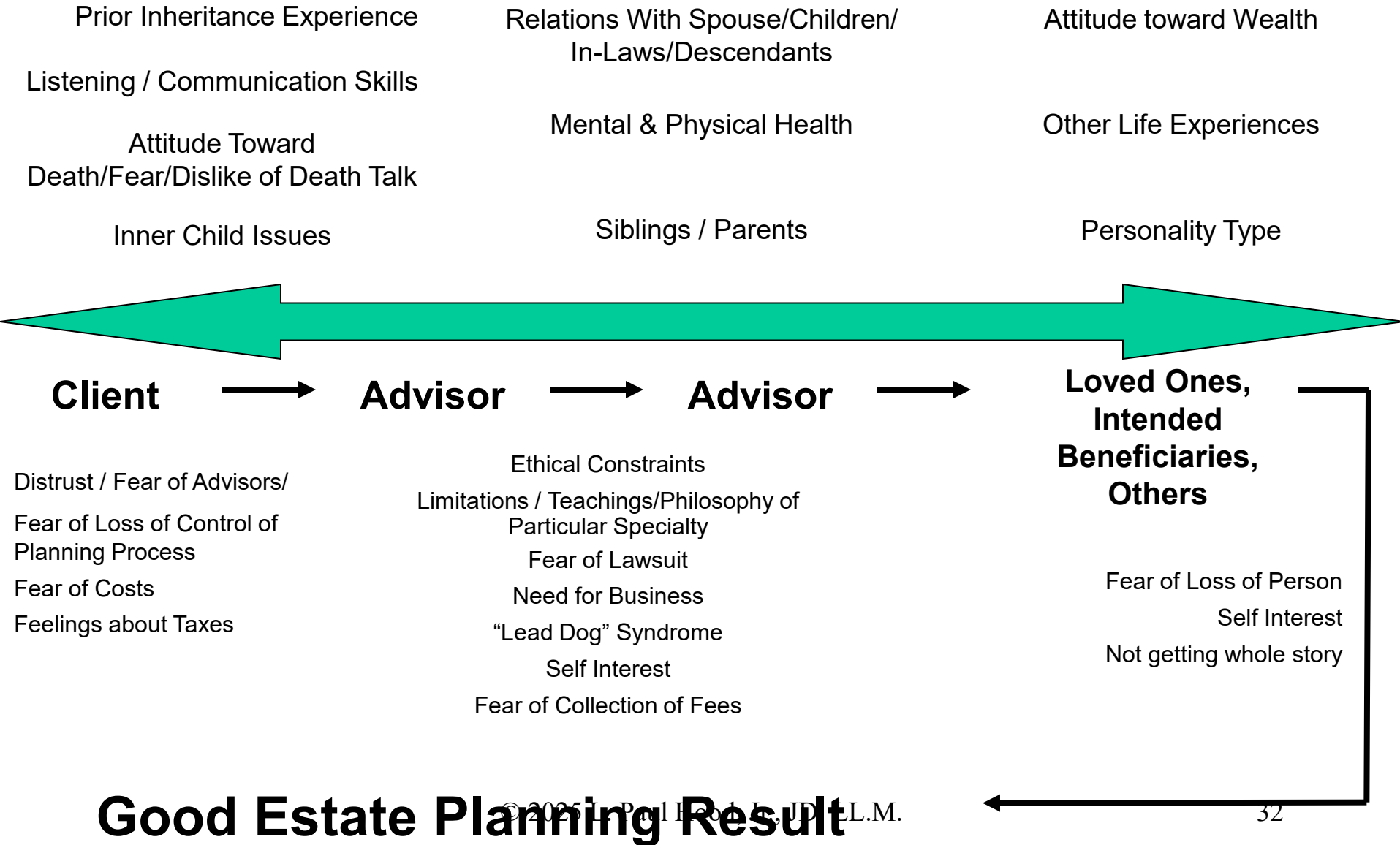
Definition

- I define a “good estate planning result” as one where property is properly transmitted as desired, and *family relations among the survivors are not harmed* during the estate planning and administration process.
- Note that taxes *aren't* mentioned.

PATH OF MOST RESISTANCE?



Path of Most Resistance?©-Couillon Version



Good Estate Planning Result

- As the Path illustrates, there are several “players” in the estate planning “play.”
- The matters ***above the thick green double arrow*** 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 thick green double arrow*** are witnessed in each of the respective various players in the “play.”

Good Estate Planning Result

- The Path is intended to illustrate 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*.

