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Do They Practice What We Teach?: A Survey of Practitioners and Estate Planning Professors

Wayne M. Gazur
University of Colorado Law School

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DO THEY PRACTICE WHAT WE TEACH?: A SURVEY OF PRACTITIONERS AND ESTATE PLANNING PROFESSORS*

*Wayne M. Gazur***

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** Associate Professor of Law and Business Administration, University of Colorado at Boulder, a joint position between the School of Law and the College of Business and Administration. Preparation of this article was supported by funding from the School of Law and private gift funds from the accounting division of the College of Business and Administration. The author gratefully acknowledges assistance provided by the American Bar Association in supplying mailing lists, in particular Pam H. Schneider, Esq., chair of the Probate and Trust Division of the American Bar Association Real Property, Probate & Trust Law section, and Ms. Susan Marie Schaus of the American Bar Association Real Property, Probate & Trust Law section. The American Bar Association did not review the survey content, and all observations and conclusions are strictly those of the author. None of the conclusions, observations, or opinions are to be attributed in any manner whatsoever to the American Bar Association or the Real Property, Probate & Trust Law section. The author also gratefully acknowledges the research assistance of Constance Tromble, a law student at the University of Colorado School of Law and the comments of Edward Gac, Neil Goff, and Robert Phillips.

The author would like to further note that the questionnaire used for this article included additional questions intended to gather information for another article analyzing the politics surrounding proposals to change the federal wealth transfer system. The second article is entitled "Muddling Along With the Wealth Transfer Tax: A Survey of Practitioners and Law School Professors," and will be published by the ABA Real Property, Probate & Trust Journal.

I. INTRODUCTION

This article presents the results of a 1998 mail survey conducted by the author that was sent to members of the American Bar Association Real Property, Probate and Trust Law section and to law professors teaching in the estate planning area. The principal goal of the survey was to compare the opinions of practitioners with those of law professors concerning the importance of selected estate planning issues and techniques.

As a teacher of Federal Estate and Gift Taxation on a regular basis, and Estate Planning from time to time, I often questioned my approach to the materials. Was I too theoretical, too practical, too detailed?[1] I concluded that one possible measure of the validity

[1] Like most law school courses, the Federal Estate and Gift Taxation course can be pitched in many directions according to the professor's inclinations. In that regard, please excuse the somewhat exaggerated characterization of various pedagogical approaches in the

of my pedagogy would be the relevance of the material to what attorneys utilize in practice.

The relevancy question has been raised before in the much more applied context of continuing legal education for estate planners. In 1993 and 1996, Malcolm A. Moore, a practicing estate planner, and Professor Jeffrey N. Pennell, of Emory University School of Law, published the results of two surveys of registrants of the University of Miami Philip E. Heckerling Institute on Estate Planning.[2] I will, from time to time, refer to these surveys as the "Miami Institute Surveys." These surveys were directed to

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following paragraphs. They somewhat echo Professor Bergin's characterizations of 30 years ago of the tension between the "authentic academic and a trainer of Hessians." Thomas F. Bergin, *The Law Teacher: A Man Divided Against Himself*, 54 VA. L. REV. 637, 638 (1968).

First, there is the social commentary track. If one is largely uninterested in the details that abound in the material, one can treat the course as a survey of the essential concepts, reserving the balance of the time for discussions of class struggle, economic and social policy, transaction costs, disincentives for capital formation, loopholes unabated, better alternatives, and so forth. One justification for this approach is that it is pointless to spend much time on a system, the details of which will be soon forgotten or changed, or which could be repealed in its entirety.

Second, there is the universal Socratic method. If one's strengths or interests lie in abstract legal doctrine and case analysis, one can delve deeply into the wealth of intricate case law. The course can be dominated by rigorous case analysis devoid of context. Professors can follow this approach without knowing or caring much about the estate planning process itself. This approach promises to further develop the students' abilities to reason and read cases, in addition to exposing them to statements of what comprises the substantive law.

Finally, there is the details approach. If one has a strong practice orientation, the course can be viewed as transferring the constantly shifting body of the latest knowledge, even to the level of recent Technical Advice Memoranda. At first blush, it might be asserted that the students would "learn the law" and be better prepared for practice under this approach. However, in my experience that is not true. While many of the students may be quite facile in identifying issues and the currently applicable law, a deep understanding of the logic of the material may be lost amidst all of the numbing detail, the content of which shifts on a daily basis.

This is not a clear-cut matter—there are undoubtedly other approaches to the course beyond these convenient, yet unflattering, stereotypes. For that matter, I incorporate aspects of each of these approaches in my courses. Although the survey questions do not openly address teaching styles, the degree of significance placed on certain issues may be indicative of the nature of a professor's classroom emphasis. Let me state at the outset that I considered, and rejected, asking the professors to identify the casebook that they use. One could infer a lot about a professor's approach by the choice of teaching materials. To avoid creating a "beauty contest" among competing casebooks, I opted not to include that question in the survey.

[2] *See* Malcolm A. Moore and Jeffrey N. Pennell, *Practicing What We Preach: Esoteric or Essential?*, 27 INST. ON EST. PLAN. ¶ 1200 (1993) [hereinafter MIAMI SURVEY I]; *see also* Malcolm A. Moore and Jeffrey N. Pennell, *Survey of the Profession II*, 30 INST. ON EST. PLAN. ¶ 1500 (1996) [hereinafter MIAMI SURVEY II].

practicing attorneys and addressed a number of issues pertinent to practice, including very detailed questions about the use of selected estate planning techniques. The first survey in particular was intended as a "reality check." In the words of Mr. Moore and Professor Pennell:

> [A] question arose whether topics covered at the [University of Miami, Philip E. Heckerling] Institute tended to run toward the elite or esoteric and failed to focus as much as they might on planning that people really need and that estate planners really do in their practices. It was decided that . . . it made sense to produce empirical results to determine the relevance of many concepts.[3]

The inquiry into relevancy by the Miami Institute Surveys prompted me to consider a survey of relevancy in terms of law school educational content, if relevancy to law practice is indeed a factor for law school professors in teaching lawyering skills. A supporting case for that proposition was made in the "MacCrate Commission Report,"[4] issued in 1992. Although appraisals vary,[5] a fair summary of the report is that it exhorts law schools to narrow the distance between theory and practice, emphasizing more practical lawyering skills, such as problem solving, factual investigation, communication, counseling, negotiation, and litigation. The teaching of tax law was not a focus of the report, and invoking the report in connection with the Federal Estate and Gift Taxation course probably takes the report out of its skills and

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[3] MIAMI SURVEY I, *supra* note 2, at ¶ 1200.

[4] Robert MacCrate, Esq. was the chairperson of the American Bar Association Section of Legal Education and Admissions to the Bar, Task Force on Law Schools and the Profession: Narrowing the Gap, which issued its report as *Legal Education and Professional Development—An Educational Continuum* (July 1992) [hereinafter MACCRATE REPORT].

[5] A number of commentators have discussed the MacCrate report. *See, e.g.*, Daniel Gordon, *Does Law Teaching Have Meaning? Teaching Effectiveness, Gauging Alumni Competence, and the MacCrate Report*, 25 FORDHAM URB. L. J. 43 (1997); Graham C. Lilly, *Skills, Values, and Education: The MacCrate Report Finds a Home in Wisconsin*, 80 MARQ. L. REV. 753 (1997); Carrie Menkel-Meadow, *Narrowing the Gap by Narrowing the Field: What's Missing From The MacCrate Report—Of Skills, Legal Science and Being a Human Being*, 69 WASH. L. REV. 593 (1994).

values context.[6] Nevertheless, the report prompted me to question the focus of law professors who teach the Federal Estate and Gift Taxation course in terms of whether that focus is relevant to the practice of law in this area.

I readily acknowledge the objections that can be raised against using the relevance of law school instruction to law practice as a measure of educational effectiveness.[7] It is not difficult to suggest other standards. For example, the success of a legal education could be measured in terms of the demonstrated ability of students to successfully deal with estate planning practice problems. Legal employers would be a demanding and objective judge of the law school graduates in this regard. But while the ultimate "product" reflects substantive knowledge and other skills that can be taught and developed by law schools, it also includes other individual assets such as intellect, temperament, and social skills. Another proxy, bar examinations, are objective but too narrowly focused on substantive skills. Law student teaching evaluations come from individuals who have little or no legal experience on which to base an opinion.[8] Finally, if there is

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[6] We believe that the Task Force's Statement of Skills and Values will permit each law school faculty to evaluate its present curriculum and facilitate its review of the actual skills education components and opportunities, as well as the extent of transmission of professional values. In doing this, we suggest that the faculty ask as to each course, what skills and what values are being taught along with the coverage of a substantive field.

MACCRATE REPORT, *supra* note 4, at 266.

[7] The topic of the relevance of law school teaching to the practice of law has been the grist for many law review articles and essays, and Judge Harry T. Edwards penned one that attracted a lot of attention, particularly among academicians. *See* Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992). Although Judge Edwards advocates more doctrinal education of law students, that would not necessarily entail the presentation of more substantive material. "Doctrinal education, thus defined, is not the delivery of substantive information. Law schools should not seek to provide students a comprehensive knowledge of legal doctrine, for it simply cannot be done." *Id.* at 57. I agree with his assessment that law schools cannot and should not try to transfer all of the substance of the law. However, if we are to use examples of doctrine in teaching students to think and analyze like lawyers, I believe it is preferable to use substantive input that does have some relevance to practice. Notwithstanding the value of history, I believe that we can do better than using the fee tail property cases or the Internal Revenue Code of 1939 for our pedagogy.

[8] *See* Gordon, *supra* note 5 at 44, utilizing a survey of St. Thomas University School of Law alumni to determine their opinions on the value of their law school education from the perspective of practice.

no proven model for linking certain pedagogical methods to a desired result, peer reviews of teaching and teaching materials are reduced to something resembling a critic's subjective view of a theatrical performance.[9]

Let me quickly add that many law professors outside of the clinical areas probably do not see relevancy to practice as an important part of their educational mission. In their view, the professor's role is to teach students to think and analyze. We should impart fundamental principles, but keeping up with the constantly evolving "law" is pointless; law professors are not particularly competent to teach practical areas. Moreover, the academy probably does not attract or reward those with a practice bent. Success, or interest, in the actual practice of law is not an important credential for securing, or succeeding in, most tenure-track teaching positions at law schools that emphasize scholarship.[10] Assuming that some of these claims are true, I tested the proposition that law professors are much different from practicing attorneys in their perspectives of what is or is not important.

So, with a spirit of experimentation and some biases evident from this introduction,[11] I embarked on this survey project. I describe in Part II the survey methodology. In Part III, I discuss the results of background questions, reserving substantive questions for Part IV. In Part V, I offer my modest conclusions.

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[9] Again, I acknowledge that if the premise that relevance matters is faulty, I am subject to the same criticism. Also, in theater, unlike legal education, good acting alone can be a satisfactory result.

[10] However, the survey found a high level of practical experience possessed by the responding professors. *See infra* note 29 and accompanying text.

[11] In case you missed it, see *supra* note 1.

II. THE SURVEY METHODOLOGY

I created two survey instruments, one for practicing attorneys and one for law school professors. These surveys were designed to discover and compare which aspects of estate planning are important to practitioners and professors. The surveys addressed other issues beyond the scope of this article, but the relevant portions of the survey instruments are reproduced in Appendices A and B.

A. Practicing Attorneys

On September 26, 1997, I mailed a test sample to fifty-six Colorado attorneys who identified themselves in the Martindale-Hubbell Law Directory as emphasizing estate planning as part of their practice.[12] The surveys were sent by first-class mail, the address was typed (not a label), and the cover letter was addressed to each recipient. On October 6, 1997, a reminder letter was mailed to each recipient.[13] Of the fifty-six mailed surveys, six were returned as undeliverable. Of the remaining fifty delivered surveys, twenty-four (48%) were completed and returned; response dates ranged from September 30, 1997 through December 2, 1997. I subsequently modified the questionnaire in response to issues raised by the test sample[14] and tried to determine an appropriate sample-size for the final survey.[15]

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[12] As of June 18, 1998, the MARTINDALE-HUBBELL LAW DIRECTORY on CD-ROM identified 453 Colorado lawyers who list estate planning as part of their practice. According to the Colorado Office of Registration for Lawyers, as of April 1998, there were 22,851 lawyers registered to practice in Colorado, 11,837 of whom were in private practice.

[13] The structure of the survey instrument and the mailing procedures were modeled after "The Total Design Method" suggested in a survey treatise. *See* DON A. DILLMAN, MAIL AND TELEPHONE SURVEYS—THE TOTAL DESIGN METHOD, (1978). Strict adherence to "The Total Design Method" would have been costly and somewhat intrusive. For example, it would require additional written reminders and enclosing a replacement questionnaire with the second follow-up letter. On the other hand, the greater the percentage of non-responses, the greater the risk of bias being introduced by those participants who were moved to respond.

[14] For a description of the questions that were added and deleted, see *infra* note 36.

[15] The sample size must be sufficiently large such that probability assumptions underlying sampling theory, such as the central limit theorem, apply. Opinions differ, but a minimum of 30 observations is usually proposed. "There is no common agreement as to what constitutes a 'sufficiently large' sample size. Some statisticians say 30; others go as

For the final survey I considered several sources for identifying estate planning attorneys.[16] Ultimately I settled on membership in estate planning organizations such as the American Bar Association Real Property, Probate and Trust Law section.[17] For the final survey, the American Bar Association Real Property, Probate and Trust Law section created peel-off mailing labels for 1,966 of its members. The 1,966 members were drawn from two groups. First, 864 of them were drawn from memberships of estate planning committees.[18] The assumption was that these individuals represented more actively involved estate planners.[19] Second, the remaining 1,102 members were

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low as 12. . . . As the sample size becomes larger and larger, the distribution of the sample means becomes closer and closer to the bell-shaped normal distribution." DOUGLAS A. LIND & ROBERT D. MASON, BASIC STATISTICS FOR BUSINESS AND ECONOMICS 227 (2d ed. 1997). The researcher would then need to select a desired level of confidence and an acceptable standard error. Since most of the survey questions involve percentages of participants who would use certain techniques, much of the sampled information is in the nature of a proportion. Ideally one would use the sample proportions from the Colorado test sample to predict a sample proportion for the final sample. However, because of the multiple questions, no one proportion prevails. Accordingly, it would be appropriate to use a proportion of 0.50. "So if no estimate of [the estimated proportion based on past experience or a pilot survey] is available, 0.50 should be used." LIND & MASON, at 247. The formula for the sample size would be $n = p(1-p)(z/E)^2$, where p is the estimated proportion, z is the value associated with the degree of confidence selected, and E is the maximum error the researcher will tolerate. *See id.*, at 246-47. I chose a 95% level of confidence and a maximum error of 5%. Solving for n, $n=.50(.50)(1.960/.05)^2$, or 384. The Colorado pilot sample had a 48% response rate, but I cut that rate in half to 25% in estimating the final sample size, due to changes in the mailing methodology. At a 25% response rate, at least 1,536 surveys would be required. At an assumed 20% response rate, at least 1,920 surveys would be required, which was close to the 1,966 ultimately mailed.

[16] The MARTINDALE-HUBBELL LAW DIRECTORY is available on CD-ROM and permits a search by area of practice with other limits, such as state, city, etc. WEST'S LEGAL DIRECTORY is available on the Internet and on Westlaw® and permits searches by major practice areas or keywords. In addition, the DIRECTORY OF ACCREDITED ESTATE PLANNERS published by the National Association of Estate Planners lists 12,000 members, including life underwriters, trust officers, attorneys and CPAs.

[17] The American College of Trust and Estate Counsel was willing to consider my request to distribute the survey at their fall 1997 meeting, but I could not complete the questionnaires in time for the meeting.

[18] The individuals were the membership of committees RP500000-603000. There are about 65 committees in the Real Property, Probate and Trust Law section. For a committee list, see *American Bar Association, Probate and Trust Committees* (visited Oct. 15, 1997) <http://www.abanet.org/rppt/ptcommittees.html>.

