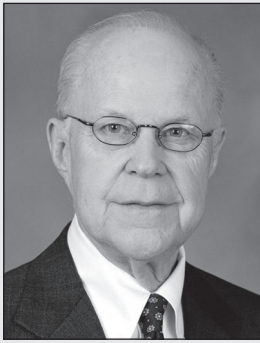


## Your Clients' Other Advisors – Instilling a Passion for Permanent Insurance

Charles W. Heard



**Charles W. Heard** began practicing trusts and estates law in Boston in 1959. Since 1972, he has continued his practice statewide in New Hampshire. He is a graduate of Yale University and the University of Michigan Law School. He currently is serving of counsel at Cleveland, Waters and Bass P.A. Heard has been a fellow of the American College of Trust and Estate Counsel since 1982, and he has been listed in "The Best Lawyers in America." His estate planning practice has always focused on looking first at the availability of permanent insurance and, after that has been determined, other strategies that might be appropriate.

*Cleveland, Waters and Bass PA  
Two Capital Plaza, P.O. Box 1137, Concord, NH 03302  
Phone: 603.224.7761  
E-mail: heardc@cwbp.com*

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I am a trusts and estates attorney who has been in private practice for the last 45 years. I have some thoughts to pass on to you today. They are not profound, but they are very important. They are important to me and I hope to you, also. Estate planning is planning for the future. No one can deny that. And it is impossible adequately to plan for the future if you do not at least consider the potential use of life insurance. I am going to be talking about the two principal uses of permanent life insurance: life insurance as an estate preservation technique and life insurance as a wealth creation opportunity. Let's start with my perspective.

### MY PERSPECTIVE

In my years of practice I have seen many different techniques employed to preserve and to create wealth. I have seen them play out from inception to finish. Some of these techniques work pretty well. Others have not proved to be so successful. Most of them are designed by trusts and estates attorneys to take advantage of avenues through the tax law which allow federal estate tax reduction or possibly, in the rare instance, elimination. But there are always uncertainties with the employment of these techniques. Tax laws may change. One can never be exactly sure how much control the older generation may have to give up. Changing tides with the Internal Revenue Service mean that some techniques are going to fall out of favor from time to time. For instance, how much longer will discounted gift transfers be condoned by the Internal Revenue Service? Mistakes can be made in the drafting of the documents. Lack of communication and of the client's understanding of complexities imposed by the techniques may make for mishaps. So, in my book, the success ratio of standard estate planning techniques of sophistication, as they fall in and out of fashion and as they change from time to time, is not always impressive. We do the best we can. We work very hard and with precision, and with pride in our products. But uncertainties of outcome plague us. For instance, how many of you have relied upon Code Sec. 6166, the famous relief provision for farmers and

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small businesses, to save the day? How many advisors have recommended that insurance be dismissed because of the availability of these so-called “relief provisions?” I have never, in all my years of practice, seen them work. We do what we think clients want.

Portfolio managers will have individual preferences. Asset allocation is an important recent articulation of what most people should have been doing all along by way of investing. And, there are uncertainties in the world of finance and investment. I go back to when the federal estate tax exemption was \$60,000. Nobody thought that would ever change. Despite the rising exemptions from the FET with which we are all familiar, every month in my office I see larger checks being written out to the Internal Revenue Service in payment of that tax. Some of these estates are ones that I worked on in the planning stages. I am not happy when I see a check for \$1 or \$2 million, or even higher, being written out by children of a decedent to the Internal Revenue Service in payment of the federal estate tax. And I am seeing a lot of them these days.

And so, the longer I have been in practice the more respect I have gained for the life insurance element. Life insurance is really very easy to understand. It is money. Money is very unambiguous. And quite frankly, plain old, boring vanilla whole life is my favorite product available. It has stood the test of time. European musical instrument makers in the 17<sup>th</sup> century finally decided what the exact measurements of a violin should be. The decision was made that long ago. Changes have been attempted over the years, but they have not been improvements. So today, a modern violin maker, and there are many masters, uses the exact same dimensions as did Stradivarius in the 1600's. To me whole life is analogous to a violin. It does not need messing with.

