

# Is Your (Ethical) Will in Order?

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## I. Introduction

The young doctor, father of two little girls, knew he was dying. The good news was that before he became ill he had purchased several million dollars of term life insurance. With the help of his estate planning attorney, the doctor set up a trust with insurance equal to his exemption equivalent amount for his daughters. The rest went to his wife. The trust was designed to make distributions to them at key points in their lives as well as at stipulated ages. Each daughter would receive a small amount when she turned 16 and again when she turned 21. The trust had normal provisions for education and maintenance and also allowed the trustee to pay for a wedding, purchase a car, or travel. As each daughter turned 25, she received one-half of the balance of her trust share; as each daughter turned 30, she received the remainder.

What was unusual about this trust is that the estate planning attorney, who also served as trustee, was given letters by the doctor to give to each daughter along with each planned distribution from the trust. As each daughter turned 16, she received a small distribution and a letter from her father:

"This is your sixteenth birthday. Happy Birthday. I know you are beautiful and I wish I could be there in person. Here are some of my favorite memories from my teenage years..."

And when she turned 21: "You are all grown up now. How proud I am of all that you have become. I know you are well on your way to a productive and fulfilling life, and will find many ways to give back to your community."

And on her marriage: "This is your wedding day and I know you are the most beautiful bride in the entire world. I am so happy for you and just wish I could be there in person. Tell your husband I love him as if he were my own son..."

The attorney who prepared this trust reports that the daughters, who are now receiving distributions and their letters, look forward to the letters their father wrote them more than the money they receive.<sup>1</sup>

The letters this thoughtful man wrote to his two young daughters while he was still alive are collectively one example of what is known as an ethical will.

## II. What Is An Ethical Will?

One author puts it succinctly: "Traditional wills involve what you want your loved ones to have; ethical wills involve what you want them to know."<sup>2</sup> Other counselors have referred to ethical wills as legacies of intangibles<sup>3</sup> and love letters from the beyond.<sup>4</sup>

Ethical wills can include many things, such as the wisdom, values, and beliefs of a parent or grandparent, their purposes for certain actions taken, expressions of love and affection, hopes and blessings for the family, exhortations to carry on charitable work, or to care for certain relatives. They can include reminders of heritage, expressions of gratitude, and statements of spiritual belief.

Ethical wills can take many forms: one letter to the entire family, separate letters to each member of the family, video tape, verbal, posthumous (obviously a posthumous ethical will would have to be created by one other than the decedent, such as Mitch Albom's best selling book *Tuesdays With Morrie* passing on the wisdom of a beloved professor). Ethical wills can also be incorporated into a traditional will. The various forms of ethical wills are discussed in Part IV of this article.

Ethical wills date back thousands of years and seem to have roots in the Bible itself. Old Testament patriarchs conveyed the ideals closest to their hearts, motivating values, and events in their life's experiences before they passed away. Jacob on his death bed, for example, gathered his children around his bedside and told them the way in which they should live after he was gone.<sup>5</sup> Before their deaths, Moses and Joshua both made farewell addresses exhorting and instructing the people.<sup>6</sup> David prepared Solomon before he passed on by warning him of whom to be wary when he became king and encouraging him to be strong and keep the Commandments and charge of the Lord.<sup>7</sup>

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<sup>1</sup> This real example was in response to the question "What is the best ethical will story in your experience?" on a questionnaire sent out by the author to 80 practitioners who were listed as using ethical wills in their practices on the web site [www.ethicalwill.com](http://www.ethicalwill.com).

<sup>2</sup> Susan Turnbull, *The Wealth of Your Life*, 2 (rev. ed 2007).

<sup>3</sup> JACK REIMER & NATHANIAL STAMPFER, ETHICAL WILLS, A MODERN JEWISH TREASURY 131 (1983).

<sup>4</sup> *Id.* at 209.

<sup>5</sup> *Genesis* 49:1 - 28.

<sup>6</sup> *Deuteronomy* 31:1 - 33:29; *Joshua* 24:1-28.

<sup>7</sup> *1 Kings* 2:2-9.

Although Biblical ethical wills were in the mode of "Now gather around, children, because I have something to tell you before I leave this earth," modern ethical wills are almost always written (and occasionally video taped). Modern ethical wills are usually found in one or more letters written to the family and kept with traditional wills.

Consider the following introductory statement to an ethical will from a New England businessman, handwritten on sheets of business stationery in 1950, to his family:

"Dear Children:

Somewhere among these papers is a will made out by a lawyer. Its purpose is to dispose of any material things which I may possess at the time of my departure from this world to the unknown adventure beyond. I hope its terms will cause no ill-will among you. It seemed sensible when I made it. After all, it refers only to material things which we enjoy only temporarily.

I am more concerned with having you inherit something that is vastly more important..."<sup>9</sup>

### III. Topics Covered in Ethical Wills

While an ethical will can contain anything the writer desires, there are certain themes that seem to occur over and over in many ethical wills. Spiritual leaders advise against saying anything negative in an ethical will, although some testators nevertheless do so. One woman, incorporating her ethical will into her traditional will, noted she was not leaving anything to her husband because "he always made me pay for my half of the dinner every time we went out to eat."