[19] Clearly, this approach did not create a pure randomly selected sample. Because membership in the Real Property, Probate and Trust Law section did not guarantee estate planning practice (some members are more real property lawyers than probate and trust lawyers), inclusion of all individuals on the committees was done to ensure that estate planning specialists were certainly included. The remaining 1,102 selections were,

drawn randomly from the general Real Property, Probate and Trust Law pool, excluding, however, law students, government lawyers, judges, public defenders, military lawyers, corporate law department attorneys, American Bar Association staff attorneys, law school faculty, part-time practitioners, and retirees.[20] The goal was to include only attorneys engaged in the full-time private practice of law with some emphasis on estate planning.[21]

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however, randomly drawn. I will not try to justify the non-random inclusion of the committee members on the basis of stratified sampling technique, although that claim could probably be made. "Stratified sampling is commonly used by social scientists because it can lend an extra ingredient of precision to a simple random or systematic sample. When selecting a stratified sample, the researcher divides the population in strata. The strata must be categories of a criterion." ALAN BRYMAN & DUNCAN CRAMER, QUANTITATIVE DATA ANALYSIS FOR SOCIAL SCIENTISTS 101-02 (rev. ed. 1994);

[20] Based on some responses that the author received from retired attorneys and trust officers, it appears that the exclusion filters were not foolproof.

[21] Membership of the Real Property, Probate and Trust Law section at the time this sample was drawn was approximately 30,000 members. The total membership of the American Bar Association was approximately 328,000 members. These statistics were provided to the author in an October 15, 1997 e-mail message from Ms. Stacy Walter of the American Bar Association. The number of individuals employed as lawyers in the United States as of 1996 has been estimated as 880,000. *See* U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES, at 410 (117th ed. 1997). A difficult issue is defining the population or universe that is being sampled. The least problematic approach would be to define the population simply as members of the Real Property, Probate and Trust Law section. One would need to make further assumptions to conclude that the Real Property, Probate and Trust Law section is sufficiently representative of membership of the American Bar Association, practicing estate planners in general, or practicing lawyers in general. The optimistic conclusion would be that members of the Real Property, Probate and Trust Law section are roughly representative of U.S. attorneys in private practice engaged in estate planning. Note the size of the different membership categories. In determining the appropriate size of a random sample, the size of the population is largely irrelevant.

> Contrary to expectations, the size of the sample relative to the size of the population (in other words n/N) is rarely relevant to the issue of a sample's accuracy. This means that the *sampling error* – differences between the sample and the population which are due to sampling – can be reduced by increasing sampling size. However, after a certain level, increases in accuracy tend to tail off as sample size increases, so that greater accuracy becomes economically unacceptable.

BRYMAN & CRAMER, *supra* note 19, at 104. "The precision of a sample statistic does not depend on the size of the population, as long as the population is much larger than the sample." DAVID S. MOORE, STATISTICS: CONCEPTS AND CONTROVERSIES 17 (1979). Population size does, however, play a role in an adjustment for samples that are a substantial percentage, generally five or more percent, of the population being tested. This adjustment is called the "finite-population correction factor." LIND & MASON, *supra* note 15, at 240-41. It might apply to the law professor sample, inasmuch as the complete

The final survey package was mailed on February 3, 1998.[22] A reminder postcard followed approximately ten days later. Both mailings were sent by first-class mail. Of the 1,966 surveys mailed, twenty-three were returned as undeliverable, and 250 recipients (14.50%)[23] completed and returned the survey.[24] Of the explained non-responses, seven recipients declined because they did not practice in the estate planning area, five recipients responded that they had retired, one recipient had passed away, one recipient did not complete the survey due to poor eyesight, one recipient had been included in the earlier Colorado test survey and, therefore, did not complete the final survey, and one recipient objected to the survey and declined to participate.

The much lower response rate on the final sample, as compared with the test sample, was probably due in large part to compromises made in the mailing procedure reflecting cost concerns and the sheer size of the sample. The compromises described in the following paragraph primarily took the individuality out of the mailing.

In the test sample, the addresses were typed on the mailing envelope; in the final sample peel-off labels were used. In the test sample, the cover letters were individually addressed and manually signed by the sender; in the final sample, a "Dear Counselor" salutation was used and the sender's signature was photocopied. In the test sample, the reminder was a personally addressed letter; in the final sample the reminder was a form postcard with a peel-off address label. The test sample was limited to Colorado, and the sender was a professor at a local public university; the final sample was sent to a national audience. Finally, the names drawn randomly from the general membership

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population (all law professors teaching federal estate and gift taxation or estate planning) is so small in number.

[22] The package consisted of a cover letter, the survey questionnaire, and a business reply return envelope.

[23] It is clear that individuals, no matter how noble, do not like to respond to surveys. In the second Miami Institute Survey, the response rate was 238 responses out of 2,000 (11.9%). MIAMI SURVEY II, *supra* note 2, ¶¶ 1500-01 at 15-2, 15-3.

[24] The 14.50% response rate was below the 20% assumed in selecting the size of the sample. *See supra* note 15. Using the formula discussed in that footnote and a 250 person sample size and solving for the maximum allowable error, would yield an error of 6.2%. $250=.50\ (.50)\ (1.96/x)^2$.

of the Real Property, Probate and Trust Law section could have included a number of attorneys practicing in the real property area, as opposed to estates.[25] Because of the potential bias from those who did not respond to the survey questionnaire, I will, from time to time, compare the results of the high response Colorado test sample to the national sample. That is to some degree an undesirable enterprise because the test sample may reflect a regional bias.[26]

B. Law Professor Sample

The practitioner survey was modified for law professor recipients. I purchased mailing lists from the Association of American Law Schools (AALS) of all professors identifying themselves in the AALS Directory of Law Teachers as teaching Estate and Gift Taxation or Estate Planning. The survey package was mailed on February 3, 1998 to all 275 professors on the list, and a reminder postcard was mailed approximately ten days later.

One survey was returned as undeliverable. Two professors declined to respond because they did not teach in the field. One professor had passed away. One professor received two surveys, completing only one.[27] Of the 274 surveys delivered, thirty-seven (13.50%) were completed and returned.[28]

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[25] If I were to redesign the survey, I would select a sample from MARTINDALE-HUBBELL LAW DIRECTORY and WEST'S LEGAL DIRECTORY estate planning specialty designations. *See supra* note 16. I would also mail fewer surveys but would more intensely follow up with the participants, much like the manner of the Colorado pilot survey technique.

[26] For example, if the sample were drawn from a state with significant agricultural activity, this fact would probably skew responses concerning I.R.C. § 2032A (1998)(all "section" references herein, unless otherwise noted, refer to the Internal Revenue Code of 1986 as amended or the Treasury Regulations promulgated thereunder). In Professor Cooper's survey of estate planning techniques, he discovered various regional differences. *See* George Cooper, *A Voluntary Tax? New Perspectives on Sophisticated Estate Tax Avoidance*, 77 COLUM. L. REV. 161, 168 (1977).

[27] The lists were supposed to eliminate double inclusion but this may not have always been the case.

[28] The 13.50% response rate is a percentage of the entire population to be surveyed, *i.e.*, law professors who teach Federal Estate and Gift Taxation or Estate Planning.

III. COMPILATION

The data from the surveys was entered in a personal computer statistical program, the Statistical Package for the Social Sciences 8.0 for Windows. The surveys were entered in the order received, and the responses were assigned numbers on that basis. Responding individuals were instructed not to identify themselves in the survey materials.

The survey included a number of background questions. Several were designed to measure the level of the participant's estate planning knowledge or expertise and were couched in terms of years of practice, years of teaching experience, percentage of practice devoted to estate planning, and number of publications. Two of the questions dealt with general questions of the age and gender of the participant.

A. Years of Estate Planning Experience

Practitioners were asked the following question: "*How many years of estate planning experience do you have?*"

Professors were asked a similar question: "*How many years of estate planning experience in private practice do you have?*"

Years of Practice	Percentages-Practitioners	Percentages-Professors
0-2	0.8%	10.8%
3-5	6.1	27.0
6-10	12.2	16.2
11-20	26.0	18.9
More than 20	54.9	27.0

One could predict that practitioners would have more years of private practice experience because practicing law is their profession. Debunking the common perception of academicians with little practical experience,[29] over one-half of the professors

[29] The author's surprise at the results is based on anecdotal perceptions of the typical law

reported more than five years experience in private estate planning

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professor candidate, who seems to rarely have more than five years of private practice experience. The AALS list did not include adjunct professors, so their potential inclusion is not an explanation for the high level of experience. An alternative explanation could be that the type of individual who teaches federal estate and gift taxation or estate planning may come from a more practice-oriented background. Or, in view of the average age of the responding professors, 53.85 (*see* Section III, Part D), it could be true that the typical law professor candidate at the time they were hired had more private practice experience than is the case with recent hires. The survey did demonstrate a positive correlation between age and years of estate planning experience in private practice. In that regard, a cross-tabulation of age against years of private practice experience found that of the responding professors with 0-2 years of experience, all were in the 40-49 years of age range, which is roughly within the author's view of "recent" hires. Of the professors, age 30-39, one out of two (50%), had more than five years' experience; of the age 40-49 group, four out of eleven (36.4%) had more than five years' experience; of the age 50-59 group, nine out of fourteen (64.3%), had more than five years' experience; of the age 60-70 group, seven out of eight (87.5%) had more than five years' experience; and of the 71-80 group, two out of two (100%) had more than five years' experience. One of the responding professors conducted an active consulting practice and included those years in the total, inasmuch as the question did not limit the years of private practice to the time prior to becoming a professor. Other professors may have used the same approach without disclosing it. Inasmuch as the variables for years of private practice experience and age were assigned values from one to five and one to six, respectively, the Spearman correlation coefficient for ranked data was used to measure the statistical degree of correlation. For a description of this test, see Susan B. Gerber and Kristin E. Voelkl, THE SPSS GUIDE TO THE NEW STATISTICAL ANALYSIS OF DATA, 65-66 (1997); *see also* Duncan Cramer, FUNDAMENTAL STATISTICS FOR SOCIAL RESEARCH: STEP-BY-STEP CALCULATIONS AND COMPUTER TECHNIQUES USING SPSS FOR WINDOWS, 371 (1998). Applying this test, the correlation coefficient was 0.480 at a 0.01 level of statistical significance. Statistical significance is used to judge whether the observed relation could have arose simply at random. A score of 0.05 or less is usually required for a result to have statistical significance. *See infra* note 36. In this case, the 0.01 level is well within the permissible range of statistical significance. The Spearman correlation coefficient "is essentially a Person's correlation on data that have been ranked." Cramer, *supra* at 371. In terms of the Pearson's correlation, one commentator has ranked the levels of correlation as follows: +/- 0.8 to 1.0 – very strong relationship; +/- 0.6 to 0.79 – strong relationship; +/- 0.4 to 0.59 – moderately strong relationship; +/- 0.2 to 0.39 – moderately weak relationship; +/- 0.0 to 0.19 – very weak/no relationship. *See* Henry W. Fischer III, THE SOCIOLOGIST'S STATISTICAL TOOLS 106 (1996). On that basis, the age of the professor and the years of private experience exhibit a moderately strong relationship. Another study of a sample of tenured and tenure-track professors from the 1988-89 AALS Directory of Law Teachers indicated that the percentage of professors with some type of practical experience appeared to be increasing. The percentage was estimated at 79% for 1988-89 as compared with 67.2% for 1975-76. *See* Robert J. Borthwick & Jordan R. Schau, Note: *Gatekeepers of the Profession: An Empirical Profile of the Nation's Law Professors*, 25 U. MICH. J. L. REFORM 191, 194, 218 (1991). Also, professors first hired in the years 1980-1989 had an average 2.9 years of private practice experience, as compared with an average 2.5 years for all professors. *See id.* at 221. That statistic focused on the amount of private practice experience at the time of being hired to one's first academic position. However, the study also found that older professors had more private practice experience, with those ages 30-40 averaging two years while those over 50 years of age averaged four years of experience. *Id.* at 220.

practice. Although the practical experience might be dated, the professors at least had been exposed to estate planning in application. On this basis, I concluded that the professors possessed an overall level of practical experience that was not so insignificant as to produce different responses to the survey questions.

B. Expertise

The professors were asked the following question: "*How many years of teaching experience do you have in the area of Federal Estate & Gift Taxation or Estate Planning?*"

Years	**Number of Responses**	**Percentages**
Less than 1	0	0%
1-5	5	13.5
6-10	8	21.6
10+	24	64.9

Practitioners were asked to report the "*percentage of your practice . . . devoted to estate planning.*"[30]

Reported Percentage	Number of Responses	Percentages
Less than 10	9	3.7%
10-20	17	6.9
21-30	32	13.0
31-50	53	21.5
51-60	41	16.7
61-80	52	21.1
81-100	42	17.1
Mean Percentage	52.86	

A goal of the sample selection methodology was to include practitioners who engaged in a significant amount of estate planning and were neither occasional dabblers nor very narrow specialists. This middle range would hopefully reflect the ultimate career path of the typical law student taking the Federal Estate and Gift Taxation or Estate Planning courses. In that regard, more than one-half (54.9%) of the practitioners indicated that they spend more than one-half of their time in estate planning.[31] More than 86% of the responding professors, on the other hand, had more than six years of teaching experience in the wealth transfer taxation and estate planning area.

I concluded that the practitioners possessed an overall level of expertise necessary to knowledgeably respond to the survey questions from the standpoint of a typical practitioner. Likewise, I concluded that the professors, overall, were seasoned teachers

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[30] Other possible indicators of expertise could have been used, such as state specialty certifications, membership in specialist organizations, and so forth. The author, in structuring the sample, did not want to limit responses to specialists. The responding Colorado test subjects tended to have a higher level of expertise: 8.3% reported that estate planning was 21-30% of their practice, 25% reported 31-50%, 20.8% reported 51-60%, 20.8% reported 61-80%, and 25% reported 81-100%.

[31] By comparison, in the second Miami Institute Survey, 88% of the respondents indicated that they spent greater than one-half of their time or billables in estate planning. MIAMI SURVEY II, *supra* note 2, ¶ 1501 at 15-5.

who could respond to the survey questions from an instructional standpoint.

C. Publications

Professors were asked three questions regarding their production of books and articles concerning Federal Estate and Gift Taxation or Estate Planning. The first two questions are a measure of expertise in, and intellectual commitment to, the subject area. The last question, dealing with more practice-oriented materials, is a measure of the practice orientation of the group. By these measures, the responding professors appeared to be very committed to the material, and had their own ideas about the subject that they expressed in published materials. While it is difficult to qualitatively compare the scholarly article count with the casebook/commercial treatise count, the large number of casebooks might suggest that the responding professors tended to be more practical or applied in their outlook. That might not be the case for the non-responding professors.

1. *"How many articles pertaining to Federal Estate & Gift Taxation or Estate Planning have you published (including co-authorships) in scholarly publications?"*

Number of Articles	**Number of Responses**	**Percentages**
0	8	22.9%
1-2	10	28.6
3-4	5	14.3
5-6	3	8.6
9-10	5	14.3
11-12	1	2.9
15-16	2	5.7
21-25	1	2.9
Mean Number of Articles	5.06	

2. *"How many scholarly books and monographs (e.g., in academic presses) pertaining to Federal Estate & Gift Taxation or Estate Planning (excluding casebooks) have you published (including co-authorships)?"*

Number of Books	Number of Responses	Percentages
0	21	61.8%
1	6	17.6
2	4	11.8
3	2	5.9
10	1	2.9
Mean Number of Scholarly Books	0.88	

3. *"How many casebooks or commercial treatises pertaining to Federal Estate & Gift Taxation or Estate Planning have you published (including co-authorships)?"*

Number of Books	Number of Responses	Percentages
0	20	55.6%
1	5	13.9
2	2	5.6
3	5	13.9
4	1	2.8
5	1	2.8
26	2	5.6
Mean Number of Commercial Publications	2.36	

D. Age

Age	Practitioner Percentages	Professor Percentages
25-29	1.6%	0%
30-39	14.2	5.4
40-49	28.9	29.7
50-59	29.3	37.8
60-70	17.9	21.6
71-80	6.1	5.4
81-90	1.6	0
91-100	0.4	0
Mean Age	52.15	53.85

E. Gender

Gender	Practitioner Percentages[32]	Professor Percentages[33]
Male	88.6%	86.5%
Female	11.4	13.5

IV. SUBSTANTIVE QUESTIONS

For both practitioners and professors, the questionnaire asked for a ranking of the importance *"in your practice"* or *"in your Federal Estate and Gift Taxation or Estate Planning course,"* respectively, of thirty-one estate planning issues or techniques. This question was followed with an open-ended solicitation of any other techniques that the participants considered important.