Why this failure to preserve wealth? Why can't we help to create wealth? What are we being paid to do, if not that? What went wrong? Why has this happened? And that is what I want to talk to you about today. And to do this I want to call your attention, to begin with, to the *critical role* played by the other advisors on the client's estate planning team.

### THE OTHER ADVISORS – CRITICAL ROLES

Usually there will be a cast of characters. To one degree or another each of the advisors has the client's ear when it comes to the client's estate planning. In some cases the influence is vast. Attorneys, accountants, life insurance professionals, financial planners, trust officers, investment portfolio managers. It goes on and on. I have come to the firm conclusion that in most cases a major reason the estate passes to the next generation or beyond at considerably lessened value is the advisors have not done their job properly. The advisors are usually competent, well-meaning, and probably successful professionals. But it is time that somebody call the advisors to account for this slippage in estate valuation which takes place upon death of a wealth owner. Is it not logical to expect that this impetus should probably come from the life insurance professional? I should think so, because the life insurance professional has a product beyond reproach if properly designed.

You must figure out how to spot early in the game an advisor or advisors who are not on the same page with you. You need to identify who is the controlling other advisor, how many of them are supportive to your proposals, and how many are going to be negative. If you don't do this analysis at the inception of a case you are probably going to find that it turns out to be a much more difficult case to close than it would have been had you made an early analysis. Could you close the case without the cooperation and support of the other advisors? Perhaps. But, it would be much, much more difficult. You have just so many working hours in each day, so you better make each one count and not waste time on a case which may turn out to be dimmed from the outset. So, let's talk about who is supportive and who isn't.

### WHO IS SUPPORTIVE?

It is not as easy as you might think to detect whether an advisor is knowledgeable about permanent life insurance. Chances are the answer is that he or she is not. Knowledge may be superficial. Remember that the complexities and intricacies of permanent insurance products are usually not taught in law school, most CPAs are not conversant

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with them, portfolio managers have little interest in such a competing product and the lay community usually has no clue. Just because another advisor seems friendly and affable should not be mistaken for an intricate knowledge of the products that you have to offer. You might try developing certain trap questions such as, "How do you feel about the need for insurance so long as there is ample liquidity in the estate?" To me the greatest conversation stopper in the estate planning process is, "Well there is plenty of liquidity so there is no need for life insurance." This contention cannot be dismissed out of hand. The correct assessment must be explained very carefully to the advisor who is guilty of such a questionable recommendation. A simple but careful explanation of the concept of tax inclusivity versus exclusivity is important. As you know, tax inclusivity refers to a tax computed with the assets which will be used to pay the tax included in the computation. That is, the entire estate is valued, and then a tax is taken out of it. How different from tax exclusivity, where the amount of the gift, for example, is valued and then the tax is computed and paid from other assets. But this is the kind of explanation which generally cannot be given successfully in a group meeting. It requires a one on one primer which you must haul out and walk through with the advisor. And it is very easy for the client to accept such an innocent-sounding maxim as "liquidity is security." It is going to be up to you to correct and stamp out this delusion.

Or there can be red flags to watch for. If the team of advisors is developing at a conference with the client a list of the client's assets and liabilities, how often have you observed that a discussion of existing life insurance usually comes up at the end of the meeting. This should be a clue to you of where the advisor leading the meeting is coming from. I like to see insurance, because it is the only guaranteed product the client owns, addressed as the first item on the agenda. Another red flag can occur when a client, if asked if he or she has life insurance, responds to the effect that there used to be life insurance but it was surrendered upon the favorable sale of the client's business. Which advisor or advisors allowed that to take place? Another red flag to watch for is the atmosphere that prevails when

life insurance is first raised. Do you sense that it is being thought of merely as a death benefit resulting from the payment of a premium? If that is the case, it shows a definite shallowness of understanding, and it is going to be up to you to bring the discussion to a more sophisticated level. If this piece of business has been brought to the table of the other advisors by you, they certainly owe you a duty of support and a serious consideration of your recommendations. In any event, the first step in this process is for you to make a good determination as to who is not with you, who is seemingly impartial, and who is on your side. You must do this.

Now, with respect to those advisors you determine are not on your side, or who at best are impartial, the question is, if they are not supportive to your position, why not?

