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WILL INTERVIEWS, YOUNG FAMILY CLIENTS AND THE PSYCHOLOGY OF TESTATION

Thomas L. Shaffer*

The psychology of testation — the human content in will interviewing and consequent "estate planning" — is a mixture of attitudes toward death, attitudes toward property, and attitudes toward giving. This article is an attempt to examine this human content in five specific lawyer-client settings. The clients are young married couples with small children; they are people to whom death would seem remote, whose property is skimpy and largely devoted to dependent support, and whose attitudes toward giving are likely to be narrowly focused on members of their immediate families.

My opportunity to be a participant-observer in these professional relationships came about this way: I teach Property III-IV at the University of Notre Dame Law School, an eight-hour "package" covering material traditionally taught in courses on wills, trusts, future interests, fiduciary administration, and federal estate and gift taxation. In the 1967-68 academic year my students and I spent about a third of our time and effort in clinical projects. In the fall semester the projects involved analysis and planning of "large" estates (i.e., those with tax problems). In the spring semester it involved planning for young-family clients, and drafting for both kinds of clients.

In the early part of the spring semester, the eight clinical groups — each from six to ten students — worked with live clients. Each set of clients was a young couple who had two young children and a modest accumulation of wealth. The project involved (1) interviews; (2) planning sessions among the "lawyers" involved; (3) drafting, each lawyer doing his own; (4) criticism and revision of the drafts; and (5) execution of the instruments and advice on ancillary transfers and life-insurance arrangements.

The client interviews followed about a semester of four hours a week of formal instruction in property settlement. Three or four classes dealt with young clients and included a movie on "solution oriented" interviewing and some independent study of a law review article on young-family wills clients. I attended and participated in all of the interviews except one, and that one was tape recorded for me. I have given the couples names drawn clumsily from the novels of C. P. Snow:

A. Mr. and Mrs. Lewis (Margaret) Eliot, who have two young daughters. Mr. Eliot is a white-collar worker in industry; Mrs. Eliot is a teacher. They are close to and have confidence in Mrs. Eliot's brother and his wife, Mr. and Mrs. Charles (Mary)...

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3 "Will Drafting," distributed by the California Bar Association through the University of California at Berkeley.
4 Shaffer, Nonestate Planning, 42 NOTRE DAME LAWYER 153 (1966).
Austin. Mr. Austin was one of the lawyers in the interview.

B. Mr. and Mrs. Kurt (Hanna) Puchwein, who have two pre-school age children, a boy and a girl. Mr. Puchwein is a public-school teacher, on leave and in a graduate program. They have confidence in Mr. and Mrs. Puchwein's parents, Dr. and Mrs. Leonard (Ruth) March.

C. Mr. and Mrs. Vernon (Muriel) Royce, who have two young children. Mr. Royce is a teacher and part-time insurance agent. They have some confidence in Mrs. Royce's brother, John Cottery, and his wife, Rachel.

D. Mr. and Mrs. Francis (Katharine) Getliffe, who have two young daughters. Mr. Getliffe is an independent small businessman. They have a good deal of confidence in Mrs. Getliffe's brother and his wife, Mr. and Mrs. Charles (Ann) Simon. Mr. Simon was one of the lawyers in the interview.

E. Mr. and Mrs. Roger (Caro) Quaife, who have two young children. Mr. Quaife is a graduate student who plans a professional career; Mrs. Quaife is a teacher on a part-time basis and in the summer. They have confidence in a number of relatives and friends.

This article will be structured in terms of four inquiries: (I) Is the will interview a confrontation with the idea of one's own death? (II) If it is, does the confrontation seem to involve a denial (or evasion) of the idea? (III-A) Does the client's attitude toward his property suggest that somehow his personality is involved in what he owns? (III-B) If his personality seems to be involved, does property-ownership relate to the client's attitude toward his death? (IV) Does the experience of making informed choices about property disposition appear to have a therapeutic effect on clients?

A note on methodology: The interpretation and range of information in these interview tapes has been compared for internal and external validity against the research standards suggested in Campbell & Stanley, Experimental and Quasi-Experimental Designs for Research (1963). The explication of the content of the tapes has been modeled to some extent on the suggestions in Becker, Problems of Interference and Proof in Participant Observation, 23 American Sociological Rev. 652 (1958). The outline for analysis will, finally, bear some relationship to the "pre-supposed empirical relationships and interpretations" model suggested in Westie, Toward Closer Relations Between Theory and Research: A Procedure and an Example, 22 American Sociological Rev. 149 (1957). I am grateful for these and other scientific insights to Campbell and Stanley (D. Campbell & J. Stanley, supra, at 5-6).

A number of factors could here jeopardize external and internal validity; I used several items on the check-list suggested by Campbell and Stanley (D. Campbell & J. Stanley, supra, at 5-6):

The selection of subjects was accidental; they were persons available to students who were seeking real clients. Some of them actively sought legal assistance while others were relatives or friends of the "lawyers" involved. The unifying factor in the clients was their genuine interest in having the legal services offered by the project, in that these clients, like any clients in this area of practice, sought the legal services which were performed for them. That affords sufficient objectivity for an internal analysis of them. External validity is more doubtful, but I believe they were sufficiently representative of well-educated, young, middle-class, married parents to justify generalization to most clients in their category — and that category is an
I. Confronting Death

Each client in these interviews confronted the idea of his own death. Of course, "If a man has learned to think, no matter what he may think about, he enormous, untapped one for legal services. I do not propose to generalize to older clients, childless clients, unmarried clients, poorer clients or clients whose children are older. Some of the attitudes suggested here would be paralleled in other groups, I am sure — but some undoubtedly would not.

There was some loss of subjects from this group. One couple's interview was not tape recorded. Another couple was unable to meet face-to-face with the "lawyers" involved; the latter couple's data was presented second-hand, through a relative. A third couple was one of the law students in the project and his wife; their interviews were conducted separately and were affected by the fact that the husband had a high level of legal sophistication. I eliminated the second and third couples because I thought they were atypical; I eliminated the first because I had no comparable data for them.

None of five couples ultimately selected was pre-tested by these lawyers; the interviews reported here were first interviews. However, two couples had dealt with lawyers and wills at earlier points in their married lives and one couple had a fairly high level of sophistication in life insurance. This mixture seems to me nearly typical (two in five with prior experience, one in five with life insurance sophistication) and I did not eliminate or try to explain differences in their interviews. All of the data that is significant with regard to these couples is fully reported.

The arrangements for interviewing the couples were all similar. Four couples were interviewed in homes, in three cases with their children present or close at hand. One was interviewed in my office, with telephone contact with the home and a baby-sitter there (which, I think, simulated the presence of children).

I have followed Becker's suggestions (Becker, supra, at 659-60) with respect to the proof of my conclusions. I have, for instance, stated the information as fully as possible, eliminating for the most part what seemed to me routine in the interviews. As Becker notes, this permits the reader to form his own conclusions, because the evidence for the reader is substantially the same as the evidence presented to me. Where most of the audience, as here, is at least as experienced as the author in the participant observation involved, Becker's suggestion seems especially useful. I have added my own analysis, which most readers can test against their own observations, as well as against mine.

Finally, Westie suggests, in areas where "there is a high degree of theoretical incoherence" (Westie, supra, at 149), the procedure of stating alternative empirical relationships and interpretations of them in advance, and then selecting the relationship and interpretation which seem to come out of the data. I have found his system of analysis helpful in structuring my report on these interviews. Here is his general explanation of the model:

This procedure involves (a) explicitly listing a comprehensive range of presupposed empirical relationships, many of them diametrically opposed to one another, which might possibly turn up in the research at hand and (b) explicitly listing a range of interpretations, many of them diametrically opposed to one another, for each possible empirical finding. Then, through empirical investigation the relationships that actually obtain are selected from the morass of "presupposed empirical relationships" initially listed. All of the other initially proposed empirical relationships are discarded. The array of alternative interpretations attached to them in the original presentation are also eliminated from consideration as interpretation of the findings.

The final step in this phase of the research cycle involves the selection of the correct theoretical interpretations from the array of contradictory through "plausible" interpretations attached to the empirical relationships that have survived the research test. This last task, though difficult, is perhaps less difficult as well as more accurate than where the usual procedure is followed. Id. at 150.

It is probably unnecessarily technical to set out a "Westie" outline for each of my discussions, but the reader may be interested in an example:

**EMPIRICAL RELATIONSHIP 1-A:** The experience of being interviewed by lawyers for the preparation of "estate-planning" devices is a relatively bland experience which does not significantly touch the clients' death anxieties. (Assumption: They have death anxieties.)

**INTERPRETATION 1-A-i:** Death anxiety is a consequence of physical illness or some variable other than planning with respect to property.

**INTERPRETATION 1-A-ii:** Death anxiety, while it may arise with reference to the possibly orphaned status of one's children, does not arise when the reference to children is their support.

**INTERPRETATION 1-A-iii:** Death is relevant in discussion of "estate-planning" devices, but the levels at which death is discussed are not anxiety producing. (The anxiety
is always thinking of his own death." But I mean here a confrontation more necessarily advertent than that.

One of the immediately remarkable features I noticed was that this confrontation tended to occur at the same point in each interview. This surprised me because the lawyers involved had no formal instruction — and, I believe, no uniform informal instruction — on the order that will preparation interviews should take. In each case serious "what if . . . ." talk about the client's death was the last subject taken up by the lawyers. In each case the lawyers inquired first into family arrangements, and into assets second. After this information was thoroughly laid out — usually for an hour or more — the subject of death awkwardly surfaced.

Even references to the death of persons other than the clients or their children, which often preceded discussion of the clients' deaths, were made haltingly and dealt with, I thought, hurriedly. Here is an example from the Getliffe interview (Mrs. Katharine Getliffe's brother, Simon, is one of the lawyers):

LAWYER: [speaking of the value of her father-in-law's house] Would you like to live there?
KATHARINE: Oh, I live six blocks away. . . . I wouldn't want to inherit it, if that's what you mean.
LAWYER: That's what I mean. [Laughter]
SIMON: Hey, wait a minute here. Don't be so in a hurry.

