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WILL MAKING: AN EXAMINATION OF CLIENT AND LAWYER ATTITUDES*

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A will is a legal instrument usually drafted by a lawyer in consultation with his client. The actual interaction between client and lawyer is not accessible, but an examination of the attitudes of clients and lawyers may illuminate the transaction. Why does a person make a will? How free should he be in decisions about the distribution of his worldly belongings? What is the lawyer's own definition of his role in will making? Is he properly rewarded for his work? What is his image of the client in this area of practice?

This article is a partial result of an analysis of data obtained in a study undertaken by the authors and sponsored by Russell Sage Foundation. The study involved 659 estates that constituted a five per cent random sample of estates closed in Cuyahoga County (Ohio) Probate Court between November 1964 and August 1965. This is the decedent sample. Cuyahoga County, which encompasses the city of Cleveland, is a metropolitan area with a population of approximately two million people. Interviews were conducted with members of the survivor population. The survivor population refers to 1,234 persons who were legal next of kin and/or testate successors of the decedents. Also a simple random sample was drawn from the lawyers who were attorneys of record for the decedent sample. Of 80 lawyers who were selected, 70 were interviewed. It is the attitudes of the survivors and attorneys toward will making that are discussed herein.

Although our study concerned only one jurisdiction, it does provide a prototype of what is likely to be found elsewhere. While the data were obtained from an Ohio court, a probate court in almost any state could have been the starting point for a similar study. The attitudes of our survivors and attorneys can, to a large degree, be considered as representative.

CLIENT

The typical will maker is likely to be a married man in early middle age, and although he is more affluent than the general population, he is not wealthy.[1] The data in this section are based upon the responses of 1,230

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1. In the survivor population, males were more likely to be testate than females (60% as compared with 56%). In the decedent sample, this condition was reversed; 70% of the

survivors.[2] Of these persons, 58 per cent (711) had already made a will; 35 per cent (427) said they planned to make a will; and only 8 per cent (92) had no plans to make a will. There is, of course, no way of knowing how many of the survivors will carry out their intentions.

Reasons for Testacy

The client seeks the assistance of a lawyer because he has a problem that he believes requires expertise he does not possess. Will drafting requires knowledge of the law and some experience with the problems of family relationships. In seeking a lawyer's help, the client is willing to reveal confidential information in order to obtain counsel and appropriate action in matters of serious import to him.

The initial approach to the study of the lawyer-client relationship was to investigate the reasons why individuals make or do not make wills. The testate survivors were asked why they had made their first wills. Those who did not have wills but who planned to make them were asked for their reasons. Those who indicated no intention to be testate were also queried.

Of the 92 who planned to remain intestate, 52 (57 per cent) stated that they did not have enough property to justify a will. Eighteen were simply satisfied with the intestate distribution. There were 22 additional idiosyncratic reasons. The finding that a lack of property was the major reason for intestacy proved to be consistent with the datum of a positive association between property and testacy.

In spite of the over-all finding that persons with higher equity were more likely to be testate, the notion of having "enough" property to make a will varied considerably according to the individual. One elderly woman who planned to make a will gave as her reason, "I have a new winter coat. It cost $75. I want to leave it to someone who will appreciate it." A serious consideration of motivations for testacy must account for these highly subjective and individualistic perceptions of worth.

The reasons for making a will fall into two categories: (1) personal circumstances or change in them and (2) the perceived capabilities of a will. These reasons are interrelated, but the degree of connectedness depends upon the individual's situation at any given time. It cannot be said that a change in personal circumstances automatically produces a condition whereby intestacy is unsatisfactory and that a will remedies the situation. Some

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females and 68% of the males were testate. Females, however, constituted a minority of the decedent sample, approximately 40%. In the 5% random probate sample, there were 272 male testate decedents and 181 female testate decedents. The predominance of male testators over female testators in the probate sample was 1.5 to 1. As shall be seen, the lawyer is not merely interested in drafting wills but also in administering estates. If the two practices (will drafting and estate administration) are combined, the lawyer has two female clients for every three male clients. Although testacy was more frequent among surviving spouses than among the married, there were more married persons among the attorneys' clientele. The mean net estate for testate decedents was $35,160; the median household income for testate survivors was between $601 and $800 per month.

2. Four survivors refused to answer the question of testacy.

changes in personal circumstances would not be relevant to testacy. For instance, the fact that a man changed jobs would not in itself be relevant. However, if the new job entailed more dangerous work, or if it paid more, such differences could provide the motivation for testacy. The capabilities of a will may be directly relevant to personal circumstances. For example, a testator who is alienated and angry because his children have "let him down" by converting to another religious faith may use the testamentary device of the conditional bequest with the expectation that the children will recant and come back into the fold rather than lose their inheritance.

Table 1 gives the reasons for will making for the two groups of survivors: those who have already made wills and those who intend to make them. These groups differ in their reasons for will making. In this analysis, personal circumstances are considered as factors that "push" into will making, and the advantages or capabilities of a will are factors that "pull." An inspection of Table 1 reveals that those who were already testate had felt some push into their action. Those who intended to make wills admitted the advantages of testacy, but at the time, these advantages were not so salient in their own personal circumstances. Personal circumstances were mentioned far more frequently by the testate than by the planners.

TABLE 1. MOTIVES GIVEN FOR TESTACY BY TESTATE SURVIVORS AND SURVIVORS INTENDING TO MAKE WILLS

Motives Given for Testacy	Testate Survivors		Survivors Intending To Make Wills	
	Number	Per Cent[a]	Number	Per Cent[a]
Personal circumstances				
Marriage, children	128	18.0	68	15.9
Aging, illness, trip	81	11.4	7	1.6
Acquired property	57	8.0	25	5.9
Compulsion, suggestion	50	7.0	1	.2
Decedent's death	29	4.1	11	2.6
Advantages of will				
Alter distribution	165	23.2	158	37.0
Faster, cheaper	157	22.1	130	30.4
Guardianship	170	23.9	68	15.9
Executor, taxes	13	1.8	7	1.6

[a]The percentages are based on 711 survivors with wills and 427 survivors intending to make wills. Some persons gave more than one reason.

The "compulsion, suggestion" category contains responses that indicate special circumstances which pushed the individual toward testacy and those responses that specify the influence on the individual of a role model, superior, or salesman in the will-making decision. Will makers gave reasons that belonged in this category fifty times; whereas only one planner was so classified. Almost half of the reasons listed in this category have to do with military service. The possibility of death while in military service

is evident. The armed forces strongly recommend to recruits that they make provisions for their families in event of death. A typical response from a former serviceman was, "I was in the Air Force; someone came around and said it was a good idea. It didn't cost anything."