[32] In the Colorado test sample, 87.5% of the responses were from males and 12.5% from females.

[33] A 1988-89 study of tenured and tenure-track law professors estimated that 79.7% of all law professors were male and 20.3% were female. *See* Borthwick & Schau, *supra* note 29, at 204. Of this survey pool, approximately 17.84% of the professors were female.

The responses were scaled from 1-5: *Not Important, Little Importance, Somewhat Important, Important*, and *Very Important*.[34] The participants were asked to rank the importance before and after the Taxpayer Relief Act of 1997 (TRA 1997).[35] In most cases, there was little difference between the responses in terms of passage of the TRA 1997, so to eliminate some of the clutter, generally only the post-TRA 1997 responses will be reported in this article.

[34] For the test survey, the questionnaire was organized in this fashion and was supposed to remain so for the final survey. However, in revising the questionnaire, the order of "Somewhat Important" and "Important" was mistakenly reversed on the practitioner questionnaire and on two pages of the professor questionnaire. In compiling the results, it was decided that the descriptive words should prevail, rather than location on the scaled continuum. Although unfortunate, the location on the scale was a three or four for either value, so the disparity would be at most a magnitude of one.

[35] Pub. L. No. 105-34, 111 Stat. 788 (1997).

A. Planning for marketability, minority, and fractional interest valuation discounts[36]

	Practitioners	Professors
Not Important [1]	8.8%	8.1%
Little Importance [2]	10.8	27.0
Somewhat Important [3]	25.4	13.5
Important [4]	26.7	43.2
Very Important [5]	28.3	8.1
Average 1-5 Ranking	3.55	3.16

The degree of importance ascribed to this technique by practitioners is significantly greater than that indicated by professors. The differences in significance could arise from many factors. For example, valuation is very factually dependent and does not readily lend itself to class discussion. This technique also involves financial valuation concepts with which some professors

[36] This question, along with a later question concerning private foundations, was added to the survey after the Colorado test. Questions about the importance of *Gallenstein* joint tenancy planning and I.R.C. § 2037 that appeared on the Colorado test were deleted from the final survey. *See generally*, Gallenstein v. United States, 975 F. 2d 286 (6th Cir. 1992). It is accepted statistical procedure to perform a test of statistical significance on data. For this purpose, one must predict an expected result, which is compared to the observed result. If the observed result is not different from the expected result to a statistically significant degree, the result is determined to be a product of random distribution rather than significant results. The Pearson chi-square is one test of statistical significance, and to obtain a statistically significant result, one usually seeks a degree of probability of less than 0.05 that the result is a random result. *See generally* Cramer, *supra* note 29 at 287-94. Results or trends may be nevertheless interesting, even though they do not meet the high predictive measure of statistical significance. To apply this test to our data requires the arbitrary assumption that of the five different levels of significance, each case has an expected probability of 1/5 (20%). Of the practitioner questions that follow, all were statistically significant in the 0-0.5 range, with the exception of the retirement account planning question, *see infra* text accompanying notes 123-125; although this question was close (0.072). The professor samples were more problematic because there were fewer participants in the sample, which increases the likelihood of a result that is not statistically significant. However, all of the professor results were statistically significant in the 0-0.5 range, except for the following four questions: (1) a question dealing with family limited partnerships as valuation discount vehicles (0.072) (*see infra* text accompanying notes 50-54); (2) a question dealing with the § 2056(b)(5) marital deduction clause (0.074) (*see infra* text accompanying notes 74-76); (3) a question dealing with retirement account planning (0.483) (*see infra* text accompanying notes 123-125); and (4) a question dealing with the wealth transfer tax consequences of the dissolution of marriage (0.066) (*see infra* text accompanying notes 130-131).

may be uncomfortable. Or, the practitioners' perceptions of the magnitude of the available discounts may be greater than the professors' perceptions.

The participants were asked to indicate the *"magnitude of typical valuation discounts"* for marketability discounts, minority discounts, and fractional interest discounts. The responses were scaled, 1=0%, 2=1-10%, 3=11-20%, 4=21-30%, 5=31-40%, 6=41-50%, 7=51-60%, 8=61-70%, 9=71-80%, 10=81-90%, and 11=91-100%. Using the scaled amounts, the responses were as follows:

	Practitioners	**Professors**
Marketability Discount:		
Mean	3.4865	3.5714
Std. Deviation[37]	0.9965	0.8840
Minority Discount:		
Mean	3.5721	3.8571
Std. Deviation	0.9985	0.8793
Fractional Interest Discount:		
Mean	3.4306	3.4571
Std. Deviation	1.1391	0.8521

In spite of the prediction that the practitioners would harbor hopes for higher discounts, the professors generally thought that the available discounts were higher.

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[37] The standard deviation is a measure of the dispersion of a distribution of values. For example, if all the values in a population were each equal to four, the mean would be four, and the standard deviation would be zero. There is no dispersion of values. However, if one value was six and the other was two, the mean would still be four. The mean alone is potentially misleading, because the two values of the population, six and two, are somewhat dispersed or distant from that mean number of four. The standard deviation is computed to measure the degree of dispersion, and the greater the standard deviation, the greater the dispersion. In this case, the standard deviation would be 2.82. The standard deviation is an absolute number of the same scale of the population values and can be directly compared with them. In this case, if the population were a normal distribution, a standard deviation of 2.82 tells us that approximately 68.26% of the values in the population will lie within a range, ± one standard deviation from the mean, a range of 1.18-6.82. Similarly, 95.44% of a normal population lies with a range ± two standard deviations. For another description of the concept of standard deviation, see Fischer, *supra* note 29 at 72-73.

The discount that applies in a given situation will of course depend on the particular facts,[38] including the type of entity and the potential application of the Chapter 14 valuation rules.[39] That said, one finds a number of written accounts of typical discounts, for example: 20% for marketability and minority discounts combined,[40] 35% as an aggregate discount,[41] "often as high as 40%-45%,"[42] a range of 25 to 60%,[43] "as much as 60%,"[44] and so forth.

In a recent study of the discounts applied by the U.S. Tax Court from 1935 through 1990, the authors found that the average lack of marketability discount was 19.50% for the 1980-1989 time period.[45] For the same period the average minority discount was 17.1%.[46] Judged on that basis, the responses of both the practitioners and the professors overestimated the available discounts and reversed the relative magnitude of the marketability and minority discounts. The authors of the study offered several explanations for reports of increasing discounts. One explanation is "the tendency to lump the discounts for minority interest and marketability together. . . . Another

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[38] *See, e.g.*, Z. Christopher Mercer, *Are Qualifying Marketability Discounts New or Not?* TR. & EST., Feb. 1998, at 39 (describing a quantitative methodology for marketability discount computation); JOHN A. BOGDANSKI, FEDERAL TAX VALUATION, Ch. 4-5 (1996) (an in depth treatment of discounts).

[39] *See* I.R.C. §§ 2701-2704.

[40] *See* Peter J. Melcher & Lucy M. Arend, *How to Quantify the Tax Benefits of Investment Family Limited Partnerships*, PRAC. TAX LAW., Winter 1998, at 13, 15.

[41] *See* BOGDANSKI, *supra* note 38, ¶ 4.03[6][d], at 4-117 ("an aggregate discount of 35 percent").

[42] Scott E. Friedman & James G. Sciarrino, *Estate Planning Vehicle of Choice for the 1990s: FLLC or FLP?*, 4 J. LIMITED LIABILITY COMPANIES 91 (1997).

[43] *See* Note, *The Uncertain Future of the Limited Partnership in Estate Planning*, 10 CONN. PROB. L.J. 337, 358 (1996) (citing Lynn Brenner, *Partner Familias*, FIN. WORLD, Sept. 30, 1994 at 62).

[44] "Together, lack of marketability and minority discounts can add up to as much as 60% of the value of the interest." Troy Renkemeyer, Comment, *The Family Limited Partnership: An Effective Estate Planning Tool*, 64 U. MO. KAN. CITY L. REV. 587, 600 (1996) (citing Michael D. Mulligan & Angela Fick Braly, *Use of Family Limited Partnerships to Create Estate and Gift Tax Valuation Discounts*, *in* FAMILY LIMITED PARTNERSHIPS 25, 42-44 (U. MO. KAN. CITY/C.L.E. ed., 1995)).

[45] *See* Melanie J. Earles & Edward E. Milam, *Valuations of Closely-Held Businesses and the Tax Court: Are the Discount Percentages Changing?*, 75 TAXES 512, 518 (1997). Authors of another article found that the discounts allowed by the U.S. Tax Court since 1984 have declined from prior years, to an average discount of 21% for a lack of marketability. *See* Lance S. Hall & Timothy C. Polacek, *Strategies for Obtaining the Largest Valuation Discounts*, 21 EST. PLAN. (WGL) 38, 41 (1994).

[46] *See* Earles & Milam, *supra* note 45, at 517.

explanation may be that Tax Court decisions and district court decisions are often discussed together, and district courts typically allow larger discount percentages."[47] Also, the study based its findings on the results of decided cases. The percentages often claimed but not litigated or reached in settlement may differ.[48]

With respect to the discount for fractional interests, both the practitioners and professors were overly generous.[49]

B. Family limited partnerships or limited liability companies as valuation discount and gifting vehicles

		Practitioners[50]	Professors
Not Important	[1]	9.5%	8.1%
Little Importance	[2]	13.6	29.7
Somewhat Important	[3]	24.8	24.3
Important	[4]	28.5	37.8
Very Important	[5]	23.6	0.0
Average 1-5 Ranking		3.43	2.92

Consistent with the discount theme of the preceding question, the practitioners again placed more importance on this topic. The importance of this planning to practitioners was established in the

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[47] *Id.* at 519.

[48] A 1998 article reported that practitioners at the ALI-ABA Annual Spring Estate Planning Practice Update claimed that "settlements had been reached allowing a 20% discount for marketable securities and 30% to 40% for other assets [in the context of a family limited partnership]." *IRS to Pursue Valuation of Family Limited Partnership Interests,* Taxes on Parade (CCH), at 3 (May 28, 1998).

> Attempting to use prior cases as precedent for setting the amount of an undivided interest discount is an ultrahazardous activity. For the curious, however, the percentages in cases allowing the discount have ranged from 5 percent to 60 percent, with quite a few decisions at 10 percent and 15 percent.

BOGDANKSI, *supra* note 38, ¶ 5.01[2][e][i], at 5-11, 5-12.

[50] The Colorado test sample practitioners placed more importance on this technique, with 4.2% finding if of little importance, 20.8% finding it somewhat important, 45.8% finding it important, and 29.2% finding it very important. Separately, the twelve Colorado practitioner responses in the final survey produced a slightly less enthusiastic response. Of the Colorado practitioners, 8.3% found it of no importance, 8.3% found it of little importance, 25% found the issue somewhat important, 41.67% found it to be important, and 16.67% found it very important.

second Miami Institute Survey. With respect to implementing family limited partnership investments in closely held businesses or investment realty, the percentage of respondents using those techniques sometimes, often, or always was 57%.[51]

The professors' relative reluctance to embrace this material could be attributed to a number of factors. One aspect is that the area is still evolving, with the Service engaging in aggressive posturing in private letter rulings.[52] Much of the activity cannot be adequately addressed without reference to state law limited partnership and limited liability company statutes.[53] Furthermore, teaching valuation involves grappling with sections 2703 and 2704, material that is still developing in the available teaching materials.[54]

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[51] *See* MIAMI SURVEY II, *supra* note 2, at ¶ 1501, 15-45, 15-46.

[52] *See, e.g.*, P.L.R. 97-51-003 (Aug. 28, 1997) (denying present interest gift treatment for gifts of family limited partnership interests); P.L.R. 97-19-006 (Jan. 14, 1997) (ignoring the creation of a family limited partnership two days prior to the decedent's death); P.L.R. 97-25-002 (Mar. 3, 1997) (giving no effect to a family limited partnership established two months prior to the decedent's death); P.L.R. 97-30-004 (Apr. 3, 1997) (disregarding as a "single testamentary transaction" the creation of a family limited partnership less than two months prior to the decedent's death).

[53] *See, e.g.*, Dale A. Oesterle & Wayne M. Gazur, *What's in a Name?: An Argument for a Small Business "Limited Liability Entity" Statute (with Three Subsets of Default Rules)*, 32 WAKE FOREST L. REV. 101, 132-41 (1997) (discussing the federal wealth transfer tax implications of state entity statutes).

[54] For example, one casebook devotes approximately fourteen pages to § 2703, and approximately four pages to § 2704. *See* BORIS I. BITTKER, ET AL., FEDERAL ESTATE AND GIFT TAXATION 602-21 (7th ed. 1996). Another casebook devotes approximately three pages to § 2704, spread over several different chapters and approximately two pages to § 2703. *See* REGIS W. CAMPFIELD, ET AL., TAXATION OF ESTATES, GIFTS AND TRUSTS ¶¶ 3091, 11,107, 12,019, 15,079 (20th ed. 1997).

C. Regular or S corporations as valuation discount and gifting vehicles

		Practitioners[55]	Professors
Not Important	[1]	14.0%	19.4%
Little Importance	[2]	33.5	47.2
Somewhat Important	[3]	16.9	8.3
Important	[4]	28.5	25.0
Very Important	[5]	7.0	0
Average 1-5 Ranking		2.81	2.39

As compared with the family limited partnership and limited liability company responses in the preceding question, the degree of importance attributed to this issue reported by both practitioners and professors declined. The decline in importance was predictable due to the familiar double taxation feature of regular corporations and the inflexible stock class restrictions of S corporations. Still, the relative gap between practitioners and professors extended to this technique as well. Based on the author's experience and conversations with practicing attorneys, obtaining valuation discounts *is* much of the estate planning practice.[56] Moreover, much of that law cannot be analyzed apart from the state law characteristics of the competing business entity forms. The responses of the practicing attorneys consistently urge the importance of these topics. However, the responding colleagues apparently disagree.

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[55] The Colorado test sample practitioners placed roughly the same importance on this technique as the national sample, with 8.3% finding it of no importance, 45.8%, finding it of little importance, 20.8% finding it somewhat important, 12.5% finding it important, and 12.5% finding it very important.

[56] A current search of the literature would disclose hundreds of articles written on the topic of wealth transfer tax valuation, so I will omit a lengthy string citation. One title sums up the point nicely. *See* Bryle M. Abbin, *Is Valuation the Best Planning Game Remaining?*, in 70 PLAN. TECH. FOR LARGE EST. 739, 760-62 (ALI-ABA Course of Study) (1996).

D. Crummey power arrangements

		Practitioners[57]	Professors
Not Important	[1]	5.8%	0%
Little Importance	[2]	8.2	5.4
Somewhat Important	[3]	23.9	32.4
Important	[4]	23.5	18.9
Very Important	[5]	38.7	43.2
Average 1-5 Ranking		3.81	4.0

The *Crummey*[58] clause was judicially accepted over thirty years ago, and it readily lends itself to a law school classroom discussion. It is an important but not overly technical topic. The practitioners and professors were largely in accord that the *Crummey* clause is an important estate planning technique.[59] At least with respect to fundamental techniques such as this, with a long and well-known history, the two groups can roughly agree on the degree of importance.

[57] The Colorado test sample practitioners placed more importance on this technique, and 4.2% found it of little importance, 12.5% found it somewhat important, 50% found it important, and 33.3% found it very important.

[58] *See* Crummey v. Commissioner, 397 F. 2d 82 (9th Cir. 1968). The 1968 decision was not the first appearance of this type of arrangement, as evidenced by the discussion in the opinion of conflicting prior cases dealing with the same issue. However, with the imprimatur of the influential Ninth Circuit Court of Appeals, the Service was compelled to ultimately concede the validity of the technique. *See, e.g.*, Rev. Rul. 73-405, 1973-2 C.B. 321 (the first public revenue ruling adopting the result in the *Crummey* decision).