. . . .

LAWYER: [to Francis] Is there any realistic expectancy of an inheritance?

. . . .

arises from considerations of illness, the deaths of other loved ones, or some other area of experience which is not touched intensely in wills interviews.)

INTERPRETATION 1-A-iv: Death anxiety is not likely to arise in circumstances other than those suggesting experience with death.

EMPIRICAL RELATIONSHIP 1-B: The experience of being interviewed by lawyers for the preparation of "estate-planning" devices is an experience raising death anxieties.

(Assumption: Clients have death anxieties.)

INTERPRETATION 1-B-i: It is impossible to deal with the full range of property ownership without raising feelings about the personality of the owner — both in the owner and in the interviewer. Since this property-personality is discussed with reference to the cessation of the non-property-personality, suggesting in turn a radical separation of personality, death anxiety is inevitable and will be exhibited in evasion, euphemism and other psychological tactics of avoidance.

INTERPRETATION 1-B-ii: Direct, unequivocal reference to the death of the interviewee raises his death anxiety.

INTERPRETATION 1-B-iii: Reference to death words, which is inevitable even in the euphemism of the law office, raises death anxiety.

ANALYTICAL PREFERENCE: Empirical Relationship 1-B, Interpretation 1-B-i, with some collateral respect for the plausibility of Interpretation 1-B-iii.

6 Tolstoy, quoted in W. BARRETT, IRRATIONAL MAN 128 (1958).

7 Christ, Attitudes Toward Death Among a Group of Psychiatric Patients, 16 J. OF GERONTOLOGY 56 (1961), in DEATH AND IDENTITY supra note 2, at 146, found patients willing to discuss their deaths, but staff, relatives and friends reluctant to raise the topic. Most (fifty-four of sixty-two) said they had never discussed their deaths with anyone; one patient reported that members of his family put him off by saying, "Why do you have to talk about such a morbid topic? You should be grateful to be alive." Id. at 151.
FRANCIS: Well, my parents are old, but —

KATHARINE: [interrupting] — they never —
FRANCIS: We know that eventually they will —
LAWYER: Would it be substantial?
FRANCIS: At what point would you say it’s substantial?

SIMON: Well, my dad leaves everything to my mother. When she dies, everything goes to Katharine and me. But I doubt there would be very little left. I hope that — you know — you hope your parents spend everything, at least we do . . . .
KATHARINE: Spend it all.
SIMON: At least we do.

When the clients’ death was directly confronted, it was in circumstances which suggested serious, advertent consideration of the idea. The most potent example of that, and the most intense portion of almost every interview, occurred relatively late in each interview when these women were asked what they wanted done with their children if both parents died while the children were minors.

Here is the Getliffe interview during a discussion of guardians (for physical care):

LAWYER: . . . . You’d want to make sure they were in a position to care for them — they had the time and interest.
KATHARINE: Well, the interest is where the difficulty is.
LAWYER: Oh, sure, I think —
KATHARINE: I mean we’ve gone through — discussed this — and it’s so — kind of a sad discussion to think who would take care of your children if you were — weren’t there to take care of them. And no one can — of course — take care of them as well as you can. I mean —
[The interview was relatively jolly up until this last exchange. I thought it then became much quieter, more somber, and more sensitive.]

LAWYER A: Well, now do we want to go on and figure out — what if this goes on and — What happens if Katharine is not alive and the two children aren’t alive — uh, do we want to go on . . . ?
LAWYER B: . . . Do you expect to have more children?
FRANCIS: We hope to.
KATHARINE: We never thought beyond our children.
LAWYER A: I know. That’s just it.
FRANCIS: Yeah. Say we all got killed. What would happen in that case?
[In the discussion following the clients were unable to decide what they wanted to happen to their property in this situation.]

8 This has been the experience of physicians treating the seriously ill. R. Fox, EXPERIMENT PERILOUS (1959); B. Glaser & A. Strauss, AWARENESS OF DYING (1965); K. Eissler, THE PSYCHIATRIST AND THE DYING PATIENT (1955); see Zinker & Fink, The Possibility For Psychological Growth in a Dying Person, 74 J. OF GENERAL PSYCHOLOGY 185 (1966).
KATHARINE: What would happen if we didn't have a will and we — we both were in an accident — both killed, what would happen to the children immediately? Who would take care of them? Would the state throw them into an orphanage?

Here, in a fairly extended example, is similar information from the Eliot interview:

LAWYER: Well, what would be your idea as far as a trust is concerned?
LEWIS: We would want the kids to have an education. The thing is, if something would happen to me — the way we're set up now, we plan on both of us living that long, with our stock program, we're — planning on all the money to go . . . for their education. By that time, I'm sure our savings . . . will pan out. Now, if anything — if something does happen to me, when the insurance policies go to her, well — what do you suggest about that? I haven't thought about it.

[These last few words with impatience in his voice — not a normal thing for him in this interview.]
MARGARET: For example, there is this thing about the house. I figure, you know, with the insurance coming to me, I can plan — in another five years — plan on at least ten thousand a year.

... .

[A discussion of their financial situation followed. It seemed to me to come with relief on all sides. Then:] LEWIS: . . . This is a good time to talk about wills, you know, because if something happened to both of us, what would happen? This is more or less why we thought of a will this way.
MARGARET: When we talked to Charlie about it originally — LEWIS: A couple of years ago — We'd like someone to look after them, instead of going to court and having — having a guardian assigned for the children, we'd sort of appoint someone.
LAWYER: How about if both of you should die?
LEWIS: This is . . .
MARGARET: [interrupting] This would be our major concern. [One of the lawyers then abruptly changed the subject and busied himself in removing the Eliot children, who were present, from the room.]
LAWYER A: . . . We should settle — If you both were to have a simultaneous, or nearly simultaneous — problem — or accident — uh, death, yes.
LAWYER B: Should they both die.
LAWYER A: Yes. Right.
[One of the lawyers then changed the subject.]

... .

LAWYER A: [After a pause] Are we ready?
LAWYER B: Yes, if simultaneous — if something were to happen simultaneously, or if, we will say, or if, you were to die, and then five
years later she were to die — if, uh — that also .... If something — let's say within six months of each other, if something were to happen, what would be your hopes?

MARGARET: Well — you know — the primary thing here is what would happen to the kids. And we want Charles and Mary to be — whatever you call it.

LAWYER: I have one thing on this trustee's discretion. Do you want Charles to have discretion to — uh, say something did happen in the next few years, something when the kids are still under, say, ten, do you want him to have discretion then to use the money for their interest, too?

LEWIS: Yes, this is what I'm saying — that's what I'm thinking of. What if something happens, supposing, now, when we're going home, there. You know, something happened now. And the kids are only six and four, we would still want him to use the money — you know ....

As these excerpts indicate, Lewis and Margaret placed considerable reliance on Charles and Mary Austin; they, it seemed to me, took relief from the thought that the Austins would look after their children. One of the lawyers affected them, visibly and audibly, when he asked them who would look after the children if the Austins were also dead. The response seemed fairly typical of these interviews. The Eliots had great difficulty in coping with the question — difficulty involving hushed conversation, thoughtful pauses, and a false start or two.

The lawyers experienced a similar effect at two other points in this part of their interview. The first was on the question of trust remainders — who should get the property if one of their daughters died, while the trust was in effect, leaving a husband and children of her own. The second question was also awkward to the lawyer who asked it:

LAWYER: If, Lew, something should happen to the children between now and — you know — and while you were both still alive, and fol-

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9 An early and prevalent content in death anxiety is the fear of separation. Researchers on death attitudes in children trace the fear of death-separation to childhood fear that the mother will die. Hug-Hellmuth, The Child's Concept of Death, 34 Psychoanalytic Q. 499, 504 (1965): "Of the whole idea of death, visibly by far the most unbearable to him was the thought of a child being separated from his mother ...." See S. ANTHONY, THE CHILD'S DISCOVERY OF DEATH 62, 134-44 (1940). I have tried to account for this reaction in the parent in terms of the Freudian theory of generation-reversal. A more direct growth, proceeding not from the parental status of the parent, but the fears he had as a child, is traced in Wahl, The Fear of Death, in THE MEANING OF DEATH 16 (H. Feifel ed. 1959). See also Volkart & Michael, Bereavement and Mental Health, in DEATH AND IDENTITY, supra note 2, at 272. The empirical fact is that separation is such a potent part of the death anxiety that one must differentiate psychologically between death envisioned more or less individually — when environment and supporting persons will not die — and death in general disasters, when the environment is destroyed, and supporting persons with it. See Lifton, Psychological Effects of the Atomic Bomb in Hiroshima: The Theme of Death, 92 DARDALUS 462 (1963), in DEATH AND IDENTITY, supra note 2, at 8; Lifton, On Death and Death Symbolism: The Hiroshima Disaster, 27 Psychiatry 191 (1964), in PEACE IS POSSIBLE 14 (E. Hollins ed. 1966); Bloch, Silber & Perry, Some Factors in the Emotional Reaction of Children to Disaster, 113 American J. of Psychiatry 416 (1956); K. Bissler, supra note 8, at 148-52.
lowing both your deaths, do you have any — what are your thoughts on who you would like your estate to go to then?

The Eliots spent a long time on that question and found themselves unable to answer it at this interview. It was settled later, by correspondence with the lawyers.

Compare the Royce interview:

LAWYER: [during a discussion of life insurance] It sounds like your plans for buying this term insurance would indicate that you have given some thought to what — you know, to what the family situation will be in the event of your death. In the event of the death of both of you at the same time, have you ever given any thought to how the children will be taken care of? Or by whom you would like them to be taken care of? [There was a long pause here, followed by a couple of false starts.]

LAWYER: Who are they close to? Friends? Relatives?
MURIEL: . . . give them to my mom and dad . . . .
LAWYER: Do you think they could take care of them?
. . . . [Vernon and Muriel then discussed several possibilities.]
LAWYER: One decision you are undoubtedly going to have to make, and talk to people about, is in case of a common disaster.
MURIEL: I think [Rachel Cottery] would probably be most likely . . . . Well, you know, she has children . . . . I think that would probably be best.
LAWYER: How would she feel about it?
MURIEL: I don't think she'd mind at all. I will talk to her before you put it down . . . .