An individual can be influenced to make a will by the suggestion of a friend, relative, lawyer, insurance agent, or some other influential person. One planner reported, "The lawyer suggested it. He said he'd do it. I don't really think there is any advantage." Testators had also received advice from their lawyers and insurance agents. The data indicate that insurance salesmen were as important in this respect as attorneys. Whether the insurance men advised their clients out of personal conviction or because they had been instructed to do so as part of comprehensive estate planning is not known. One survivor, who was himself an attorney, said, "I was required to make a will by my instructor in a course on wills." Several testators were compelled to make wills when they entered religious life. Other suggestions emanated from testators: "My wife's father is an attorney; she felt it was necessary," or "My sister made me do it. She said it was important even though I don't have savings," or "Friends and neighbors advised us."

The possibility of death because of old age, serious illness, or while making an extended trip were motives given far more frequently by the testators than by the planners. Either the experiences of the two groups differ (the testate group is older) or their reactions to similar experiences are different. An impending trip may be the impetus for will making, but only if it is associated with the possibility or heightened probability of death. This association is evident in the following statement: "We were traveling to California. Well, you know, accidents can happen." The notion of imminent death was given relatively infrequently, even by the testate group; 11 per cent of the testators offered responses that fell into this category. This response is not surprising, since most individuals express a perceived invincibility regarding the subject of their own death.

Economic wealth was positively associated with testacy for both the decedent sample and survivor population, but the acquisition of property was mentioned by 8 and 6 percent, respectively, of the testators and those who intended to be testate. The absence of property operated to deter people from making a will, but the presence of property was not paramount in the decision for testacy. Property was a necessary but not sufficient condition for will making.

This group of survivors had recent probate experience and may consequently differ from the general population in their motives for making wills in that their experience may have impressed upon them the importance of having a will. One hundred forty-three testators had actually made their first wills immediately after the deaths of the decedents for whom they were beneficiaries or next of kin. Twenty-nine of these gave the decedent's passing as their principal reason. Eleven of those intending to make a will also mentioned the death as their reason for planning a will. Of the approximately 20 per cent of the testators who made their wills after the death of the decedent, the percentage was three times as high for the survivors of intestate

decedents as it was for the survivors of testate decedents: 43 per cent to 15 per cent.

The situations that were by far the most conducive to will making were getting married and having children. The subjective responses of both testators and planners showed the importance given to family responsibilities in making a will. One hundred twenty-eight of the testators (18 per cent) and 68 of the planners (16 per cent) gave one or both of these reasons as their motivation for testacy.

Related to this emphasis upon familial responsibility was the desire to alter the intestate distribution. One hundred sixty-five of the testators (23 per cent) and 158 of the planners (37 per cent) said they made or would make wills because they preferred not to have their property distributed in strict accordance with the intestate statutes.

A sizable number of respondents had the mistaken notion that having a will solves all the cumbersome problems of property distribution and many survivors were surprised at the delays encountered with probate procedures. One hundred fifty-seven (22 per cent) of the testators and 130 (30 per cent) of the will planners felt that having a will saves time, money, or both. But there are other popular misconceptions about the advantages of a will. One widow remarked, "What good did my husband's will do? I still had to go to court. You shouldn't have to go to court if there is a will." Others, although not holding this misconception, did believe that a will makes things go more quickly or that having a will means that the estate settlement will cost less. They did not have in mind anything so specific as the saving of estate taxes or dispensing with the personal representative's bond. Taxes and the appointment of an executor were categorized separately; they were mentioned by only 13 testators and seven planners. The client was inclined to place little emphasis on facets of the will that could challenge the attorney's skill; the client was seldom interested in tax savings except insofar as he or she misconceived the advantages of testacy. Moreover, the client had given little thought to the selection of an executor. Although he may have realized the position is one of trust, he usually knew little or nothing of the executor's specific duties.

The naming of a guardian of minors and their estates was the most important motive for making a will among the testators (24 per cent).[3] The choice of a guardian may be of utmost importance to the client; but the qualities required of a guardian are not adequately defined by law, nor are they necessarily within the lawyer's competence. Among the planners, guardianship ranked equally with marriage and children (both 16 per cent) but was far less important than other reasons, such as altering the intestate distribution (37 per cent) and saving money or time (30 per cent).

The reason given most frequently by survivors (in 323 instances) for

3. Guardians were rarely named by the decedent testators. Perhaps this was because the probated will was usually written after the children had achieved majority. On the other hand, custom may be changing in regard to the testamentary appointment of guardians.

making a will was altering the intestate distribution. The most frequent modification was to will the entire estate to the spouse with the objective of maintaining family continuity. This concern for altering the distribution in order to meet the individual's perception of equitable distribution raises the basic question of testamentary freedom: How much freedom should the testator be allowed?

Testamentary Freedom

A Nebraska survey of 860 adults demonstrated the popularity of sentiments in favor of restricting testamentary freedom. A majority felt the law should permit parents neither to disinherit their children nor to discriminate among them.[4] The majority thus disagreed with the present law that allows both disinheritance and discrimination.[5]

The issue of testamentary freedom and concomitant notions of family responsibility in the modern period of history has been a source of much discussion and debate. Concern with this question led to an investigation of the Ohio respondents' feelings about testamentary freedom. A Likert-type testamentary freedom scale was devised, consisting of five statements with five degrees of agreement-disagreement.[6] The scale had possible scores from 5 to 25. Low scores indicated a preference for restriction; high scores, a preference for freedom. The statements were as follows:

(1) When a person makes a will, he or she should be required by law to leave money or property to his or her minor children.
(2) When a man makes a will, he should be required by law to leave money or property to his wife.
(3) When a woman makes a will, she should be required by law to leave money or property to her husband.
(4) When a person makes a will, he should be required by law to leave money or property to adult children.
(5) When a person makes a will, he should be required by law to leave the same amount to all children.[7]

4. J. COHEN, *et al.*, PARENTAL AUTHORITY: THE COMMUNITY AND THE LAW 77 (1958).

5. "In all states except Louisiana a parent has the power to disinherit his children by willing his property to other persons." T. ATKINSON, WILLS 138 (2d ed. 1953). The power to disinherit includes within its scope the power to discriminate. In our Ohio study, excluding cases where children were disinherited in favor of a surviving spouse, a significant minority of the decedent testators disinherited or discriminated among their surviving children.

6. A discussion of Likert-type scales is found in many methodology texts, *e.g.*, C. SELTIZ, *et al.*, RESEARCH METHODS IN SOCIAL RELATIONS 366-69 (1959).

