

STATEMENT BEFORE THE
SENATE COMMITTEE ON FINANCE
SUBCOMMITTEE ON TAXATION AND IRS OVERSIGHT
HON. CHARLES E. GRASSLEY, CHAIRMAN

"TAXPAYER BEWARE:
SCHEMES, SCAMS AND CONS"

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Mr. Chairman and members of the Committee, I want to thank you for inviting me here today to address this very important issue.

My name is Joseph G. Hodges Jr. I am a member of the Colorado Bar and a solo practitioner in Denver, Colorado. I also currently serve as a member of the Council from the Probate Division of the American Bar Association's Real Property, Probate and Trust Law Section, where I Co-Chair the Section's technology Committee, and as a Fellow and Regent of the American College of Trust and Estate Council [ACTEC]. However, the following comments are mine alone and are being submitted only in my individual capacity. They do not represent the position of the American Bar Association or the Section of Real Property, Probate and Trust Law, nor for that matter of the American College of Trust and Estate Counsel or its Board of Regents.

I am appearing before you today solely as a private practitioner whose law practice has, ever since its inception in 1968, emphasized estate planning and administration and charitable planned giving. As such, it, along with my many Bar Association and related Internet activities, have given me a unique and broad exposure to a variety of taxpayer schemes, scams and cons and people who have fallen victim to the same.

You have already heard a great deal from our previous speakers about the wide variety of schemes, scams and cons that are presently out there and being perpetrated upon the innocent and badly informed public, and especially our senior citizens. Thus, I will not belabor you with further examples, except to say that the recent advent of the Internet as a means for the affordable and mass delivery of such false and/or misleading material about the average citizen's two biggest fears and certainties in life, *DEATH AND TAXES*, has brought a whole new set of issues to bear on and further compound the problem.

The Impact of the Internet on the Delivery of Legal and Financial Services

_____ Prior to the advent of the Internet as we know it today in the early 1980's, people who were in the business of providing financial and estate planning services had to rely heavily on marketing and using techniques that would convince people of their need for professional help and the quality of the services that were being offered. To a great extent, those contacts were made through personal and face-to-face visits that were precipitated by quality referrals often extended over a long period of time and resulted in a lasting personal and professional relationship with the client and the rest of the client's family members.

With the advent of the Internet and its world-wide scope, the model for the most effective and least expensive delivery of these sorts of traditional financial planning services has changed both dramatically and with lightening speed. As that has occurred, people no longer are seeking out referrals to qualified professionals. Rather, self-help has become the affordable method of choice for many Americans, witness the significant increase of things such as on-line stock brokerage services, software that will allow the consumer to handle many traditional legal matters without the need for professional advice or services.

As a consequence, the American Bar Association has finally begun to address in many ways the impact that this sort of technology is having on the traditional methods of practicing law. Some of those efforts are reported in the Report of the ABA Tech 2000 Task Force on the March, 2000 Law Practice Management Section's Conference entitled "*Lawyers Serving Society Through Technology*." The Executive Summary of this Report reflects a variety of concerns and calls for action, including:

- 1) The effective use of technology appears to provide the most promising solution for connecting underutilized lawyers with people who have unmet legal needs.
- 2) There is a distinct possibility that a large segment of the legal profession, mostly solos and small firms, could be displaced by competitors providing legal solutions under the category of "**legal information services**" (emphasis added), such as the **Nolo Press Law Store** [www.nolo.com] as opposed to traditional "**legal services**," witness the

growing movement towards, and current serious concerns within the ABA about, Multiple Disciplinary Practice [MDP] within the big accounting firms and the Multiple Jurisdictional Practice [MJP] of law across state lines. A recent article that examines this subject in depth can be found in the January-February 2001 issue of the journal of the American Judicature Society (Vol. 84, No. 4), called **Judicature**. The article is by John Creacen, the Director of the Administrative Office of the Courts for the state of New Mexico and is entitled "*Legal Information vs. legal advice: Developments during the last five years.*"

3) The Internet is allowing some types of legal services to be "commoditized,," such as the "self-help" preparation of simple Wills and Powers of Attorney, and even individual income tax returns, using software products that are produced by such reputable companies as Intuit and Kiplinger magazine.

4) Things such as artificial intelligence and expert systems and document assembly have the potential to make revolutionary changes when they are deployed in combination with the Internet, such as Lexis-One [www.lexisone.com] or the Wealth Transfer Planning Wills and Trusts Preparation Web-based software that is now being made available to professionals and the public at www.lawontheweb.com.

