

Report #12 (Thursday)

A complete listing of the proceedings and speakers is available on [the Institute's Web site](#)

First, a news item of interest from the Associated Press:

CBS Cancels 'The Will' After One Airing
Jan 12, 5:25 PM EST

The Associated Press

NEW YORK -- CBS lost "The Will" after just one night. This reality series, which logged a minuscule 4.2 million viewers on its premiere airing Saturday, has been axed by CBS, the network confirmed Wednesday.

Despite heavy promotion, "The Will" ranked 79th place in viewers, according to Nielsen Media Research, making it CBS' lowest-ranked show of the week. (The week's most-watched show, CBS' "CSI," drew almost 29 million viewers.)

A reality show whose 10 participants vied to be sole heir to the fortune of a 73-year-old rancher, "The Will" thus joins a handful of other one-shot blunders in TV history. The most recent was "South of Sunset," a CBS detective drama with former Eagles rocker Glenn Frey, which debuted Oct. 27, 1993, then was never seen again. With a 6.1 rating, that show attracted what was deemed the smallest audience ever for a series premiere on any major network.

For the sake of comparison, "The Will" got a 2.9 rating.

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This Report contains coverage of the Thursday general session on Charitable Planning and the two special sessions on Technology - Demystifying the Numbers

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Charitable Remainder and Lead Trusts and other Charitable Planning Thursday Morning, 1/13/05
Presenter: Sanford S. Schlesinger Esq.

Reporter: Herbert L. Braverman Esq.

Sandy Schlesinger spoke to us on charitable planning and covered a variety of recent developments and sundry topics of interest. But, I do want to mention his far more substantial outline, which includes terrific discussions of 4 major charitable planning devices, namely, the charitable remainder trust ("CRT"), the charitable lead trust ("CLT"), pooled income funds and charitable gift annuities. For a thorough review and update on these charitable planning techniques, I recommend his outline. By the way, this is true for most of the speakers, who only have 45 minutes to cover some of the highest points in their respective outlines and other materials. Many go further in separate break-up

afternoon sessions throughout the week, some of which are included among our reports on line. Nevertheless, we have to point out that these reports only scratch the surface of the fine work that our faculty has put into preparation.

Sandy spoke at length and with passion about what the future holds for charitable giving in the ever-changing economic and tax environment.

He asked the attendees if the charitable world and the insurance industry would be adversely affected by lower transfer taxes and/or complete repeal and, of course, the consensus was that both would suffer somewhat (but who knows how much exactly?). He suggested that giving would decrease by 8% to 14% as the credit amount climbs over the next few years and that, with repeal, the decrease might descend as much as 16% to 28% (heaven forbid).

He spoke about the AFR impact on split interest gifts and pointed out that a donor really has 4 bites at this apple. He/she could use the AFR in the month of the contribution, the rate in the month preceding, the rate in the second preceding month or, since the IRS publishes the rate for the next month on the 20th of the current month, the donor might elect to wait a month for an even better option. He indicated that a higher AFR rate generally favors the CRT and gift annuity, while a lower rate favors the CLT and gift of a remainder interest. He cautioned that low AFR rate could jeopardize a CRT that might fail the 5% exhaustion rule and/or the 10% minimum charitable remainder interest rule.

He also spent some time discussing the 4 tier taxation pattern for distributions from CRTs. He pointed out, as did Richard Robinson, that the rate changes under law changes complicate this system and present some opportunities; of course, he cautioned that all of these changes "sunset" as of January 1, 2009. However, the determination as to what is ordinary income and what is capital gain (at one rate or another depending on its source and character) is cumulative from year-to-year and is determined at the end of each trust year. Losses and gains in different tiers cannot be offset against each other. When a distribution comes from a particular tier, say ordinary income, and all of the income is in the same tax bracket, a pro rata portion of each class of ordinary income is deemed distributed. If the income is subject to tax at different rates, the higher taxed ordinary income is deemed to be distributed first. This concept that higher taxed income with a given tier is deemed distributed first is retained most recent proposed regulations in this area.

Sandy spent some time suggesting that contributing retirement accounts to charity, given a charitable disposition in a client, is a good idea when done in a testamentary format, even though there may be a net income tax in the arrangement because of restrictions on charitable deductions in our tax law.

Sandy reviewed the so-called Care Act, which is not yet federal law, which would allow tax free transfer of retirement funds to charity (i.e., no income tax and no estate tax inclusion--and no deduction either). This would be a healthy simplification that is accepted in Congress.

Sandy advised of the Donor Managed Investment Account that the IRS recognized in PLR 200445023. This technique is similar to the donor advised fund, but it is created for only one charity and enables a person to make an immediate charitable contribution, but retain the possibility that the amount passing to the charity will be greater in the future. This device also allows a broader range of investment alternatives.

Sandy spoke about ethical issues and the concerns now surfacing with respect to charities that are trustees in arrangements where they are also beneficiary(s) and professional that "steer" a client to a charity in which they have a direct or indirect interest.

Sandy noted that the government provided sample split interest trust forms are an acceptable starting points for drafting any of the provisions that our clients would profit from having included. His outline for the various vehicles mentioned above should be consulted for many further important points that may be discussed in his break-out session.

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Special Sessions 3-D and 4-D - Technology - Demystifying the Numbers Thursday Afternoon,
1/13/05

Presenters: Joseph G. Hodges Jr. and Roger L. Shumaker Esq.

Reporter: Joseph G. Hodges Jr.

When you dream up the idea of doing these (more or less) live reports from Heckerling, a natural consequence is that you also get appointed to be the reporter for your own sessions. I mention that here only so you will appreciate that, while I will remain as neutral and unbiased as I can in giving this report, some of my personal prejudices might show through.