### **IF NOT SUPPORTIVE, WHY NOT?**

Very possibly there is in fact no real, in-depth, understanding of the intricacies of the product. There may be absolutely no recognition of the amazing flexibility built into a permanent product once that product has been in existence for a number of years.

Perhaps the unsupportive advisor lacks experience and age. Maybe he or she has never had the opportunity to see the product blossom. Maybe he or she has unfortunately bought into the concept that "liquidity is security." It is conceivable that the unsupportive advisor has not carefully thought through the difference between federal estate tax reduction and third party payment of the tax. You simply cannot make assumptions about understanding or knowledge of what you are doing.

Given these reasons, and there may be many more, why there are those in the advisory group who are not on your side, we should turn to the challenge of how to convert these non-supporters into people who are on the same page as you.

### **HOW TO CONVERT THEM**

Let's say there are two or three other advisors. I suggest you set up a meeting with each of them, individually. The meeting should be relatively brief. Every minute should

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count. You must explain exactly what the qualities are of the permanent insurance product or products that you are recommending for this particular client's program and why its qualities and features cannot be duplicated by other strategies. Here is a list of the advantages and features you might choose from, depending on the circumstances of the client's case:

**1. Removal From Transfer Tax System.** Available annual gift tax exclusions will frequently cover the premium paid to the insurance company, particularly if it is paid over a period of years. In other words, there may well be no gift tax or erosion of the gift tax exemption. It is quite likely that the other advisors have not focused on the fact that the money represented by the paid insurance premium is now cleansed of the federal estate tax. In other words, it will come back to the family 100 cents on the dollar. Had the premium not been paid, but rather had the cash been retained by the client, the federal estate tax would claim anywhere from 40% to 50% of that amount. The death benefit will also be free of the federal estate tax if there is no incident of ownership in the insured. You all know how that works through ownership of the contract either by an ILIT or a member, or members, of the next generation in the family. But how many advisors realize that if an irrevocable life insurance trust is the recipient of the death benefit, and there are provisions therein which last during the lives of the grandchildren and perhaps great grandchildren, once again, the assets of the ILIT are free of the transfer tax system for the entire term of that trust. This, of course, is one of the great appeals of Dynasty trusts, which are so frequently used these days.

**2. Dividend Options.** You know what these options are. For purposes of this discussion, I would call your attention particularly to the dividend option which through paid up additions provides the opportunity to increase the death benefit without medical examination. This option is available on mutual company policies and older policies issued by companies which have become stock companies. By the way, it is my understanding that paid up additions on rated policies are applied at standard rates. The older the insured gets, the more appreciative the insured is of

this opportunity. Many advisors think that a face amount policy of \$500,000 has a fixed death benefit in that amount. I can assure you that I have many older clients who are appreciative of this opportunity to acquire paid up additions to the death benefit more than any other feature of their policies.

**3. Premium Offset.** This has been a controversial subject for many years because of abuses that have taken place from time to time, but certainly a client should know that at some point this option will arise, if premiums have been paid in full, to have cash in the policy take over premium payments, in whole or in part. This is often considered, and rightly so, to be one of the most desirable features of flexibility in a permanent life policy.

**4. Values Always Rising.** This is the case with whole life. You know how that works, but are you sure the other advisors know this and why it works this way? Don't make assumptions.

**5. Premium Flexibility Design.** One of the items in this category that people seem to be looking at more and more these days is the opportunity to buy coverage only up until the age of life expectancy, but with an option at that time to continue the coverage. This can have a significant appeal to the client who insists on premium shopping. And, probably, it is not a bad way to go for that particular client.

**6. Premium Financing Strategies.** For larger estates needing more than \$10,000,000 or \$15,000,000 of death benefit, I usually like to see the premium payment considered as a reallocation of assets rather than as an issue of cash flow. I even like the single premium payment in some situations because it is so easy for the client to understand and get a grip on. If this approach, or a variation on the theme such as ten pay, etc., involves gifting consequences, some banks are extending loan arrangements whereby there will not be a gift because the loan is supported by letter of credit arrangements. And then, of course, a margin account, for the aggressive client, can be attractive because loan and interest can just be run up on the books within the legal limit, and the settlement can take place with the brokerage firm out of death benefit. It is a

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situation of nothing ventured, nothing gained. Financing strategies abound on a seemingly endless and increasing basis from year to year.