5) Consumer price choices are moving away from the traditional hourly rates approach to either auction or value-added flat-fee approaches, such as pre-paid legal plans, such as the AARP Legal Services network at www.LSN.aarp.org/info, or the new Elder Law Answers web site at www.ElderLawAnswers.com, or the new Elder Law Answers web site at www.rightpro.com.

6) The ethical framework for delivering "legal services" on line is currently not in place.

7) Lawyers will face increasing competition from other professionals, including accountants and MDPs, many of whom are not subject to the same ethical rules, while the unauthorized practice of law statutes [UPL] are becoming harder and harder to apply to combat these competitors, especially in an Internet context.

The essence of these recommendations and how Internet technology can be used in a positive way to revolutionize the delivery of legal services to the consuming public can be examined in more depth at the new ABA **eLawyering** web site at www.elawyering.org.

The Revocable Living Trust As The Be-All End-All Tool of Choice

_____Thanks in large part to the relative success of national organizations like The Lawyer's Network [www.netplanning.com] (the "Loving Trust" network) and the American Academy of Estate Planning Attorneys [www.aeepa.com], and seminars like the "Tax Reduction and Total Asset Protection" conference that is put on nation-wide by National Training Conference and usually taught by "The Father of Asset Protection" himself, Jay W. Mitton, MBA, JD, of Provo, Utah, the existence of trust scams and trust mills has exploded in recent years.

Not a day goes by when one does not see an ad in the local papers for a Trusts seminar, often hosted by reputable brokerage houses and presented by card-carrying members of organizations like the Network or the Academy.

The sad part of this movement is that a lot of the publicity for these events borders on outright misrepresentation, and sometimes even fraud, such as by implying that the only way to save estate taxes is to have a revocable living trust, or that it is essential in all jurisdiction in the United States to avoid "PROBATE" at all costs.

As a result of seminars likes these, there has been a significant upturn in the amount of junk mail selling Living Trust Kits. In addition, many books on the subject are starting to show up in the stores, such as "*Understanding Living Trusts*" by Vickie and Jim Schumacher of Schumacher Publishing in Santa Monica, California, or "*The Living Trust: A Cure For The Agony of Probate*" or "*You and Your Will: A Complete Do-It-Yourself Manual With Forms and Instructions*" by Vijay Fadia that is published by Homestead Publishing Company of Torrence, California, or "*Family Trusts*" by Frank Croke with William Croke, Attorney-At-Law, that is published by Capital Management Press, or "*60 Minute Estate Planner*" by Sandy F. Kraemer Esq. that is published by Prentice Hall. As a consequence of this, the Attorneys General of many states, including my home state of Colorado, have finally begun to publish consumer

booklets, like the one called "*Consumer Alert! - Living Trust Scams*" that Colorado's former Attorney General, Gale A. Norton, published in cooperation with the AG's Consumer Protection Unit.

Some Additional Solutions to the Problem

_____ As a direct consequence of the significant increase in the amount of consumer fraud and misrepresentation in this arena, both the ABA RPPT Section and ACTEC currently have under serious consideration and development significant additions to the public education content on their Web sites, not only about all the many sorts of tax schemes, scams and cons that are so widely known to exist today, but more importantly about helping the public to seek out and find qualified and reputable professional help with their estate planning needs.

In the case of the ABA RPPT Section, their plan is to develop their public content much as the ABA Business Law Section has done already for the consuming public. The RPPT Section will be meeting in Washington, DC at the end of this month to give final approval to phase one of this new site.

In the case of ACTEC, although the public content part of its site had been slow in developing to date, the College's Practice Committee currently has several proposals under active consideration. In addition, a year ago the College's Foundation underwrote the cost of producing a one-hour program for PBS as a segment of the "**Inside the Law**" series called "**Death and Taxes: An Inside the Law Special**" that first aired nationwide in May of 2000, and the Foundation just recently approved the funding of a second such production focusing on Elder Law at its spring 2001 meeting last month. A similar public video educational effort was undertaken by the California Bar a year or so ago, this one focusing on elderly fraud issues, and it was funding out of the proceeds of the settlement of a case against one such perpetrator.

Conclusion

_____ I hope the Committee can see from the foregoing and all the testimony today that the Bar Associations are becoming much more proactive in trying to combat the many tax scams and cons that are present today in the sincere hope that such public educational efforts will bring about a quick and sudden but well-deserved "death" to most such schemes.