Good Estate Planning Result

- The Path 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 planners bring their own personal “baggage,” including *fear of talking about death*, into the planning process.

Why Clients Don't Want to Make Large Gifts

- *What madness is it for a man to starve himself to enrich his heir, and so turn a friend into an enemy! For his joy at your death will be proportioned to what you leave him. Seneca*
- There are many tax reasons, much more so in the past, for clients/donors to make large gifts. Yet most pass. Why?

Why Clients Don't Want to Make Large Gifts

- ***Present cost of giving***. Appraisals, potential for gift taxes, and professional fees.
- ***Destruction of incentive***. See the Buffett quote later.
- ***Family dynamics***. Some families make poor partners.

Why Clients Don't Want to Make Large Gifts (cont.)

- ***Potential shifts in control***, even loss of control.
- ***Bag lady syndrome***. I may need it later. Don't underestimate this, particularly for females.
- ***A loss of self and sex appeal*** because of gifting. Think about the quotes of Sartre and James.

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*.

Important Terms of Psychology of Estate Planning

- 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.***

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.”

One Definition of Transference

- *a phenomenon in which people **transfer** feelings and attitudes, **usually 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.*

Transference

- **Transference** often is witnessed in situations where one party is in a **position of confidence** relative to the other, e.g., psychologists, doctors, estate/charitable planners, 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, if it's recognized**.

Transference

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

Transference in Estate Planning

- Let's consider an example of how the phenomenon of *transference* can occur in estate/charitable planning:

Transference in Estate Planning

- **Example:** 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 amount 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.

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.***

Transference in Estate Planning

- 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.”

Transference in Estate Planning

- In the *Example*, 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.

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.

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.*

Countertransference in Estate Planning

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

Examples of Countertransference in Estate Planning

- ***Example 1: Birth Order Mismatch.***
Client is a youngest child, while the planner is the oldest child in his family. Planner usually defaults to naming the oldest child as successor executor and trustee if the client doesn't express a preference.

Examples of Countertransference in Estate Planning

- **Example 2: Professional Bias.** 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.

Countertransference in Estate Planning

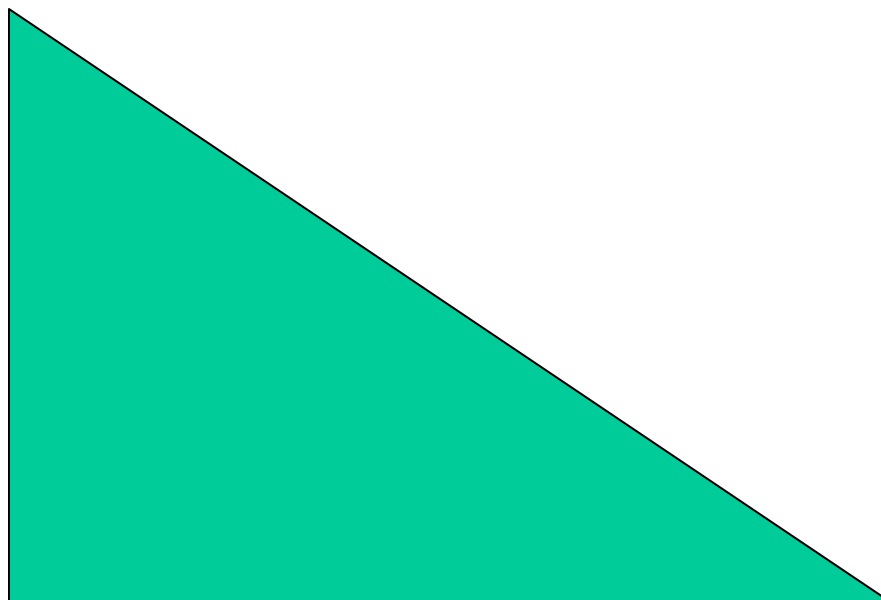
- *Countertransference* also can manifest itself in *biases* by the advisor either in favor of or against certain *estate planning techniques*.
- Additionally, planners can be morally opposed or outraged by their clients' behavior to the extent that it impacts the planner's ability to work effectively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

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 science-based family systems theory (one of approximately 12 major schools of family therapy).

Triangles

- 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.



The triangle involves three people.

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.
- 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.

Triangles

- 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**.