One of the lawyers then suggested that this guardian, who had children of her own, be empowered to use trust funds for her own children. The other lawyers attempted to explain reasons for this, but the clients reacted to their explanation with continuing silence. It is plausible that this indicated that Muriel (Mrs. Royce) had not thought of her children as being in another family. It was important to her to think that her children would be taken care of by a trusted relative, but she did not think of the relative as having other children. That thought somehow broke her confidence in the survival of a supporting person, possibly because it forced her to think of the guardian as existing for some purpose other than the care of Muriel's children. It seems to me that this phase of Muriel's interview is psychologically similar to Katharine Getliffe's wondering about her children being thrown into an orphanage.10

10 K. Eissler, supra note 8, at 162-63, 180-82, suggests from a clinical analysis that this sort of attachment, in a psychotic patient, may grow so strong that a mother who thinks she is dying may kill her children to prevent their being left without care. In the case Eissler reports, the patient located a person to care for her children, and thereby avoided what he, as her psychiatrist, feared; she then, though, made of the surrogate mother both a mirror-image of herself and a figure for transference. The experience led Eissler to conclude that the plight of those who know they are dying would be eased "by pre-mourning, so to speak"
Here is another "supporting-persons" example, from the Eliot interview:

LAWYER: Do you have insurance on your land contract?
LEWIS: No, because I'm sure, if anything happens to us, that her folks [who hold it] will take care of it.

And, from the Puchwein interview:

LAWYER: I think we've probably reached the point where we'd be interested in having you tell us how you would probably like your property to be divided — as far as the children, and that —
KURT: We anticipated this question . . . so we asked Dr. and Mrs. March if they would take the younger child; you know, they have already agreed to take [the older], and they said they would take [the younger].
HANNA: We'd probably want it drawn up pretty much the same as [the will] before, only including [the younger child]. I don't think there's much else . . .
KURT: [speaking of expectation of inheritance from his father] . . . He's not a millionaire or anything . . . I don't know how much he has. Let's just say I don't expect anything.
HANNA: Nobody does.
KURT: No, nobody does. My mom doesn't even . . .

LAWYER: I didn't study your [present] will too carefully. In the event you and your wife are not here, and your children do go to the guardians, what happens to your estate — your property and your insurance proceeds?
KURT: [explaining that he made his father beneficiary of one large life insurance policy] . . . so that, if anything should happen to Hanna and I, the money would go to him. [Kurt then explained he had a similar arrangement on an even larger policy on which Dr. March was beneficiary. He added that he would leave all of his property to Dr. and Mrs. March to take care of the Puchwein children.]
KURT: Yes, that would be my intention.
HANNA: Well, they would be —
KURT: [Abruptly] No, they — they can handle it.

I interpret the exchange to mean that Hanna does not have as much confidence in giving her parents unrestricted ownership of their property as Kurt does. This begins to break the security provided by the thought of supporting persons. This concern again came up later in the interview:

KURT: Another important thing that we've touched upon, but still doesn't ring clear with me, is that if — if Hanna and I die, and then

in which the patients "divorced themselves from their love objects." He believes, though, that "the ego cannot achieve this under ordinary circumstances." Id. at 181.
Hanna’s parents follow a short time thereafter, say two years, when the kids are still only twelve and eleven—something like that—and my sister gets them, there’s a possibility that, if I would just turn everything over to Hanna’s parents, that money would be a long time in making that step from their death to my sister. It would be tied up for some time.

The lawyers were affected by these discussions almost as much as the clients were. When Katharine Getliffe asked about her children being placed in an orphanage, for instance, the lawyers, with haste and even confusion, assured her that such an event would not happen. But none of the lawyers knew what would happen instead. Their collective advice on the matter amounted to an assurance that members of Francis’s and Katharine’s families would care for the children while—and until—the Probate Court worked out guardianships, and that the guardians, when appointed, would be members of their families. In other words, the lawyers invited these clients to rely on the survival of supporting persons. This done, one of the lawyers changed the subject:

LAWYER: Okay, well, let’s start talking about the more possible situation of you not dying until a much older age—
KATHARINE: Good.
LAWYER—and—you look very healthy to me, both of you. And, say some of your children will be past maturity... and some will be under twenty-one....

The Quaife interview, finally, presented the death confrontation in a child-care, supporting-persons context very clearly and concisely:

LAWYER: If anything happened to both of you, and your children didn’t—survive you—there would be a guardian or something?
CARO: Yeah, um hum. As it stands now, probably my parents. My mother is working presently, but will not be after this summer. But it should be so—
LAWYER: And alternatively perhaps your sister?
CARO: No, no. Parents.
[Pause.]
CARO: And so they could split it up, so they’d be with my parents part of the year and with Roger’s parents part of the year—whatever they wanted....

These are examples of parents reacting to the suggestions that (a) they might predecease their children, and (b) even the persons designated to be substitute parents might die—or be occupied with other concerns—before the children became adults. There were, of course, many other mentions of death in the interviews, but many of those could have been conventional. They may not have involved a clear consideration of the possibility of death. The child-care discussions demonstrate convention much less. In the course of these discussions every client considered his own death as the event which would
leave his children orphaned and subject even to contingencies threatening alternative means of care for them.\textsuperscript{11}

II. Evasion and Denial of Death

Man is the only animal that contemplates death, and also the only animal that shows any sign of doubt of its finality. This does not mean that he doubts it as a future fact. He accepts his own death, with that of others, as inevitable, plans for it, provides for the time when he shall be out of the picture. Yet, not less today than formerly, he confronts this fact with a certain incredulity regarding the scope of its destruction.\textsuperscript{12}

These clients and lawyers (and I should emphasize that I am reporting on the conduct of lawyers as well as the conduct of clients) evaded and tended to deny the reality of the clients' deaths.\textsuperscript{13} This was most noticeable in verbal fumbling and awkward pauses, especially among the lawyers, when the dynamics of the interview had reached the stage where mention of personal death was almost unavoidable. In the Eliot interview, for instance, the moment came when the final, belabored information about assets was completed. The group fell silent. One of the lawyers then haltingly suggested death:

\begin{verbatim}
LAWYER: Should we start looking now at what your intentions will be in the — uh — on the property? If something were to happen . . . what are your — uh — your thoughts?
LEWIS: Well, if something were to happen to me, all the property would pass, then, to Margaret. That's the way we would have it set up . . . [If both spouses were dead?] I'll have to think about this now. Would it be important at this point to set up, like a trust type thing for the children, as far as moneywise, or does it make any difference?
\end{verbatim}

In the Quaife interview, and in others, examination of the beneficiary designations of life insurance policies afforded a relatively smooth, euphemistic way to raise the subject:

\begin{verbatim}
LAWYER: I take it that you would want your will to read the same as these life insurance policies — you know, like, if anything happens to you, it's your wife, and then your children, and then your parents, or —
\end{verbatim}

\textsuperscript{11} It is all but impossible to guess at the consequences this sort of confrontation has on property-settlement decisions. The attitude one takes toward his own death is central in the attitude he takes toward his life, \textit{id.} at 27-28, — so much so that many psychologists conclude that death anxiety is the basis of all anxiety. \textit{See} Feifel, \textit{Attitudes Toward Death in Some Normal and Mentally Ill Populations}, in \textit{The Meaning of Death supra} note 9, at 114, 116.

\textsuperscript{12} W. Hocking, \textit{The Meaning of Immortality in Human Experience} 5 (1957).

\textsuperscript{13} This was to be expected. Golding, Atwood & Goodman, \textit{Anxiety and Two Cognitive Forms of Resistance to the Idea of Death}, 18 \textit{Psychological Rep.} 359 (1966), using a variety of testing devices (including galvanic skin response measurement and time-delay, and word-response tests) concluded that "normal" people resist the idea of death and, as a principal defense mechanism, tend to react to it in a rigid, dogmatic way. \textit{See also} Alexander, Colley & Adlerstein, \textit{Is Death a Matter of Indifference?}, in \textit{Death and Identity supra} note 2, at 82. There is even some suggestion in the empirical literature that a more cordial attitude toward death is a symptom of suicidal pathology. \textit{See} Lester, \textit{Fear of Death of Suicidal Persons}, 20 \textit{Psychological Rep.} 1077 (1966).
ROGER: Yeah, generally, right.
[Pause; the mood became quieter, more somber. This change in atmosphere is quite noticeable even on the tape.]
LAWYER: Do you have any concern in this regard for your brothers and —
CARO: Just personal effects I think.
LAWYER: Is there some specific — anything specific — anything specific that you want to give anybody? Paintings, books, and so forth?
CARO: No, nothing like that. If something happens to both of us, it would be all for my [sic] children. Jewelry and things like that. If something happened to all of us—Oh, then, I think, to my mother, if she chose anything that she wanted.

In several groups, mention of death was sustained for a few minutes and then someone, usually one of the lawyers, changed the subject. (In the Eliot interview, one of the lawyers busied himself with removing the Eliot children from the room, and this provided a break in the train of discussion which lasted for several minutes.) Here is an example, from the Getliffe interview (beginning during a discussion of Katharine’s parents):

LAWYER: I guess this brings us to a good question — I mean, why do you need a will?
KATHARINE: I mean I can see, in a case where we have little children, and we’re all involved, but with my parents — I mean. Well, I never even think about it [that is, for them].
SIMON: ... Now they [the Getliffes] need a will because of two minor children.
[One of the lawyers then changed the subject and began talking again about inheritance from parents. This went on for a while, until another lawyer brought the subject back on course abruptly. He took the bull by the horns]:
LAWYER: The next thing would — uh — be to — uh — start asking what you want done with your estate should one of you die and then should both of you die at the same time, should your children die with you — all of these differing steps we’ll probably have to go through one by one. And the starting point would probably be, in the case of your [Francis’s] death, say our next step will be—
FRANCIS: Well, if I were to die, I would assume she could take care of everything, that it would then go to her.
LAWYER: Everything?
FRANCIS: Yeah.
LAWYER: You feel that she has sufficient experience in background and handling money that she could handle it on her own without, say, another person helping her out in the business matters?
FRANCIS: [to Katharine] Well, what would you say? [To lawyers] I think so. We work together so much that —
WILL INTERVIEWS, YOUNG FAMILY CLIENTS

SIMON: Well, it seems that if you had two kids to take care of — I mean, you’re going to be running the business and . . .