Roger and I attempted in two repeat one and one-half hour session to cover the field in terms of the number crunching computer programs that are currently available, including many that will crunch the numbers for charitable gifts and planning. As is always the case with such an effort, you can't cover or mention every program, although we tried to make sure they all were mentioned in our written materials. In addition, a couple of new products were brought to our attention between the time our outline was submitted and this presentation was given, and those will be mentioned here.

As a preliminary matter, perhaps the biggest news item of the week was the fact that last Friday Thomson RIA acquired ownership of the zCalc calculation program that operated in tandem with the Microsoft Excel spreadsheet program. The previous owner will stay on as a consultant to RIA for some period of time.

Roger began the presentation by covering several factors that need to be considered in understanding the automation process and the necessary components of an estat and trust planning and administration process. Joe added to this a discussion of how to choose the right software for your needs and questions to address before you purchase. Roger then wrapped up this potion of the presentation with a review of some of the ethical concerns that are involved with using technology.

Joe followed this presentation with a discussion of the Brentmark Estate Planning Tools program [www.brentmark.com], which is the mirror image of the Leimberg NumberCruncher program. Both of these program have a very complete set of estate planning and financial planning tools, and the calculations are very fast and presented in a straight forward and understandable way. In addition, the reports produced are sufficient for client presentations and, in certain cases, attachment to tax returns. Joe added to this presentation a demonstration of TigerTables by Larry Katzenstein [www.tigertables.com]. This program includes calculations for life estates, remainders, annuities, unitrusts and pooled income factors with up to 10 lives, plus valuations of a life estate with a 5%/ \$5,000 annual withdrawal right fir purposed of determining the previously taxed property credit.

Roger then proceeded with a demonstration of the BNA Estate & Gift Tax Planner program [www.bnasoftware.com]. Both Roger and Joe confessed to having been users of this particular product going clear back to the days when it was operated using an HP calculator mounted on a printer stand, so things have come a long ways since then. This product performs a number of planning calculations that many programs do not. Recently a number of split-interest calculations

have been added, as has a new user interface and the ability to produce PowerPoint(tm) slides. At the end of Roger's presentation, Joe demonstrated some of the simpler functions this program can be used for by showing how IRD calculations can be easily and quickly done using a two-column comparison.

Joe then demonstrated the Estate Planning Quickview program that is also available from both Brentmark and Leimberg (see URLs above). Joe described this as a "down and dirty" but fast estate planning and presentation program that will present the calculation results in both numbers and bar graphs. What makes it unique is that it does it for 14 different planning scenarios all at the same time.

Roger then demonstrated the Intuitive Estate Planner program by Thomson-West . Authored by Donald Kelley, this program is perhaps one of the most comprehensive calculation and illustration programs currently available for doing all of the common estate and gift planning calculations. It includes a general analysis plus illustration capacity plus several utility programs, such as future values of investments, charitable split interests values, life estates and remainders, and present values of future payments.

Joe then quickly demonstrated the Kugler Estate Analyzer from Brentmark (see URL above). While the initial interface for this program is relatively simple, it will perform a variety of sophisticated calculations depending on the estate planning alternatives you want to examine for a given client.

Roger then quickly demonstrated and discussed the new Estate Profiler Pro program that was first seen by the two of us only a couple of weeks ago. This is billed as financial and estate planning software, and from the looks of its multi-screen output (which tends to get confusing at times) it is just that. What is unique about this product is that it does indeed present all the data and calculation results on one screen, along with line charts that illustrate the results graphically. Unfortunately we did not have time to give this program a real run for its money.

Joe then turned to software programs that are dedicated to doing charitable gift planning calculations. One of his favorites was the Brentmark Charitable Financial Planner program. The real plus of this program is the ability of the user to quickly do what if alternative calculations when considering various planning alternatives. In addition, it is a very affordable product for smaller charities. As another cost-effective alternative Joe next demonstrated the Crescendo Lite program [www.crescendosoftware.com], which is a stripped down version of the institutional-sized program that Crescendo markets, but it comes with enough calculation alternatives to make it worth while for many small charities, especially since it comes with all the presentation tools and other communication tools and forms that the larger program has, albeit limited just to the calculations that are included. As another calculation alternative, Joe directed people to the following Web sites where free charitable calculators current can be found or even purchased for addition to the Web sites of financial advisors if

desired: Crescendo at www.crescendosoftware.com/cres_home.jsp, PhilathroTec at www.ptec.com, and the Planned Giving Design Center at <http://www.pgdc.com/usa>.

The session concluded with a strong suggestion from the speakers that the flow chart and other graph capabilities of these programs be used to help insure the client's understanding of the various alternatives that are being considered and that print outs of the same be given to the client and placed in the client's file (along with any handwritten notes about the options considered and rejected and why), as a matter of good legal malpractice prevention. Also, everyone was encouraged to visit the web sites of the various vendors not only to learn more about the software in question but also what their current pricing might be.

Our on-site local reporters who are present in Miami this year are Gene Zuspahn Esq. of Zuspahn & Zuspahn in Denver, Colorado, Shelly Merritt Esq., a solo practitioner in Boulder, Colorado, Connie T. Eyster Esq. of Hutchinson, Black & Cook LLC in Boulder, Colorado, Jason Havens Esq. of Havens & Miller PLLC in Dustin, Florida, Bruce Stone of Goldman, Felcoski & Stone, PA of Coral Gables, Florida, Herbert L. Braverman Esq. of Walter & Haverfield LLP in Cleveland, Ohio, and Jeffrey L. Weiler of Benesch, Friedlander, Coplan & Aronoff LLP of Cleveland, Ohio. The editor again this year will be Joseph G. Hodges Jr. Esq, a solo practitioner in Denver, Colorado who is the Chief Moderator of the ABA-PTL List.

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