Triangles in Estate Planning

- Triangles are **ubiquitous**; they're neither good nor bad. They are communication systems.
- I often witnessed and was impacted by **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 in Estate Planning

- ***Triangles*** also can involve ***inanimate objects***, e.g., persons who use a certain bedroom in an antebellum home that has a “history.”
- ***Triangles*** can exist between the client and two estate planners-I’ve been involved in some of these.

Examples of Triangles in Estate Planning

- **Example 1:** A husband and wife 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 something even more pointed like “don’t you think that he [the husband] is being hardheaded?”

Examples of Triangles in Estate Planning

- **Example 2:** Your clients, an elderly husband and wife, are concerned about which of their children should handle their affairs when they are no longer able to do so. They pick a child to be their agent under their powers of attorney and tell all of their children of their decision. 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**.

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).

Poll No. 2

Which of the following statements most closely approximates your feelings?

- A. I have **never experienced or witnessed** anything like transference, countertransference or triangles during an estate planning interaction with a client.
- B. I have **been aware** of psychological phenomena at work during an estate planning interaction, but **I didn't know what they were or how they worked**.
- C. I'm **glad and relieved to know that there are psychological explanations** for what often result from these phenomena, which often are emotion-based.
- D. This information **surpasses what I need to know as an estate planning professional**.

Death Anxiety

Most human beings exhibit death anxiety at some point. 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 Anxiety

Reasons *why* people have *death anxiety (cont.)*:

- 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*: (per Russell James)
 - *Avoidance* of talk about mortality and other reminders of mortality (called *mortality salience*).
 - *Minimization* of mortality through jokes about death and feeling that mortality is not pressing enough for action at the moment.
 - *Symbolic* immortality-which is a form of *autobiographical heroism*. Estate planning fits here.

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.

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.

Mortality Salience

- According to 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 things such as:
 - 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.

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.

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.

Forms of Avoidance of Mortality Salience (the five D's)

- According to Russell 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."

Common Fears of Estate Planning

From my own work and research, 12 **Common Fears** Associated with Estate Planning that prevent clients from moving forward:

- Fear of contemplating death (***Mortality Salience***).
- 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***.

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*.

Consequences of Estate Planning

- Most of these fears are ***irrational*** and can be safely and properly addressed in a well-confected estate plan.
- Estate planning, once done and finalized, is known to ***reduce death anxiety***, e.g., Ishmael from *Moby Dick* about his will signing, i.e., “a stone rolled away from my heart.”

Consequences of Estate Planning

- 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 *mortality salience* and fear of a post-death estate *dispute/squabble*.

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*.

Effects of Death On Behavior

- 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.

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 often results in **repression** of death thoughts-the thought of death simply is too painful to be allowed into a person's **conscious** thoughts.

Cognitive Distortions

Cognitive distortions often are referred to as *stinkin' thinkin'*. 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, with no real rational basis for this conclusion.
- 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.

Types of Cognitive Distortions

- Cognitive distortions are machinations in which our mind convinces us of something that is not true. Here are 15 common cognitive distortions (per John M. Grohol):
 - **Filtering**-where facts that don't align with our current thinking are minimized or disregarded.
 - **Polarized or “black and white” thinking**-where there often is an either/or false choice.
 - **Overgeneralization**-where a broad conclusion is based upon too few data points to buttress it.

Types of Cognitive Distortions

- Here are 15 common cognitive distortions (per John M. Grohol)(cont.)
 - ***Jumping to conclusions prematurely***-e.g., my parents loved me less because they left me less.
 - ***Catastrophizing*** (also referred to as magnifying or minimizing)-where the person believes that disaster is looming.
 - ***Personalization***-where the person believes that everything that other people do or say is some kind of direct, personal reaction to the person.

Types of Cognitive Distortions

- Here are 15 common cognitive distortions (per John M. Grohol)(cont.)
 - *Control fallacies*-these come in two forms: *externally controlled fallacies*, where the person views themselves as a victim of fate, and *internally controlled fallacies*, where the person assumes responsibility for the pain and happiness of everyone else.

Types of Cognitive Distortions

- Here are 15 common cognitive distortions (per John M. Grohol)(cont.)
 - ***Fallacy of fairness***-feelings of resentment when the person believes themselves to be the arbiter of fairness.
 - ***Blaming***-this comes in two forms: where the person ***holds others responsible*** for pains or bad situations, and where the person ***takes responsibility and the blame*** for every problem.