[59] The first Miami Institute Survey asked several questions about *Crummey* clauses. In the context of irrevocable life insurance trusts, the percentage of practitioners implementing the clause sometimes, often, or always was a stunning 92%. MIAMI SURVEY I, *supra* note 2, ¶ 1218 at 12-58. In the context of "§ 2503 gift trusts" that percentage was 53%. *Id.*

E. Section 2503(c) trusts

		Practitioners[60]	Professors
Not Important	[1]	15.2%	2.7%
Little Importance	[2]	33.3	27.0
Somewhat Important	[3]	14.4	18.9
Important	[4]	28.4	37.8
Very Important	[5]	8.6	13.5
Average 1-5 Ranking		2.82	3.32

The professors valued this topic much more than the practitioners. Perhaps this difference is not surprising. Although the section 2503(c) trust is quite limited for almost anyone with any significant gifting aspirations,[61] and consequently of little use to many practitioners, the case law is well-known and can be fun to teach.[62] Professors may be a little self-indulgent at times in choosing material and slow to depart from those choices. These results could indicate that this is one of those occasions.

[60] The Colorado test sample practitioners placed even less importance on this technique, which is consistent with the greater significance that they placed on the *Crummey* arrangement, an alternative to the § 2503(c) trust. Of the Colorado test sample practitioners, 12.5% found these trusts of no importance, 45.8% found them of little importance, 20.8% found them somewhat important, 12.5% found them important, and only 8.3% found them very important.

[61] The list of shortcomings is long. The trust terminates too early for many estate plans, one cannot marshal assets for multiple beneficiaries, one cannot limit distributions to narrow purposes like education, if the beneficiary passes away trust assets cannot be diverted to other generation members (except with the default power of appointment gimmick), and so forth.

[62] Although the subsection was enacted as a simplification measure for gifts to minors, it produced its fair share of litigation. *See, e.g.*, Commissioner v. Herr, 303 F.2d 780 (3d Cir. 1962); Estate of Levine v. Commissioner, 63 T.C. 136 (1974), *rev'd* 526 F.2d 717 (2d Cir. 1975).

F. Private Annuities

		Practitioners[63]	Professors
Not Important	[1]	37.0%	18.9%
Little Importance	[2]	45.4	54.1
Somewhat Important	[3]	4.6	21.6
Important	[4]	12.2	5.4
Very Important	[5]	0.8	0
Average 1-5 Ranking		1.94	2.14

In the first Miami Institute Survey, only 3% of the respondents reported that they would implement this technique, 11% would recommend it, and 35% would at least discuss it, sometimes, often, or always.[64] This survey also found little practitioner interest in this technique, although the professors showed slightly more enthusiasm.[65] Thus, it appears that not only can practitioners and professors agree on the importance of fundamental techniques like the *Crummey* clause, but they can also

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[63] The Colorado test sample practitioners had little enthusiasm for the private annuity. Of these practitioners, 37.5% found it of no importance, 45.8% found it of little importance, and 16.7% found it only somewhat important. None found it important or very important.

[64] MIAMI SURVEY I, *supra* note 2, ¶ 1216 at 12-47. Professor Cooper's work found, anecdotally, a greater appreciation for the private annuity in Atlanta, Georgia. *See* Cooper, *supra* note 26, at 168, n.10. A cross-tabulation of this technique to the practitioners' states of practice found that only one of the six Georgia respondents ranked it as important. The other five found it of little or no importance.

[65] This academic interest could perhaps be explained by the conceptual problem presented in distinguishing true annuity interests from retained § 2036(a) interests. *See, e.g.*, Ray v. United States, 762 F.2d 1361 (9th Cir. 1985). Some professors are still enthusiastic about private annuities and SCIN.

> Private annuities and self-canceling installment notes will remain two important freezing techniques in the future because they have not been affected by Chapter 14 of the Internal Revenue Code .... These planning vehicles are stable, viable estate planning tools. Planners will be able to structure intrafamily transactions intended to pass on closely-held business interests without significant adverse income, estate or gift tax consequences.

John K. Pierre, *Using Intra-Family Sales in Estate Freezing: The Prospects in the Year 2000 and Beyond for Private Annuities and Self-Canceling Installments Notes*, 24 S.U. L. REV. 207, 236 (1997). This technique may also have a role in Medicaid planning. *See infra* note 122.

apparently agree on techniques that clearly have little applied importance.

G. Installment sales (with gratuitous debt forgiveness)

		Practitioners[66]	Professors
Not Important	[1]	19.7%	13.5%
Little Importance	[2]	44.1	54.1
Somewhat Important	[3]	8.4	10.8
Important	[4]	23.1	21.6
Very Important	[5]	4.6	0
Average 1-5 Ranking		2.49	2.40

This technique suffers from the uncertainties presented in *Estate of Maxwell v. Commissioner,*[67] but one might have predicted more popularity after the TRA 1997 reduction in the income tax on capital gains and increase in the exemption for sales of personal residences.[68] However, among practitioners, the 36.1% reported above for post-TRA 1997 importance is actually less than the 37.3% for pre-1997 TRA importance. The professor percentages did not vary.

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[66] Of the Colorado test sample practitioners, 25% found this technique of no importance, 37.5% found it of little importance, 29.2% found it somewhat important, and 8.3% found it important.

[67] 3 F.3d 591 (2d Cir. 1993) (finding that the advance intent to forgive the purchase money debt obligation deprived the transaction of treatment as a sale for full and adequate consideration in money or money's worth).

[68] This assumes a taxable transaction and not the use of a sale to a defective grantor trust. A cross-tabulation of this technique against the six practitioners who offered the defective grantor trust as an important technique found that none considered this technique important or very important. *See generally* Michael D. Mulligan, *Sale to a Defective Grantor Trust: An Alternative to a GRAT*, 23 EST. PLAN. (WGL) 3 (1996); Cornelius W. Coghill, III, *Reevaluating the Grantor Trust Status of GRATs and QPRTs*, 23 EST. PLAN. (WGL) 51 (1996); Burton W. Kanter & Michael J. Legamaro, *The Grantor Trust: Handmaiden to the IRS and Servant to the Taxpayer*, 75 TAXES 706 (1997). In a taxable installment sale one must also consider the interest charge imposed on significant transactions by I.R.C. § 453A.

H. Self-canceling installment notes (SCIN)

		Practitioners[69]	Professors
Not Important	[1]	34.7%	18.9%
Little Importance	[2]	43.9	59.5
Somewhat Important	[3]	5.9	5.4
Important	[4]	14.2	16.2
Very Important	[5]	1.3	0
Average 1-5 Ranking		2.03	2.19

The professors ascribe a slightly greater degree of importance to this topic, probably because *Estate of Moss v. Commissioner,*[70] the leading case addressing this technique, is one of only a handful of intriguing section 2033 cases. In the first Miami Institute Survey only 4% of the respondents would implement a SCIN transaction, 13% would recommend it, and 26% would discuss it, sometimes, often, or always.[71]

I. QTIP marital deduction

		Practitioners[72]	Professors
Not Important	[1]	2.9%	0%
Little Importance	[2]	5.4	0
Somewhat Important	[3]	20.2	16.2
Important	[4]	12.8	8.1
Very Important	[5]	58.7	75.7
Average 1-5 Ranking		4.19	4.59

[69] In the test sample, 37.5% of the Colorado practitioners found this technique of no importance, 29.2% found it of little importance, 25% found it somewhat important, and 8.3% found it important.

[70] 74 T.C. 1239 (1980).

[71] MIAMI SURVEY I, *supra* note 2, ¶ 1216 at 12-48.

[72] The Colorado test sample practitioners ascribed more importance to this technique, with 8.3% judging the technique as somewhat important, 33.3% judging it as important, and 58.3% judging it as very important.

Both the practitioners and professors are interested in this topic, but the professors ascribe a higher degree of importance to it. Like the *Crummey* clause that also generated such a response,[73] the marital deduction is a fundamental topic for the Federal Estate and Gift Taxation course and for practice. One would expect the least amount of difference in comparisons of practitioner and professor responses for such a core topic, and that is again largely borne out by this survey question.

J. Section 2056(b)(5) marital deduction (life estate with power of appointment)

		Practitioners[74]	**Professors**
Not Important	[1]	11.6%	5.4%
Little Importance	[2]	27.4	13.5
Somewhat Important	[3]	15.4	32.4
Important	[4]	22.8	27.0
Very Important	[5]	22.8	21.6
Average 1-5 Ranking		3.18	3.46

Comparing these results with those of the prior question, for both practitioners and professors, the QTIP significantly surpassed the section 2056(b)(5) approach in terms of overall importance. This relative popularity confirms the author's experience and anecdotal reports from practitioners.[75] However, section 2056(b)(5) planning seems to be fading in importance more quickly for practitioners than for professors.[76]

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[73] *See supra* notes 57-59, and accompanying text.

[74] In the test sample, 8.3% of the Colorado practitioners found this technique of no importance, 29.2% found it of little importance, 16.7% found it somewhat important, 33.3% found it important, and 12.5% found it very important.

[75] The QTIP permits full and partial electivity and control over disposition of the remainder. The latter factor is particularly attractive in the context of serial marriages.

[76] The slight "wedge" in importance professors ascribed to the QTIP carries over into the § 2056(b)(5) clause. That is to say, professors placed more importance on *both* marital deduction clauses. To test the hypothesis of whether older practitioners and professors more heavily favored the § 2056(b)(5) approach, cross-tabulations were computed. A cross-

K. Disclaimer wills (i.e., containing no formula clause)

		Practitioners[77]	Professors
Not Important	[1]	17.6%	8.1%
Little Importance	[2]	25.1	18.9
Somewhat Important	[3]	14.2	37.8
Important	[4]	24.3	27.0
Very Important	[5]	18.8	8.1
Average 1-5 Ranking		3.02	3.08

Professors and practitioners placed roughly equal emphasis on this topic. Evidence of its significance can be seen by the fact that the disclaimer will is given some treatment in a popular casebook;[78] and in Colorado, one of the sample forms drafted by a bar association committee is a disclaimer will.[79]

One might predict that a cross-tabulation of practitioner responses against the net worth of their average client would demonstrate that practitioners with clients of more modest means (and presumably simpler estates) place more importance on the disclaimer will than practitioners with wealthier clients. Although this prediction was borne out for clients with net worths in excess

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tabulation of the age of the practitioner against the QTIP and § 2056(b)(5) questions did not show that older practitioners placed a higher degree of importance on the § 2056(b)(5) than did younger practitioners. In computing the Spearman correlation coefficient, *see supra* note 29, the correlation of the QTIP and the § 2056(b)(5) questions to practitioner age provided very weak degrees of correlation (-0.045 and 0.109, respectively); furthermore, those numbers were not at a statistically significant level. For professors, the percentages of those considering the QTIP to be important or very important included 100% of those age 30-39; 72.73% of those age 40-49; 85.71% of those age 50-59; 100% of those age 60-70; and 50% of those age 71-80. For the § 2056(b)(5) approach, 50% of the professors age 30-39; 63.64% of those age 40-49; 42.86% of those age 50-59; 37.50% of those age 60-70; and 50% of those age 71-80 considered it important or very important. Computing the Spearman correlation coefficient of the QTIP and § 2056(b)(5) questions to professor age yielded very weak degrees of correlation (0.132 and -0.167, respectively), and these numbers were not statistically significant.

[77] In the Colorado test sample, 8.3% of Colorado practitioners found this technique of no importance, 8.3% found it of little importance, 50% found it somewhat important, 16.7% found it important, and 16.7% found it very important.

[78] *See* CAMPFIELD ET AL., *supra* note 54, ¶ 6013.

[79] *See Estate Planning Forms Committee of the Colorado Bar Association Trust and Estate Section, Colorado Estate Planning Forms, Disclaimer Wills— Form 8* (1996).

of $9,000,000, there was significant interest in this technique for estates up to $5,000,000.[80]

L. Life Insurance (not held by a trust)

		Practitioners[81]	Professors
Not Important	[1]	8.3%	0%
Little Importance	[2]	19.6	8.1
Somewhat Important	[3]	16.3	43.2
Important	[4]	42.5	24.3
Very Important	[5]	13.3	24.3
Average 1-5 Ranking		3.33	3.65

Professors generally placed more importance on life insurance free of trust than did practitioners. It is probably the case that a professor needs to cover the basic concepts as a general matter, and applied structures (such as irrevocable life insurance trusts) are a secondary concern. Conversely, the applied structure would be more important than the general concept to a practitioner. However, focusing on the applied structure itself in the following question, both practitioners and professors ascribed roughly the same level of importance to the irrevocable life insurance trust.

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[80] The percentages of responses of practitioners with typical clients of a certain net worth that found the technique to be important or very important are as follows: $50,000–$300,000, 20%; $301,000–$600,000, 31.25%; $601,000–$900,000, 41.38%; $901,000–$1,200,000, 50%; $1,201,000–$1,500,000, 40%; $1,501,000–$2,000,000, 48.84%; 2,001,000–$2,500,000, 51.85%; $2,501,000–$3,000,000, 56.25%; $3,001,000–$5,000,000, 37.93%. In applying the Spearman correlation coefficient, *see supra* note 29, to all of the data, there was weak correlation between the use of the disclaimer will and the net worth of the practitioners' typical clients (0.067) and the results were not statistically significant. The Spearman correlation coefficient test was run again with only practitioners whose clients had net worths in excess of $9,000,000 and that produced the predicted moderately strong negative correlation (-0.559). However, with only six practitioners in the sub-sample, the result was not statistically significant (0.249).

[81] Of the Colorado test sample practitioners, 4.2% found this of no importance, 20.8% found it of little importance, 54.2% found it somewhat important, 8.3% found it important, and 12.5% found it very important.

M. Irrevocable life insurance trusts

		Practitioners[82]	Professors
Not Important	[1]	5.0%	0%
Little Importance	[2]	5.8	8.1
Somewhat Important	[3]	29.5	37.8
Important	[4]	20.3	18.9
Very Important	[5]	39.4	35.1
Average 1-5 Ranking		3.83	3.81

This is a very applied technique, but the practitioners did not place significantly more importance on it than the professors. It is likely that this is a core technique for both groups.[83]

N. Section 2032A special valuation

		Practitioners[84]	Professors
Not Important	[1]	25.5%	27.0%
Little Importance	[2]	32.6	43.2
Somewhat Important	[3]	10.5	8.1
Important	[4]	25.5	18.9
Very Important	[5]	5.9	2.7
Average 1-5 Ranking		2.54	2.27

[82] Of the Colorado test sample practitioners, 4.2% found this of no importance, 20.8% found it of little importance, 54.2% found it somewhat important, 8.3% found it important, and 12.5% found it very important.

[83] One practitioner the author spoke with concerning the survey results was surprised that any estate planning practitioner could describe life insurance as "Not Important," as was done by 8.3% of the practitioners in the preceding question and 5.0% of the practitioners in the immediate question. In his opinion, life insurance is one of the easiest ways to assure that a decedent's family will receive a certain level of wealth. In his experience, some clients will not buy any insurance because they do not necessarily want the survivors to receive significant inherited wealth that may destroy their personal initiative. At the other extreme are clients that would rather burn money than pay a tax. For these clients, life insurance premiums, no matter how high, are an acceptable solution. Predictably, a number of clients fall between these two extremes.

[84] As a group, the Colorado test sample practitioners did not place greater importance on this topic, with 12.5% finding it of no importance, 54.2% finding it of little importance, 12.5% finding it somewhat important, 8.3% finding it important, and 12.5% finding it very important.

The level of importance attributed to this technique by professors was difficult to assess because in order to preserve confidentiality, the professors' survey did not request the location of their respective law schools. Representation from agricultural states, therefore, could not be weighed. The practitioners' survey did include the state(s) of practice, and as might have been predicted, there was heavy interest from practitioners in states traditionally associated with agriculture. Of the sixty-one responses considering this technique to be "important," thirty-nine were from the states of Alabama, California, Colorado, Illinois, Indiana, Iowa, Kansas, Nebraska, North Dakota, Texas, Virginia, Washington, and Wisconsin. The "important" responses from Alabama, Colorado, Indiana, Iowa, Kansas, North Dakota, and Washington comprised at least 50% of the total responses for practitioners from those states. Only fourteen participants judged this topic to be "very important," with three of those responses coming from Illinois practitioners (comprising 25% of total Illinois responses), two coming from Nebraska practitioners (comprising 50% of total Nebraska responses), and the balance scattered among various states.