7. A determination of the discriminating power of the questions was made on a subsample of 95.

Question Number	First Quartile	Fourth Quartile	Difference
1	1.892	3.285	1.393
2	1.750	3.178	1.328
3	1.714	3.357	1.543
4	2.250	4.035	1.785
5	2.464	3.964	1.500

Questions 2 and 3, which concern the requirement to leave money to spouses, do not extend testamentary freedom beyond the present legal situation.[8] There is no legal requirement to leave money to minor children.[9] In fact, wills are often written precisely to avoid the complications of property falling into the hands of minors. Neither are there requirements to leave money to adult children nor to leave the same amount to all children.[10]

It was hypothesized that a preference for testamentary freedom would be positively related to higher socioeconomic status, specifically to higher education, higher income, and more prestigious occupations. Education is the only measure that pertains strictly to the survivor himself. The two measures of socioeconomic status refer to the family. "Income" is monthly household income, and "occupation" is the major breadwinner's occupation whether or not he is the survivor. Education and occupation are coded according to the Hollingshead categories.[11]

The mean scores on testamentary freedom for the survivor population, by education, income, and occupation, are given in Tables 2, 3, and 4.

TABLE 2. SURVIVORS' TESTAMENTARY FREEDOM SCORE, BY EDUCATION

Education	Mean Score[a]	Number
Graduate school	16.23	98
College graduate	16.00	108
Some college	14.86	212
High school graduate	14.49	388
Some high school	13.43	261
8 years grade school	12.47	87
Less than 8 years	12.44	69
Total	14.34	1,223[b]

[a]Scores range from 5 to 25; the higher the score, the greater the preference for freedom.
[b]Education unknown for 11 survivors.

8. A person need not leave any part of his or her estate to the surviving spouse, but if the deceased died testate, most states give the surviving spouse an option to renounce the will and take a forced share. A widow has this option in all states except the Dakotas. In 1962 the widower lacked this right in eleven states. *See* L. TURRENTINE, WILLS AND ADMINISTRATION 18 (2d ed. 1962).

Letter from Professor Allison Dunham to co-author Marvin B. Sussman, April 24, 1968: "In the recent attempt at revision of probate law undertaken by the National Conference, we have discovered in talking with lawyers about the 'non-barrable' share of the surviving spouse that the lawyers are prepared to admit that a client who is determined to 'disinherit' his spouse may easily do so by a series of lifetime conveyances and the lawyers are also prepared to admit . . . that very few testators in fact attempt to disinherit the surviving spouse. They then argue that a major function of the 'non-barrable' share is to permit them, as custodian of the general cultural mores as to what is proper at death, to inform a client by an appeal to third party authority that "you should not' attempt to disinherit the spouse."

9. *See* T. ATKINSON, *supra* note 5, at 139.

10. *Id.*

11. A. Hollingshead, Two Factor Index of Social Position (mimeographed) (New Haven, Conn., 1957).

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TABLE 3. SURVIVORS' TESTAMENTARY FREEDOM SCORE, BY INCOME

Monthly Household Income	Mean Score[a]	Number
$1,501 and over	16.26	82
$1,001-$1,500	15.46	129
$801-$1,000	14.75	157
$601- $800	14.39	187
$401- $600	14.09	317
$201- $400	13.31	156
$200 or less	13.27	93
Total	14.37	1,121[b]

[a]Scores range from 5 to 25; the higher the score, the greater the preference for freedom.
[b]Income unknown for 113 survivors.

TABLE 4. SURVIVORS' TESTAMENTARY FREEDOM SCORE, BY OCCUPATION OF BREADWINNER

Breadwinner's Occupation	Mean Score[a]	Number
Major professionals and top executives	16.37	113
Managers and lesser professionals	15.25	129
Administrators, small business, and minor professionals	14.79	168
Clerical, sales, and technicians	14.10	203
Skilled manual	13.97	244
Semiskilled manual	13.98	129
Unskilled manual	13.44	34
Total	14.54	1,020[b]

[a]Scores range from 5 to 25; the higher the score, the greater the preference for freedom.
[b]Not employed, 204; occupation unknown, 10.

Although differences were small, categories of persons who were better educated, wealthier, and in "higher" occupations did favor a greater degree of testamentary freedom. This preference may be interpreted as based on the desire to make the best allocation for the whole family, thus meeting the norm of familial responsibility. These respondents were perhaps better able to understand the distinction between a moral obligation and legal compulsion. They valued freedom and opposed legal restraints that may not have been in consonance with the realities of their particular situations.[12]

All survivors were given the following statement and were asked to indicate whether or not it was true: "When a person makes a will, he should be allowed to leave his money or property to whomsoever he pleases." Altogether, 900 persons (73 percent) agreed with the statement. But 724 (80 per cent) of these same 900 persons had previously agreed with one

12. S. STOUFFER, COMMUNISM, CONFORMITY AND CIVIL LIBERTIES (1955). Stouffer believes the tolerance of the educated to be based upon their exposure to different values.

or more of the restrictive statements. The majority of survivors was caught in a logical inconsistency. For example, they had agreed that the law ought to require people to leave money to adult children, which is in sharp contrast with the position that a person should be allowed to leave his money to whomever he wished. A total of 87 persons who agreed with all five restrictive statements took the contrary position that a person should have unrestricted testamentary freedom. Perhaps they felt that there was considerable merit in the existing statute if the individual did not abuse his right to testamentary freedom. On the other hand, they may have believed in testamentary freedom as a legal privilege in a free society, which is accompanied by a corresponding responsibility.

There were 176 persons (14 per cent of the survivor group) who favored absolute testamentary freedom. These individuals differed from the entire survivor population in that they were slightly better educated, had higher incomes, and were employed in more prestigious occupations. For the survivor population, the median educational level was high school graduation; occupational category was lower-white-collar; and income ranged from 401 to 600 dollars a month. For the "freedom" group, the median educational level was some college; occupational level was upper-white-collar; and income ranged from 601 to 800 dollars a month. The mean age was 48.4 years for the survivor population but 45 years for the freedom group. There was virtually no difference regarding the condition of testacy; 58 per cent of the survivors were testate, as compared with 57 per cent of the freedom group.

Legal Sophistication of Will Makers. Making a will provides some socialization into testamentary options. The individual becomes acquainted with legal devices and learns which ones are most appropriate to his situation. Such acquaintance does not necessarily imply mastery of the intricate processes and mechanisms of probate law; few are able to achieve this type of knowledge. Furthermore, this capability is more to be expected of the lawyer than of the client.

Will makers and intestate individuals had similar testamentary freedom scores: 14.44 for the testate and 14.36 for the intestate. There were, however, differences between the two groups in their responses to individual statements on increasing or restricting testamentary freedom. This supports the hypothesis that the testate are slightly more sophisticated than the intestate about inheritance law. An examination of each of these statements helps to clarify the differences between the two groups. The first two statements have some basis in law and restrict testamentary freedom.

(1) *When a man makes a will, he should be required by law to leave money or property to his wife.* Although the law is not stated this way, the effect is the same, since a widow may elect to take a statutory share of the estate if the testator wills her nothing or a smaller portion than the statutory share;[13] 74 per cent of the testate survivors, as compared with 70 per cent intestate, agreed with this statement.

13. *See* L. TURRENTINE note 8 *supra.*

(2) *When a woman makes a will, she should be required by law to leave money or property to her husband.* According to the majority of jurisdictions, the widower's rights are the same as the widow's;[14] 68 per cent of the testators agreed with this statement, as compared wtih 64 per cent of the intestate.