Aside from that petty observance on the part of the wife who was going to get even, there are thousands of examples of ethical wills that would move anyone reading them to the point of tears. One written from Jewish parents on June 6, 1944 (D-Day) to their sons in America before dying at the hand of the Germans would touch even the hardest heart:

"Actually, it is not difficult for me to die or for Papa either. What is very

hard, infinitely hard, is the fact that your young brother Schmuell will die when we do, and he is such a wonderful boy.

Our greatest consolation and good fortune is that you are not here. But, dear children, don't take foolish things to heart. Be happy, contented people; be good human beings and loyal sons of your oppressed Nation. Never abandon your land or your people. Fight for freedom and social justice.... Know how to appreciate your good fortune and use it not for yourselves alone but for others both near and distant.... And don't mourn for us with tears and words but rather with deeds. We were not useless here; in any way we could, we tried to make things easier for those around us..."<sup>10</sup>

Some of the most common themes in ethical wills are exhortations to care for the community, expressions of love to the family, caring for loved ones and pets, statements of faith and beliefs, gratitude, and exhortation and encouragement to the family.

#### A. Caring for Communities

Abraham Ellis, a highly respected businessman and philanthropist in Philadelphia, Pennsylvania, incorporated the following into his ethical will:

"Giving to charity is only doing what is just and right. We do not deserve any great praise if, because we have more, we give to those who have less. We are simply doing what is right and just. The possessions we own today were owned by someone else before we were born and will be owned by someone else after we are gone. We are only tenants, trustees, stewards of whatever we possess. Thus, we must use our wealth with a sense of responsibility toward others...."<sup>11</sup>

A man should provide for the next generation materially...but he must provide for them spiritually as well; he must seek to make their way in life easier by showing them where the

<sup>9</sup> REIMER & STAMPFER, *supra* note 3, at 161.

<sup>10</sup> From questionnaire sent to 80 practitioners by author (*see* note 1).

<sup>11</sup> REIMER & STAMPFER, *supra* note 3, at 85-87.

<sup>12</sup> *Id.* at 198.

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path is to be found which will guide them through the forest of daily living where it is so easy to lose both body and soul."<sup>12</sup>

Another parent used a lovely metaphor to communicate his belief:

"I honestly feel that if one reaches the stage of where he has provided fully for his family and himself, the balance does not belong to him. It is a lend/lease from the Almighty to distribute to charity. If I survive, I will try to spend the rest of my life seeking out avenues of worthwhile charities..."<sup>13</sup>

Pinhas Rutenberg, a man who bequeathed his estate to benefit youth programs, provided the following explanation in his traditional will:

"Our youth, the hope of our future, given its proper education, is the assurance of our continuity. The basis of its proper education are: rootedness, wisdom and knowledge, unity and brotherhood, earnestness and loyalty. To the education of youth in this spirit I dedicate the income of all my holdings, which has been and will be conveyed annually to the Pinhas Rutenberg Trust."<sup>14</sup>

George Washington, first President of the United States, expressed his desire to care for the community in his traditional will by assigning all monetary rewards for services he rendered during the Revolution toward the endowment of a university to be established within the limits of the District of Columbia. President Washington included in his traditional will the following:

"That as it has always been a source of serious regret with me to see the youth of these United States sent to foreign countries for the purpose of education, often before their minds were formed or they had imbibed any

adequate ideas of the happiness of their own... For these reasons, it has been my ardent wish to see a plan devised on a liberal scale which would have a tendency to spread systematic ideas through all parts of this rising empire..."<sup>15</sup>

Johns Hopkins, American financier and philanthropist, set forth provisions for the establishment of the Johns Hopkins University and Hospital in great detail in his traditional will. He stipulated that the hospital should be not only for the whites but also for the "sick, poor, colored people." His will also included funds for the building for the reception and care of colored orphans and destitute children. Mr. Hopkins died in 1873 and left \$7.5 million (an astounding sum at that time) to these two institutions.<sup>16</sup>

Edwin Forrest, a highly successful actor who died in 1872, in his traditional will provided for members of his own profession by leaving the bulk of his large estate in the hands of trustees "for the support and maintenance of actors and actresses decayed by age or disabled by infirmity." The home he established for members of his profession who did not do as well as he did was to contain his library, be "neat and pleasant," and provide a theatre for private exhibitions and professional culture. These things were intended to promote health and happiness of the "inmates." Provisions were made for the reading of Shakespeare and the Declaration of Independence on the 4th of July. He concludes by saying "God has favored my efforts and given me great success, and I would make my fortune the means to elevate the education of others and promote their success and to alleviate their sufferings and smooth the pillows of the unfortunate, in sickness or other disability of the decay of declining years."<sup>17</sup>

The will of Augustus Caesar, a three-scroll treatise read in 13 A.D., included a collection of instructions to his successor, Tiberius, and to the Republic to maintain both the splendor and tranquility of the Roman Empire. Among other counsels, he advised choosing only wise, discrete, and virtuous people for the administration of every department of the government, and noted it was dangerous to confide to any single person the entire authority because the power of the monarch might degenerate into tyranny. He recommended that those who followed him not preoccupy themselves about extending the limits of the

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 171.

<sup>14</sup> *Id.* at 113.

<sup>15</sup> VIRGIL M. HARRIS, ANCIENT, CURIOUS AND FAMOUS WILLS

442 (1911).

<sup>16</sup> *Id.* at 387.

