Influencing Clients: Biases, Behavior, and Building Rapport

Estate planners can more effectively guide client decision making by gaining a greater understanding of the client's thought processes.

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Modern economic theory is based on 18th century economist Adam Smith's assertion in *The Wealth of Nations* that self-interest motivates economic activity.[1] But a client's self-interest in the short-term is not necessarily the same as his or her best interest in the long-term, and as even Smith (in his book *The Moral Sentiments*) recognized, people are motivated by multiple interests and needs, including the needs for understanding, control, autonomy, relatedness, and a sense of justice or fairness. Recognizing these needs and learning how to work with, rather than against, human nature will lead to more effective advice.

A significant challenge estate planning advisors face is how to more effectively convince clients to adopt suggestions that will serve them best over the long haul. Rational and disciplined clients are the easiest for estate planning practitioners to help. But not all clients are rational and disciplined. Sometimes biases and life experience get in the way of balanced, forward-thinking behavior. How do emotions like fear and greed affect financial decisions? Why do some people prioritize one type of goal while others choose something totally different? How should estate planning practitioners reconcile goals from clients that seem contradictory? These questions can vex even the most seasoned advisor and require a high level of skill to navigate.

Before delineating the emotional and behavioral challenges that clients bring to the table and suggesting solutions for building rapport and addressing those issues, a brief review of human brain structure is in order—because the interplay of biology and life experience influence individual perceptions and decision-making.

Brain structure

A useful oversimplification of human brain structure is that humans have a triune brain, made up of three distinct sections.[2] The "reptilian brain" is generally comprised of structures at the lowest level that are responsible for survival instincts such as seeking food, warmth, and security and engaging in the fight-flight-or-freeze response under threat. The "mammalian brain" consists of structures in the mid-brain that control more complex motivations, emotions, and memory. The third section of the brain, the cerebral cortex, is located at the top and is the rational, planning, and decision-making brain. The cerebral cortex, however, can be "hijacked" by the rep-

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EXHIBIT 1
Two Fundemental Behavioral Orientations

Orientation	Behavioral Activation; "Go"	Behavioral Inhibition; "No Go"
Regulatory focus	Promotion	Prevention
Goal	Reward positive outcomes, and gains	Avoid punishment, negative outcomes, losses, and regrets
Mindset	Abundance	Scarcity
Type of thinking	Big picture, holistic; focus on "why"	Detail and "nitty gritty" oriented; focus on "how"
Way decisions are made	Consider multiple alternatives and long-term consequences	Focus on the present situation and on salient and immediate resolution; narrow bandwidth and tunneling
Behavior	Take action	Withdraw; avoid taking action; freeze

tilian and mammalian brains, influencing rational interpretation and decision-making.

Two fundamental orientations

In particular, within the mammalian mid-brain are structures that are responsible for what are known as "behavioral activation" or "Go" responses, and for "behavioral inhibition" or "No Go" responses.[3] Humans (and other animals) have a strong tendency, hard-coded at deep brain levels, to associate action ("Go") with reward and withdrawal or failure-to-act ("No-Go") with punishment or negative consequences.[4] These tendencies are summarized in Exhibit 1.

In order to effectively influence someone, an advisor needs to be able to assess which orientation is dominating the client's perception and then work with that orientation, rather than against it. While psychologists have formal assessments to test these orientations, most advisors' intuitions typically can tell them whether (or when) their clients are oriented towards gaining positive outcomes or avoiding negative ones.

Regulatory focus. What effect does an individual's basic perspective have on how he or she makes decisions? When people are *promotion-focused*, they attend to the gains or the "pros," and are more likely to take action, ending up with both more "hits" but also more "false alarms" or errors of commission (e.g., buying more stocks and thus more winners but also more losers). In contrast, when people are *prevention-focused*, they are normally overly cautious and risk-avoidant, more prone to avoid taking action (e.g., not investing) than to take it—unless they see themselves in imminent danger, in which case, they can become even greater risk-takers than the promotion oriented.[5]

Thus, if an advisor can sense that a client he or she is trying to influence is promotion-oriented, the advisor should focus on the benefits to be had, and should offer multiple recommendations, as people who are promotion-focused are open to alternative solutions to problems. Also, to work with this focus, emphasize the "Whys" of the recommendation: which of the clients' values it will serve. In contrast, if the client is prevention-oriented, the advisor will be more likely to influence the individual by offering just a single, well-justified recommendation, explaining the types of trouble the client could avoid by taking this action, and focusing on the details of "What" the client will need to do to carry out the recommendation.

While some researchers focus on these different orientations as biases that *all* of us can be prone to under different circumstances, others pri-

[1] Smith, *The Wealth of Nations* (1776), Book 1, chapter 2 ("It is not from the benevolence of the butcher, the brewer, or the baker that we expect our dinner, but from their regard to their self-interest.")

[2] MacLean, *The Triune Brain in Evolution: Role in Paleocerebral Functions* (Plenum, 1990).