The following three statements restrict testamentary freedom and have no legal basis.

(3) *When a person makes a will, he or she should be required by law to leave money or property to his or her minor children.* In this case, 57 per cent of the testate, as compared with 62 per cent of the intestate, agreed with the statement.

(4) *When a person makes a will, he or she should be required by law to leave money or property to adult children.* Among the testate, 25 per cent agreed; among the intestate, 28 per cent agreed.

(5) *When a person makes a will, he or she should be required by law to leave the same amount to all children.* In this case, 33 per cent of the testate, as compared with 39 per cent of the intestate, concurred.

These differences between the testate and the intestate, although small, tend to support the hypothesis that the former are better informed than the latter about the laws of property disposition. More of the testate appear to know what the law provides. However, it was not determined whether testators possessed a higher level of knowledge than the intestate prior to their will making or whether it is a consequence of their encounters with lawyers and the legal system.

Qualifications of Freedom. The survivors were asked to indicate the conditions under which they would limit or allow full testamentary freedom. Those who agreed that a person should be able to leave his estate to whomever he pleases were asked: "Can you think of any circumstances in which this freedom ought *not to be* allowed?" The survivor who took the opposing position (that testamentary freedom should be restricted) was asked: "Can you think of any circumstances in which this freedom ought to *be* allowed?"

Nearly one-fourth of the survivors expressed the view that no conditions or circumstances would persuade them to qualify their stance (see Table 5).

TABLE 5. SURVIVORS' QUALIFICATIONS OF TESTAMENTARY FREEDOM

Qualification	Number	Per Cent
No qualifications	300	24.3
Family obligations	437	35.4
Competency of testator	197	16.0
Characteristic of beneficiary	130	10.5
Combination	149	12.1
Other	21	1.7
Total	1,234	100.0

14. *Id.*

The largest number (35 per cent) would restrict individual freedom for the interests of the family. Some confined themselves to the nuclear family, but others favored restricted freedom in the interests of the extended kin. Typical responses were "not in the event that he has blood kinfolk" and "only if there is enough after minor children and the spouse are provided for." The obligation to look after the widow was mentioned many more times than the obligation toward the widower; in fact, the widower or husband was never mentioned specifically, but was included only in the more general term "spouse." A few persons felt that the obligations to kin should be restricted for inherited property but not for property that was the result of lifetime earnings. Others distinguished between persons with large estates and those with more modest ones. The latter, who are less wealthy, should be restricted, while those who are more wealthy should be free to leave part of their fortunes to nonrelated persons and philanthropic institutions. Testamentary freedom was considered to be justifiable when there was a surplus equity and the testator could take care of his family and still afford to exercise his freedom.

The respondents expressed concern over the competency of the testator and the influence of unscrupulous persons upon the testator. They would support restrictive measures in such instances. Current laws that disqualify those of unsound mind from writing a will or invalidate the testament of such a person[15] were supported. A person was not considered competent if he was unduly influenced, and the elderly were supposed to be especially subject to undue influence. They were thought to be looking for companionship and therefore to be susceptible to flattery by fortune hunters and confidence men. Addiction to drugs was also thought to be a sign of incompetence. One respondent believed that persons confined to Veterans Administration hospitals were particularly apt to be subjected to undue influence, and he recommended tighter controls on the VA.

Statements concerning the characteristics of the beneficiary were more diverse. Some felt that the testator should be obligated to provide for the needy members of his kinship group. Some persons felt that an incapacitated relative should be taken care of before providing for other family members; automatic claims on the testator's bounty were not accepted. Some of this sentiment for the needy was based on a verbalized concern for the community: "[T]he handicapped would otherwise be a burden on the community" or "[A] child with a chronic illness or a senile spouse must be taken care of or they will be a public burden." In contrast with the perceived obligation to care for the deserving needy, many felt that testators should be prevented from giving to the unworthy. Cats and dogs are most frequently mentioned among the unworthy. The Communist party, Ku Klux Klan, a golfing association, subversive organizations in or out of the country, and any other "un-American causes" were mentioned as unworthy. Respondents indicated that unrestricted bequests should not be permitted to

15. *See* T. ATKINSON, *supra* note 5, at 232-41.

the following types of individuals: alcoholics, drug addicts, subversives, paramours, the mentally ill, the mentally retarded, gamblers, and criminals.[16]

Although a large number of persons would restrict individual freedom in favor of family welfare, there were others who felt that the welfare of the family and testator, or both, required testamentary freedom. Their comments were in line with Jeremy Bentham's observations that the power of making a will encourages family virtue, represses vice, assures the testator against ingratitude, and generally keeps the family house in order.[17] Some of the situations in which respondents felt the testator should be free to disinherit kin and bestow his goods upon others were:

> If you were a Catholic and couldn't divorce your wife, but you wanted to, then you shouldn't have to leave her your money.
>
> You may be treated better by strangers than by your own family, or your child may be a wastrel and throw the money away.
>
> If you had a second wife and she was no damn good . . . .
>
> If the kids are juvenile delinquents and disown you . . . .
>
> Members of his own family may have nothing in common, may not even be friendly. A friend might have stood by.

Thus, both restrictions and freedom were justified in terms of moral principles. Freedom was justified in terms of reciprocity; restriction was justified by absolute standards.

Analysis and Implications of Client Attitudes Toward Will Making

Only a small number of survivors deliberately intended to remain intestate. Whether those who planned to make a will actually did so, however, is imponderable. In part the answer may depend upon the extent to which these persons eventually experience the circumstances that pushed those who were already testate. To recognize the advantages of a will is not sufficient unless the advantages are relevant to one's own situation. It should be remembered that most of the intestate were already middle-aged. The majority of those who made a will did so before age 45. Some of the testators made their wills when they served in the military or entered a religious community. Although planners will probably not experience this particular kind of change in personal circumstances, they will be increasingly subject to the pressures of old age and illness.

The most important push into testacy for both testators and planners was a change in family circumstances – getting married and having children. The weight of responsibility for family members was not borne lightly. The vast majority of the survivors believed in testamentary freedom, but they also believed that a will maker should be required to leave money to his

16. These persons are considered beyond the pale. Schwartz reminds us that "the gift is a way of dramatizing group boundaries." Schwartz, *The Social Psychology of the Gift*, 73 AM. J. SOCIOLOGY 10 (1967).

17. J. Bentham, *Utilitarian Basis of Succession*, in THE RATIONAL BASIS OF LEGAL INSTITUTIONS 420-21 (J. Wigmore ed. 1923).

spouse and to his minor children. The majority thus did not believe in absolute testamentary freedom, but rather in a qualified freedom. It was felt that the testator should be free to dispose of his property as he wished if he had no family or after he had adequately provided for his family.