KATHARINE: Well . . . uh . . . I mean, I hope this never happens, but if it was to happen — I mean, so many women have to go out to work, so handling these other matters would be — I’d have to go out to work, too, probably, but, I mean, these would be — not that difficult.

. . . .

LAWYER: The next — you know — we’ll just go down the list of contingencies. Now, if . . . uh . . . Katharine should happen to predecease you, you know, how would you want the property to go? We can assume, I suppose —

FRANCIS: All to me [to Katharine] isn’t it?

KATHARINE: Yeah. No [laughing] — I won’t let you have it.

This was a direct, professional desk-side manner — the sort of thing I suppose these young lawyers will have highly developed as their wills practice begins to grow. This lawyer’s approach, and the fact that Francis proved an exceptionally alert, well-informed client, resulted in a smoother handling of the subject of death than was characteristic of these interviews.

A second fact indicating evasion of death discussion was the high incidence of raucous humor on the subject of death. Most of these people appeared to be normally delicate and refined, but their comments on death seem, out of context, almost callous. Here is a series of examples:

LAWYER: [After discussing Lewis’s military service, and speaking to the other lawyers]: Always check that, fellows because they’ll buy you a tombstone, the V.A. will.

LEWIS ELIOT: That’s right. Put you in the ground.

LAWYER: They’re only paying about two hundred dollars for burial expenses and the undertakers are charging a thousand.

MARGARET ELIOT: Yeah, that’s a scandal.

LAWYER: [during discussion of double-indemnity provisions of insurance policies] The best way for you to die would be in an accident.

VERNON ROYCE: That’s right. [Laughter.]

MURIEL ROYCE: How can we arrange it?

LAWYER: Do you have a reserve commitment?

KURT PUCHWEIN: No.

14 Crown, O’Donovan & Thompson, Attitudes Toward Death, 20 Psychological Rep. 1181 (1967), found that most subjects preferred to see in others an unhealthy insensitivity to death rather than an unhealthy sensitivity (“I don’t believe I will die” was preferred to “I fear death”), but rated highest of all a healthy sensitivity, illustrated, perhaps, by this anecdote from a physician:

I go a long way with the man to whom I once had to say that his wife was dead. He gave me a puzzled look. “Dead, eh?” he said; and then with a wistful glance into the middle distance, he said, “Dead, eh? Blimey, it’s a funny old life.” Lydgate, Where Is Thy Sting? 206 Spectator 308 (1961). See Tolor & Reznikoff, Relations Between Insight, Repression-Sensitization, Internal-External Control, and Death Anxiety, 72 J. of Abnormal Psychology 426 (1967); Feldman and Hersen, Attitudes Toward Death in Nightmare Subjects, 72 J. of Abnormal Psychology 421 (1967).
LAWYER: Which isn't a bad way to be this week. [Early spring, 1968.]
LAWYER: We hope we get a chance to finish your will. [Laughter.]

LAWYER A: [explaining V.A. death benefits] They pay toward funeral expenses and provide a nondescript tombstone and a flag —
KATHARINE GETLIFFE: Oh, they do?
LAWYER A: — and you [to Francis] can be buried in Arlington Cemetery free.
KATHARINE: [nervous laugh]
LAWYER B: You mean, when he dies — does he get a tombstone automatically?
LAWYER A: He has to ask for it.
KATHARINE: [nervous laugh]

[Laughter.]
LAWYER A: The last I heard, they paid about two hundred and fifty dollars toward funeral expenses. Lawyers usually don't have to worry about that, though, because the funeral director collects it....
LAWYER B: Can you do the same with the tombstone....?
LAWYER A: No, you have to take the one they give you. They're all the same.... Just like the shoes.

[Laughter.]
LAWYER A: ... last name, first name, middle initial, rank and serial number....

[Laughter.]
LAWYER C: Well, let's get on to something else.

[During a discussion of Francis's life insurance, one lawyer said he had some term insurance once and got nothing out of it.]
LAWYER B: That's because you didn't die. [Great emphasis on last word.]
LAWYER A: It wouldn't be worth anything to me then anyway.

[Nervous laughter.]

[One lawyer read the provisions of a term rider on a whole life policy.]
LAWYER B: You'd better die within the next five years. [Nervous laughter.]
LAWYER A: You get more money that way.
KATHARINE: I hope he lives to a ripe old age.

[Laughter.]

[Lawyers then began to discuss accidental death provisions of policies and exclusions for death in riots and insurrections.]
FRANCIS GETLIFFE: How about if you're an innocent bystander. Still doesn't pay? [Katharine laughed.]
LAWYER: Well, it wouldn't pay for anything but accidental death. If somebody clobbers you with a brick, that's not an accident.

[Laughter.]
ROGER QUAIFE: [discussing his life insurance] I tried to get more just before I went to Viet Nam —
CARO QUAIFE: — and they wouldn’t let him have it [laughing]. They said no.

... [One of the lawyers asked Roger the amount of additional life insurance premiums he was required to pay in order to eliminate from policies the exclusion for death in private aircraft.]

ROGER: Well, it's not much, because after you get above a certain flight-hour low, it isn’t too much. There's a real big drop after you pass two thousand hours. It's nothing like the first hours, when you have to pay something like nine dollars a thousand.

LAWYER: A cheerful thought if you plan to learn how to fly. [There was a sort of nervous pause then, after which Roger again said, “Well, it's not too much.”]

... LAWYER: ... A whole life policy is one on which you pay all your life — until age 100; then they'll pay you the face amount on the theory that if you're not dead you ought to be.

[Nervous laughter.]15

A third factor indicating evasion of death discussion was the relatively greater comfort with which the clients returned to discussions of assets and family after death had been suggested. For example, Kurt Puchwein changed the subject abruptly from a discussion of guardianship for his (presumably) orphaned children to a discussion of assets. “We do have about a thousand dollars in savings,” he said. “That should probably be mentioned. I didn’t think it was enough to mention, but now that I think about it, a thousand dollars is plenty.” He said this with more relish than he showed in discussing his own death. The change in subject also gave him, I thought, some emotional relief. And not only did members of each group tend individually to change the subject from death, but other members reacted positively to the tendency.

15 Fox analyzed this in a hospital ward devoted to experimental surgery and medication for serious and terminal patients. Of the physicians involved (the Metabolic Group):

[In its admixture of bravado and “blasphemy,” the humor of the Metabolic Group resembled a type of humor known as “grim humor” or “gallow humor.” (“Galgenhumor”). This sort of joking typically occurs in situations where a group of individuals (more generally men than women) are faced with a considerable amount of stress — above all, firsthand contact with death. R. Fox, supra note 8, at 81. He reports several instances involving jokes among the patients which are perhaps closer to the prototype he describes.

A group of ... [patients] inflated some of the rubber tubing ordinarily used for tourniquets, and constructed a “kidney” out of it. They presented it to a patient who was in the advanced stages of a serious renal disease.

Remember that time when Mac was getting all that cortisone, and he kind of went off his rocker? He came, prancing down the ward one morning, flowers in one hand, a urinal in the other, saying, “I’m dead, and I’m going to Heaven with these in my hands!” It was a panic! Id. at 173.

I have observed similar reactions in trial judges being exposed to gruesome real evidence. Shaffer, Judges, Repulsive Evidence, and the Ability to Respond, 43 NOTRE DAME LAWYER 503, 510 (1968).
This retreat from the subject of death may resemble psychologically the trust exhibited in supporting persons (parents or siblings or even banks) as sources of care for their children. In other words, one way these clients have of coping with the unwelcome subject of personal death is to rely on the belief that both the people they love, and their environments, will live on after they die.

So much for evasion of the subject of death. What of the possibility that these clients also tend to deny that they will die? The difference is that denial occurs after the reality of death is confronted. One answer to the question is that "denial" is too strong a word. I can conclude from the interviews that the clients — with willing support from their lawyers — relied on a sort of indefinite mortality. They tended at least to expect that their personal lives would be suspended, and death could be postponed, beyond any focal point in time. The Quaifes’ discussion of their furniture and appliances may be an illustration of this:

[Caro listed the disposition of each item of her tangible personal property — stove, refrigerator, furniture, jewelry, etc.]

LAWYER: Well, I tell you . . . my general attitude is that everything, every asset ought to be put in trust. That means the trustee has got to take care of some of this stuff. The cash realized from selling the stuff is—

CARO: [interrupting] For the children.

LAWYER: — cash that can be used for the support of the children. That is except, of course, things of peculiar personal value, like jewelry or paintings or something, but — just ordinary household stuff . . . .

CARO: Well, the household things have some value now, but if nothing happened to either of us for some years, they wouldn’t be worth anything . . . . So, if anything happened to us in the immediate future, I can see places for these things, but if nothing happened to us for ten or fifteen years . . . .

. . . .

In a few years, it would cost more to get them anywhere than what they’re worth.

It does not seem to have occurred to Caro that in ten or fifteen years she will own different, and probably better, furniture and appliances. She is extending the present and assuming that when she dies — an event she puts in the indefinite future — things will be as they are now. Another example of that mood is the almost uniform assumption, by these young parents of two, that their

16 Joseph, Transference and Countertransference in the Case of a Dying Patient, 49 PSYCHOANALYSIS AND THE PSYCHOANALYTIC REV. 21 (1962), presents a moving clinical example. B. GLASER & A. STRAUSS, supra note 8, at 80, found that terminal hospital patients tend to evade the mode of their deaths, or the time of their deaths, more readily than the fact of death itself. The same phenomenon presents a problem to life insurance salesmen. Briggs, The Psychology of Successful Persuasion, CLU JOURNAL, July, 1967, at 64: "In the life insurance sales situation, there are a large number of ways for the prospect to rationalize — to convince himself that he really does have enough insurance for right now. Naturally, he needs more, and he'll take it out later, but for now, he is OK."
families would not increase in size. Only Francis Getliffe considered the possibility that he would father more children. Kurt and Hanna Puchweins' old wills provided only for one child, and did not mention or include by general reference the daughter who was born after the wills were executed.