Based on revenue loss estimates, section 2032A is not significant from an overall revenue perspective, costing an estimated $85,000,000 in lost revenue for 1998.[85] This topic does not command much coverage in teaching materials.[86]

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[85] *See Analytical Perspectives*, Chapter 5 of the Budget of the U.S. Government for Fiscal 1999, *reprinted as Tax Expenditures Chapter From the President's Fiscal 1999 Budget*, *in* 78 TAX NOTES (TA) 911, 938 tbl. 5-6 (Feb. 16, 1998) [hereinafter TAX EXPENDITURES CHAPTER].

[86] One leading casebook devotes five pages to the topic. *See* CAMPFIELD ET AL., *supra* note 54, ¶¶ 13,001, 13,007 at 227-31. Another devotes four pages to the topic. *See* BITTKER ET AL, *supra* note 54, at 621-24. A third text devotes only two pages to the topic. *See* DOUGLAS A. KAHN ET AL., FEDERAL TAXATION OF GIFTS TRUSTS AND ESTATES 74-75 (3rd ed. 1997).

Section 2032A valuation can apply to non-agricultural real estate, but the valuation rules are not as advantageous. Accordingly, another question asked *"[h]ow frequently do situations arise in which taxpayers use long-standing I.R.C. § 2032A special valuations in a non-agriculture context?"*

		Practitioners	Practitioners
Never	[1]	44.9%	11.4%
Seldom	[2]	44.1	68.6
Sometimes	[3]	9.4	20
Often	[4]	1.6	0
Very Often	[5]	0	0
Average 1-5 Ranking		1.68	2.08

In a non-agriculture context, the professors thought that section 2032A was more important. However, the professors probably do not ascribe much absolute importance to this topic, inasmuch as 80% of them answered "never" or "seldom." As compared with the practitioners' even more pessimistic appraisal, the professors might have been saved by following the well-known rule of multiple choice questions—one never chooses "never" as the answer.

Judged by revenue loss estimates, the application of this section in a non-agriculture context is even more remote in practice. It is estimated that only $25,000,000 in tax revenues was lost in 1998 as a result of the application of section 2032A,[87] and the practitioners' responses reflect that.

[87] *See* TAX EXPENDITURES CHAPTER, *supra* note 85, at 938 tbl. 5-6.

O. Planning to maximize the TRA 1997 family business exemption

		Practitioners[88]	Professors
Not Important	[1]	17.1%	27.8%
Little Importance	[2]	34.6	30.6
Somewhat Important	[3]	13.8	13.9
Important	[4]	23.8	25.0
Very Important	[5]	10.8	2.8
Average 1-5 Ranking		2.77	2.44

The practitioners expressed a greater interest in this new provision. The professors will need to catch up, because the projected revenue loss from the provision is estimated to be significant, starting at $390,000,000 in 1999 and gradually increasing.[89] It is curious that the professors are about as interested in section 2032A (average ranking of 2.27), a relatively insignificant provision, as this potentially more important provision (average ranking of 2.44). Hopefully, this does not indicate complacency on the part of the academy, to which the newness of the material, its complexity, and its absence in the bound editions of the regular casebooks, could be contributing factors.

[88] The Colorado test sample practitioners found this of slightly more importance, with 8.7% finding it of no importance, 21.7% finding it of little importance, 26.1% finding it somewhat important, 26.1% finding it important, and 17.4% finding it very important.

[89] *See* TAX EXPENDITURES CHAPTER, *supra* note 85, at 938 tbl. 5-6.

P. Business valuation freezes (complying with section 2701)

		Practitioners[90]	Professors
Not Important	[1]	14.3%	8.3%
Little Importance	[2]	31.5	27.8
Somewhat Important	[3]	12.2	19.4
Important	[4]	34.5	38.9
Very Important	[5]	7.6	5.6
Average 1-5 Ranking		2.9	3.06

With the practical drawbacks entailed in prescribing the "qualified payment"[91] needed to mitigate application of this section, one might have predicted modest interest by the practicing bar. However, over 42% of practitioners found this to be "important" or "very important."[92] Perhaps "complying with section 2701" was interpreted to include the less burdensome multiple class of stock exception provided by section 2701(a)(2)(C). The fact that professors are even more interested in the topic than practitioners is less surprising, given the rich history of the statutory provision.[93]

[90] Of the Colorado test sample practitioners, 12.5% found this of no importance, 33.3% found it of little importance, 33.3% found it somewhat important, 12.5% found it important, and 8.3% found it very important.

[91] *See* I.R.C. § 2701(a)(3).

[92] In the first Miami Institute Survey, only 10% of the respondents would implement a preferred and common stock freeze, 22% would recommend it, and 41% would discuss it, sometimes, often, or always. With respect to frozen and growth partnership interests, 14% would implement it, 26% would recommend it, and 39% would discuss it. MIAMI SURVEY I, *supra* note 2, ¶1216 at 12-50.

[93] Professor Cooper drew attention to the perceived estate freezing abuses in a widely cited article. *See* Cooper, *supra* note 26. Congress responded in 1987 and 1988 with troublesome legislation. *See* Wayne M. Gazur, *Congressional Diversions: Legislative Responses to the Estate Valuation Freeze*, 24 U.S.F. L. REV. 95 (1989). In 1990, Congress replaced that legislation with the current provisions. *See generally*, Martin D. Begleiter, *Estate Planning in the Nineties: Friday the Thirteenth, Chapter 14: Jason Goes to Washington—Part II*, 47 DEPAUL L. REV. 1 (1997).

Q. Business buy/sell agreements

		Practitioners[94]	Professors
Not Important	[1]	5.0%	8.3%
Little Importance	[2]	9.6	22.2
Somewhat Important	[3]	29.6	22.2
Important	[4]	31.7	41.7
Very Important	[5]	24.2	5.6
Average 1-5 Ranking		3.60	3.14

The practitioners found this technique to be more important than did professors.[95] One might predict that professors who emphasize this material are those who are more comfortable with corporate or partnership income taxation. A cross-tabulation of the results of a question concerning other courses taught against this question did not support that prediction. Fifteen of the professors ranked this issue as important and two ranked it as very important. Of the six professors who taught corporate taxation, one ranked this issue as very important, and three ranked it as important. Of the three professors who taught partnership taxation, two ranked this issue as important. While it would appear that professors who teach corporate taxation or partnership taxation are likely to find this issue to be important, the other eleven professors who found it to be important did not teach those courses, and eight of these eleven did not teach any tax courses beyond the Federal Estate and Gift Taxation course.

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[94] The Colorado test sample practitioner responses were similar. Of the test sample practitioners, 8.3% found this of little importance, 33.3% found it somewhat important, 41.7% found it important, and 16.7% found it very important.

[95] In the first Miami Institute Survey, 34% of the respondents would implement § 2703 exempt buy-sell agreements, 44% would recommend it, and 56% would discuss it, sometimes, often, or always. MIAMI SURVEY I, *supra* note 2, ¶ 1216 at 12-50. In the second Miami Institute Survey, the use of buy-sell agreements was broken down into different objectives. Percentages of practitioners whose clients used the agreements sometimes, often, or always were as follows: (1) to establish tax value, 51%; (2) to provide liquidity, 87%; (3) to liquidate the investment, 75%; (4) to avoid being in business with the surviving family, 88%; and (5) other, 66%. MIAMI SURVEY II, *supra* note 2, ¶ 1501 at 15-42, 15-43.

A related corporate exit issue is section 303. The participants were asked *"[a]s your estimate, how frequently do situations arise in which taxpayers use an I.R.C. § 303 redemption to pay estate taxes?"*

		Practitioners	Professors
Never	[1]	23.6%	2.9%
Seldom	[2]	58.1	38.2
Sometimes	[3]	16.7	41.2
Often	[4]	1.6	14.7
Very often	[5]	0	2.9
Average 1-5 Ranking		1.96	2.76

The professors have a much higher interest in section 303 redemptions. However, it appears to be of little interest to practitioners.[96] This question highlights one of the differences between teaching and practice. In teaching the law, the professor must address some techniques of little worth, so the future practitioner can form a judgment about the technique. The student may never use the technique in practice, but he or she will at least know why it is not used.[97] That said, the professors seem to be emphasizing this more obscure topic to the possible detriment of the broader issue of business buy/sell agreements raised by the preceding question (although the absolute rankings of importance *are* greater for the buy/sell question). There is a danger of reading too much into this result, but again, as with the section 2503(c) trust,[98] there could be a characterization issue. One wonders whether this is the self-indulgent teaching of an interesting (yet largely impractical) topic or the essential presentation of the available techniques.

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[96] The author never implemented a § 303 redemption in practice or encountered anyone who had. As far as redemptions are concerned, the § 302(b)(4) exception provides a broader answer. Further, if the stock is bequeathed to the surviving spouse, qualifying for the marital deduction, and the estate taxes are apportioned away from the marital share, § 303 is effectively ousted.

[97] Also, the law or other circumstances may change, breathing new life into the technique. The periodic changes in the taxation of long-term capital gains, for example, have made certain techniques more or less appropriate.

[98] *See supra* text accompanying notes 60-62.

R. Section 6166 deferral of estate taxes

		Practitioners[99]	Professors
Not Important	[1]	13.3%	18.9%
Little Importance	[2]	34.4	51.4
Somewhat Important	[3]	14.1	24.3
Important	[4]	32.8	2.7
Very Important	[5]	5.4	2.7
Average 1-5 Ranking		2.82	2.19

One might have predicted an increase in significance of section 6166 following the TRA 1997 liberalizations.[100] On the other hand, with the increase in the unified credit and the introduction of the family business exemption, one might predict little added interest. In fact, among practitioners the pre-TRA 1997 percentage for "somewhat" to "very important" was 51.50%, while the post-TRA 1997 percentage was 52.3%.

It is somewhat surprising that even 38.2% of practitioners found this issue to be "important" or "very important." A recent commentary claimed that only 716 section 6166 agreements were sought by estates in 1992.[101] Likewise, the revenue loss estimate for 1998 due to tax deferral for all outstanding agreements is $70,000,000 for closely held businesses, and $10,000,000 for farms.[102]

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[99] In the test sample 12.5% of the Colorado practitioners found this technique of no importance, 33.3% found it of little importance, 45.8% found it somewhat important, and 8.3% found it important.

[100] *See, e.g.*, Joseph R. Oliver, *Reinstating Code Sec. 6166 Eligibility After the Taxpayer Relief Act of 1997*, TAXES, Jan. 1998, at 57.

[101] *See* Howard Gleckman, *Estate-Tax Relief: Guess Who Gets The Breaks?*, BUS. WK., June 30, 1997, at 43.

[102] *See* TAX EXPENDITURE CHAPTER, *supra* note 85, at 938 tbl. 5-6.

S. Charitable remainder trusts

		Practitioners[103]	Professors
Not Important	[1]	6.6%	13.5%
Little Importance	[2]	20.3	18.9
Somewhat Important	[3]	26.6	32.4
Important	[4]	29.0	27.0
Very Important	[5]	17.4	8.1
Average 1-5 Ranking		3.30	2.97

The degree of professor enthusiasm for charitable remainder trusts is surprising to the author in view of the limited treatment of this topic in most casebooks, the detailed nature of the material, and the time constraints in the basic Federal Estate and Gift Taxation course. A possible explanation of the importance attributed to this provision by professors is that some of the professors answering the survey may also teach Estate Planning where charitable remainder trusts would be covered.

One might predict a reduced practitioner interest in this technique due to the TRA 1997 reduction in the income tax on capital gains. For the pre-1997 TRA state of affairs, 74.7% of the responding practitioners described the significance as "somewhat" to "very" important. For the post-1997 TRA alternative, that percentage declined to 73.0%.[104]

[103] In the test sample, 12.5% of the Colorado practitioners found this to be of little importance, 37.5% found it somewhat important, 33.3% found it important, and 16.7% found it very important.

[104] In the first Miami Institute Survey, split interest charitable giving was implemented by 31% of the respondents, and discussed by 78% of the respondents, sometimes, often, or always. With respect to implemented split interest plans, a charitable remainder annuity trust was implemented sometimes, often, or always by 54% of the respondents. The charitable remainder trust was implemented in 73% of those circumstances, although the charitable lead trust was implemented in only 14% of those circumstances. MIAMI SURVEY I, *supra* note 2, ¶ 1213.

T. Charitable lead trusts

		Practitioners[105]	Professors
Not Important	[1]	18.2%	13.5%
Little Importance	[2]	35.5	29.7
Somewhat Important	[3]	14.9	40.5
Important	[4]	23.1	10.8
Very Important	[5]	8.3	5.4
Average 1-5 Ranking		2.68	2.65

For both practitioners and professors, the charitable lead trust (CLT) was less significant than the charitable remainder trust (CRT). The first Miami Institute Survey found that only 14% of the respondents would implement a charitable lead trust in split interest giving plans.[106] This survey demonstrates some interest in the technique, although the difference in scaling between the surveys makes comparisons difficult. As with the private annuity,[107] the survey results again demonstrate that practitioners and professors can agree on what topics are of marginal importance.[108]

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[105] The Colorado test sample practitioners also placed less importance on this technique as compared to the charitable remainder trust; 20.8% found it of no importance, 29.2% found it of little importance, 29.2% found it somewhat important, and 20.8% found it important.

[106] MIAMI SURVEY I, *supra* note 2, ¶ 1213.

[107] *See supra* notes 63-65 and accompanying text.

[108] In the 1993 Miami Institute Survey, the charitable lead trust was very unpopular. *See* MIAMI SURVEY I, *supra* note 2. A recent article suggests that charitable lead trusts may be more popular of late; this might be reflected in the higher level of significance in this survey. *See, e.g.*, Robert P. Conor, *CLTs: An Important Tool In The Right Situation*, TR. & EST., Sept. 1997, at 16.

> CLTs generally have been less popular than charitable remainder trusts (CRT) since the CLT is a taxable trust, and a donor funding a CLT during his or her lifetime does not receive an income tax deduction for the present value of the charitable interest. However, the increased popularity of CLTs in recent years has been the result of a number of factors.

Id.

U. Private Foundations

		Practitioners[109]	Professors
Not Important	[1]	25.2%	35.1%
Little Importance	[2]	33.5	40.5
Somewhat Important	[3]	13.6	10.8
Important	[4]	17.8	13.5
Very Important	[5]	9.9	0
Average 1-5 Ranking		2.54	2.03

For professors this appears to be a very esoteric topic. For practitioners, one might predict a strong correlation with the level of net worth of a typical client. In that regard, the greatest number of practitioners describing this technique as "very important" had typical clients with a net worth of $3,001,000-$5,000,000, representing 34.48% of the practitioners with clients in that net worth class. The highest percentage of practitioners using the "very important" classification was in the highest client net worth categories, $15,001,000-$17,000,000[110] and greater than $21,000,000.[111]

[109] This technique was not listed in the Colorado survey, but several Colorado practitioners noted it as an important technique in the open comment responses.

[110] There was only one responding practitioner in this client range, and that practitioner described private foundations as very important.

[111] There were few responding practitioners with clients at this net worth level. Of the three practitioners reporting in this range, two described this technique as very important, while one described it as only somewhat important. Computing the Spearman's correlation coefficient, *see supra* note 29, for client net worth and use of the private foundation produced a moderately strong positive relationship between the two variables (0.439) at a statistically significant level (0.01).

V. Generation-skipping "dynasty" trusts

		Practitioners[112]	Professors
Not Important	[1]	19.5%	8.1%
Little Importance	[2]	27.4	18.9
Somewhat Important	[3]	17.0	29.7
Important	[4]	18.3	35.1
Very Important	[5]	17.8	8.1
Average 1-5 Ranking		2.88	3.16

The professors are resoundingly more interested than the practitioners in this topic.[113] In addition to presentation of the broad generation-skipping transfer tax (GSTT) aspects, the proliferation of states that permit perpetual term trusts raises provocative issues of the decline of the rule against perpetuities and the concomitant rise of power in the "dead hand."

The participants were also asked *"[a]s your estimate, how frequently do situations arise in which taxpayers (i.e., trusts, estates, or donors) actually pay a GSTT?"*

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[112] The Colorado test sample practitioners reported slightly more interest in this technique; 12.5% found it of no importance, 25% found it of little importance, 20.8% found it somewhat important, 25% found it important, and 16.7% found it very important.