<sup>17</sup> *Id.* at 365-68.

empire but, rather apply themselves to the maintenance and good government of what they already held.<sup>18</sup>

### B. Expressions of Love and Care for Family and Other Loved Ones

In some ethical wills, parents encourage the children to stick together through thick and thin and support one another whatever the need. For example,

“Also, my sons, stand at one another’s side in an hour of need.... Support a needy brother with good advice as well as practical aid. This matter is an obligation and takes precedence over all other charities; for so our sages, may their memory be for a blessing, said: Whichever of the following expressions precedes the other in the Bible takes precedence also in observance, “to thy brother; to thy poor; and to the needy and the land.”...<sup>19</sup>

and:

“My prayer to my children, take care of your mother, beautify her old age, sweeten her bitter life, heal her broken heart; do not weep for me—on the contrary, remember with joy; and the main thing—live together in peace, bear no hatred for each other, help one another in bad times, think on occasion of other members of the family, pity the poor....”<sup>20</sup>

In one ancient will, the will of Eudamids of Corinth, a philosophical individual, the following unusual bequest was made:

“I bequeath to Arethaeus my mother to support; and I pray him to have a tender care of her in her declining years. I bequeath to Charixenes my daughter to marry, and to give her to that end the best portion he can afford. Should either happen to die, I beg the other to undertake both charges.”

Amazingly, Charixenes survived Eudamids by only five days, and Arethaeus acted in conformity with the will and assumed not only the support of

Eudamids’ mother, but in due time, found a suitable husband for his daughter.<sup>21</sup>

Many people provide for their pets in their wills. One such individual, a Mr. Berkeley of Knightsbridge, England, who died in 1805, left £25 to four of his dogs. When he told a friend what he had done and was criticized for not using the money toward the relief of his fellow man, he replied: “Men have attempted my life whereas it was to a dog that I owe that I am alive.”<sup>22</sup> On his deathbed, he asked that his dogs be brought to him, and as they showered their affections on him, with his last bit of strength he reached out to embrace them and died in their paws.

Some testators show off their poetic flair in the ethical portion of their wills:

“The remainder of my will is vested in the affection of my dear wife, with whom I leave it, in the good hope of resuming it more pure, bright and precious, where neither moth nor rust doth corrupt, and where there are...unspeakable riches of glory and immortality.”<sup>23</sup>

One mother told her sons, as part of her traditional will, that she had saved her money so that they would not be destitute in their old age:

“Therefore I have saved for one purpose, that if either, or both of you, live to be old and unable to work, you may find a home and pay so much to be kept the rest of your lives. There will be enough left to clothe you. All I am possessed of I want put out at interest. I do not want one cent of it spent otherwise, excepting what it takes to pay my funeral expenses. Remember, dear boys, this is a cold world and I would long since have been glad to lay down my burden had it not been for my love for you.”<sup>24</sup>

### C. Statement of Beliefs

Statement of beliefs found in ethical wills can be statements of religious beliefs, statements of attitude about death, or about how the funeral should be conducted, and statements about values, feelings, and how life should be lived.

<sup>18</sup> *Id.* at 19.

<sup>19</sup> REIMER & STAMPFER, *supra* note 3, at 142.

<sup>20</sup> *Id.* at 151-152.

<sup>21</sup> HARRIS, *supra* note 15, at 11 - 12.

<sup>22</sup> *Id.* at 99.

<sup>23</sup> *Id.* at 83.

<sup>24</sup> *Id.* at 82.

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Two beautiful examples of beliefs about death include:

"I should like my death to be by divine kiss. When I think about my own dying, the thought does not arouse in me any feeling of sorrow, morbidity or sadness because this entire process of putting off one and putting on another aspect of existence is natural and normal. The time has come to conclude all the affairs of my life, my mundane activities; and I stand at the threshold of a new period and of a new world far beyond me on the other side of awareness. The roles I have filled during my lifetime are satisfying, and that I did not spend my years for naught, and in that all my communal endeavors were for the benefit of my people and the good of our beloved land."<sup>25</sup>

and:

"Whensoever death shall come, it will find me unafraid. I pray that it may find me ready. I have ever tried so to live that I might be prepared to meet my God. I love life and the exquisite gifts of work, of play, of joy, of chastening, of light, of laughter, and most of all, of love that it has brought me. I am, and have always been, deeply grateful for the abundance of the life with which I have been blessed. Life has been inexpressibly sweet to me. Yet come death when it may, I yield up life as gladly, as gratefully, as I have accepted its gift for the while... It would be selfish to ask for more."<sup>26</sup>

Some muse on the meaning of life in their ethical wills. A young man killed in Israel's War of Independence at the age of 20 wrote:

"Lately I've been thinking about what the goal of life should be. At best man's life is short...what then shall we do during this time? We can reach

either of two conclusions. The first is that since life is so short we should enjoy it as much as possible. The second is that precisely because life is short and no one can completely enjoy it...therefore we should dedicate life to a sacred and worthy goal, to sacrifice it for something which will be valued above life...it seems I'm slowly coming to the conclusion that life by itself is worth little unless it serves something greater than itself."<sup>27</sup>

Many use ethical wills to express their faith in God:

"Only by having faith in God will you be able to overcome everything in the future. Children now your true friends will be of help to you; having no mother, no father, you must always remain united; in the words of King David, 'How good and how pleasant it is for brethren to dwell together in unity.'"<sup>28</sup>

King Henry VIII of England expressed in his will a desire that:

"Our executors and supervisors and executors of our testament have a special respect in our funeral to the laud and praising of God, the health of our soul and somewhat to our dignity royal, but avoiding damnable pomp and outrageous superfluities."<sup>29</sup>

After bequests to family and friends, Patrick Henry wrote in his will:

"This is all the inheritance I can give to my dear family. The religion of Christ can give them one which will make them rich indeed."<sup>30</sup>

Jane Lathrop Stanford, who together with her husband, Leland Stanford, founded Stanford University, by her will dated in 1903 left the rest, residue, and remainder of her property and estate to the Board of Trustees of Stanford University as founded by herself

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<sup>25</sup> REIMER & STAMPFER, *supra* note 3, at 111.