Types of Cognitive Distortions

- Here are 15 common cognitive distortions (per John M. Grohol)(cont.)
 - ***Shoulds/musts/oughts***-these can be ***internal***, where the result often is guilt and/or shame, or, ***external***, where the feelings usually are anger, frustration and resentment. ***Don't should on yourself!***
 - ***Emotional reasoning***-where the person believes that all of his beliefs must be true.
 - ***Fallacy of change***-where the person believes or expects others to change to suit him.

Types of Cognitive Distortions

- Here are 15 common cognitive distortions (per John M. Grohol)(cont.)
 - ***Global labeling***-where the person reaches a negative global judgment from only one or two qualities.
 - ***Always being right***-where the person will go to any lengths to demonstrate that he is right.
 - ***Heaven's reward fallacy***-a feeling of bitterness or sadness when the person believes that his sacrifice and self-denial entitles him to a certain desired outcome.

Poll No. 3

Have you ever experienced a client who is in the throes of a cognitive distortion?

- A. Yes.
- B. No.

Effects of Death Anxiety

- One potential consequence of *death anxiety* and *cognitive distortions* 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.

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.

Effects of Death Anxiety

- 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 it done is more important than how or what is done.*

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.

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*, as well as cognitive distortions, 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 and even immortality* is the goal.

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/charitable planning***.

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.

Effects of Separation Anxiety

- 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***. The item itself is what is important because of its ***association*** with the deceased loved one.

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, i.e., I am what I have.

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, which really are cognitive distortions.

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*.

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 once 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.
- *“A man’s worst difficulties begin when he is able to do as he likes.”* **Thomas Henry Huxley**

Issues in Estate Planning

- What does one consider when contemplating estate planning? Professor Thomas 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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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**.

Planner'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:

Planner's Participation

- That tension is *personal* for the lawyer because most lawyers are uncomfortable being in charge of a client's estate plan.
- 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.

Planner's Participation

- On the other side of the equation is the planner's aspirations of being a ***counselor***, and most planners also are as uncomfortable in talking with the client about ***death*** as most clients are.

Planner's Participation

- Estate planning is full of ***conventions***, over which estate planners 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 estate planner ***“how do most of your other clients do this?”***

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 [client] 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.

Planner's Participation

- The term ***“unipolar blending”*** has been suggested 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.

Planner's Participation

- 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*.

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*;

Why Families Fight

- (4) the death of a loved one is mortality salience and 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.

Tools to Use

- There are a number of tools that planners can use to assist clients/donors psychologically, with respect to finishing their planning, including, without limitation:
 - Reflective listening.
 - Appreciative inquiry.
 - Motivational interviewing.
- We will focus on ***motivational interviewing*** and ***appreciative inquiry***, since reflective listening is used in both.

Motivational Interviewing (MI)

- MI 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*.

Motivational Interviewing (MI)

- MI is based upon four guiding principles (RULE):
 - **R**esist the righting reflex (discussed below);
 - **U**nderstand and explore the patient's own motivations;
 - **L**isten with empathy; and
 - **E**mpower the patient, encouraging hope and optimism.

Motivational Interviewing (MI)

- It has application to estate/charitable planning, where clients/donors often are ambivalent about doing their planning.
- By asking the right questions, we can guide the client/donor to the conclusion that they need to get their estate/charitable planning done, and that we are the right people to guide them through this process.

Righting Reflex

- MI 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.

Righting Reflex

- All advisors have a tendency to go to this *righting reflex* quickly because we assume that clients want our help and opinion *immediately* because they are in our offices-this *often is not true*.

The Four Processes of Motivational Interviewing

- MI is based upon four processes (EFEP):
 - *engaging* (establishing a helpful connection and working relationship);
 - *focusing* (developing and maintaining a specific direction in a conversation about change in behavior);

The Four Processes of Motivational Interviewing

- Motivational interviewing is based upon four processes (cont.)(EFEP):
 - evoking** (eliciting the client's own motivations for change, which lie at the heart of motivational interviewing); and
 - planning** (developing a commitment to change and a concrete plan of action).

The Spirit of Motivational Interviewing (MI)

- ***Collaborative:*** MI is based upon a cooperative and collaborative partnership between patient/client/donor and helper, particularly where behavior change is needed.

The Spirit of Motivational Interviewing (MI)

- ***Evocative***: MI seeks to evoke from the patient/client/donor that which he already has: his own motivation and resources for change, ***connecting behavior change with his own values and concerns.***

The Spirit of Motivational Interviewing (MI)

- ***Honoring Autonomy***: MI requires a certain amount of ***detachment*** from outcomes, because the patient/client/donor can make up his own mind and is free to go in any direction, even one not advised.