As hypothesized, those who were better educated, employed in more prestigious occupations, and who earned higher incomes were more likely to support testamentary freedom. The results were consistent in the hypothesized direction.

Testators and planners had similar scores on the testamentary freedom scale, although differing slightly in their answers to individual questions. Those who were already testate were most likely to restrict freedom where the law was itself restrictive, for example, in reference to spouses. Also, they were more likely to express a preference for freedom where the law allowed freedom, for example, with respect to children. The differences between testators and planners in an item analysis were consistent with the hypothesis that the testate are more sophisticated in matters of law. Again, however, the differences between the two groups were not extreme.

The preceding analysis has implications for the lawyer-client relationship. Apparently, the lawyer must not only write a will that successfully disposes of the client's property to his chosen successors but also, he may, in some cases, be called upon to influence the client's choice of successors. For example, he can point out the disadvantages of leaving property to minor children. The client in most instances is concerned with the welfare of his family and kinship group, but he may be ignorant of the means to achieve these goals. Where the client perceives the immediacy of death, it may be important for the attorney to determine if the client's plans are well considered and satisfactory for the foreseeable future. The attorney may also find it necessary to educate the client concerning the duties of the executor so that this position will not simply become an unwelcome honor to a favored family member. In many cases, it might also be helpful for the lawyer to explain that having a will does not mean probate proceedings are avoided. Undoubtedly some of the misconceptions of the testator are shared by his family and contribute to their later dissatisfaction.

Lawyer

Estate planning is preventive law, and will making, as one facet of estate planning, is usually done with legal assistance. The role of the attorney in the estate-planning phase of the inheritance process will be examined in this section. The approach of the study was an investigation of the lawyer's self-definition of his role in this area — an area in which the average lawyer in the sample was quite experienced.[18]

18. Forty per cent of the lawyers said they drafted over 50 wills a year; only five lawyers drafted fewer than 10 a year. Over 80% of the lawyers had been in practice over 10 years. Thus, through the years, most of these lawyers had drawn up hundreds of wills.

The lawyer-client relationship is voluntary. With minor exceptions (for example, in cases where testators are compelled to make a will by religious authorities) the client makes the decision to be testate and chooses his attorney. The lawyer-client relationship is also fiduciary; at this stage in the inheritance process, the lawyer may be the only person, other than the testator himself, who is aware of the testator's aims and desires. The size and composition of the estate may be unknown to the testator's family and closest friends, and the natural objects of the testator's bounty may be uninformed of their status in his last will and testament.

The lawyer's compensation for drafting the will is on a fee-for-service basis. Complexity of will provisions, income of client, and possible future business are the basic criteria in assessing the fee. Although this relationship conforms to the professional model, the element of professional monopoly in an area of competence is missing. Such a monopoly is scarcely found in the field of estate planning, where banks, estate planners, and insurance agents encroach upon the legal profession's domain.

Image of the Client

The lawyer's view of his client was elicited in two ways. The lawyer was asked: "Could you describe the ideal client in the wills area?" Indirectly, the lawyer's image of his client was reconstructed from the answers to several questions dealing with difficulties lawyers said they faced in this area of practice.

The lawyer has the license to obtain, and it is necessary for the client to make known, information concerning matters of a private nature.[19] The client may hold back essential information if he does not have sufficient confidence in the attorney. Understandably, the lawyer appreciates clients who trust him.

> A client who realizes the need for a will and for basic estate planning, who is willing to completely confide in his attorney, who is able to consider problems raised by the attorney in an objective manner, and who will finally make decisions in carrying out his basic desires as to a disposition which will be in accordance with the legal advice of his counsel is the ideal client.
>
> The ideal client is one who tells you everything, who doesn't hold back anything even if it means bringing out family skeletons, because sometimes skeletons can make a difference.

A client may trust his lawyer and yet be unable to provide the necessary information, as illustrated in the following examples of lawyers' difficulties with their clients:

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19. E. HUGHES, MEN AND THEIR WORK 81 (1958). *See also* Merton & Barber, *Sociological Ambivalence*, in SOCIOLOGICAL THEORY, VALUES AND SOCIOCULTURAL CHANGE: ESSAYS IN HONOR OF PITIRIM A. SOROKIN 112 (E. Tiryakian ed. 1963).

They frequently wish to have a will drawn because of some pending trip and fail to have at their fingertips all the necessary information to do a proper job of estate planning.

I have a great number of clients with vast real estate holdings and with personal distribution of these holdings among the family without keeping adequate records — small parcels of property, but a lot of them. They are not exactly sure what is in their estate.

Trust is part of the Boy Scout image held by attorneys in the sample regarding the ideal client. One attorney stated it succinctly: "The ideal client is a good, honest individual — truthful and sincere."

A will is an important document, and the lawyers do not care to draft wills for clients who have not given the matter serious thought. Nor do they wish to aid the person who wants to use his will as an instrument of vengeance. Attorneys do not see themselves as psychologists or psychiatrists. They would like a client who has previously determined his beneficiaries according to a "normal" or "fair" pattern and who does not change his mind thereafter. They desire a normal business transaction. However, if will making became too routine and perfunctory, there would be a corresponding loss of creativity in providing personal service in an area charged with strong emotional feelings; in essence, there would be a loss of one dimension of the professional role.

One problem is dealing with psychoneurotics who when in emotional upheavals consult a lawyer, people who on impulse want to disinherit some members of the family and include strangers. Twenty-four hours later they want to change it.

I recall many instances when I made a will where the party went home and tore it up because he was so confused he didn't know what to do. You have a problem with people who are emotionally unbalanced and want to change their will every other week or month. This type of will would be the simplest thing in the world to break.

Some clients have vacillating minds. They are overzealous to have certain members of the family have the estate, due to recent kindnesses, and forget what has happened in the years before.

Remarriage is one family problem singled out by lawyers as being most troublesome whether the second marriage has actually occurred or is merely anticipated. Hence, the remarried client is less than ideal.

Second marriages are always a big problem, especially in the absence of an antenuptial agreement to provide that all children are somehow going to receive a fair share from their parent; and it is not a question of luck as to which will die first. Or in the first marriage one spouse will hesitate to give it to the surviving one because he or she might remarry.

Most common is that a large percentage of husbands and wives are apprehensive as to what the survivor will do with money that comes into their hands. They frequently fear remarriage and that the estate they have worked together to accumulate will be placed in the hands of someone who put forth no effort in its accumulation.

> Clients wish to restrict the use of their property after death in a fashion that normally isn't justified. Example: A husband or wife desiring to have the surviving spouse have the benefit of the estate but subject to a restriction such as remarriage. And then there are complications in second marriage situations with children of each spouse. These can be prevented by an antenuptial agreement, but that doesn't happen as often as I think it should.