<sup>26</sup> *Id.* at 127.

<sup>27</sup> *Id.* at 125.

<sup>28</sup> *Id.* at 158.

<sup>29</sup> HARRIS, *supra* note 15, at 37.

<sup>30</sup> *Id.* at 384.

and her husband in 1885. She then concludes with this beautiful expression of her faith in God and her belief in the future life:

"I wish publicly to acknowledge my great gratitude to an all-wise, loving heavenly Father for His sustaining grace for the past ten years of bereavement, trial and disappointments. In all, I have leaned hard on this great Comforter and have found rest and peace. I have no doubt about the future life beyond this; a fair land where no more tears will be shed and no partings had."<sup>31</sup>

Some express their belief in what is really important. For example:

"More than material possessions, I hope I will have left each of you; an optimistic spirit, a fervent enthusiasm for life, a sensitivity for nature and esthetics, a closeness and regard for one another, a sense of responsibility and concern for others and a sense of worthwhileness about yourselves. I wish your life may be as good and satisfying as mine has been and thank each of you for having contributed to it. Lovingly, Dad."<sup>32</sup>

Or consider this admonition to get a good education:

"Take care that your descendants get a good education. Don't mind the cost because education is the safest investment. The main thing you want to instill in your children is truthfulness. The best pillow is a clear conscience."<sup>33</sup>

#### D. Gratitude

Some of the most beautiful provisions of ethical wills involve statements of gratitude. A perennial favorite is the "Ethical Will and Testament to My Grandchildren and Children Everywhere" of Sam Levenson, teacher, humorist and author:

"I leave you my unpaid debts. They are my greatest assets. Everything I own—I owe:

- 1) To America I owe a debt for the opportunity it gave me to be free and to be me.
- 2) To my parents, I owe America. They gave it to me and I leave it to you. Take good care of it.
- 3) To the Biblical tradition, I owe the belief that man does not live by bread alone, nor does he live alone at all. This is also the democratic tradition. Preserve it.
- 4) To the six million of my people and to the thirty million other humans who died because of man's inhumanity to man, I owe a vow that it must never happen again.
- 5) I leave you not everything I never had but everything I had in my lifetime: a good family, respect for learning, compassion for my fellow man and some four letter words for all occasions; words like 'help', 'give', 'care', 'feel', and 'love'.<sup>34</sup>

Another incredible expression of gratitude is found in the will of Robert North of Scarborough, England written in 1765:

"And now having, I hope, made a proper disposition of my lands and money, those pearls of great price in the present esteem of men, let me take this opportunity of expressing my gratitude to the original Grand Proprietor; and here I must direct my praises to that Benign Being who through all the stages of my life hath encompassed me with a profusion of favors, and who by a wonderful and gracious providence hath converted my very misfortunes and disappointments into blessings; nor let me omit, what the business just finished seems more particularly to require of me, to return Him my unfamed thanks who, to all the comforts and conveniences of life,

<sup>31</sup> *Id.* at 428-29.

<sup>32</sup> REIMER & STAMPFER, *supra* note 3, at 180.

<sup>33</sup> *Id.* at 164.

<sup>34</sup> *Id.* at 192.

has super added this also of being useful even in death, by thus enabling me to dispose of a double portion namely out of love to the poor and another of gratitude to my friends.

"My soul feasts itself with ecstatic reflections on that ravishing change when, from the nonsense and folly of an impertinent, vain and wicked world, it shall be summoned to meet its kindred spirits, and admitted into the blissful society of angels and those made perfect; when, instead of sickness, gloominess and sorrow...glory and immortal youth shall be its attendants, and its habitation the palace of the King of Kings; this will be a life worth dying for indeed!... Fired with a view of this transcendent happiness and triumphant hope, these noble privileges of a Christian, how is it possible to forebear crying out 'Oh, Death, why art thou so long in coming? Why tarry the wheels of thy chariot?'"

"To that Supreme Being, whose treasures and goodness are thus infinite and inexhaustible, be all honor and glory forever. Amen."<sup>35</sup>

In another ethical will, the testator wrote:

"There has been no day in which my heart has not leaped with gratitude to God for the joy of life and its fulfillment in the perfect love that has been given to me both as a child and in every moment of my sacred married life. There has never yet dawned the day when I have not been able to give thanks unto God for His goodness, and the day of death shall be but one more such day."<sup>36</sup>

One ethical will called gratitude the "Mayfly of All Virtues."<sup>37</sup> Another provided money so that a sermon could be preached every October in commemoration of the testator being saved from a lion on the coast of Africa in answer to prayer.<sup>38</sup>

John Jay, the first Chief Justice of the United States Supreme Court, who died in 1829, included the following provision in his will:

"Unto Him who is the author and giver of all good, I tender sincere and humble thanks for His manifold and unmerited blessings and especially for our redemption and salvation by His beloved son... His protection has accompanied me through many eventful years, faithfully employed in the service in the service of my Country; and His providence has not only conducted me to this tranquil situation but given me abundant reason to be contented and thankful. Blessed be His holy name. While my children lament my departure, let them recollect that in doing them good, I was only the agent of their Heavenly Father, and that he never withdraws His care and consolations from those who diligently seek Him."<sup>39</sup>

#### E. Exhortation and Encouragement for the Family

Some ethical wills mention gifts or talents of the children and encourage them based on their unique qualities. Here is what one woman wrote to her children and husband:

"Elizabeth, I wish for you happiness and stability. That your feelings fly toward the dream of fulfillment but still be balanced by your keen intelligence is what I hope for you. I hope you remember our times of understanding and wherever I am, I will send whatever healing is possible. I trust the mountain guide sense in you to go to peaks! I'll never see—be there for me.

"Benjamin, I wish that your keen intellectual nature be rounded by that intuition that comes from the artist in you. At thirteen your insight was remarkable. May that become more cultivated as you grow older. I'll live

<sup>35</sup> HARRIS, *supra* note 15, at 201-02.

<sup>36</sup> REIMER & STAMPFER, *supra* note 3, at 145.

<sup>37</sup> *Id.* at 167.

<sup>38</sup> HARRIS, *supra* note 3, at 169.

<sup>39</sup> *Id.* at 395.

for you in the applause of that day, that brightened your face and the applause now for such continued and adventurous and original trailblazing.

"Sandy, should you outlive me, I release you to the memories of those happinesses that endured and survive me. I know you forget all else. I urge you to hold on to your visions but ground them in reality. We will meet again as no quantum in the universe dies but is attracted to others for whom it has charge. If I have outlived you, I go meet you now."<sup>40</sup>

One father wrote to his children collectively:

"The heritage which is yours is a good name and as good an education as I could afford to give. It does not look as if any of you have a disposition to grow rich. Do not be worried about it. Remain strictly honest, truthful, industrious and frugal. Do not speculate. No blessing rests upon it even if it be successful. Throw your whole energy into the pursuance of the calling you have chosen. Serve the Lord and keep Him always before you; toward men be amiable, accommodating and modest, and you will fair well even without riches. My last word to you is: honor your mother. Help her bear her weary widowhood. Leave her undisturbed in the use of this small estate and assist if there should be a want."<sup>41</sup>

#### F. Heritage

Some ethical wills remind the children of their rich heritage; here is an example from a Jewish father to his children:

"To my children: in material things I have seen to it that you will not want. These are the least important things although the lawyer has prepared a will to safeguard them. Remember to be Jews, and the rest will follow as day follows night. Our religion is not

a ritual but a way of life. To us as Jews, life is...its own self-justification;...ritual is only a tool to remind us who we are and of the divine commandments. Jews do not lie, steal, or bear false witness...such things are simply unbecoming for a Jew.

"Never turn away from anyone who comes to you for help. We Jews have seen more suffering than any other people; therefore, we should care more. That which you give away, whether of money or of yourselves, is your only permanent possession.

"Your grandfather taught me that a man should earn his money till the age of forty, enjoy it till fifty, and then give it away, that a man who dies rich is a failure as a human being. I say this because I know that your abilities will make you wealthy. But my real desire is that you be rich in heart and soul."<sup>42</sup>

#### IV. Forms of Ethical Wills

Based on questionnaires completed in response to the author's survey of 80 practitioners, letters to the family, either one letter to the entire family or individual letters to the family, are the most common form of ethical wills. However, ethical wills can take many other forms.

##### A. A Life Well Lived

First is just the very way one lives his or her life. Perhaps this is the best form of all but the most difficult to achieve, simply because no one is perfect. Despite our best intentions, we slip and do things we shouldn't do.

One individual who apparently did achieve this was Lundy H. Harris. When he died in 1900, Clorra Harris was appointed his administratrix. She received a letter from the local probate court telling her she had to furnish an inventory of his estate within 10 days. She wrote back to the court:

"It is not with the intention of showing egregious sentimentality that I say I find it impossible to give you a complete and satisfactory inventory of the

<sup>40</sup> REIMER & STAMPFER, *supra* note 3, at 177.

<sup>41</sup> *Id.* at 134.

<sup>42</sup> *Id.* at 188.

Estate of Lundy H. Harris. The part that I give is so small that it is insignificant and misleading.

"At the time of his death, he had \$2.35 in his purse, \$116.00 in the Union Bank and Trust Company of this city, about four hundred books, and the coffin in which he was buried... The major part of his Estate was invested in heavenly securities, the values of which have been variously declared in this world and highly taxed by the various churches but never realized. He invested every year...in charity so secretly, so inoffensively, and so honestly that he was never suspected of being a philanthropist, and never praised for his generosity. He pensioned an old outcast woman in Barton County, an old soldier in Nashville; he sent two little negro boys to school and supported for three years a family of five who could not support themselves. He contributed anonymously to every charity in Nashville and every old maid interested in a benevolent object received his aid, every child he knew exacted and received penny tolls from his tenderness. He supported the heart of every man who confided in him with encouragement and affection. He...was ever recognized as one of the largest bond holders in heaven.