Communication Styles

- There are essentially three communication styles, and these can be used in the same conversation:
 - **Direct**-Telling what to do
 - **Follow**-Listening
 - **Guide**-Middle ground, involving both
- MI spends most of its time in **Guide** mode, whereas most helpers utilize a Follow-Direct pattern.

Core Communication Skills

- The three core communication skills are:
 - *Asking*
 - *Listening*
 - *Informing*
- Too many helpers spend too much time in the informing or ask/inform skillsets and not enough time listening.

The Skills Required in Motivational Interviewing

- MI involves the following skills:
 - Asking *open-ended questions*.
 - *Affirming* the other person.
 - *Reflective listening*-this is very important.
 - *Summarizing*.
 - *Informing and advising*.
- MI 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, as discussed. MI is not done *to* or *on* a person; it's done *with* a person.

Roadblocks to Effective 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.

Roadblocks to Effective Listening

- Roadblocks to effective listening (cont.):
 - *Giving advice, making suggestions, or providing solutions.*
 - *Persuading with logic, arguing, or lecturing.*
 - *Telling people what they should do; moralizing.*

Reflective Listening

- 12 roadblocks to effective listening (cont.):
 - Reassuring, sympathizing, or consoling.
 - Questioning or probing.*
 - Withdrawing, distracting, humoring, or changing the subject.

Reflective Listening

- 12 roadblocks to effective listening (cont.):
 - Disagreeing, *judging*, criticizing, or blaming.
 - Agreeing, approving, or *praising*.
 - Shaming*, ridiculing, or labeling.
 - Interpreting or *analyzing*.

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, and involve the *righting reflex*.

Reflective Listening

- 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 and what he is going through.

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.
- By gently guiding clients in conversation, the therapist has the clients ***convince themselves*** that the change is in their best interests.

Change Talk and Sustain Talk

- 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-e.g., completing their planning) and *sustain talk* (where they are in favor of maintaining the status quo-e.g., doing nothing) during the same conversation.

Applied Motivational Interviewing

- Planners can use the principles of MI to *guide* clients/donors *toward closure* in the estate/charitable planning process.
- Most clients/donors are *ambivalent* about doing their estate/charitable planning and engage in both *change talk* and behavior and *sustain talk* and behavior.

Applied Motivational Interviewing

- By properly responding to the *sustain talk* and encouraging the *change talk*, the planner can play a role in assisting clients/donors to get them the therapeutic benefits of finishing their estate/charitable planning.

Appreciative Inquiry (AI)

- The second tool that is available to estate planners is called Appreciative Inquiry (AI).
- AI represents the intersection of the words *Appreciate* and *Inquire*.

Appreciative Inquiry (AI)

- AI is based upon the theory of *social constructionism*, which posits that an individual's notion of what is real, including his sense of his problems, is constructed in daily life through communications with others and is subjective and able to be *changed*.

Appreciative Inquiry (AI)