The lawyer in a remarriage case is dealing with a highly charged, affective interpersonal situation about which there is considerable folklore and which has its roots in history. The belief that marriages made in this world are permanent and even continue in the hereafter is a general conception steeped in religious and cultural traditions. The thought of remarriage of one's spouse usually arouses less than a charitable response: "I will be damned if they will dance on my grave; I did not work myself into the grave for that!" The attorney is aware of the problems of remarriage, but he is less informed concerning the reasons for them. Since he dislikes the role of family counselor, he ignores the problem and stereotypes the client as a difficult one.

A minority of attorneys were found to associate wealth with their image of the ideal client. For a few, the ideal client is not only wealthy but also has his wealth in the form that poses few complications: "Lots of money in stocks and bonds – or cash, no real estate." "One who has a large estate, all or most of the assets in the state of Ohio." One lawyer preferred complications as a challenge to his legal acumen and for the probability of a higher pay-off:

> Getting into a fantasy, aren't you? I like the client with unlimited money and unlimited legal and tax problems that will necessitate a tremendous amount of legal work; one with previous experience with legal charges.

Another lawyer was more realistic:

> How many millions should he have? That's awfully difficult. Actually he would be one who had an estate in the area of $250,000 to $500,000 and who would take the time to prepare the intelligent will covering all the contingencies; who would let tax considerations be secondary to actual disposition of property. The millionaire has a million advisers before he gets to the attorney.

Attorneys hope not only to draw up the will but also to administer the estate. Fees for estate settlements are determined not on the basis of time but on the size of the estate. Given this method of compensation, it is to be expected that the lawyers would prefer wealthy clients.

Various elements compose the lawyer's view of the ideal client in the area of will making. He likes the client who has sufficient equity to make the preparation of the will challenging to his skills and which, because of its size and complexity, can provide adequate compensation. He appreciates

the stable, well-informed client who has unsullied personal traits and characteristics. As the lawyers described their basic job of drafting the will and their method of counseling the client, it seemed that their view of their own role was predicated upon the client's being close to their ideal.

Drafting the Will

The extent to which lawyers influence their clients at the will-making stage was of particular interest in this study. Over 85 per cent of the lawyers applied the concept of testamentary freedom in counseling their clients. Attorneys urged their clients to make their own decisions regarding the disposition of their property. Although this practice suggests that the attorney is liberated from the cultural restraints on testamentary freedom, it is impossible to overlook the fact that the lawyer, like his client, is a product of our culture and that in subtle and unobtrusive ways he influences his client to make the right decision. This decision is generally consistent with maximizing the well-being and stability of the family over generational time.

Of the 70 attorneys studied, 60 were characterized as having a nondirective approach to counseling their clients. They were pre-eminently concerned with getting the facts. Given this knowledge, the attorney's role is to interpret correctly the intent of the client and not to impose his ideas upon the client.

Ten of the lawyers routinely advised the client concerning who should be the legatees. Two of these attorneys suggested that clients consider the differential needs of family members and charitable giving:

> I try to find out were they ever helped by an organization. If they were, I feel they ought to leave something to such an organization. Also if they have kids and one is in a better position than the other, I suggest it might make life a little easier to give one a little extra.
>
> I usually ask how he would like his estate to go. If he is better off than average means after making provisions for the family, I go into the question of charities and bequests to favorite organizations. I usually try to have them consider churches, schools, and hospitals for benefits. Whenever indicated by the composition of the estate and the desire of the testator, I discuss trusts.

The remaining eight lawyers were concerned with the testator's family and gave specific advice:

> I ask what the client has in mind, a simple or complex will. If whatever he has is the result of marriage, I feel that everything should be left to the surviving spouse in the first instance and then to the children. Generally the client will always indicate that this is what he had in mind in the first place. I would attempt to discourage any disinheritance of the spouse or children.

> I just talk to them and ask them what they want to do; what their wishes are. Then I usually try to give them my opinion as to the needs of the children and surviving spouse. I always try to point out that a woman needs as much education as a man. Then we just talk it out and whatever they want goes into the will. Usually they go along with my suggestions.

Another facet of the lawyer's will-making role is the attorney's relationship with family members other than the testator. Eighty per cent of the attorneys sampled indicated that they never consulted with other family members such as the spouse or children. This finding suggests that lawyers perceive the relationship with the client as a fiduciary one and that under ordinary circumstances, consultation with other family members would be unprofessional behavior. No attorney consulted with family members routinely or without the permission of the client.

Attorneys may not consult with family members, but they do consult extensively with their law colleagues and other professionals attached to financial institutions. Slightly over 60 per cent reported consultation with other specialists (see Table 6). Some attorneys will use consultants if their clients request it.

TABLE 6. CONSULTATION OF LAWYERS REGARDING WILL DRAFTING

Consultation Behavior	Number	Per Cent
Never consults	27	38.6
Consults with bank representatives	17	24.3
Consults with other attorneys	15	21.4
Consults with others[a]	11	15.7
Total	70	100.0

[a]This includes insurance agents, accountants, et cetera.

> I consult only if the testator requests it. It's a confidential thing, but sometimes they request it. A lawyer is only allowed to discuss a confidential matter if the client requests it. In the majority of cases it is a family matter between husband and wife. I only talk with bankers or insurance agents when the client requests it. However, with the estate plan you recommend that others be involved because the client does not know all that is involved. I bring in a banker, insurance agent, accountant and have a little seminar on it—but only with his permission.

Consultation is likely to occur if the estate is large or if the property is legally complicated. Generally, consultation is not routine, and when it occurs it is usually with associates, partners, or those sharing office space. Only one attorney indicated that family problems were a significant reason for consulting with other professionals. This was somewhat surprising in

view of the variety of problems reported, such as disagreement among family members, mental incapacity, second marriages, and minor children.

Slightly less than 40 per cent of the sample were generalists. These attorneys believed that they had the competence to handle whatever legal complexities might arise. The following statements are typical of the attitude of the nonconsulting group: "I don't have to consult with anyone, for I draw up simple wills," or "They consult me because of my experience. I have never had occasion to consult with anybody else."

For some simple wills, a standard form suffices. Thirty-eight lawyers said they used a standard will form for routine cases — one they personally developed or adapted from a book form.

> I use a standard form extensively — in every simple case. There may be some variations from it, but it is generally routine and repetitious.
>
> We use them to the extent that they fit in with the client's wishes. We adapt them to situations not covered.
>
> I use my own form, a form that includes the best provisions that I am able to find from other sources — Cuyahoga County records, form books, and suggested provisions in legal publications.

Twenty-six attorneys (37 per cent) indicated that all wills were written individually.

This division over the use of standard forms was reflected also in satisfaction with the compensation for drafting a will. Those using routine procedures for drafting of wills tended to be well-satisfied with their compensation; they viewed their participation as minimal and gave full credit to their legal secretaries. In routine cases, will making was viewed more as an ordinary business transaction than as a professional task. Here are two typical responses:

> In 90 per cent of the cases, most wills are pretty much form. The ordinary will is very routine. Of course, we have a wonderful secretary, and I just say, "draw up a will."
>
> The girls have been here seven and sixteen years and have made so many simple wills that I can give them the names of the testator and beneficiaries and let them draw up the will.