"You can see how large this Estate was and how difficult it would be to compute it's [sic] value so as to furnish you the inventory you require for record on your books."<sup>43</sup>

#### B. Part of Traditional Will

Many ethical wills are woven into traditional wills as we have seen, for example, in the traditional wills of George Washington, Patrick Henry, and John Jay. This may be particularly true with charitable bequests as the testator or testatrix provides thinking behind the bequest or goals with respect to the bequest

to the desired charitable organization. So called "incentive trust documents" also include types of provisions that could be considered part of ethical wills because they set forth values of the trustor and indicate to the children what type of behavior is expected and will be rewarded.

#### C. Verbal

Ancient ethical wills *were* verbal exhortations to the family or community as the loved one was about to depart. Even today, this occurs. It may not, however, actually occur on the death bed of the individual making the verbal ethical will.

In his 2007 commencement address to Harvard University graduates, Bill Gates, founder of Microsoft, told this story:

"My mother, who was filled with pride the day I was admitted here, never stopped pressing me to do more for others. A few days before my wedding, she hosted a bridal event, at which she read aloud a letter about marriage that she had written to Melinda. My mother was very ill with cancer at the time but she saw one more opportunity to deliver her message and at the close of the letter she said: 'From those to whom much is given, much is expected.'"<sup>44</sup>

Had Bill Gates's mother not pressed her message on her son and his bride, would they have become the philanthropists they are today?

#### D. Completing Questionnaires

There are at least three good books that provide questions to consider and places to answer that, when completed, can become an ethical will. If any child received any of these books completed by a parent, it would be quite special. One is *The Wealth of Your Life, A Step-by-Step Guide for Creating Your Ethical Will*, by Susan B. Turnbull.<sup>45</sup> Another is *Grandmother's Memories To Her Grandchild*, by Candy Paull and Thomas Kinkade.<sup>46</sup> The third is *My Last Wishes*, by Joy Meredith.<sup>47</sup> My mother actually bought the Paull/Kinkade book and filled out a little bit of it. Even the part that she filled out means a great deal to us, and we learned things about her we did not previously know.

In addition to the three books mentioned, there are several books that guide people through the process

<sup>43</sup> HARRIS, *supra* note 15, at 227.

<sup>44</sup> Bill Gates's Commencement Address to the Harvard University Class of 2007 can be found at <http://www.memex.haughtons.org/archives/2007/07/18/4227>.

<sup>45</sup> 2005.

<sup>46</sup> 1999.

<sup>47</sup> 2007.

of writing ethical wills.<sup>48</sup> Attached as Exhibit B is a list of questions that could be used to create an ethical will.

#### E. Personal Interviews

The best example of the posthumous personal interview/ethical will is the recent best seller *Tuesdays with Morrie* by Mitch Albom.<sup>49</sup> Through weekly meetings, Mitch, a professional writer, interviews his old professor, Morrie Schwartz. Morrie has been diagnosed with ALS and is slowly dying. Morrie was always Mitch's favorite professor in college, and although he had been away from Morrie for years, a chance incident brought Mitch back into Morrie's life. He spent many mornings with Morrie, talking with him about what was really important in life. The result was a book that topped the best-seller list for weeks.

#### F. Last-Minute Communications

One true story involved a man who was in intensive care in the hospital. He had only one daughter but they were estranged. However, at this particular point in time, the father knew that his condition was quite serious and he wanted to ask her for forgiveness before he died. The nurse, who wrote the article, came into his room to see if he needed anything. He asked her for a notepad and a pencil. He also asked her to call his daughter and let her know how seriously ill he was. She provided the tablet and pencil and went back to the nurse's station to place the call. The daughter, not even knowing her father had been hospitalized, was truly concerned. She told the nurse she would be right over as quickly as she could get there. When the daughter arrived, the nurse escorted her to the father's room, but in the interval between the call and the daughter's arrival, the father had slipped away. There on the table beside his bed was the notepad with this note scribbled to the daughter:

"My dearest Janie, I forgive you. I pray you will also forgive me. I know that you love me. I love you too, Daddy."<sup>50</sup>

Can you imagine how much that note meant to his daughter?

#### G. The Funeral Service Itself

Some clients actually pre-plan their own funeral services. There is a questionnaire, attached as Exhibit A to this article, used with permission by a funeral home

director, that can be completed by those who wish to plan their funeral services. The author has one client who has planned out every detail: hymns to be sung, message to be preached, participants, pall bearers, everything just the way he wants it. Of course the fact that he planned his own service will allow him, after he is gone, to communicate his thoughts and values to those who attend.

Lyndon Johnson asked Billy Graham to preach at his funeral and told Graham exactly what he wanted him to say. He knew the world listened when a President died:

'Don't use any notes,' Johnson told Graham, 'and no fancy eulogizing either. I want you to look into those cameras and just tell 'em what Christianity is all about. Tell 'em how they can be sure they can go to heaven. I want you to preach the Gospel. And just one more thing. Somewhere in there, you tell 'em a few things I did for the country,'<sup>51</sup>

#### H. Video Tape

There are many professional video tape businesses which will come and video tape anything anyone wants to pay for. In addition, there are some with a special mission to videotape ethical wills, such as the Jewish Ethical Wills Society in Boca Raton, Florida. Headed by Stan Halpern and formed in 1998, it is a nonprofit organization that does not charge for making the video tapes. This allows individuals of modest means to preserve their values and life lessons for the benefit of their family. Rabbi Jack Reimer, author of books and articles on ethical wills, says, "that [t]he most important thing we leave behind when we die isn't our possessions; it's our legacy of values and beliefs."<sup>52</sup>