[3] Guitart-Masip, Fuentemilla, and Dolan, "Go and No-Go Learning in Reward and Punishment: Interactions Between Affect and Effect," 62 Neuroimage 154 (August 2012).

[4] Sharot, *The Influential Mind: What the Brain Reveals About Our Power to Change Others* (Henry Holt, 2017).

[5] Grant-Halvorson and Higgins, *Focus: Use Different Ways of Seeing the World for Success and Influence* (Penguin Group, 2013).

marily address the effects in terms of individual differences, suggesting that most people generally have either a promotion or prevention-oriented way of viewing the world.[6] Nonetheless, they agree that people can have different foci in different areas of their lives (e.g., being promotion-focused in terms of their work but prevention-focused in terms of their health).

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Perceptions of scarcity or abundance. Clients' life experience and perceptions also determine their view of how much is "enough"—and individual beliefs about abundance versus scarcity can significantly affect their financial behavior. When people view something in their lives as scarce—be it money, food, or time—they overfocus on it.[7] In essence, the mammalian brain focuses on fear and overpowers the rational brain:

> By staying top of mind, [scarcity] affects what we notice, how we weigh our choices, how we deliberate, and ultimately what we decide and how we behave. When we function under scarcity, we represent, manage, and deal with problems differently.[8]

Scarcity focuses people's attention narrowly and can cause them to lose sight of the broader picture. During times of perceived financial scarcity, for example, people fixate on near-term, looming bills rather than longer-term goals such as creating an emergency fund and saving for retirement. When the mortgage is overdue and money is tight, the annual furnace tune-up and roof inspection become low priorities, and just one problem can lead to a feast-and-famine spending cycle.

Client problems

Two common sources of problems that clients may be experiencing deserve a closer look.

Co-dependence. Problematic financial decision-making can also be brought on by feelings of co-dependence or excessive emotional reliance of one party on another. In such cases, one party sacrifices himself or herself to help the other, who becomes dependent on the support and often insistent that it continue. Co-dependent clients sometimes endanger their own future financial security by assisting others—typically family members, but sometimes even charities such as their church.

This dysfunctional dynamic can manifest in parents providing excessive financial support to their children—either by paying for a college or graduate program they cannot afford, providing financial support to enable their children to live in expensive cities, or subsidizing them as they pursue careers that do not pay the bills. In so doing, parents not only delay the fiscal maturity of their children but also threaten their own long-term retirement goals.

Entitlement and avoidant behaviors. For the financial advisor, some of the least gratifying clients to serve are those who feel entitled to live beyond their means—those who might feel compelled to keep up with the Joneses. The excessive expenditures can range from overindulgence in shoe shopping to purchasing a second home they cannot afford. Another way fiscal dysfunction can manifest itself is through avoidant behaviors, such as putting off end-of-life planning and delaying saving for retirement.

The problem in such cases is typically that the negative consequences of this behavior lie far in the future and are uncertain. Both the distance in time and the uncertainty that the advisor's feared negative outcome will come to pass mean that the client is not likely to be motivated by the advisor's warnings of the potential risks of overspending. That doomsday scenario is just too far off in the future. Warnings are not likely to work here to discourage the overspending unless the situation is getting dire.

As Tali Sharot says in her book *The Influential Mind*,[9] "it is difficult to make people work for something that may or may not happen." Finding ways to encourage clients to clearly visualize their older selves (whom individuals normally tend to regard in similar ways to the manner that they regard other people[10]) to emphasize their similarity and continuity with their present selves may make them more likely to make decisions (e.g., saving for retirement) that will benefit that future self. And focusing on positive actions the client can take to improve the situation in the near

6 *Id.*

7 Mullainathan and Shafir, *Scarcity: Why Having Too Little Means So Much* (Holt, 2013), page 12.

8 *Id.*

9 Note 4, *supra.*

10 Hershfield, "You Make Better Decisions If You 'See' Your Senior Self," Harvard Business Review (June 2013).

11 Tversky and Kahneman "The Framing of Decisions and the Psychology of Choice," 211 Science 453 (January 1981).

12 Rothman and Salovey, "Shaping Perceptions to Motivate Healthy Behavior: The Role of Message Framing," 121 Psychological Bulletin 3 (1997).

13 Ziegler and Tunney, "Who's Been Framed? Framing Effects Are Reduced in Financial Gambles Made for Others," 3 BMC Psychology, article 9 (2015).

future generally has more of an impact than dire threats.

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Solutions

Trying to move a client from a dysfunctional position or belief he or she holds to one that would be more beneficial in the long run can be arduous indeed. By taking advantage of the status of an objective third-party and adopting certain strategies to improve rapport with the clients, estate planning advisors will be more successful at inducing clients to implement their recommended courses of action. Advisors can help reduce the impact of individual bias and dysfunctional behavior for clients, thus inducing them to implement the recommendation.