[113] In the first Miami Institute Survey, 76% of the respondents said that where appropriate they would create generation-skipping exemption shelter trusts to run for multiple generations of beneficiaries, sometimes, often, or never. MIAMI SURVEY I, *supra* note 2, ¶ 1207.3. In the second Miami Institute Survey, the implementation of "dynasty" trusts was expressly discussed; 48% of the respondents would implement such trusts and 70% would discuss such trusts, sometimes, often, or always. MIAMI SURVEY II, *supra* note 2, ¶ 1501 at 15-33. *See generally* Douglas J. Blattmachr & Jonathan G. Blattmachr, *A New Direction In Estate Planning: North To Alaska*, TR. & EST., Sept. 1997, at 48 (discussing the Alaska dynasty trust statute); Johnathan G. Blattmachr et al., *New Alaska Trust Act Provides Many Estate Planning Opportunities*, 24 EST. PLAN. (WGL) 347 (1997).

		Practitioners	Professors
Never	[1]	30%	2.9%
Seldom	[2]	55.9	77.1
Sometimes	[3]	13	20
Often	[4]	1.2	0
Very Often	[5]	0	0
Average 1-5 Ranking		1.85	2.17

With the retroactive repeal (and refund) of the GSTT for pre-1986 years,[114] the so-called "Gallo" exemptions,[115] the breathtaking cost of transfers when the tax applies, and the delayed impact of the tax for taxable terminations and distributions, one might assume that no one is paying this tax, or that it is paid only by the very wealthy. However, some estates are indeed paying this tax, and professors should take note and give the GSTT more than passing attention. For estate tax returns filed in 1994, generation-skipping transfer taxes of $129,617,000 were paid.[116] The tax does not affect only the wealthiest estates; a significant portion of the tax, $18,799,000 (14.5%), was collected from estates worth less than $5,000,000.[117]

The GSTT could be one of those topics that for the average practitioner, law school may be the primary means of acquaintance with the material. However, casebooks tend to devote relatively

[114] The Tax Reform Act of 1986 retroactively repealed I.R.C. §§ 2601-2663, replacing these sections with the current statute. The new statute generally applies only to any generation-skipping transfer made after the date of enactment, October 22, 1986, with certain exceptions. Tax Reform Act of 1986, Pub. L. No. 99-514, § 1433(b)-(d), 100 Stat. 2731-32.

[115] Under the Tax Reform Act of 1986 amendments, transfers to a grandchild were exempt so long as they were not in excess of $2,000,0000 per grandchild in the aggregate, if made prior to January 1, 1990. If the donor grandparent was married, the exemption was effectively doubled. *Id.*

[116] Martha Britton Eller, *Federal Taxation of Wealth Transfers, 1992-1995*, STAT. INC. BULL., Winter 1996-97 at 48.

[117] *Id.*

little space to the topic.[118] This promises to become an increasingly important trap for the uninformed.[119]

W. Medicaid planning

		Practitioners[120]	Professors
Not Important	[1]	24.7%	22.2%
Little Importance	[2]	27.6	38.9
Somewhat Important	[3]	15.1	19.4
Important	[4]	19.2	11.1
Very Important	[5]	13.4	8.3
Average 1-5 Ranking		2.69	2.44

The practitioners were much more interested in this complex and evolving topic.[121] It would be difficult to devote much time to this topic in the basic Federal Estate and Gift Taxation course beyond a few observations about the impact on gifting schemes, joint tenancies and trust arrangements.[122] This topic should be

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[118] *See, e.g.*, BITTKER ET AL., *supra* note 54, at 559-71 (13 pages); CAMPFIELD ET AL., *supra* note 54, ¶¶ 29,001-49 at 662-71 (10 pages); KAHN ET AL., *supra* note 86, at 141-88 (48 pages); STANLEY S. SURREY ET AL., FEDERAL WEALTH TRANSFER TAXATION 879-929 (3rd ed. 1987) (51 pages); and LEWIS D. SOLOMON ET AL., FEDERAL TAXATION OF ESTATES, TRUSTS AND GIFTS 45-47, 255-78 (1989) (27 pages).

[119] Yet the need to have a working knowledge of the GST tax has never been greater. More and more states, such as Alaska, Delaware, Idaho, South Dakota and Wisconsin, are allowing trusts to have an unlimited duration. Even where a dynasty trust or other sophisticated planning is not desired, GST tax considerations are ever present.

Steven T. O'Hara, *Working In A World With The GST Tax*, TR. & EST., Feb. 1998, at 47.

[120] Of the Colorado practitioners in the test sample, 26.1% found it of no importance, 30.4% found it of little importance, 26.1% found it somewhat important, and 17.4% found it important.

[121] In the first Miami Institute Survey, 35% of respondents would implement asset protection techniques (including Medicaid qualifying trusts), while 73% would discuss them with the client, sometimes, often, or always. MIAMI SURVEY I, *supra* note 2, ¶ 1228. *See generally*, Steven H. Stern, *Case Study: Medicaid Crisis Planning For Spouses*, 2 T.M. COOLEY J. PRAC. & CLIN. L. 71 (1998).

[122] Just when one was ready to dismiss the private annuity, another use emerges. This perhaps confirms the benefit of keeping all teaching options open, at least to introduce the available concepts. *See* David J. Correira, *Using Private Annuities and Installment Notes in Medicaid Planning*, 25 EST. PLAN. (WGL) 381 (1998).

addressed in an Estate Planning course, but at this point there is a dearth of teaching materials.

X. Retirement account planning (including IRAs)

		Practitioners[123]	Professors
Not Important	[1]	3.2%	0%
Little Importance	[2]	7.2	21.6
Somewhat Important	[3]	29.6	32.4
Important	[4]	22.0	29.7
Very Important	[5]	33.2	16.2
Average 1-5 Ranking		3.78	3.40

The coverage of this topic, particularly planning for beneficiary designations and minimum distributions, has exploded in practitioner oriented publications in the last several years.[124] Because many of the issues are income tax issues, many Federal Estate and Gift Taxation casebooks devote little space to this issue, apparently content to deal with the increasingly irrelevant details of section 2039.[125] However, with the host of other topics that need

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[123] In the Colorado practitioner test sample 4.2% considered this of no importance, 4.2% considered it of little importance, 8.3% considered it somewhat important, 54.2% considered it important, and 29.2% considered it very important.

[124] *See, e.g.*, Kenneth A. Hansen, *Estate Planning for IRA and Qualified Plan Distributions*, 25 TAX'N LAW. 21 (1996); Jay E. Harker, *IRA Beneficiary Designations: Who Gets It When You Go?*, TR. & EST., May 1997, at 49; Robert H. Louis, *Estate Planning for Retirement Benefits*, PRAC. LAW., Sept. 1996, at 31; M. Read Moore, *A Sorry 'Estate' of Affairs for Qualified Plan and IRA Benefits: Naming an Estate as Beneficiary*, 23 EST. PLAN. (WGL) 385 (1996); Leonard J. Witman & Laura Weyant-Kearney, *Trusts as Beneficiaries May Prolong IRA Distributions and Save Taxes*, 84 J. TAX'N 86 (1996); Louis A. Mezzullo, *Planning For Distributions From Qualified Retirement Plans*, TR. & EST., July 1998, at 36; Louis A. Mezzullo, *New Regulations Improve Status of Trusts as Beneficiaries of Qualified Plans and IRAs*, PROB. & PROP., July/Aug. 1998, at 12; Stephen P. Magowan, *Roth IRAs: Estate and Income Tax Planning Tool for the 21st Century*, PROB. & PROP. July/Aug. 1998, at 6; Karen J. Folb, *Who Should Be The Beneficiary of Your Qualified Retirement Plan Benefits*, TAXES, Jan. 1998, at 6; Bruce D. Steiner, *Postmortem Strategies to Shift Retirement Plan Assets to the Spouse*, 24 EST. PLAN. (WGL) 369 (1997); James L. Dam, *Estate Planners Are Facing New Malpractice Danger From IRAs*, LAW. WKLY. USA, Jan. 27, 1997, at 1.

[125] *See, e.g.*, BITTKER ET AL., *supra* note 54, (no discussion beyond §§ 2039 and 691); CAMPFIELD ET AL., *supra* note 54, at 456-57 (two pages); KAHN ET AL., *supra* note 86, at 1137-40 (a good introduction); SOLOMON ET AL., *supra* note 118, 687-710 (a lot of general

to be addressed in the basic income taxation course, this topic may receive little attention anywhere. The practitioners ascribe significantly more importance to this issue; law professors must catch up.

Y. Below-market rate loans

		Practitioners[126]	**Professors**
Not Important	[1]	29.6%	32.4%
Little Importance	[2]	42.9	45.9
Somewhat Important	[3]	5.0	18.9
Important	[4]	18.8	2.7
Very Important	[5]	3.8	0
Average 1-5 Ranking		2.24	1.92

Neither group expressed much enthusiasm for this topic, although the practitioners were somewhat more interested. The author must confess that he spends at least a day on this topic—for taxpayers of modest means, knowing how to navigate section 7872 allows trouble-free home loans to children, and the breadth of *Dickman v. Commissioner*[127] is provocative. Or, my attention to section 7872 could be just a personal case of professorial self-indulgence.

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income tax information about the treatment of retirement plan assets accompanying the discussion of the transfer tax implications, although § 401(a)(9) planning is not a focus). Books devoted to estate planning do have chapters devoted to this topic, however. *See, e.g.*, JOHN R. PRICE, PRICE ON CONTEMPORARY ESTATE PLANNING, ch. 13 (Supp. 1998); JEROME A. MANNING ET AL., ESTATE PLANNING, ch. 9 (5th ed. 1995); NATALIE B. CHOATE, LIFE AND DEATH PLANNING FOR RETIREMENT BENEFITS (2nd ed. rev. 1996). The author introduces this topic in his Federal Estate and Gift Taxation course through a short, mandatory writing assignment that emphasizes retirement plan benefits planning.

[126] In the Colorado test sample, 16.7% found this issue of no importance, 45.8% found it of little importance, 25% found it somewhat important, and 12.5% found it important.

[127] 465 U.S. 330 (1984). This decision settled the question of whether below market interest rate loans can produce gift tax consequences. On the heels of the decision Congress enacted a broad statutory response in § 7872. However, the expansive view of the gift tax espoused in *Dickman* promises to have continuing impact in other gift tax contexts.

Z. Below-market/gratuitous loan guarantees

		Practitioners[128]	Professors
Not Important	[1]	39.3%	35.1%
Little Importance	[2]	44.8	45.9
Somewhat Important	[3]	4.2	10.8
Important	[4]	9.6	8.1
Very Important	[5]	2.1	0
Average 1-5 Ranking		1.90	1.92

Wealthy families can arguably transfer business opportunities to younger generations free of transfer taxes and through the use of loan guarantees assure capital for the new businesses free of transfer taxes and application of section 7872.[129] Apparently this view is not shared by many, and it was ascribed even less importance than below-market rate loans.

AA. Gift and estate tax consequences of dissolution of marriage (including property settlements)

		Practitioners[130]	Professors
Not Important	[1]	16.5%	18.9%
Little Importance	[2]	30.1	32.4
Somewhat Important	[3]	11.4	24.3
Important	[4]	33.5	21.6
Very Important	[5]	8.5	2.7
Average 1-5 Ranking		2.87	2.57

[128] In the Colorado test sample, 33.3% found it of no importance, 37.5% found it of little importance, 20.8% found it somewhat important, and 8.3% found it important.

[129] Although the IRS initially expressed the opinion that gratuitous loan guarantees can produce taxable gifts, it has retreated from that position. *See* P.L.R. 91-13-009 (Dec. 21, 1990). The status of the technique is uncertain at this time.

[130] In the Colorado test sample, 16.7% found this issue of no importance, 41.7% found it of little importance, 25% found it somewhat important, 12.5% found it important, and 4.2% found it very important.

Both practitioners and professors place some importance on this topic, although the practitioners place slightly more importance on it. Apparently, sections 2516, 2523, and 1041 have not eliminated all concerns.[131]

BB. Gift and estate tax consequences of same-gender relationships

	Scaling	**Practitioners**[132]	**Professors**
Not Important	[1]	60.9%	43.2%
Little Importance	[2]	23.4	27
Somewhat Important	[3]	3.8	21.6
Important	[4]	8.9	8.1
Very Important	[5]	3.0	0
Average 1-5 Ranking		1.70	1.94

This issue has been a moderately popular topic of legal scholarship.[133] Although professors might accordingly place more importance on the issue, the overall level of significance is nevertheless low.

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[131] Several cases remain important as general propositions of law. *See, e.g.*, Commissioner v. Wemyss, 324 U.S. 303 (1945); Merrill v. Fahs, 324 U.S. 308 (1945). Hopefully, some cases can be largely bypassed. *See, e.g.*, Harris v. Commissioner, 340 U.S. 106 (1950). However, some situations are not addressed by § 2516. *See, e.g.*, Rev. Rul. 68-379, 1968-2 C.B. 414 (considering payments to discharge support obligations in a legal separation, short of divorce). Other situations are subject to fine interpretations. *See, e.g.*, P.L.R. 92-35-032 (May 29, 1992) (noting that § 2516 does not satisfy the full and adequate consideration exception of § 2036); T.A.M. 98-26-002 (Mar. 23, 1998) (including trust in decedent's estate under § 2036 but permitting a full deduction under § 2053).

[132] In the Colorado test sample, 39.1% found this of no importance, 43.5% found it of little importance, 13% found it to be somewhat important, and 4.3% found it important.

[133] *See, e.g.*, David L. Chambers, *What If? The Legal Consequences of Marriage and the Legal Needs of Lesbian and Gay Male Couples*, 95 MICH. L. REV. 447, 474-76 (1996); Patricia Cain, *Same-Sex Couples and the Federal Tax Laws*, 1 LAW & SEXUALITY 97, 123-29 (1991); Adam Chase, *Tax Planing for Same-Sex Couples*, 72 DENV. U. L. REV. 359 (1995).

CC. Qualified Personal Residence Trusts (QPRT)

		Practitioners[134]	Professors
Not Important	[1]	20.6%	8.1%
Little Importance	[2]	29.0	37.8
Somewhat Important	[3]	16.0	27.0
Important	[4]	23.9	24.3
Very Important	[5]	10.5	2.7
Average 1-5 Ranking		2.75	2.76

The practitioners and professors demonstrate an uncanny level of agreement on the importance of this topic. This technique was created with the 1990 adoption of the "Chapter 14" valuation rules[135] and is somewhat esoteric.[136] Even in the absence of extensive teaching materials,[137] the professors place at least as much significance on the technique as do practitioners.

[134] In the Colorado test sample, 12.5% found this issue of no importance, 29.2% found it of little importance, 16.7% found it somewhat important, 29.2% found it important, and 12.5% found it very important.

[135] *See* I.R.C. §§ 2701-2704.

[136] In comparison, the second Miami Institute Survey found that 25% of the respondents would use a QPRT for a primary residence sometimes, often, or always; 37% would use it for a secondary residence sometimes, often, or always; 18% would use it for both. *See* MIAMI SURVEY II, *supra* note 2, ¶ 1501 at 15-38.

[137] One leading casebook devotes two sentences to this topic. *See* CAMPFIELD ET AL., *supra* note 54, ¶ 12,085. Another includes about one page. *See* BITTKER ET AL., *supra* note 54, at 72. A third includes about two pages on the subject. *See* KAHN ET AL., *supra* note 86, at 925-26.

DD. Grantor Retained Annuity (GRAT) or Grantor Retained Unitrust Trusts (GRUT)

		Practitioners[138]	Professors
Not Important	[1]	11.4%	5.4%
Little Importance	[2]	33.1	29.7
Somewhat Important	[3]	18.1	32.4
Important	[4]	30.1	24.3
Very Important	[5]	6.4	8.1
Average 1-5 Ranking		2.87	3.00

At this time, professors are slightly ahead of the practitioners in the significance they place on GRATs and GRUTs. Like the QPRT from the preceding question, this issue was a product of the 1990 legislation. Teaching materials place more emphasis on this technique,[139] and this may be reflected in the greater degree of significance attached to it by professors. Or, in the alternative, because it is fundamentally a more important topic, it compelled the production of more elaborate teaching materials.