The clients found it difficult to project their lives into the future, to a time when they would be older, more dependent perhaps, and certainly less attractive. A good example of that, occurring in each interview, was the question of trust distribution if a child-beneficiary died leaving a spouse or children of his own. It was hard to conceive of their small children as adults, who were not dependent on the clients anymore — and that may have been, partly, because the conception implied age in the clients, a memento mori perhaps. Death and old age may have been associated in their minds, with the result — by no means inevitable — that old age for themselves was not an attractive prospect.

There is some evidence that when the context of death discussion is particularly affecting, denial is somehow surpassed and death faced with sadness, but without evasion. Care of children is, again, the most intense example of that. Here are examples from the interviews of Caro Quaife and Katharine Getliffe. Caro's expression of approval was quite emphatic at the end of this excerpt on a choice of trustee and guardian for her two small children:

LAWYER A: I think it's pretty hard to have your father as trustee, because, you know, this might go on for thirty or forty years.

[Pause.]
LAWYER B: Of course, it ought to be over by then.
LAWYER A: Yeah, but even if it goes on for ten or twelve years—
How old is your oldest child now?
CARO: Four.
ROGER: Four and a half.
LAWYER A: Well, you would want to keep it until at least twenty-one.
LAWYER C: That’s not as critical with a trustee because the court will always appoint a substitute trustee. It’s perhaps a little more critical with a guardian because there you’ve got physical care of the children. Anybody can take care of money, but you don’t want just anybody to take care of your kids.
CARO: Yeah!

Katharine Getliffe was closer to a confrontation with her own death at this child-centered point in the interview than at any other point:

... we’ve gone through—discussed this—and it’s so—kind of a sad discussion to think who would take care of your children if you were ... weren’t there to take care of them. And no one can—of course—take care of them as well as you can.

The psychotherapeutic aspiration is, of course, that a client has less anxiety when he faces, discusses and, if possible, resolves suppressed ideas. Death is, in these clients and in everybody else, both suppressed and anxiety producing.21

When lawyers and clients deal with death, as they did in Caro’s and Katharine’s interviews, will interviews become a sort of therapy. This aspect of will interviews is discussed in greater detail below.22

III. Death and Property

A. Relationship

Do these wills clients demonstrate that they are in a personal relationship with the property they own?23 There seems to be some evidence that they do,

21 Death tends to be conceived of in our culture as an accident, some kind of catastrophe. S. Freud, Beyond the Pleasure Principle 80 (J. Strachey transl. 1959); Fulton, Death and the Self, 3 J. of Religion & Health 359 (1964). See Menninger’s discussion after Shneidman, Orientations Toward Death: A Vital Aspect of the Study of Lives, 2 INT’L J. OF PSYCHIATRY 167, 193-96 (1966); W. Hocking, supra note 12, at 10-11. This is a modern version of the primitive attitude toward death as supernatural punishment. See J. Goody, supra note 18, at 80, 208-09; R. Hertz, Death and the Right Hand 77 (1960).

22 The goal of a therapy for death anxiety would probably be to overcome the denial of death, since denial is, in childhood and afterward, the way most of us come to terms with the horror of death. See Wahl, Suicide as a Magical Act, in E. Shneidman & N. Farberow, Clues to Suicide 23, 24-28 (1957); S. Anthony, supra note 9, at 189-90; A. Montagu, Immortality 22-23, 37 (1955). This may then resemble the effect of friendly concern on the soldier’s death anxiety. E. Southard, Shell-Shock and Other Neuropsychiatric Problems 685 (1919). Even the terminally ill experience peace and a realistic reconciliation with death when they are shown honest sympathy. B. Glaser & A. Strauss, supra note 8, at 119.

23 The psychological, sociological and anthropological sources for this theory are discussed in Shafer, supra note 1.
although I suspect that older, wealthier clients would present better evidence of the point. Furthermore, I suspect that the main evidence of relationship will appear in the next section, when the property relationship is discussed in reference to the client’s death. There is, nevertheless, some evidence of the relationship without advertent and simultaneous consideration of death. This is illustrated by Roger Quaife’s discussion of his coin collection and Caro Quaife’s discussion of her paintings and art objects:

[The discussion of assets came to an evaluation of jewelry, of which they have a relatively large amount. Roger had shown great interest in the value of this, and had had it appraised. However, Caro claimed no knowledge of its worth, even though most of it was what the couple would consider hers. While cataloguing various items of tangible personal property):

ROGER: ... I’ve got about a hundred and forty dollars in coins. I’ve been throwing coins in boxes since I was a little kid.
LAWYER: This is just, you say, the face value, Roger?
ROGER: Yeah, this is just pennies, nickels, dimes, and quarters.
CARO: How about those mint sets? Are they worth very much?
LAWYER: Are these proof sets?
ROGER: No, these are not proof sets. This is just—I have been throwing coins in boxes since I was three or four ... . They’re not real old; they’re all American coins; but they’re older.

LAWYER A: ... . Put the personal effects in the trust, then, and let the trustee—
LAWYER B: Well, it’s up to the Quaifes.
CARO: ... As long as the jewelry and the paintings and art objects go to my daughter. [Note that these items had significant value and that the daughter here was four years old.] Or my son. The rest of it—I don’t care.
ROGER: Yeah. All my coins and that, you know—I guess I would want that to—

I know they’re worth more than a penny’s worth of pennies and a nickel’s worth of nickels. I know that they’re worth more than a hundred and forty dollars in just raw coins. You know, I’d want that to go to the kids, but I wouldn’t want that to get into the hands of my son until he had realized what he had.

The attitude toward personal property here is not economic, at least not to the person who has a relationship with it. Roger is willing to count Caro’s jewelry, but Caro is not. And Roger is not willing to regard his coins simply as coins. Both parents wanted these bits of wealth—not as wealth, but as things—to be given to their children. They wanted these bits of personality to be gifts, to
be expressions of love in a way that seemed to transcend, to be entirely other than, simple inheritance and any idea of support.24

A similar attitude toward personal effects was found in the Eliot interview:

LAWYER: Lew and Margaret, how about personal property that you own yourself — any valuable rings, watch, something of particular —
LEWIS: I wouldn’t say —
LAWYER: You know, anything that you’d want given to a particular person?
[The Eliots then had a hushed conversation, and she answered the lawyer in a markedly subdued tone] . . . my wedding rings . . . . .
LEWIS: We don’t have any inheritance . . . to give out to somebody else.
MARGARET: Nothing of any value, just a lot of — junk.

["Junk" here is a contented sort of condemnation, though — like Christopher Robin's “silly old bear” or St. Francis’s “Brother Ass.”] And in the Getliffe interview:

[As part of a general inquiry into the value of assets, one of the lawyers asked about items of personal property.]
FRANCIS: Really, the main things of value we’ve got would be (to Katharine) your rings —
KATHARINE: My rings (nervous laugh).
FRANCIS: I guess that was about a thousand — right? [Katharine probably nodded.] About a thousand.
KATHARINE: And our furniture.
FRANCIS: A couple of watches. [Laugh.] How are we doing?

B. Immortality

The possibility that wills clients usually think of their deaths as events in the indefinite future becomes clearer when the property relationship is included in their attitudes. The property relationship becomes clearer, too, when ownership is taken to be something that survives death. Clients come more readily to the vague idea of surviving death when they approach it through the relationship they have with their property.25 The best example of that arises in discussions of trust arrangements for minor children. (With other clients one might find it in such things as spendthrift provisions, generation-skipping trust

24 Compare the motives which are involved in the purchase of life insurance, Briggs, The Psychology of Successful Persuasion, CLU JOURNAL, April, 1967, at 49; July, 1967, at 59; April, 1968, at 51.
25 Goody, discussing post-mortem property disposition, remarks:
The material goods with which he is associated are in fact part of the man himself as a social object; man, clothes, and tools are aspects of the unit of social relations, a social personality. It follows logically within this idiom that the flesh of man’s cattle is his own flesh, just as a man’s quiver is also in a certain sense part of himself. J. Goody, supra note 18, at 200.
arrangements, and charitable dispositions which include pervasive and detailed provisions for disposition.)

Most of the couples related their property to their (presumably) orphaned, pre-school children solely in terms of the "American Dream" of college education. They did not consider the support of a pre-school-age child first. In fact, they did not consider it at all until the lawyers reminded them of it. They considered first what the child would be doing when he was eighteen to twenty-two! Witness the Royce interview:

LAWYER: Well, say you died right now. What's the first thing you would want done?
MURIEL: If I die right now [a note of incredulity]?
LAWYER: Say both of you died.
VERNON: Set it up for the education of the children.
LAWYER: Would you want something before that?
MURIEL: Well, make sure they had somebody to take care of them.
LAWYER: Okay, then, the first thing you would want is support of your children while they were minors.

Later in the interview, the group talked about the use of funds to support children while they are small, at the expense, if necessary, of college education. Vernon still had not received the message:

VERNON: I just want to clear up—there will be enough money, and so on. I want (to see that) they get a college education.
MURIEL: Well, yeah. I don't see any reason—but what he said was if there wasn't enough money.

One of the lawyers explained that if they died soon the funds available to the children might prove to be insufficient.

LAWYER: . . . We're talking about supporting them for fifteen years—both of them—before they're even near college age.
MURIEL: Yes, that's the point.

And, finally, Vernon saw the light:

That makes a good point here, in terms of saying—If you were going to put into the terms of the trust that no more of the property that is given should be distributed for their support than is necessary, then there must be—the last four thousand dollars apiece must be given to each one for their college education. . . . [This] may bind the trustee in a way that is not very good for things that you can't foresee now.
[This] allows the person who has the property to use it more or less as you [sic] would, you know, as things come up, he has a chance to do things more or less as if he were their parents, rather than, "I have to

See Friedman, The Dynastic Trust, 73 Yale L.J. 547 (1964).
look to the trust instrument — spend this money here" — even though there's no money left.