Halpern also tapes lectures, events, and affairs of the Jewish community in the Boca Raton area and contributes them to the Florida Atlantic University's Judaic Library. Robert Miller, the Library's director, notes that "[i]t (the ethical will) causes you to reflect on your life, and that's something very valuable to leave for your children."<sup>53</sup>

Astronaut Rick Husband, mission commander of the ill-fated Columbia space shuttle, video taped

<sup>48</sup> Books on ethical wills include VARRY K. BAINES, *ETHICAL WILLS: PUTTING YOUR VALUES ON PAPER* (2d ed. 2006) (see also Dr. Baines' website at [www.ethicalwill.com](http://www.ethicalwill.com) with other resources for preparing ethical wills); RACHAEL FREED, *WOMEN'S LIVES, WOMEN'S LEGACIES: PASSING YOUR BELIEFS & BLESSINGS TO FUTURE GENERATIONS* (2003); JACK REIMER & NATHANIAL STAMPFER, *SO THAT YOUR VALUES LIVE ON* (1999). See also [www.ethicalwill.com](http://www.ethicalwill.com).

<sup>49</sup> 1997.

<sup>50</sup> Sue Monk Kidd, *Don't Let it End This Way*, *GUIDEPOSTS MAGAZINE*, November 2006, at 80.

<sup>51</sup> Nancy Gibbs & Michael Duffy, *The Pastor in Chief*, *Time*, August 20, 2007, at 43.

<sup>52</sup> Marian Dozice, *Generational Chronicles*, *BOCA RATON COMMUNITY NEWS*, June 8, 2001 at 1.

<sup>53</sup> *Id.*

devotionals for his young son and daughter for each day he was to be gone on the trip. When the shuttle exploded and Rick never came home, those video tapes, which he left with his children, became precious remembrances of what their father felt was really important in life.<sup>54</sup> And even if Rick had come home, the videos would likely have been treasured by the children well into adulthood.

## V. Practitioners' Experience With Ethical Wills

From the website [www.ethicalwill.com](http://www.ethicalwill.com) the author located and wrote to 80 practitioners who were listed as using ethical wills in their practice and sent questionnaires to them. These practitioners include attorneys, financial advisors, and representatives of charitable organizations, such as the Jewish Ethical Will Society and hospice organizations.

Amazingly, 25 of those contacted responded to a two-page questionnaire. The first question asked: On a scale of one to 10, how receptive were the clients or users of your services to ethical wills? The responses were interesting. One person said he only mentioned ethical wills to "appropriate" clients, and for that group, the level of receptiveness was a 10. For others, he said, there was a drop off. Several participants reported a high level of interest (9 or 10) while others reported a lower level (3 to 4). Perhaps the inappropriate for the client factor drags the number down for those who lumped all the clients into one category.

In asking how the professionals introduced their clients to the idea of ethical wills, the responses were varied and interesting. One person said that she called it a "personal legacy statement." She said that she asked questions to pull out information and then took the information and created the legacy statement from that. She used a website, [www.theadvisorsproject.com](http://www.theadvisorsproject.com). This practitioner was unusual in that she actually created the ethical will (excuse me, personal legacy statement) for her clients.

Others reported informing clients that such a document could exist and encouraging clients to do it. Some have work shops, for example, the Jewish Ethical Wills Seminar, and some refer clients to websites, such as [www.ethicalwill.com](http://www.ethicalwill.com). Some reported offering samples to their clients. One individual conducted a three-hour workshop on how to write an ethical will. Another said he talked to clients about how traditional estate plans are part of a much bigger endeavor to create a legacy. Another said she discussed problems that

might occur if the family didn't understand the client's intentions. Several individuals reported giving clients sample ethical wills to look at, and one person even gives his clients a book written by Dr. Barry Baines, *Ethical Wills: Putting Your Values on Paper*.<sup>55</sup> Another professional provides his clients with a list of questions to answer such as:

- "If you had advice for your children or grand children, what would it be?" and
- "What lessons have you learned in life?"

Another person said he gave his clients a one-page summary called "A Primer on Ethical Wills."

The next major question asked of the professionals involved topics their clients addressed most often in ethical wills. The number one response was "What I Consider Important in Life." Second and third were "What I Have Learned in My Life that I Want My Loved Ones to Know" and "Statements of Love and Affection for the Family." Next came "Words of Wisdom to Pass On," then "Statements of Religious Beliefs" and "What I Hope You Do Before and After I Die."

Other things that were not so important but that some clients did discuss were explanations about decisions in the estate plan, such as philanthropy, uneven distribution to heirs, and so forth), personal histories, and people, pets and organizations to support.

In asking what form the ethical will typically took, 53% of those who responded reported that one letter to the entire family was most common; 21% said that individual letters to family members was most common; 11% said that ethical will provisions incorporated into the traditional will was most common; 11% said video taping was most common; and 5% said the audio tape was most common.