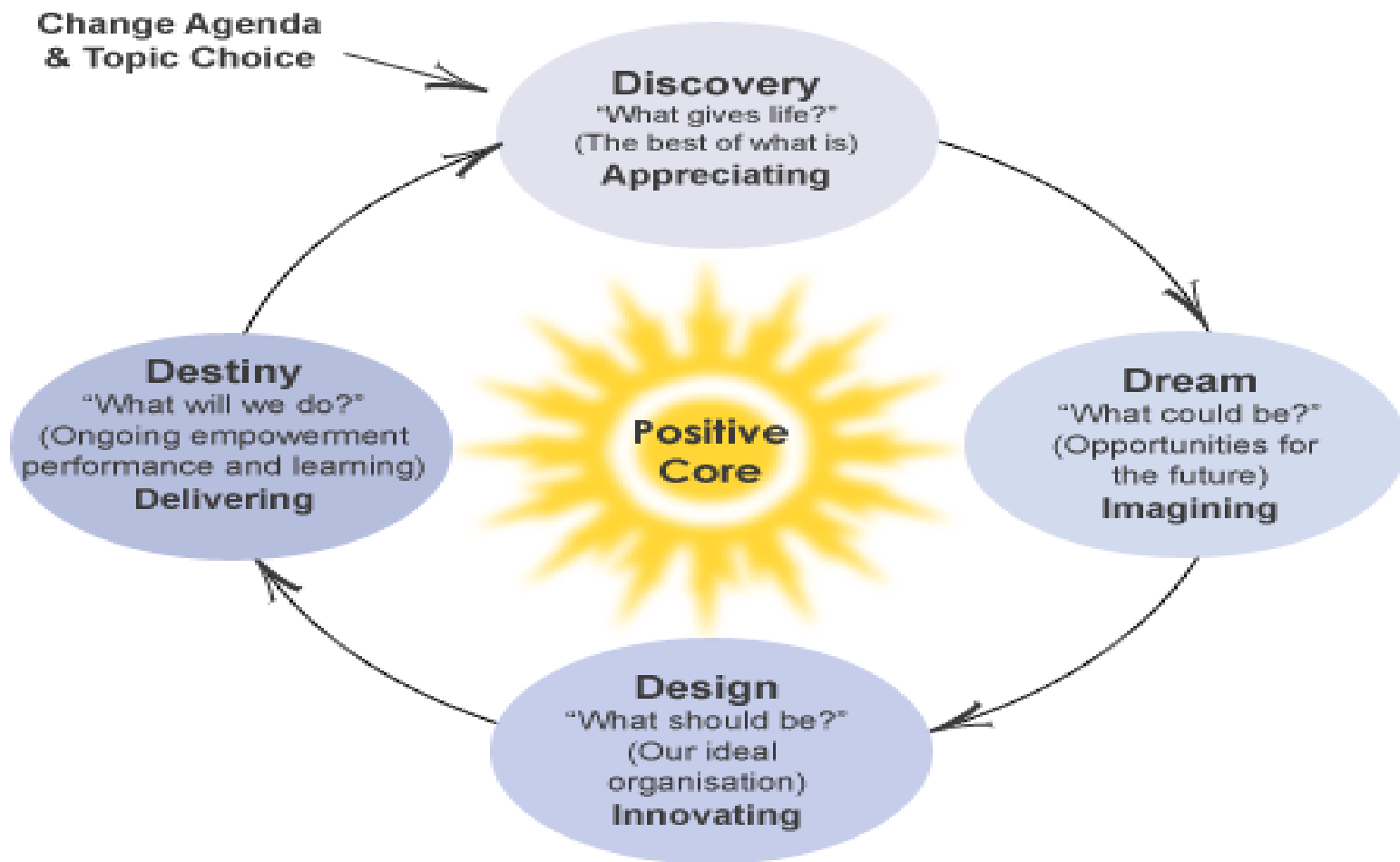
- AI is based upon the theory that there are things that a person or organization does very well-what ***gives life*** to the person or system, and the focus is on those ***positives*** with a view toward taking one to positive changes.
- This is to be contrasted with the Change Management system (***SWOT analysis***), which identifies ***problem*** areas and strives to solve them.

Appreciative Inquiry (AI)

- In addition to the ***social constructionist principle***, AI also is based upon the following four principles:
 - ***Simultaneity Principle***-Inquiry creates change.
 - ***Poetic Principle***-We can choose what we study.
 - ***Anticipatory Principle***-Images inspire action.
 - ***Positive Principle***-Positive questions lead to positive change.

Appreciative Inquiry (AI)

- AI involves the art and practice of asking questions (known as the *unconditional positive question*) that strengthen a system's capacity to apprehend, anticipate, and heighten positive potential.



Discovery, Dream, Design and Destiny

Appreciative Inquiry (AI)

- Note that from the 4 D model:
- the desired outcome of **Discovery** is ***Appreciating the best of what is***;
- the desired outcome of **Dream** is ***Imagining what could be***;
- the desired outcome of **Design** is ***Innovating/discovering what should be***; and
- the desired outcome of **Destiny** is ***Delivering/creating what will be***.

Appreciative Inquiry (AI)

- The proponents of AI, which was conceived in the late 1980's by David L. Cooperrider, a Ph.D. student at Case Western Reserve University in Cleveland OH, believe that far more progress can be made by focus upon the **positive attributes** of the system than a focus upon the **negatives or weaknesses or shortcomings** of the system because there's less resistance to enhancing what is done well, even if it means phasing out or changing some weak areas.

Appreciative Inquiry (AI)

- How can AI be used in estate/charitable planning?
- The possibilities are endless. For starters, family businesses that need succession planning can avail themselves of AI. Planners can use AI with donors who are unclear about how they want their gifts used.

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Thank You!!!

- Comments? Questions? Please feel free to e-mail me at paul@paulhoodservices.com.
- I sincerely appreciate your interest in and attention to this important topic.
- www.paulhoodservices.com