The drafting of a will was often not regarded by attorneys as a distinct activity with a fair price agreed upon by members of the bar. Only 16 attorneys said they determined their fees according to the minimum scale recommended by a local bar association. The majority of attorneys felt that while drafting a will resulted in minimal financial reward, it was very good public relations. It was considered to be a community service resulting in good will and familiarity between the public and the law profession. Public service and good will were related to long-range economic gains. Will making was seen as the initial step to more lucrative estate administration. Here is how several attorneys put it:

Drawing up the will creates a close contact with the client. It creates a climate of their thinking of you as their family lawyer. They'll use you in the future and generally at death.

I do many wills for free. I urge people to make wills, and I let them know if they can't pay, I'll do it free. Of course, if I were maintaining a full-time office, I'd have to cover overhead. [This was a part-time lawyer holding political office.]

If I had to, I'd do it for nothing. Often this is the first time people have come to an attorney. I tend to set the fee on the low side, because we don't want to scare people away.

You charge for a will with the expectation you will eventually get the estate — and then compensation will be received.

In general, fees charged ranged from 15 to 35 dollars for an uncomplicated will and from 25 to 50 dollars for reciprocal (husband-wife) wills. A minority of attorneys object to will drafting as a method of public relations or as a speculation on future estate business.

I'm paid adequately because I won't do it for less. Will drafting has got to pay a reasonable going wage, based on a reasonable hourly rate . . . none of this "loss leader" stuff. That's crazy in my book.

In this office, we charge for estate planning. We don't plan to make it up in probate.

There were several reasons some lawyers felt they could not charge an adequate fee. First, they thought the public was unwilling to compensate them for the work involved. Attorneys who believed that the compensation was inadequate expressed feelings that they were working for charity without receiving the ennobling benedictions for such efforts. They felt strongly that clients did not apprehend the time involved in drawing up an adequate will and that clients were consequently unwilling to pay an adequate fee for rendered services.

Because people don't know what's involved or I don't tell them or something — I suppose because we attempt to charge what people expect to pay and it's not adequate. I draw wills for next to nothing and expect to get a return from handling the estate. People don't expect to pay for the time it takes. I try to guess what I think the client would like to pay.

I am undercompensated. If done properly, it requires more time than the public realizes in terms of a proper estate plan. The general public has a notion that it should be no more than a $25 job.

You can't charge people what its worth to prepare their wills. If you could charge a millionaire proportionately, it would even out, but you can't because most wealthy people got that way by squeezing pennies.

Also, attorneys tend to undercut one another, a practice that lowers the cost of will making. This competition makes it difficult for an attorney to charge for actual time in preparing the document. Two attorneys complained:

People shop for the cheapest one. Some attorneys will do it for $5, but I'd never go below $25.

I'd like to charge the bar association's recommended fee — if everyone else did — but some lawyers charge nothing.

A self-proclaimed rate buster said:

I have been severely criticized by other attorneys for ruining the profession. I should charge a lot more; they are absolutely right.

There was an indication of competition from lay individuals or entities, especially banks. The attorneys are faced with the basic problem of their inability to control an area of practice that historically belongs to them but in the modern period is equally claimed by banks, insurance companies, and other institutional systems.

In essence, in the will-drafting stage it appears that the public has cornered the legal profession. Charges for what can be considered routine wills are low. From the standpoint of time, the attorney is not adequately compensated if he spends any time at all. The will must be considered as "an accommodation for people you hope to get business from." Perhaps the attorneys' approach toward will drafting can best be summed up with the words of one sample member: "If you wanted to make your living drawing up wills, you'd be a hungry boy."

Encroachment

The lawyers in this study resented the banks for engaging in wills-estates work. This unhappiness reflected more of a concern with scarce pecuniary rewards than professional postures and practices regarding estate work. Seventy per cent of the lawyers thought competition with banks was a major problem in the will-making area. There is obviously a breakdown in communications between financial institutions and the average member of the bar. It appears to be a battle of David against Goliath. The following outspoken expressions indicate the perception of this competition by the lawyer:

Competition? Yeah — because they are able to advertise their trust services and they get paid for the administration of a trust. As a consequence, in order to bring in trust money they will render a great deal of advice. What's worse is that the most incompetent attorney can have the bank do the whole thing for him. The bank is like his ghost writer. That being the case, the lawyers who know what they are doing can't really be paid for their time because the client can get it wholesale — either from the bank directly or from the attorney who doesn't know what he is doing, so has the bank write the will and doesn't have to charge much. All of this is extremely detrimental to the client's welfare.

> I believe banks and insurance companies should be kept out of the wills-estates area. I find insurance companies are prone to give much misinformation for purposes of selling insurance by rather poorly trained salesmen and giving poor tax advice. Banks, primarily in drawing up suggested wills, are more interested in obtaining trusteeships or executorships than they are with true consideration of testators' problems. However, if the estate is large, work done by some attorneys is not especially knowledgeable.
>
> There is competition not with insurance companies so much as with banks. Banks advertise their trust departments and with that the testamentary trust. My experience is that they advertise, which cuts into our business. They have no compunction in drawing wills and doing legal work. If I can't advertise to get business, their legal department should not be able to do so. I have an abhorrence of the unauthorized practice of law. I will not, if I can help it, recommend a bank as trustee. On the other hand, I find that their trust departments do a good job. They know their business. I am opposed to the size of the fees and the fact that they are lay people.

A few attorneys intimated that a conspiracy existed between the banks and large law firms. In answer to the competition question, one lawyer stated:

> There is no doubt about it, particularly with trust companies and with big law firms who have a peculiar method of soliciting business. Larger firms frequently employ the son of a wealthy man in order to get the business of his father's estate.

In the words of another lawyer in the sample:

> Banks, where they don't handle it themselves, direct legal work to firms with whom they have a close connection; so they control a great deal of estate work in that manner.

Those who perceived no competition had established a symbiotic relationship with trust departments of banks. A successful practice in any profession is usually achieved with assistance.[20] In the wills-estates area, the bank's referral of a client may be worth more than a dozen "through-the-door" clients or referrals from other lawyers. The bank-referred client is likely to be wealthier than the average. In addition, the bank assists the lawyer by helping with preparation of the requisite documents. An attorney who works in conjunction with banks receives valuable assistance and ample financial rewards for a minimum effort.

The hostility of our attorneys toward banks' involvement in estate work reflected unhappiness over economic competition as well as priorities of professional practice. Banks are legally entitled to act as executors and trustees and thus are able to solicit business in this respect. It would appear that such advertising concerning the value of estate planning is of social

20. For the analogous situation among physicians, *see* Hall, *The Stages of a Medical Career*, 53 AM. J. SOCIOLOGY 327-36 (1948).

benefit, since it encourages awareness of testamentary needs on the part of the public.