In asking "What made you decide to encourage your clients to do ethical wills," responses included:

- "It can minimize post-mortem litigation."
- "It is tremendously satisfying."
- "It feeds that part of me that was originally drawn to trusts and estates work."
- "It is a nice service to offer and gets them thinking and motivated to complete their estate plan."
- "It seems like a way people can begin to tell their story."
- "Personal value to me."
- "Seemed like a good fit for most of my clients who give back to the community."
- "I have been a family wealth advisor for twenty-five years. At several estate settlement conferences, after the terms of the will were read, the

<sup>54</sup> Rick Husband's story can be found online at [http://www.moriel.org/notice/rick\\_husband\\_astronaut.htm](http://www.moriel.org/notice/rick_husband_astronaut.htm).

<sup>55</sup> 2006.

- children said 'That's it? Didn't Dad or Mom leave us anything besides money and stuff?'"
- "It is consistent with my view of what estate planning is intended to accomplish."
  - "I thought it would set me apart from other lawyers."
  - "Good way to touch the clients and for them to realize it's not just about the documents."
  - "When I first became interested in the importance of looking at values and doing estate planning, I learned that values conversations are critical for any type of philanthropic gift."
  - "I felt that ethical wills set the theme for the estate planning process. In addition, they provide an incredible gift for an individual's family members after they are gone."
  - "I consider myself to be a holistic estate planner and thought the ethical will component was critical."
  - "Hearing my father's audio tape."
  - "We promote value based estate planning; it's a natural extension."
  - "I thought they were the most beautiful, sensible documents anyone could create."

And finally from the practitioners, in asking for the best ethical will story in their experience, I will share four (in addition to the one at the beginning of this article):

1. "The ethical will I wrote for my daughter and wife was the best ethical will story in my experience. The process made me ever more appreciative of them and aware that life is a minute by minute gift."
2. "A client lost his mother from cancer when he was young. She wrote all of her children letters to be opened on their eighteenth birthdays. She told them what her belief system was and what she expected from them. He wanted to do the same for his grandchildren."

3. "A dysfunctional family was brought back together through the parent's letter. It pushed the siblings to talk to each other and now they are all very close and loving. It was a wonderful present."
4. "A wealthy father died. He had not been able to verbally express affection to his children, but he did so in his ethical will letter. To see his adult children exclaim, 'I never knew Dad loved me like this!' and 'I never knew I was valued by Dad!' reinforced to me the value of ethical wills."

As is always true, perhaps the greatest gift is to the writer. One practitioner noted:

"I have many wonderful ethical will stories but the best part is the reward the process provides the writer: reflection, renewed sense of self and peace of mind."

## VI. Conclusion

Ethical wills can be a wonderful gift both to the writer and to the recipient. For the writer, being able bequeath concepts, values, and aspirations so that children and grandchildren can partake helps achieve a bit of immortality.

For the recipient, to have a letter from a parent or grandparent or other loved one after that person is gone, can provide consolation, a sense that the loved one is still with the child or grandchild, and great encouragement to continue on despite the great loss experienced. Estate planners are fortunate to deal mostly with the cream of the crop of society. Our successful clients usually give back to the community and would be candidates for ethical wills. Should we not at least make them aware of this opportunity and make it as easy as possible for them to provide this valuable, inspirational document for future generations? After all, it's not just about the money.

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## EXHIBIT A

These are my wishes concerning my funeral:

### I. Viewing

A. That there be no public viewing of the body.

or

B. That there be a public viewing of the body.

### II. Location of Service

A. That the service be held at \_\_\_\_\_ with the body present.

or

B. That the service be held at \_\_\_\_\_ some time after burial or cremation.

### III. Instructions for Service

A. That the following hymns/songs be sung:

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B. That the following Scripture or other writings be read:

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C. Other Instructions concerning the service:

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D. That the following preacher(s), rabbi(s) or other person(s) conduct the service:

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**IV. Burial or Cremation**

A. That internment be in \_\_\_\_\_

The Deed for the cemetery can be found in \_\_\_\_\_  
or

B. That I be cremated and that my ashes be: \_\_\_\_\_

**V. Pall Bearers**

A. That the following persons are pall bearers:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**VI. Expenses**

A. That cost be held to a minimum.

And/or

B. Other instructions regarding costs of my funeral:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**VII. Flowers / Contributions**

That in lieu of flowers, family and friends may make contributions to:

\_\_\_\_\_

**VIII. My Agent.**

That \_\_\_\_\_ (name of person(s)) is to have final authority concerning my funeral and has the right to change any of the above arrangements if necessary.

**IX. Other Special Instructions:**

\_\_\_\_\_  
\_\_\_\_\_

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

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## EXHIBIT B

### Questions for Ethical Wills

1. Who do you love that you haven't told?
2. What would you want them to know?
3. Who is the most influential person in your life?
4. Who has taught you the most?
5. What was the lesson they shared?
6. Whom do you admire the most? Why?
7. What is the best thing anyone has ever said to you?
8. What is the best thing anyone has said about you?
9. What is the greatest lesson you've learned?
10. What is your favorite quote or saying?
11. What is the funniest thing that has ever happened to you?
12. What is the most adventurous thing you've ever done?
13. What has been the best day of your life? Describe.
14. What is your greatest accomplishment?
15. What are your biggest regrets?
16. Is there anything you need to confess before you die? Go ahead.
17. What would you have done differently in life?
18. Who have you not forgiven? Why?
19. Do you need to apologize and ask for their forgiveness now?
20. What will you regret in your life if you don't do or say it now?
21. What is your unfulfilled dream?