**7. The Guarantees.** The older the insured gets, the more valuable the guarantees become to the client. At 45 you figure you are not going to die. At 75, with health involvements increasing, the guarantees take on a much greater significance. And the advisors are the ones who will be thanked.

**8. Leveraging of the Money.** Few other techniques can duplicate the attractiveness of this feature of permanent life insurance. I am a great advocate of not saving the exemption from the federal estate tax until death. If you project a federal estate tax of \$1,000,000 and your remaining exemption is \$1,000,000, it is a dollar for dollar savings, after the erosion of future inflation. Why not take that \$1,000,000 remaining exemption and leverage it with permanent insurance so as to create wealth for the family rather than just repay the tax to the family. This is not a complicated matter. Rather, I see it as something which more than likely the other advisors have not focused on because nobody has taken the time to explain it to them. Life insurance professionals have made too many assumptions.

**9. Blending.** I see way too much blending toward term being used by the life insurance professional in order to make the premium palatable to the client. This is as good an example as any of an area where the client needs education about the consequences of this strategy. I am not against it, but it should be carefully explained that the client will be forever grateful for the blend being more toward the whole life end of the spectrum rather than term. In most cases in which I have participated, a skillful agent has been able to find a way of financing the premium, finding unused money, etc. For instance, what about the couple in their late 60s who are merely banking their social security checks which, together, total \$20,000 or more a year? Whatever income is being earned on these deposits is probably being income taxed, and they are not even keeping up with inflation. Here is found money to finance in whole or in part a significant addition to the insurance portfolio. It may be the original "no brainer."

**10. Disability Premium Waiver.** Few clients anticipate disability. But when it happens, the ramifications can be devastating to a family. Seeing is believing, when it comes to disability. When it happens, immediately the death benefit on the life insurance portfolio is looked at. To be able to have it continued with premium payments suspended can be extremely significant for a family's well-being and piece of mind. Has the client thought about this?

**11. Assistance for Financial Downturn.** Do the other advisors really understand the ease with which a loan can be obtained from a cash value policy? That there are no qualification procedures, etc. Do they understand that the rates are competitive? This is such a simple concept that you tend to assume the other advisors have these options in mind. They may not.

**12. Accelerated Death Benefit.** Most newer policies allow for advances to be paid against projected death benefit based on certain circumstances. We are not talking about controversial viatical settlements or life settlements. It is relatively easy to qualify for such benefits. In my observation, insurance professionals seldom point this out to clients. As a sales tool, it is powerful for the client to be aware of. Once again, I frequently have the feeling that life insurance has been presented to the client as a situation where they pay their money and get a specified death benefit. The advisors are selling the client short if the client is not made aware of this type of option.

**13. Exit Strategy – Secondary Market.** To date this is a controversial subject. But I do believe that in time, perhaps with regulation, this will become an item of major attractiveness to potential permanent life insurance purchases. I feel that the days of monopsony are doomed and that the market for the seller of a life product is well on its way to opening up, and I see this as a significant improvement in the climate for life insurance sales.

I am sure that you can think of other unique qualities of your product in addition to the above list. But these surely present more than adequate opportunities for education of the other advisors.

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As mentioned before, more often than not, the other advisors will not be familiar with these unique features of the permanent life contract. They say that if you know nothing about something you probably don't have much interest in that subject. And if you get to know something about that subject, life shows us that more often than not you probably will gain some interest in the knowledge of that subject. I never had much interest in horses until a few years ago when I had occasion to need to gain some knowledge about them. Lo and behold, I found that I became quite interested in horses. A mundane example, perhaps. But, it's perfectly plausible that the attorney or CPA in your advisor group at a particular time just simply does not have much knowledge about life insurance, for many possible reasons. I'll bet that a little education might well go a long way in getting that advisor interested in life insurance. He or she might take pride in becoming quite knowledgeable about life insurance. That advisor might gain a reputation as being knowledgeable in the life insurance field. And, going one step further, it is perfectly possible that he or she, independent of the life insurance professional, could become a proactive advocate of life insurance in the estate planning process. This should be a goal and, believe it or not, gaining knowledge in a specific area can often be fun.