Reframing. Amos Tversky and Daniel Kahnemen's prospect theory describes the relationship between objective outcomes (gains and losses) and psychological reactions to them.[11] The general findings of this theory (for which Kahneman was later awarded the Nobel Prize in Economics—Tversky, unfortunately, had died and there are no posthumous Nobel Prizes) are that people subjectively have far greater reactions to losses than to gains and prefer certainty to uncertainty. Because the aversion to losses is stronger than the desire for gains, when people fear that a loss may be imminent, people tend to take risks in hopes of avoiding the risk; conversely, when they expect that a gain may be forthcoming, they become risk-averse.

Research based on this theory suggests that when outcomes are relatively certain, advice should be framed in terms of the gains to be achieved, while when outcomes are uncertain, the focus should be on losses to be avoided.[12] In other words, use a promotion-focused strategy when outcomes are more certain and a prevention-focused strategy when outcomes are less certain. For example, one might emphasize increased peace of mind for one's children and spouse by having a clearly articulated estate plan, or increased likelihood of achieving financial independence by increasing pre-retirement savings, since these are more certain outcomes, while focusing on the risks that one takes on by being underinsured or failing to have planned for incapacity, since these are less certain outcomes.

Benefits of emotional distance. Working with a trusted third-party, be it a financial advisor, estate attorney, or accountant reduces the risk of clients getting in their own way when it comes to long-term investing or estate planning. Research suggests that when one is less emotionally involved in an outcome, more rational decisions are made.[13] A financial advisor who has emotional distance from a client's life can help ensure that financial decisions are rational (considering long-term wants and needs as well as short-term, emotionally pressing desires and fears) and take into account long-term value as well as immediate costs.

Even if a client wants to make a decision that may seem unusual to others, advisors can use their objective, third-party status to help them make decisions after considering all of the implications. In one real-world scenario, a client's child divorces a spouse that the client still loves. If a client wants to leave money to the child's ex-spouse, for example, the financial advisor or estate attorney can illustrate how to do so wisely (and in a way that might be acceptable to the client's own child). The client can establish a testamentary trust to ensure that the ex-spouse receives income over his or her lifetime—and then, after the ex-spouse dies, the grandchildren will be beneficiaries. This satisfies the client (who might be motivated by co-dependence) and also serves the client well.

Clear communication and simplification. Another way to engage positively with clients is to be mindful about the fact that too much technical jargon can be alienating to them. It is possible to demonstrate expertise in one's field without being off-putting. To build rapport, estate planning advisors are well advised to communicate clearly how they weigh decisions for clients. By acknowledging the advantages and disadvantages of an investment or trust vehicle, for example, and clearly explaining the analysis that has gone into a recommendation, advisors educate their clients and simultaneously build trust with them.

By way of example, financial advisors can suggest specific strategies in a simplified, easy-to-digest manner, such as the following:

- Establish emergency savings that gives the client breathing room when a crisis, such as a roof leak, occurs.
- Create plans that break larger financial goals into small, manageable action steps.
- Simplify adherence to plans by taking advantage of automation (e.g., setting up automatic deposits to retirement accounts).
- Anticipate barriers and create "if-then" plans to deal with overspending[14] (e.g., "If I buy an unbudgeted item, I must then contribute the same amount to my savings account").

One educational form of communication between an advisor and a client is to share with the client a list of terms that are industry specific. Often, financial advisors assume that clients who are successful in their own field also fully comprehend the terms of the finance world. So, too, estate planning attorneys might be mistaken in believing that their clients understand technical legal terms. Professionals use these terms with such regularity in their daily work lives that they become second nature. By creating and sharing with clients a simple hand-out or e-mail attachment with technical industry definitions, advisors can be more confident that their clients are on the same page with them. Sharing these terms also helps those clients who might be too embarrassed to disclose their lack of knowledge or understanding.

Appropriate professional interventions. For estate planning advisors, the simpler is sometimes the better. Ensuring that all of a client's assets are titled correctly and that the proper beneficiary designations have been made is arguably more important than an annual review of existing estate documents. The emotional burden of reviewing estate documents annually might be met with resistance and a lack of appreciation by clients. Suggesting simpler, important steps such as those mentioned above will make it more likely that the advice will be well-received while simultaneously giving an attorney or other advisor annual contact with a client.

Follow through. One of the most meaningful ways estate planning advisors can build rapport with their clients is by following through on commitments made during meetings or phone calls. Advisors are busy people and it is easy to let things fall through the cracks. But by implementing strategies to ensure thorough completion of tasks promised, such as recording meeting notes, delegating tasks as needed and setting reminders for items promised, advisors will increase the odds that their clients feel better cared for.

Conclusion

Implementing the strategies described above not only mitigates the impact of client biases and personal foibles upon responsible investing and estate planning but also potentially increases the affinity the client feels for his or her advisors. While these positive interventions are certainly beneficial from a business development standpoint (because happy clients are more likely to make referrals), they are also personally gratifying for the advisor—adding certainty that the advisor has served the clients well. ■

[14] Gollwitzer and Oettingen, "Implementation Intentions," in Gellman and Turner (Eds.), *Encyclopedia of Behavioral Medicine*, pages 1043-1048 (Springer-Verlag, 2013).