In the 1993 Miami Institute Survey, only 9% of respondents would use GRATs, 39% would recommend them, and 65% would discuss them, sometimes, often, or always.[140] The second Miami Institute Survey found that 84% of the respondents said that their implementation of GRATs, GRUTs, and QPRTS had increased since 1993.[141]

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[138] Of Colorado test sample practitioners, 16.7% found it of no importance, 29.2% found it of little importance, 33.3% found it somewhat important, 8.3% found it important, and 12.5% found it very important.

[139] *See, e.g.*, CAMPFIELD ET AL., *supra* note 54, ¶¶ 12,079-107 (5 pages); BITTKER ET AL., *supra* note 54, at 68-73 (6 pages); KAHN ET AL., *supra* note 86, at 920-33 (14 pages).

[140] MIAMI SURVEY I, *supra* note 2, ¶ 1216 at 12-47.

[141] MIAMI SURVEY II, *supra* note 2, at ¶ 1501 at 15-38.

EE. Estate of Hubert[142] *planning (administration expenses)*

		Practitioners[143]	Professors
No Importance	[1]	20.9%	35.1%
Little Importance	[2]	31.5	32.4
Somewhat Important	[3]	10.6	21.6
Important	[4]	30.2	8.1
Very Important	[5]	6.8	2.7
Average 1-5 Ranking		2.71	2.11

This decision has generated much discussion.[144] However, its practical significance may be limited. In that regard, the practitioners place a moderate degree of importance on this issue. Professors probably do not spend much time on the broader topic of administration expenses and apparently place less importance on this specialized topic.

FF. Open-ended responses

Finally, the questionnaire asked for a listing of issues or techniques that are important but were omitted from the preceding questions. This generated a number of widely varying responses.

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[142] Commissioner v. Estate of Hubert, 520 U.S. 93 (1997).

[143] In the Colorado sample, 16.7% found this of no importance, 25% found it of little importance, 41.7% found it somewhat important, and 16.7% found it important.

[144] *See, e.g.*, Farhad Aghdami & David Pratt, *The Supreme Court Decides Hubert—Now What Do We Do?*, 47 J. TAX'N 340 (1997); David W. Reinecke, *Double Trouble: Reflections on Hubert*, PROB. & PROP., Nov./Dec. 1997, at 46; Jerald David August & James J. Freeland, *S. Ct. in Hubert Fails to Provide Needed Guidance*, 24 EST. PLAN. (WGL) 299 (1997). In late 1998, the Service issued proposed regulations responding to the Supreme Court decision. *See* 63 Fed. Reg. 69,248 (1998).

Practitioners	**Number of Responses**
Durable powers of attorney	2
Living wills	2
Health care powers of attorney	1
Living/revocable trusts and related documents	1
Planning for disabled family member	3
Charitable giving by direct gifts at death	1
Public charities	1
Lifetime charitable gifts of IRAs	1
GSTT planning	2
Taxable gifts (to use tax exclusivity)	3
Minor trusts	1
Opportunity shifting to younger generations (including loan and equity assistance)	3
Annual exclusion giving	7
Gifting programs (closely held stock, real estate, and other appreciating assets)	3
Tuition payments directly to institutions and other education planning	1
Retained life estate transfers	1
Fractional interest discounts (sub trust interests)	1
Income tax planning	1
Use of defective grantor trusts (including sales to defective trusts)	6
Prenuptial planning	1
Second marriage planning	1
Qualified domestic trusts	1
Bypass trust planning (including full use of unified credit)	3
Opting in or out of marital property law-Wisconsin	1
Estate equalization in event of surviving spouse's death within six months	1
Estate equalization planning for spouses	2
General use of disclaimers	4
Offshore techniques	2
Asset protection through trusts	1
Pre-sale planning of family businesses	1

Merger and acquisition integration with estate plans	1
Family farm corporations (including gifting)	1
Family limited partnerships and LLCs	1
Succession planning for closely-held businesses	1
Split-dollar life insurance	1
Tax apportionment	1
Trustee selection	1

By addressing the *Crummey* clause specifically in a question, the survey took for granted the importance of gifting programs. The practitioners' additional comments demonstrate the planning importance of gifting programs. Likewise, the survey's specific questions about I.R.C. section 2056(b)(5) and 2056(b)(7) notwithstanding, the marital deduction also appeared in a number of the open-ended comments. Last, the importance placed on the use of defective grantor trusts reflects an increasing discussion of these techniques in practitioner forums.[145]

The open-ended responses included some unique responses, but the most frequent topics repeated very fundamental themes such as inter-vivos gifting, marital deduction planning, disability concerns, and the use of disclaimers. Once again, the basic issues of the Federal Estate and Gift taxation course are clearly important in estate planning practice.

Professors	**Number of Responses**
Planning for disability	1
Guardianships and conservatorships	1
Marital deduction planning	3
Marital deduction qualification	1

[145] The Miami Institute Surveys examined the use of defective grantor trusts in connection with S corporation shareholder status, GRATs and GRUTs, and gift trusts. The authors summarized their findings: "Overall, these results reflect the increased knowledge about, and apparent use of, defective grantor trusts for income tax purposes, although the numbers are not as high as they might be for this potentially tax-rewarding technique." MIAMI SURVEY II, *supra* note 2, ¶ 1501 at 15-40. The use of defective trusts has appeared frequently in recent practitioner publications. *See supra* note 68.

Marital deduction funding	1
Community property planning	2
Qualified Domestic Trusts	1
Non-tax related planning and drafting	3
Choice of deduction (estate or income tax return)	1
Counseling and ethics	1
Tax apportionment	1
Gifting programs	2
Income tax planning (including section 303)	1
Income taxation of trusts & estates	1
Interrelationship of estate and gift tax	1
Planning for international estates	1

The professors' responses demonstrated an emphasis on marital planning issues. Unlike the practitioners, none of the professors singled out defective grantor trusts. In comparison, the broad diversity of issues addressed by the practitioners might in part reflect the practice perspective with input from numerous, diverse client circumstances. The difference in the quantity of answers also reflects the open-ended input of 250 practitioners, as compared to only thirty-seven professors.

V. CONCLUSION

A. Core Issues

The survey demonstrates consistency between practitioner and professor responses, particularly regarding fundamental techniques such as *Crummey* planning, the QTIP marital deduction, and irrevocable life insurance trusts. As might be expected, the more fundamental and accepted the issue, the greater the degree of agreement between the two groups on its significance. Likewise, with some techniques that are clearly unpopular, such as the private annuity, there is a great degree of agreement on its lack of significance.

In this regard, the techniques that gathered the greatest absolute degree of significance from both practitioners and professors were the QTIP marital deduction (average rankings of

4.19 and 4.59, respectively),[146] followed by the *Crummey* clause (average rankings of 3.81 and 4.0, respectively),[147] and the irrevocable life insurance trust (average rankings of 3.83 and 3.81, respectively).[148] With the exception of the QTIP marital deduction, there was little difference between the absolute levels of significance indicated by practitioners as opposed to professors.

Likewise, with respect to several of the least popular techniques, the two groups were also largely in agreement. For example, the private annuity (average rankings of 1.94 and 2.14, respectively),[149] SCIN (average rankings of 2.03 and 2.19, respectively),[150] and below-market loan guarantees (average rankings of 1.90 and 1.92, respectively),[151] were issues of this nature.

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[146] *See supra* notes 72-73 and accompanying text.
[147] *See supra* notes 57-59 and accompanying text.
[148] *See supra* notes 82-83 and accompanying text.
[149] *See supra* notes 63-65 and accompanying text.
[150] *See supra* notes 69-71 and accompanying text.
[151] *See supra* notes 128-29 and accompanying text.

B. Specialized Techniques

There are several issues that are so applied or specialized that differences are bound to arise between the practitioner and professor responses, generally producing higher noted degrees of significance by practitioners. Examples of this category include section 2032A special valuation (average rankings of 2.54 and 2.27, respectively),[152] section 6166 deferral of taxes (average rankings of 2.82 and 2.19, respectively),[153] charitable remainder trusts (average rankings of 3.30 and 2.97, respectively),[154] private foundations (average rankings of 2.54 and 2.03, respectively),[155] Medicaid planning (average rankings of 2.69 and 2.44, respectively),[156] and planning for the result in *Estate of Hubert* (average rankings of 2.71 and 2.11, respectively).[157]

C. The Cafeteria of Seeming Irrelevance

The survey results also highlight fundamental differences between teaching law and practicing law. In practice, an attorney implements a technique selected from a body of knowledge that includes a number of competing alternatives. Although certain techniques will be more important at a given time than others, a prudent evaluation of the client's circumstances requires at least a passing consideration of the alternatives. However, in this instance, some of the alternatives will not be considered particularly relevant. Teaching law requires a broader perspective. First, the law professor seeks to impart a method of analysis and reasoning. Second, more specifically, the law professor seeks to relate the various alternatives that *could* be implemented in practice. It appears that professors tend to place emphasis on more topics than practitioners. Apparently, the professors are trying to offer a range of techniques and approaches to problems, some of which may not be relevant to practice at a given time.

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[152] *See supra* notes 84-87 and accompanying text.
[153] *See supra* notes 99-102 and accompanying text.
[154] *See supra* notes 103-4 and accompanying text.
[155] *See supra* notes 109-11 and accompanying text.
[156] *See supra* notes 120-22 and accompanying text.
[157] *See supra* notes 142-44 and accompanying text.

However, circumstances change with changes in the tax laws (witness the cyclical fortunes of the capital gains income tax incentives) and the seemingly irrelevant technique may abruptly return to favor.

Some examples of issues on which professors placed more emphasis include the section 2056(b)(5) martial deduction clause,[158] life insurance held free of trust,[159] and the generation-skipping transfer tax.[160]

D. Old Favorites

With old concepts that are entrenched, like the section 2503(c) trust, the practitioners seem to have abandoned them long before the professors. In this case, it produced one of the largest gaps in the magnitude of the average ranking, producing 2.82 for practitioners and 3.32 for professors.[161] The section 303 redemption may be another example of this, producing average rankings of 1.96 for practitioners and 2.76 for professors.[162] In some cases professors may emphasize techniques that are not relevant to the practice, simply because the professor likes teaching those concepts.

E. New Developments

There are some situations where the use of techniques in practice is much more popular than law teaching would suggest. For example, the newly enacted small business exemption (average rankings of 2.77 and 2.44, respectively),[163] retirement asset planning (average rankings of 3.78 and 3.40, respectively),[164] and family limited partnership and limited liability valuation discounts (average rankings of 3.43 and 2.92, respectively),[165] are topics much

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[158] *See supra* notes 74-76 and accompanying text.
[159] *See supra* note 81 and accompanying text.
[160] *See supra* notes 112-19 and accompanying text.
[161] *See supra* notes 60-62 and accompanying text.
[162] *See supra* notes 96-98 and accompanying text.
[163] *See supra* notes 88-89 and accompanying text.
[164] *See supra* notes 123-25 and accompanying text.
[165] *See supra* notes 50-54 and accompanying text.

more important to practitioners than to law teachers. That difference may reflect the newness of the topics and the light coverage in teaching materials, since it appears that the level of significance attributed to an area may in part be driven by the emphasis placed on those points in the teaching materials. While most professors probably do their reading of current cases and other pronouncements faithfully, development of some innovative ideas and issues may be occurring first on the practice side, with the teaching materials and legal education left to catch up.

F. Summary

If the premise is correct that the relevancy of substantive issues addressed in the law school classroom to the issues that arise in practice enhances the effectiveness of law school education, the survey results paint a mixed picture. On the one hand, legal education appears to be effective in dealing with the core principles. Further, the role of legal education is a broad one, requiring the discussion of a number of subjects that a practitioner might not consider to be particularly relevant. However, there is a fine line between presenting the "concept cafeteria" and dealing with highly irrelevant or outdated matters. Finally, professors may need to redouble their efforts to teach beyond the casebooks, to address issues that are emerging or not easily reduced to a tidy presentation.

APPENDIX A

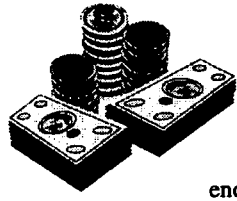
The Future of the Federal Wealth Transfer Tax: A Study of Attitudes and Perceptions

The Taxpayer Relief Act of 1997 was a partial response to a continuing debate concerning the direction of federal wealth transfer taxation. This survey explores:

- the perceptions of estate planners and law teachers concerning the impact of the taxes on family businesses in particular;
- attitudes toward various proposals for changes to the federal wealth transfer tax;
- and the importance of common estate planning techniques and issues.

Please answer all of the questions. You may be assured of complete anonymity. If you wish to comment on any questions or qualify your answers, please use the margins.

Thank you for your help.



Return this questionnaire in the enclosed envelope or to:

Associate Professor Wayne M. Gazur
University of Colorado School of Law
Campus Box 401
Boulder, CO 80309-0401
(303) 492-7013

. . .

Q-12. How frequently do situations arise in which your clients use and I.R.C. § 303 redemption to pay estate taxes? (circle one)

1. Never
2. Seldom
3. Sometimes
4. Often
5. Very often

Q-13. How frequently do situations arise in which your clients use longstanding I.R.C. § 2032A special valuation in a non-agriculture context? (please complete)

1. Never
2. Seldom
3. Sometimes
4. Often
5. Very often

. . .

Q-16. How frequently do situations arise in which clients (i.e., trust, estates, or donors) actually pay a generation-skipping transfer tax? (circle one)

1. Never
2. Seldom
3. Sometimes
4. Often
5. Very often

Q-17. If asked to describe the magnitude of typical valuation discounts, my estimates would be: (please complete)

Marketability Discounts (for business enterprises) _____ %
Minority Discounts (for business enterprises) _____ %
Fractional Interest Discounts (for real estate ownership) _____ %

. . .

Next, we would like to ask about issues that arise in your practice.

Q-19. Please rank the importance of the following estate planning techniques or issues in your practice on a scale of 1 to 5, with 1 being the least important, and 5 the most important. Please indicate the importance before the Taxpayer Relief Act of 1997 ("TRA 1997") and then indicate the importance after TRA 1997.