So, do not be deceived by attorneys who may appear to be knowledgeable about insurance products. Even seasoned estate planning attorneys have gaps of knowledge in this area; life insurance may have always been a bit of a mystery product. You have a significant opportunity to convert the other advisors. To do so, you must associate with them.

Many talks and books and articles have been directed at how to form relationships with other advisors. In this presentation I am more concerned about your being able to spot which of the other advisors is in control of the situation. Which are not up to speed on your involvement and your value on the team. Which seem convertible to your way of thinking and which are not. So rather than dwell on relationship I choose to point out that some level of association will probably be necessary.

I would recommend not being reluctant to show enthusiasm for the particular unique features of your products which really do appeal to you not as a life insurance sales professional necessarily, but rather as a professional involved in the world of financial arrangements for individuals and businesses. Genuine enthusiasm shown for simple, easy to understand advantages of certain products for certain clients is sure to make an impression on the other advisors. You are all experts at making appointments with strangers. But these other advisors are not necessarily going to be strangers. I have no reluctance in leaving you to your own devices.

Consider inviting other advisors to your office rather than allowing a protocol to develop of usually going to their offices. Have meetings at your office for two or three attorneys at one time who practice in your area. Seminars may be too time consuming. A brief coffee gathering can do the trick. You could explain only two or three points that you are excited about at a particular get-together.

At my firm, where we have five trusts and estates lawyers, for many years now we have held what we call Boardroom Briefings. These meetings are held in our boardroom and they are for life insurance professionals and financial planners who specialize in life insurance pursuits. It is intended to be an equal footing, free exchange of ideas, suggestions, updates, grievances, you name it, among everybody sitting at that table. This has proved to be immensely valuable in having ongoing working relationships with our close allies in the estate planning field. I would suggest that you consider doing this. You might want to extend the idea so as to have, for instance, four or five attorneys or CPAs, or both, and four or five life insurance professionals involved. The location of the meetings would rotate among the various offices. You might be surprised at the reception you'd get from the other advisors at this kind of approach to engender good relations and profitable cooperation. The goal, of course, is for equal recognition of all members of the estate planning team. With no exceptions. Each is an expert at

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what he or she does. And these areas of expertise should be shared on a frequent and on-going basis.

It is important to separate the wheat from the chaff at an early stage. You have just so many work hours available each day and it would make more sense to move on to other advisors if you feel that you are getting nowhere with a particular advisor or advisors. I have seen a lot of time wasted by life insurance professionals on situations that I could tell would never blossom.

### IS THERE ANOTHER ADVISOR OUT THERE?

Of course there is. It is you. Don't forget yourself. But you might be your own worst impediment. Let me give you a recent example in my practice.

The other day I bumped into a heavy hitter from a major company. We stopped and chatted. I asked him if he had had any recent contact with a mutual client. He indicated that he recently had a call from that client and that the appraisals which the client had been expecting for the current market value of his commercial real estate had come in lower than expected. And in fact, we knew that the client was quite proud of what he saw as the current value being around \$20,000,000. But lo and behold, the appraisals came in at around \$10,000,000.

The client was fully prepared to finance with other assets at least \$10,000,000 of second-to-die whole life to pay the projected federal estate tax on the basis of the \$20,000,000 of real estate. The agent then said that the good news, of course, is that the client will now only need \$5,000,000 of insurance to pay the tax on the commercial real estate. I was somewhat stunned; something did not seem right to me. I was well aware of the prominence in the profession of this very successful life insurance producer. I suggested that I would have preferred to see the coin turned over. Client's family could be kept whole at \$20,000,000 by increasing rather than decreasing the life insurance coverage I would have suggested that the insurance should be increased to \$15,000,000 from \$10,000,000 rather than decreased to \$5,000,000. This would have kept the inheritances intact. The financing of the premium was an easy asset reallocation for the client. So, beware. Be sure that you in your pursuits are on the right side. I honestly think this different approach had not occurred to the agent.

This, of course, speaks to the use of permanent life insurance to *create* wealth, not just to *preserve* it. The guarantees and qualities contained in permanent life products are unique, and they are not available elsewhere. Make sure the other advisors understand this.