Banks have frequently been faced with the problem of how far they can advise clients on wills-estates matters without engaging in the unauthorized practice of law. The drafting of wills, trusts, and like instruments coupled with responsibility for the estate plan is a function for the attorney and not the bank. Some attorneys are concerned that their colleagues might be inclined to shift this responsibility to the banks in a *de facto* manner by merely signing the instruments and thus losing control over this professional area of practice. Drafts prepared for attorneys by trust departments are often so expertly done that they turn out to be final documents. The attorney thus becomes a middleman between the bank and the client, and the bank is very nearly practicing law. Yet the lawyer ultimately retains the decision-making function. If he can control the actions of the bank, he maintains his autonomy in this area of practice.

Generalizations Regarding Lawyers and the Will-making Process

The attorney engaged in will making espouses a client-oriented philosophy and adheres vigorously to his confidential relationship with the testator. He is nondirective in eliciting the wishes of the client but is guided by legal and cultural norms that he has internalized as his own. These norms become operative when he confronts a client whose desires for distribution offend his sensibilities.

The sample attorneys are general practitioners rather than estate-planning specialists. The mode of activity suggests meeting the exigencies of the situation rather than the conditions of long-range planning. According to James F. Farr,[21]

> Estate planning is not susceptible of precise definition; it is as broad as the human imagination. It involves the use and arrangement of property for and among the members of a family group under a planned design affording the greatest enjoyment to the whole group commensurate with sufficient conservation.

There was a propensity for lawyers planning estates to "go it alone" without assistance, especially where small estates were involved. A frequent expression was, "I draw simple wills." Attorneys stated that small estates do not necessitate the drafting of trusts. Fifty-four per cent of the lawyers utilized some type of standard form in drafting wills. The implication is that they harmonize the type of will with the testator's financial worth. This is done even if it is recognized that persons with small estates have as many affective relationships and family problems as individuals with large estates, making estate planning a difficult task irrespective of the assets involved.

Some attorneys find this area of law practice exciting and capable of tapping their most creative impulses. The challenge is to meet the expecta-

21. J. FARR, AN ESTATE PLANNER'S HANDBOOK 3 (3d ed. 1966).

tions of a client, maximizing the client's expression of testamentary freedom within the constraints imposed by law and culture. Simultaneously, there must be a consideration of the needs of the survivors, who are potential clients of the attorney. The development of an attorney's practice over client generational time (father to son, the older generational family to the younger one) is a natural characteristic of estate planning. The lawyer who can approach will making as a creative task and think through, with his client, the implications of the will for the next generation is guaranteeing for himself a legacy as important as that received by the beneficiaries.

The possibility that the lawyer will provide for his own retirement on fees from administration of estates is no conjecture. It is expected and achieved by lawyers with a heavy estate-planning practice in which will making alone would be a profitless task. This is an excellent illustration of deferred gratification. Will making is merely the first step of a process that will provide ample returns in the later years of the lawyer's practice. Will making, with its fiduciary relationship, provides the attorney with the opportunity to establish a relationship with the family that will place him in a favorable position to obtain the estate business that can logically follow.

Partial substantiation of the study hypotheses concerning intergenerational practice, deferred gratification, and retirement security for lawyers from estate administration came from data analyzed by the age of the attorney in relation to the number of wills drafted and estates managed in a given year (see Table 7). Lawyers in their sixties achieved a balance between the number of wills drafted and the number of estates opened in a year. Until that age, the lawyers drafted far more wills than they opened new estates. In the twenties, the ratio appears nearly as favorable as in the forties; however, attorneys in their twenties handled less volume than did older attorneys. The data are based on a cross section of attorneys at one point in time and do not reflect the change in practice for a given attorney over time. Nevertheless, within the limitations imposed by the data and the assumptions regarding change in estate-planning practice during a particular career, there is some indication that estate administration, with its greater psychic and financial rewards and professional autonomy, comes in the later years of life.

TABLE 7. MEAN NUMBER OF WILLS AND ESTATES YEARLY AND RATIO OF WILLS TO ESTATES, BY AGE GROUP OF ATTORNEY

Age Group of Attorney	Mean Number of Wills	Mean Number of Estates	Ratio of Wills to Estates
20-29	25	10	2.5
30-39	55	15	3.7
40-49	35	15	2.3
50-59	25	15	1.7
60-69	20	20	1.0

Conclusion

The principal reason why individuals made wills was their desire to protect the well-being of members of their immediate families, namely, their spouses and children. The will maker was usually in the childbearing or childrearing stage of the family life cycle and was under the age of 45.

Testamentary freedom, the right of an individual to dispose of his property as he wishes, was viewed in a very special way by the survivors in this study. They stated that an individual should have testamentary freedom but they also felt strongly that a will maker should, and if necessary be legally required to, leave his property to his spouse and minor children. In probing this apparently contradictory position, it was discovered that the survivors felt strongly that the testator should be free to give his equity to whom he pleases, provided he has no immediate family to care for or after he has adequately provided for their needs. Essentially, they believed that wealthier individuals could and should exercise testamentary freedom because they have sufficient resources to afford this privilege.

This overriding concern expressed by the testators and planners that members of their families be taken care of at the cost of absolute testamentary freedom has implications for the lawyer-client relationship. The desire to provide for kin is so strong that there is a danger that the individual who is faced with the possibility of imminent death may make hasty and shortsighted decisions regarding the provisions of his will. In his desire to provide for minor children and, unaware of the disadvantages of such an action, a client may, for example, name them in a will. The task and responsibility for the lawyer is to educate the client to avoid legal pitfalls and potentially strained intrafamily relationships that can result from hasty naming of legatees, guardians, and executors.

Attorneys did not perceive will making as a highly professional task except in the fiduciary aspect. Will making was regarded as the entry point into a process that leads to estate administration, the latter providing substantial financial reward and work satisfaction stemming from considerable autonomy.

Lawyers were very concerned about competition in the will-making area from banks, insurance firms, and other economic, religious and social institutions. The strongest reactions were directed against banks; the chief reason was competition over scarce financial rewards rather than professional postures and practices regarding estate work.

The majority of lawyers in this sample were generalists, undertaking by themselves the simplest to the most complex tasks and procedures of will making. The range of complexity varied from utilization of a standard will form to holding a series of meetings with the client, in some instances even involving members of the family who were potential legatees. If necessary, the lawyer employed consultants as specialists, just as generalists in medicine do. The posture assumed by the lawyer was dependent upon his own experience and motivation and that of the client, with the potential size of the estate as an added variable.

Will making was felt to be a possible lead into a family-practitioner relationship that may provide continuous pay-offs in estate administration and other legal business. Estate administration, especially, may provide a regular maintenance income in the later years of the attorney's career, thus reducing his need to seek additional practice.