The lawyers hastened to agree with him and to explain how prudent the trustee would be.

A similar dialogue occurred during the Eliot interview:

MARGARET: . . . and I don't know any more than that about what you do, with . . . uh . . . how the assets are disposed of. We want the kids to have a chance for college, to have that pretty much taken care of, and then any other things that would come up for them.

. . .

We've run into a couple of cases where kids, at a certain age, got a lot of money, went out and bought a big car, had no real idea, and then come to the point where that money ran out and they were done — and it was gone, and — you know —

The lawyers who dealt with Lewis and Margaret Eliot were somewhat more delicate than the lawyers who dealt with Vernon Royce, but the professional result was the same — a discretionary trust for minor children.

The Getliffe interview demonstrated, perhaps, a higher level of realism in the client, but even Francis Getliffe was a little worried about the division of his property when his children were adults:

FRANCIS: Maybe we should leave it up to the trustee to decide how much —

LAWYER A: You want it entirely discretionary as to how much principal could be given out —

FRANCIS: Sounds like —

LAWYER B: Up to his share.

KATHARINE: What I'm wondering is — After they have both, or as many as you have, have reached that certain age where it is all divided, then the portion that the older child has received is deducted, right?

FRANCIS: Right.

LAWYER A: Yes, we will specify that . . .

FRANCIS: . . . Say, later on the principal goes way down and there's not much left. How would you work that, then? They would divide —

There, at the end of the interview, Francis had come to regard his limited resources in terms of support, rather than of dynastic distribution, and even rather than the "American Dream" of a college education for his two little boys.

The lawyers were also involved in the denial of death. They seemed to be actively interested in persuading clients that the law gave them a way to survive their mortality.27 Recall, in that connection, the emphasis with which

27 This is a specific instance in the dynamics of law-office practice, of "psychosemantic logic" — the kind in which, for instance, a person divides his own rational processes into two persons, one of whom will survive his own death. There is a substantial body of analysis of this death-logic in the literature on suicide. See E. SHNEIDMAN & N. FARBROW, supra note 22,
the lawyers assured Katharine Getliffe that the state would not put her children in an orphanage.\textsuperscript{28} There are other examples of this reassurance in the interviews. Here is a sales-pitch for a contingent trust for minor support\textsuperscript{29} during the Getliffe interview:

LAWYER: . . . In your will [to Francis] — this is talking about your will. You want it to go, you know — “if my wife is dead, when I die,” you want it all to go to the children —
FRANCIS: Oh, I see. You mean, if we both — well, she, yeah —
KATHARINE: The children . . . .
FRANCIS: Yeah, but that’s where the problem comes in, isn’t it: They’re too little.
LAWYER: Well, right. That is where the problem comes in. [Another lawyer then completely changed the subject. He took the discussion to assets. Everyone went to this subject cheerfully, but the tangent amounted to no more than a moment of comic relief. The first lawyer then went back to the subject of death and care of children.]
LAWYER: Well, I think . . . uh . . . if we want to talk about this a little more: In case Katharine would not be alive at your death, the children would be minor, now that is going to be the basic — really the basic problem we’d like to solve in a will. And the thing that a will allows you to do is to set up — to really set up what you want. You know, this is a thing nobody likes to think about, but it allows you to do what you want.

A similar episode occurred during the Royce interview:

LAWYER: [explaining trust] . . . It’s a way of extending the use of your property, according to your wishes, beyond your death.
MURIEL: Mostly, don’t trusts and trust funds . . . used by individuals who are quite wealthy . . . instead of all of it to your children, part of it?
LAWYER: I think that’s kind of a common misconception, that trusts are for the rich.

\textsuperscript{28} W. Hocking, supra note 12, at 60:
It is a simple matter to contemplate one’s death. But when one does so, one does it \textit{as a survivor!} Within oneself there is reproduced an element of social objectivity: it is the inclusive or reflective self which contemplates the death of the dated, excursive self, and is half able to accept it. The self does not contemplate nor know how to contemplate its own extinction.

\textsuperscript{29} The students had, in this connection, studied Corcoran, \textit{The Contingent Insurance Trust — A Hidden Bonanza for Minor Children}, 55 Ill. Bar. J. 596 (1967) and Shaffer, \textit{Nonestate Planning}, supra note 4. Both articles indoctrinated them on the wisdom of trusts and the evils of guardianship.
LAWYER: One time in which [the trust] is almost always—or at least very commonly—it's a good idea to set up a trust when you have minor children, and will have minor children, for a substantial period of time. It's probably the simplest way of taking your property, and sort of confining its use to your children. It's using it more or less as if you were still alive, for their care and support, in a way that you couldn't do—say, well, simply by giving it in a will.

Finally, here is an example from the Quaife interview. The group is discussing care of orphaned children:

LAWYER: Roger's parents are rather young, and—
CARO: Yeah, and my parents are rather old—
LAWYER: And they're not getting any younger.
CARO: Right, but none of Roger's brothers and sisters are married and I don't think my sister is even in a position to take care of them. Possibly she would be in a few years, but—[pause]. If something happened to my parents, then she would.
LAWYER: What would happen if all your parents were dead?
CARO: Oh, [note of surprise], that's a possibility? The—I suppose, my sister—[pause].
[Long pause.]
ROGER: What else could you do?
CARO . . . then you'd have to work down the line [of sibling relatives]. [She listed the relatives in order.]

The lawyers then discussed the possibilities for trustees to manage property for minor children—in terms of relatives and bank trust departments:

LAWYER: . . . You see, Roger, [if you chose a corporate trustee] you wouldn't have to change it, and you wouldn't have to worry about the individual dying, or, you know, something of this sort. They—
ROGER: Well, sure, why don't we do that, then.

This thought became even more cordial as the interview developed the fact that an uncle of Caro's was a trust officer in one of the banks that might be chosen for trustee.

IV. Therapy

There was some evidence from these interviews that clients find the experience of realistic, informed "estate planning" therapeutic. Although the evidence is not overwhelming, when taken with secondary psychological literature it may sustain the conclusion that the professional relationship between wills client and lawyer, when pursued candidly and with realistic and thorough consideration of what is involved, helps to allay anxiety about death.

Both the Puchweins and the Quaifes came to their interviews with wills they had executed in the past. The Quaifes appear to have expected their lawyers to revise thoroughly what they had done, but the Puchweins did not. They
had agreed to submit themselves to a student team only because they thought they might get some relatively minor advice on including their daughter in their wills scheme. They left the relationship, however, having completely discarded their old wills. They ended by executing more complex new ones.

The old Puchwein and Quaife wills were of the very simple, very short, all-to-my-wife-and-then-to-the-kids variety.\(^{30}\) Property was in each case given outright to children, either through the wills or by direct secondary beneficiary designations on life insurance policies. In the Puchweins' old wills, the secondary disposition was only to their son. On the face of the wills, their (presumably) orphaned daughter was given nothing; only by access to a pretermitted-heir statute could she have obtained her inheritance. Furthermore, in the Puchweins' arrangement beneficiary designations were secondarily in favor of grandparents, with the informal — hardly even stated — faith that the grandparents would use this wealth to support the (presumably) orphaned children. Most of these arrangements were, of course, unwise, and these lawyers advised their clients on this premise. The value of their advice is indicated by the fact that the clients made new arrangements. I think this value also present, although perhaps less obvious, in the fact that the clients obtained a certain reconciliation with their own deaths in having acted, and in having understood what they did. I detected a tendency to this in the Puchwein interview:

LAWYER: Is that how your other will was set up — leaving your personal property to [Hanna’s parents]?
KURT: I assume it was. I made that will out in about fifteen minutes one day. . . . I just went in and I saw this lawyer that was the father of a friend of mine that I was in school with. And I just told him, “I don’t have any problems or anything. I just — I’m married now and I’m raising a family and I just want a lawyer. So if I get hit by somebody in my car or something — and he says ‘I’m going to sue you,’ I don’t have to go look in the yellow pages, you know.”

So he said, “Yeah, I think that’s a good idea.” He said, “I think everybody should have some lawyer he can see.”

So I said, “All right, will you be my lawyer?”

And he said, “Yes, I’m your lawyer.”

And I said, “Okay, good-bye.”

So, as I was leaving, he said, “Incidentally, do you have a will made out?”

And I said, “No. A will? I’m only twenty-five,” or something.

\(^{30}\) The students were disposed to regard these wills as ill-advised. \textit{Id}. 
He said, "I thought you said you didn’t need a lawyer."

And I said, "I don’t."

And he said, "Well, sit back down." So, then, I just kind of—sort of— took care of [his newly-born son] at that time. And, again, I had just got out of undergraduate school then and I didn’t have any assets or anything to consider. So I don’t know if he really included [future children and arrangements for their care] or not.

The lawyers discussed a flexible trust arrangement. The Puchweins obviously had not thought of the possibility that the grandparents might die and that assets for children would then be part of the grandparents’ estate. In this connection, Kurt said he had a substantial part of his funds earmarked for the children’s college education. They talked and thought a good deal about these suggestions—with much verbal fumbling.

KURT: The same people would be in charge of the trust. There wouldn’t be any reason to have them separated. Your reasoning—... What happens to my property if I should die or be killed or if Hanna and I should disappear?—die [nervous laugh]—in the next three years or four years or something like that, and they get this five thousand and the twenty thousand?... They don’t just hold on to that twenty thousand until they become of age; they can use it, can’t they?

The lawyers explained the consequences of outright grandparent ownership to them, and compared guardianship and trusts.

KURT: I just don’t understand enough about these things. Just how flexible they can be—that the money would be put to good use—say, for education. I’m sure that Hanna’s parents can afford to take care of—well, any problems that would come up for the children, financially, or any other way, for that matter. But I would still like to see the money that I have accumulated in my short time here to promote their education, rather than have them all of a sudden get it when they’re twenty-one or become of age. ... I don’t think they need it. It wouldn’t reap the harvest that I would want it to. I wouldn’t want that. I would rather that they would be able to use it. [It was clear here that he thought of trusts only as a way to keep funds static. The lawyers explained flexible trust disposition.]