	Not Important	Little Important	Important	Somewhat Important	Very Important
	1	2	3	4	5
1. Planning for marketability, minority, and fractional interest valuation discounts					
Pre-TRA 1997	1	2	3	4	5
Post-TRA 1997	1	2	3	4	5
2. Family limited partnerships or limited liability companies as valuation discount and gifting vehicles					
Pre-TRA 1997	1	2	3	4	5
Post-TRA 1997	1	2	3	4	5
3. Regular or S corporations as valuation discount and gifting vehicles					
Pre-TRA 1997	1	2	3	4	5
Post-TRA 1997	1	2	3	4	5
4. Crummey power arrangements					
Pre-TRA 1997	1	2	3	4	5
Post-TRA 1997	1	2	3	4	5
5. Section 2503(c) minor trusts					
Pre-TRA 1997	1	2	3	4	5
Post-TRA 1997	1	2	3	4	5
6. Private annuities					
Pre-TRA 1997	1	2	3	4	5
Post-TRA 1997	1	2	3	4	5
7. Installment sales (with gratuitous debt forgiveness)					
Pre-TRA 1997	1	2	3	4	5
Post-TRA 1997	1	2	3	4	5
8. Self-canceling installment notes					
Pre-TRA 1997	1	2	3	4	5
Post-TRA 1997	1	2	3	4	5

9. "QTIP" marital deduction

Pre-TRA 1997	**1**	**2**	**3**	**4**	**5**
Post-TRA 1997	**1**	**2**	**3**	**4**	**5**

10. 2056(b)(5) marital deduction (life estate with power of appointment)

Pre-TRA 1997	**1**	**2**	**3**	**4**	**5**
Post-TRA 1997	**1**	**2**	**3**	**4**	**5**

11. Disclaimer wills (i.e., containing no formula marital clause)

Pre-TRA 1997	**1**	**2**	**3**	**4**	**5**
Post-TRA 1997	**1**	**2**	**3**	**4**	**5**

12. Life insurance (not held by a trust)

Pre-TRA 1997	**1**	**2**	**3**	**4**	**5**
Post-TRA 1997	**1**	**2**	**3**	**4**	**5**

13. Irrevocable life insurance trusts

Pre-TRA 1997	**1**	**2**	**3**	**4**	**5**
Post-TRA 1997	**1**	**2**	**3**	**4**	**5**

14. Section 2032A special valuation

Pre-TRA 1997	**1**	**2**	**3**	**4**	**5**
Post-TRA 1997	**1**	**2**	**3**	**4**	**5**

15. Planning to maximize the Taxpayer Relief Act of 1997 family business exemption

Post-TRA 1997	**1**	**2**	**3**	**4**	**5**

16. Business valuation freezes (complying with § 2701)

Pre-TRA 1997	**1**	**2**	**3**	**4**	**5**
Post-TRA 1997	**1**	**2**	**3**	**4**	**5**

17. Business buy/sell agreements

Pre-TRA 1997	**1**	**2**	**3**	**4**	**5**
Post-TRA 1997	**1**	**2**	**3**	**4**	**5**

18. Section 6166 deferral of estate taxes

Pre-TRA 1997	**1**	**2**	**3**	**4**	**5**
Post-TRA 1997	**1**	**2**	**3**	**4**	**5**

19. Charitable remainder trusts

Pre-TRA 1997	**1**	**2**	**3**	**4**	**5**
Post-TRA 1997	**1**	**2**	**3**	**4**	**5**

20. Charitable lead trusts

Pre-TRA 1997	**1**	**2**	**3**	**4**	**5**
Post-TRA 1997	**1**	**2**	**3**	**4**	**5**

21. Private foundations

Pre-TRA 1997	**1**	**2**	**3**	**4**	**5**
Post-TRA 1997	**1**	**2**	**3**	**4**	**5**

22. Generation-skipping "dynasty" trusts

Pre-TRA 1997	**1**	**2**	**3**	**4**	**5**
Post-TRA 1997	**1**	**2**	**3**	**4**	**5**

23. Medicaid planning

Post-TRA 1997	**1**	**2**	**3**	**4**	**5**

24. Retirement account planning (including IRAs)

Pre-TRA 1997	**1**	**2**	**3**	**4**	**5**
Post-TRA 1997	**1**	**2**	**3**	**4**	**5**

25. Below-market rate loans

Pre-TRA 1997	**1**	**2**	**3**	**4**	**5**
Post-TRA 1997	**1**	**2**	**3**	**4**	**5**

26. Below-market/ gratuitous loan guarantees

Pre-TRA 1997	**1**	**2**	**3**	**4**	**5**
Post-TRA 1997	**1**	**2**	**3**	**4**	**5**

27. Gift and estate tax consequences of dissolution of marriage (including property settlements)

Pre-TRA 1997	**1**	**2**	**3**	**4**	**5**

Post-TRA 1997	**1**	**2**	**3**	**4**	**5**

28. Gift and estate tax consequences of same-gender relationships

Pre-TRA 1997	**1**	**2**	**3**	**4**	**5**
Post-TRA 1997	**1**	**2**	**3**	**4**	**5**

29. Qualified Personal Residence Trusts

Pre-TRA 1997	**1**	**2**	**3**	**4**	**5**
Post-TRA 1997	**1**	**2**	**3**	**4**	**5**

30. Grantor Retained Annuity or Unitrust Trusts

Pre-TRA 1997	**1**	**2**	**3**	**4**	**5**
Post-TRA 1997	**1**	**2**	**3**	**4**	**5**

31. Estate of Hubert planning (administration expenses)

Pre-TRA 1997	**1**	**2**	**3**	**4**	**5**
Post-TRA 1997	**1**	**2**	**3**	**4**	**5**

Q-20. Please list other techniques not listed in Question 19 above that are important in your practice.

_____

_____

_____

_____

. . .

Finally, we would like to ask some questions about yourself to help interpret the results.

Q-22. How many years of estate planning experience do you have? (circle one)

1. None-2 years
2. 3-5 years
3. 6-10 years
4. 11-20 years
5. More than 20 years

Q-23. What is the net worth of your typical estate planning client? (circle one)

1. $50,000-$300,000
2. $301,000-$600,000
3. $601,000-$900,000
4. $901,000-$1,200,000
5. $1,201,000-$1,500,000
6. $1,501,000-$2,000,000
7. $2,001,000-$2,500,000
8. $2,501,000-$3,000,000
9. $3,001,000-$5,000,000
10. Other (specify) $_____

Q-24. What is the net worth of your wealthiest estate planning client? (please complete)

$ _____ net worth

Q-25. What is your age? (circle one)

1. 25-29
2. 30-39
3. 40-49
4. 50-59
5. 60-70
6. Other (specify)

Q-26. In which state do you practice? (please complete)

_____ state

Q-27. What is your gender? (circle one)

1. Male
2. Female

Q-29. What percentage of your practice is devoted to estate planning? (circle one)

1. Less than 10%
2. 10-20%
3. 21-30%
4. 31-50%
5. 51-60%
6. 61-80%
7. 81-100%

. . .

* * * * *

Is there anything else you would like to tell us about the direction of the federal wealth transfer tax? If so, please use the back page for that purpose. For example, if you believe that the federal wealth transfer tax should be retained as is, abolished, or modified, please explain the basis for your opinion.

* * * * *

Your contribution to this effort is greatly appreciated. If you would like a citation to a future published article addressing this survey, please write "citation requested" on the back of the return envelope, printing your name and address below it. Please do not put this information on the questionnaire itself.

Thank you for your responses. Please enclose the survey in the prepaid postage business reply envelope and deposit it in the United States mail.

If you have questions regarding your rights as a subject, any concerns regarding this project or any dissatisfaction with any aspect of this study, you may report them (confidentially, if you wish) to the Executive Secretary, Human Research Committee, Graduate School, Campus Box 26, University of Colorado-Boulder, Boulder, CO 80309-0026 or by telephone to (303) 492-7401. Copies of the University of Colorado Assurance of Compliance to the federal government regarding human subject research are available upon request from the Graduate School address listed above.

APPENDIX B

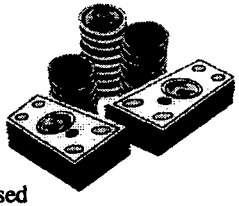
The Future of the Federal Wealth Transfer Tax: A Study of Attitudes and Perceptions

The Taxpayer Relief Act of 1997 was a partial response to a continuing debate concerning the direction of federal wealth transfer taxation. This survey explores:

- the perceptions of estate planners and law teachers concerning the impact of the taxes on family businesses in particular;
- attitudes toward various proposals for changes to the federal wealth transfer tax;
- and the importance of common estate planning techniques and issues.

Please answer all of the questions. You may be assured of complete anonymity. If you wish to comment on any questions or qualify your answers, please use the margins.

Thank you for your help.



Return this questionnaire in the enclosed envelope or to:

Associate Professor Wayne M. Gazur
University of Colorado School of Law
Campus Box 401
Boulder, CO 80309-0401
(303) 492-7013

. . .

Q-10. As your estimate, how frequently do situations arise in which taxpayers use an I.R.C. § 303 redemption to pay estate taxes? (circle one)

1. Never
2. Seldom
3. Sometimes
4. Often
5. Very often

Q-11. How frequently do situations arise in which taxpayers use longstanding I.R.C. § 2032A special valuations in a non-agriculture context? (circle one)

1. Never
2. Seldom
3. Sometimes
4. Often
5. Very often

. . .

Q-13. As your estimate, how frequently do situations arise in which taxpayers (i.e., trusts, estates, or donors) actually pay a generation skipping transfer tax? (circle one)

Never
Seldom
Sometimes
4. Often
5. Very often

Q-14. If asked to describe the magnitude of typical valuation discounts, my estimates would be: (please complete)

Marketability Discounts (for business enterprises) _____%
Minority Discounts (for business enterprises) _____%
Fractional Interest Discounts (for real estate ownership) _____%

. . .

Next, we would like to ask about the content of your estate planning courses.

Q-16. Please rank the importance of the following estate planning techniques or issues in your Federal Estate and Gift Taxation or Estate Planning course on a scale of 1 to 5, with 1 being the least important, and 5 the most important. Please indicate the importance before the Taxpayer Relief Act of 1997 ("TRA 1997") and then indicate the importance after TRA 1997.

	Not Important	Little Important	Important	Somewhat Important	Very Important
	1	2	3	4	5
1. Planning for marketability, minority, and fractional interest valuation discounts					
Pre-TRA 1997	1	2	3	4	5
Post-TRA 1997	1	2	3	4	5
2. Family limited partnerships or limited liability companies as valuation discount and gifting vehicles					
Pre-TRA 1997	1	2	3	4	5
Post-TRA 1997	1	2	3	4	5
3. Regular or S corporations as valuation discount and gifting vehicles					
Pre-TRA 1997	1	2	3	4	5
Post-TRA 1997	1	2	3	4	5
4. *Crummey* power arrangements					
Pre-TRA 1997	1	2	3	4	5
Post-TRA 1997	1	2	3	4	5
5. Section 2503(c) minor trusts					
Pre-TRA 1997	1	2	3	4	5
Post-TRA 1997	1	2	3	4	5
6. Private annuities					
Pre-TRA 1997	1	2	3	4	5
Post-TRA 1997	1	2	3	4	5
7. Installment sales (with gratuitous debt forgiveness)					
Pre-TRA 1997	1	2	3	4	5
Post-TRA 1997	1	2	3	4	5
8. Self-canceling installment notes					
Pre-TRA 1997	1	2	3	4	5
Post-TRA 1997	1	2	3	4	5

9. "QTIP" marital deduction

Pre-TRA 1997	**1**	**2**	**3**	**4**	**5**
Post-TRA 1997	**1**	**2**	**3**	**4**	**5**

10. 2056(b)(5) marital deduction (life estate with power of appointment)

Pre-TRA 1997	**1**	**2**	**3**	**4**	**5**
Post-TRA 1997	**1**	**2**	**3**	**4**	**5**

11. Disclaimer wills (i.e., containing no formula marital clause)

Pre-TRA 1997	**1**	**2**	**3**	**4**	**5**
Post-TRA 1997	**1**	**2**	**3**	**4**	**5**

12. Life insurance (not held by a trust)

Pre-TRA 1997	**1**	**2**	**3**	**4**	**5**
Post-TRA 1997	**1**	**2**	**3**	**4**	**5**

13. Irrevocable life insurance trusts

Pre-TRA 1997	**1**	**2**	**3**	**4**	**5**
Post-TRA 1997	**1**	**2**	**3**	**4**	**5**

14. Section 2032A special valuation

Pre-TRA 1997	**1**	**2**	**3**	**4**	**5**
Post-TRA 1997	**1**	**2**	**3**	**4**	**5**

15. Planning to maximize the Taxpayer Relief Act of 1997 family business exemption

Post-TRA 1997	**1**	**2**	**3**	**4**	**5**

16. Business valuation freezes (complying with § 2701)

Pre-TRA 1997	**1**	**2**	**3**	**4**	**5**
Post-TRA 1997	**1**	**2**	**3**	**4**	**5**

17. Business buy/sell agreements

Pre-TRA 1997	**1**	**2**	**3**	**4**	**5**
Post-TRA 1997	**1**	**2**	**3**	**4**	**5**

18. Section 6166 deferral of estate taxes

Pre-TRA 1997	**1**	**2**	**3**	**4**	**5**
Post-TRA 1997	**1**	**2**	**3**	**4**	**5**

19. Charitable remainder trusts

Pre-TRA 1997	**1**	**2**	**3**	**4**	**5**
Post-TRA 1997	**1**	**2**	**3**	**4**	**5**

20. Charitable lead trusts

Pre-TRA 1997	**1**	**2**	**3**	**4**	**5**
Post-TRA 1997	**1**	**2**	**3**	**4**	**5**

21. Private foundations

Pre-TRA 1997	**1**	**2**	**3**	**4**	**5**
Post-TRA 1997	**1**	**2**	**3**	**4**	**5**

22. Generation-skipping "dynasty" trusts

Pre-TRA 1997	**1**	**2**	**3**	**4**	**5**
Post-TRA 1997	**1**	**2**	**3**	**4**	**5**

23. Medicaid planning

Post-TRA 1997	**1**	**2**	**3**	**4**	**5**

24. Retirement account planning (including IRAs)

Pre-TRA 1997	**1**	**2**	**3**	**4**	**5**
Post-TRA 1997	**1**	**2**	**3**	**4**	**5**

25. Below-market rate loans

Pre-TRA 1997	**1**	**2**	**3**	**4**	**5**
Post-TRA 1997	**1**	**2**	**3**	**4**	**5**

26. Below-market/gratuitous loan guarantees

Pre-TRA 1997	**1**	**2**	**3**	**4**	**5**
Post-TRA 1997	**1**	**2**	**3**	**4**	**5**

27. Gift and estate tax consequences of dissolution of marriage (including property settlements)

Pre-TRA 1997	**1**	**2**	**3**	**4**	**5**
Post-TRA 1997	**1**	**2**	**3**	**4**	**5**

28. Gift and estate tax consequences of same-gender relationships

Pre-TRA 1997	**1**	**2**	**3**	**4**	**5**
Post-TRA 1997	**1**	**2**	**3**	**4**	**5**

29. Qualified Personal Residence Trusts

Pre-TRA 1997	**1**	**2**	**3**	**4**	**5**
Post-TRA 1997	**1**	**2**	**3**	**4**	**5**

30. Grantor Retained Annuity or Unitrust Trusts

Pre-TRA 1997	**1**	**2**	**3**	**4**	**5**
Post-TRA 1997	**1**	**2**	**3**	**4**	**5**

31. *Estate of Hubert* planning (administration expenses)

Pre-TRA 1997	**1**	**2**	**3**	**4**	**5**
Post-TRA 1997	**1**	**2**	**3**	**4**	**5**

Q-17. Please list other techniques not listed in Question 16 above that are important in your courses.

_____

_____

_____

_____

_____

. . .

Finally, we would like to ask some questions about yourself to help interpret the results.

Q-19. Which of the following courses do you regularly teach? (Circle all that apply.)

1. Federal Estate & Gift Taxation
2. Estate Planning
3. Corporate Taxation
4. Individual Taxation
5. Wills & Trusts
6. Other (specify)

Q-20. How many years of estate planning experience in private practice do you have? (circle one)

1. None-2 years
2. 3-5 years
3. 6-10 years
4. 11-20 years
5. More than 20 years

Q-21. How many years of teaching experience do you have in the area of Federal Estate & Gift Taxation or Estate Planning? (circle one)

1. Less than 1 year
2. 1-5 years
3. 6-10 years
4. More than 10 years

Q-22. How many articles pertaining to Federal Estate & Gift Taxation or Estate Planning have you published (including co-authorships) in scholarly publications? (please complete)

_____ number of articles

Q-23. How many scholarly books and monographs (e.g., in academic presses) pertaining to Federal Estate & Gift Taxation or Estate Planning (excluding casebooks) have you published (including co-authorships)? (please complete)

_____ number of scholarly books and monographs

Q-24. How many casebooks or commercial treatises pertaining to Federal Estate & Gift Taxation or Estate Planning have you published (including co-authorships)? (please complete)

_____ number of casebooks and commercial treatises

Q-25. What is your age? (circle one)

1. 25-29
2. 30-39
3. 40-49
4. 50-59
5. 60-70
6. Other (specify)

Q-26. What is your gender? (circle one)

1. Male
2. Female

...

* * * * *

Is there anything else you would like to tell us about the direction of the federal wealth transfer tax? If so, please use the back page for that purpose. For example, if you believe that the federal wealth transfer tax should be retained as is, abolished, or modified, please explain the basis for your opinion.

* * * * *

Your contribution to this effort is greatly appreciated. If you would like a reprint of a future published article addressing this survey, please write "***reprint requested***" on the back of the return envelope, printing your name and address below it. Please do not put this information on the questionnaire itself.

Thank you for your responses. Please enclose the survey in the prepaid postage business reply envelope and deposit it in the United States mail.

If you have questions regarding your rights as a subject, any concerns regarding this project or any dissatisfaction with any aspect of this study, you may report them (confidentially, if you wish) to the Executive Secretary, Human Research Committee, Graduate School, Campus Box 26, University of Colorado-Boulder, Boulder, CO 80309-0026 or by telephone to (303) 492-7401. Copies of the University of Colorado Assurance of Compliance to the federal government regarding human subject research are available upon request from the Graduate School address listed above.

Educator Survey