... LAWYER: ... that’s not the type of trust we’re talking about.
KURT: I know. I didn’t realize that until—

KURT: Another important thing that we’ve touched upon, but still doesn’t ring clear with me, is that if ... if Hanna and I die, and then Hanna’s parents follow a short time thereafter, say two years, when the
kids are only twelve and eleven—something like that—and my sister gets them, there’s a possibility that, if I would just turn everything over to Hanna’s parents, that money would be a long time in making that step from their death to my sister. It would be tied up for some time.

The lawyers explained to him, finally, how he might arrange his insurance policies to tie into the arrangement he had decided to make in his will.

KURT: I’m glad [the first student he talked to about a will] mentioned this, about getting this will. Actually, we are not going to just renew this, but kind of put this one by the wayside and have them revamped. Is that the idea?

Kurt’s realistic acceptance of death is clearer when one hears him during the interview than it is in the printed word. In the early part of his interview he was guarded and mildly skeptical. As he began to talk of the circumstances of his earlier will he sounded more interested in what we were doing, and by the time he announced his understanding of our plans for him he seemed to me genuinely concerned and open and involved in what we were going to do together.

Vernon Royce also proved reluctant to understand and appreciate what was involved in the professional services he asked for. He, like Kurt Puchwein—and like Lewis Eliot—came to the experience expecting some sort of black magic, a black magic he would not understand, and a consolation, if he experienced consolation, that was based on superstition more than on information. But the experience he had was not magic at all. It was more like a realistic consideration of his family, his property and his death. It is clear from the Royce interview—although, unfortunately, more in tone than in quotable language—that Vernon Royce benefited from a realistic consideration of these aspects of his life.

Francis Getliffe is a somewhat different case. He proved very realistic about such things as flexible trustee control of his funds. He asked searching questions and quickly absorbed information given in reply to them. Intellectually, he proved a different kind of client, but I doubt that his emotional condition during the experience made him as different as his interest in and comprehension of the law involved might suggest.

V. Conclusion: Two Problems
With Secondary Psychological Literature

These interviews were planned and carried out without reference to the psychology of testation. My purpose in recording them was to have material for a critique of the young “lawyers’” interviewing techniques. Months later it occurred to me to examine the tapes for psychological material. What I found for the most part confirmed the findings of those clinical and experimental psychologists who have in the last decade shown a burst of enthusiasm for
I found also some confirmation of classical psychoanalytic theories on death attitudes and generation reversal. These confirmations of secondary material are indicated in footnotes—which I inserted to show resemblances rather than to support my factual observations. (The structure of this article, including my theoretical interpretations of the data, was complete before I set out to find resemblances in secondary literature.)

There are, though, two features in these interviews for which I find little or no resemblance in the secondary literature. I discuss them here because they may indicate a gap in controlled psychological observation and in the insights of psychotherapy. The first of these areas is the property relationship; the second is the possibility that informed testamentary planning is a kind of therapy for death anxiety.

A. Property Relationship

There seem to be three clues in psychological theory to man's relationship to what he owns. None of them appears to have interested experimental psychologists—perhaps because white rats don’t own things (or do they?). Two of the three clues seem to have come originally from Freud; scholars appear to have done little with these since Freud and his immediate circle worked them out. The third clue is a philosophical insight which seems to me full of promise, and which also has not been picked up by psychologists, largely, I suppose, because it comes from Jean-Paul Sartre.

1. The Faecal Theory.

Freudians hold that infantile development proceeds out of a stage of omniscience, where the child makes no distinction between what he is and what is around him, into a stage where he concentrates on his body. His first experience with property is with his faeces. These are his, but they are not part of his body— and someone else wants them. He can please or displease, hoard or dispense, and he can enjoy himself in both ways or in neither, all in reference to the potty chair. The theory is extended — lucidly by Ferenczi — to explain a progressive interest in mud, sand boxes, rocks, coins, other forms of money, and even in wealth. It was used in a popular magazine a few months

31 See the lament for its neglect in both Lifton articles, supra note 9; Alexander, Colley and Adlarstein, supra note 15, at 83; Wahl, supra note 9; Wahl, supra note 22. THE MEANING OF DEATH, supra note 9, was published very early in the development of thanatology and abounds with prolegomena to death research.

32 E. JONES, PAPERS ON PSYCHO-ANALYSIS 407-12 (Beacon ed. 1961); S. ANTHONY, supra note 9, at 169, 176; see T. REIK, THE INNER EXPERIENCE OF A PSYCHOANALYST 399, 412 (1949).

33 S. FREUD, NEW INTRODUCTORY LECTURES ON PSYCHO-ANALYSIS 106-07 (J. Strachey transl. 1965); S. FREUD, supra note 21, at 46-47, 67-72.

34 They die in any event, and sometimes in circumstances which suggest analogies to human death. See Richter, The Phenomenon of Unexplained Sudden Death in Animals and Man, in THE MEANING OF DEATH, supra note 9, at 302.

35 S. FREUD, supra note 33, at 101; E. JONES, supra note 32, at 413-37.


37 S. FERENCZI, SEX IN PSYCHO-ANALYSIS 269-79 (Dover ed. 1958).
ago by our country's most illustrious pediatrician, as a reference for counseling parents on allowances and piggy banks.38

The faecal theory explains how it is that a man expresses himself in giving or refusing to give. It explains how a man can identify with what he owns — how property can rest, psychologically, somewhere between the Mitweld (which he is not) and the Eigenweld (which he is). Freudians divided the whole world into retentives and compulsives and thereby went a long way toward an anal-erotic explanation for generosity, fussiness, inefficiency,39 and even sadism and masochism.40 It is enough for present purposes to see the faecal theory as a means — a rigorously Freudian means, to be sure — of beginning to see if it is true that a man is what he owns.

My main difficulty with the faecal theory is that I cannot trace it, as Ferenczi suggests he can,41 from specific articles such as heirlooms, and Caro Quaife's jewelry and Roger Quaife's coins, to wealth — to the economic power and security one has, and to the tyranny one can exercise with intangible property. Ferenczi attempts to draw a straight line from potty chair to capitalism, but the link between coins, "filthy lucre," and capitalistic wealth is speculative.

2. The Psychopathology of Everyday Life.

The second of the Freudian insights is not nearly so well worked out. In fact, I put it together from bits and pieces of Freud's book,42 and Jones's chapter,43 on silly mistakes, absent-mindedness, slips of the tongue, etc. Both are significant in psychological literature as instances of Freud's great insight that everything one does has significance, and that careless mistakes are windows into the unconscious. Many of these instances involve property-personality. In some instances an object is treated as if it were a person: A husband cannot find the book his wife gave him until he is able to feel love for her.44 People forget to pay bills they resent having to pay,45 or neglect sending money to relatives they do not really want to help.46 Servants break china if they are unhappy at the way they're treated.47 A bride who has been forced into marriage loses her wedding ring on the honeymoon.48

Sometimes property represents the person acting; it extends his presence. Even without "psychopathology," consider the universal human custom of giving an old and valued piece of personal property as an expression of love, or the universal primitive religious sacrifice of valued property. Anthropology is full

39 See S. Freud, On Creativity and the Unconscious (1958); E. Jones, supra note 32, at 129, 197-98, 209-16, 419-36; S. Ferenczi, supra note 37, at 270.
40 T. Reik, supra note 36.
41 S. Ferenczi, supra note 37, at 279.
43 E. Jones, supra note 32, at 24-36.
44 S. Freud, supra note 42, at 71; E. Jones, supra note 32, at 62-63.
45 E. Jones, supra note 32, at 29, 71; see S. Freud, supra note 42, at 79-80.
46 S. Freud, supra note 42, at 82-83, 83n.1, citing Earnest Jones. See S. Ferenczi, supra note 37, at 176, for instances in which this usually mild pathology was expressed psychosomatically in rectal disorders.
47 S. Freud, supra note 42, at 91; E. Jones, supra note 32, at 65.
48 S. Freud, supra note 42, at 113.
of similar examples. Freud and Jones instance the man who leaves his umbrella or his coat in a place he does not want to leave, or who forgets the key to a place he does not wish to visit; the person who fails to wind his watch because he would prefer time to stop for him; and numerous, curious examples of unintended theft.

These examples—which fascinated Freud and Jones, I suspect, because they were a means, rare for them, to deal with the psychology of "normal" people—demonstrate that one tends to deal with things as a substitute for dealing with unreachable personality. That is true of the inner self of the actor, which can reach beyond the actor and become what the actor owns; it is also true of the hidden selves of others, selves that are not available, but selves that can be, for the actor, in things.

Each of these Freudian theories can be projected also into a consideration of testation. The things a man owns do not die when he dies; his wealth—which is the value of his things—is relatively immortal. If he is what he owns, then he will, in a way, survive his own death. That is what testation is all about. That is why communities which protect some form of free testation, or pretend to it, are likely to talk about it as a "natural right." And that is why communities which deny or restrict free testation invariably develop evasive devices for allowing post-mortem property disposition without admitting it. A person wants to arrange his property for immortality and he feels better when he understands his arrangement, approves of it and thereby prepares to transcend the grave.


Sartre's theory begins at the most radical point in his metaphysics—the first principle that a person is not what he is. But he wants to be what he is. Freedom is a frustration and a curse because one can be whatever he wants, which means he is nothing at all except free (being-for-itself). This is not true, though, of an inanimate thing (being-in-itself); things are what they are; they enjoy a sort of metaphysical security. Man, who is not what he is and who has no metaphysical security, has an ontological envy for things. That is why he wants to own them—to become them; he wants them to become him.

It is not sufficient to generalize ownership, as most systems of property law probably do, to use:

I am not satisfied with this definition. In this case I use this plate and this

50 S. FREUD, supra note 42, at 113-14, 117.
51 E. JONES, supra note 32, at 64-65.
52 S. FREUD, supra note 42, at 113-14n.1.
53 Id. at 125-27.
54 See Brill, introduction to id., at 6.
55 J. SARTRE, EXISTENTIAL PSYCHOANALYSIS 90-156, The Meaning of "To Make" and "To Have": Possession (H. Barnes transl. 1953); Freud seems to have theorized that the compulsion to repeat extends to a compulsion to return to the inorganic state, S. FREUD, supra note 21 at 70-71.
glass, yet they are not mine. I can not “use” that picture which hangs on my wall, and yet it belongs to me.\textsuperscript{56}

Nor will it do to say that one owns what he is free to destroy:

[A]n owner can possess his factory without having the right to close it; in imperial Rome the master possessed his slave but did not have the right to put him to death.\textsuperscript{57}

Both of those definitions are negative, “limited to preventing another from destroying or using what belongs to me.”\textsuperscript{57a} Even a thief regards himself as the owner of what he has stolen.\textsuperscript{58}

An adequate theory of property has to take into account the relationship between the possessed and its possessor:

The quality of being possessed does not indicate a purely external denomination marking the object’s external relation to me; on the contrary, this quality affects its very depths; it appears to me and it appears to others as making a part of the object’s being. . . . This is . . . the significance of primitive funeral ceremonies where the dead are buried with the objects which belong to them. . . . The corpse, the cup from which the dead man drank, the knife he used make a single dead person.\textsuperscript{59}

The explanation for this universal human phenomenon is in the free character of the possessor:

If we apprehend in things a certain quality of “being possessed,” it is because originally the internal relation of the for-itself to the in-itself, which is ownership, derives its origin from the insufficiency of the being in the for-itself. It is obvious that the object possessed is not really affected by the act of appropriation, any more than the object known is affected by knowledge. It remains untouched. . . . But this quality on the part of the possessed does not affect its meaning ideally in the least; in a word, its meaning is to reflect this possession to the for-itself.

The desire to have is at bottom reducible to the desire to be related to a certain object in a certain relation of being.\textsuperscript{60}

This human aspiration is also observable in the creative artist, the experimenting scientist, the sportsman (who sets out “to have” a mountain or a ski slope); “the ‘mine’ appeared to us then as a relation of being intermediate between the absolute internality of the me and the absolute externality of the not-me,”\textsuperscript{61} a relationship more fully realized at specifically legal levels of possession:

I am responsible for the existence of my possessions in the human order. Through ownership I raise them up to a certain type of functional being;

\textsuperscript{56} J. Sartre, supra note 55, at 120.
\textsuperscript{57} Id.
\textsuperscript{57a} Id. at 121.
\textsuperscript{58} Id. at 122.
\textsuperscript{59} Id. at 122-23.
\textsuperscript{60} Id. at 125-27.
\textsuperscript{61} Id. at 127; cf. J. Van Den Berg, The Psychology of the Sickbed 33-34 (1966).
and my simple life appears to me as creative exactly because by its continuity it perpetuates the quality of being possessed in each of the objects in my possession. I draw the collection of my surroundings into being along with myself. If they are taken from me, they die as my arm would die if it were severed from me.

Thus to the extent that I appear to myself as creating objects by the sole relation of appropriation, these objects are myself. The totality of my possessions reflects the totality of my being. I am what I have.\textsuperscript{62}

Sartre's theory has some clear implications for a psychology of testation, but a mere lawyer, mired as he is in for-instances, finds it hard to make it concrete in the lives of his clients. Sartre advanced the idea in psycho-analytical terms; he did it as part of a broad set of suggestions for analysis and therapy, and, no doubt, some medical practitioners have attempted to realize on his insights. But Sartre is neither therapist nor empiricist and none of the sources I read have subjected his work to clinical insight or to experimentation or observation. It would help if psychology were able to find and develop the idea of a person (being-for-itself) possessing a thing (being-in-itself) and possessing it in the fervent, serious aspiration that the possession will give him a godlike security. (The idea of God is the idea of someone who is being-in-itself-for-itself. He is a person who is who he is. Man is a person who is not what he is but who wishes to be what he is.)

One comes away frustrated from a consideration of property psychology, annoyed at psychologists because they have neglected the subject. The situation seems parallel to two earlier points in the history of that stormy science — the point at which Freud challenged psychology with the idea of unconscious, savage, sexual man, and the more recent point at which psychologists like Feifel and Shneidman, and psychiatrists like Lifton and Eissler, challenged Freudianism with the suggestion that it was afraid to talk about death. The present challenge, I think, is to a science which tends too far away from the material in human existence and which is annoyed at the unavoidable substance in the thought that a man is what he owns.\textsuperscript{63}

\textbf{B. Therapy}

The more modern research in thanatology results in a wedding of concepts — a link between the ancient idea of fearful death (expressed most often in our culture by regarding death as a catastrophe, an accident), and a world of modern devices for pretending there is no such thing as death. From the idea of death as fearful, of death as unmentionable, comes anxiety. Death is a sup-

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\textsuperscript{62} J. Sartre, \textit{supra} note 55, at 131-32; S. Anthony, \textit{supra} note 9, at 48-53 (1940), even suggests that property affords a sort of security against death.

\textsuperscript{63} Feifel, \textit{Physicians Consider Death}, PROCEEDINGS OF THE 75TH ANNUAL CONVENTION, AMERICAN PSYCHOLOGICAL ASSOCIATION 201 (1967) suggested that one goes into the healing arts because of an early fear of death, and that this may explain why physicians are reluctant to discuss death — with their patients or with anyone else. \textit{See also} Shneidman, \textit{Suicide}, in N. Farberow & G. Allport, \textit{Taboo Topics} 33, 36 (1963); Wahl, \textit{supra} note 9, at 19, 22. Why are they, along with non-medical clinicians and research psychologists, reluctant to discuss property?
pressed idea and therefore a primary source of psychological disorder. Our cultural expressions of death neurosis include retirement cities and hospitals, where the dying are hidden and the old and ill are expected to die inconspicuously, and expensive, corpse-worshipping funeral rituals. The individual expression of this neurosis in its less acceptable forms may be delinquency, crime and disabling illness; and in its more acceptable forms all sorts of petty emotional hang-ups. Freud outlined one of the mildest and broadest forms of these last in discussing the things we find uncanny:

There is scarcely any other matter... upon which our thoughts and feelings have changed so little since the very earliest times, and in which discarded forms have been so completely preserved under a thin disguise, as that of our relation to death. Two things account for our conservation: the strength of our original emotional reaction to it, and the insufficiency of our scientific knowledge about it.

... It is true that the proposition "all men are mortal" is paraded in textbooks of logic... but no human being really grasps it, and our unconscious has as little use now as ever for the idea of its own mortality.

... Considering our unchanged attitude towards death, we might rather inquire what has become of the repression, that necessary condition for enabling a primitive feeling to recur in the shape of an uncanny effect. But repression is there, too.

The answer for neurosis is therapy, which is a pretentious word for care and concern. And everyday neurosis, the kind we all have, is most likely to be answered outside expressly therapeutic relationships. It is most likely to be aired and dealt with realistically in a sort of everyday psychotherapy — the sort that good lawyers have been performing for their clients for centuries.

What this article is meant to suggest is the possibility that advertent, informed planning for property settlement is therapy for death anxiety. But the development of this possibility assumes stronger contributions to the effort from practicing lawyers, who can both open their experience to researchers, and generalize upon it for their brothers at the Bar. The development of a practical

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64 Fulton, The Sacred and the Secular: Attitudes of the American Public Toward Death, Funerals and Funeral Directors, in DEATH AND IDENTITY, supra note 2, at 89, 102.
65 Weisman & Hackett, Predilection to Death, in DEATH AND IDENTITY, supra note 2, at 293, 325-26; Blauner, supra note 18.
66 Institutionalizing death tends to deny it, Fulton, supra note 64; S. ANTHONY, supra note 9, at 98, 148-58; see Jackson, Grief and Religion, in THE MEANING OF DEATH, supra note 9, at 218. This is the theme of J. DUNNE, THE CITY OF THE GODS (1966). Murphy, Discussion, in THE MEANING OF DEATH, supra at 317, 340, quotes Freud, "Consideration for the dead, who no longer need it, we place higher than truth — and, most of us, certainly also higher than consideration for the living." See K. EISSLER, supra note 8, at 48.
67 Shoor & Speed, Death, Delinquency, and the Mourning Process, in DEATH AND IDENTITY, supra note 2, at 201; Stern, Williams & Frados, Grief Reactions in Later Life, in DEATH AND IDENTITY, supra note 2, at 240.
68 Hilgard, Newman & Fisk, Strength of Adult Ego Following Childhood Bereavement, in DEATH AND IDENTITY, supra note 2, at 259; Weisman & Hackett, supra note 65. Jung reports hypochondria, supra note 36, at 94, 112; see W. HOCKING, supra note 12, at 250-51, 252-53; Alexander, Colley & Adlerstein, supra note 13, reporting serious social withdrawal; Teicher, "Combat Fatigue" or Death Anxiety Neurosis, in DEATH AND IDENTITY, supra note 2, at 249.
69 S. FREUD, supra note 39, at 149-50.
70 The ethical obstacles to access to behavioral information from will conferences are not
psychology of testation assumes also relevant contributions from those whose special vocation is human behavior — psychologists, sociologists, and even law professors who occasionally tire of textbooks and appellate court opinions. Lawyers cannot perform even everyday psychotherapy for death anxiety if they continue to treat will-drafting as a form of black magic, carried out in Elizabethan English, with canned forms and ten minute interviews. And, with all of our best efforts, we stand in need of reliable scientific information on the human side of property ownership.\footnote{I find welcome wisdom in Kalven, \textit{The Quest for a Middle Range: Empirical Inquiry and Legal Policy}, in \textit{Law in a Changing America} 56, 62-63 (G. Hazard ed. 1968)}

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\textit{We may have said too quickly that no one should have expected the social scientist to have put the legal questions. Does not the failure of law and social science to mix more zestfully require some explanation from the social science side too? Why has not the law as phenomena seemed of sufficient interest to the social scientist to move him to put his own questions to it and to study it not as law but as part of his study of society? There is thus the possibility that we may have a kind of no-man's land between law and social science — a potentially rich field for inquiry which neither side cultivates.}\end{flushright}