Final Indignities

AN EDITORIAL INVESTIGATION BY THE

St. Petersburg Times

Final Indignities

WELCOME

Last year, the *Times* published *Final Indignities*, an editorial series that exposed flaws in Florida's estate system and proposed common-sense solutions. That series was directed not just at lawyers and lawmakers, but at citizens like you, the people who suffer when the system breaks down. Due to strong public demand, we have reprinted the series and organized this community forum.

The series and forum share a goal: to give you the power of knowledge. Although estate planning is a concern for all Floridians, many lack the answers to important questions:

- *Should I have a will or living trust?*
- *How do I pick a skilled and honest lawyer?*
- *How do I make sure my final wishes are carried out after I'm gone?*
- *What can my beneficiaries do to protect themselves?*
- *What happens in probate court, and how much does it cost?*

We hope this presentation helps answer those and other questions. We hope it gives you something else: the tools to do your own research and assert your own rights.

Mike Foley
Vice President
Communications/Community Relations

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ABOUT THE SERIES

This series is based on information gathered from court records, Florida Bar proceedings, and interviews with judges, lawyers and the citizens affected by their work. It was researched and written by editorial writer Jeffrey Good, who has worked for the *Times* since 1983 and written extensively about the probate court's impact on elderly Floridians.

Good

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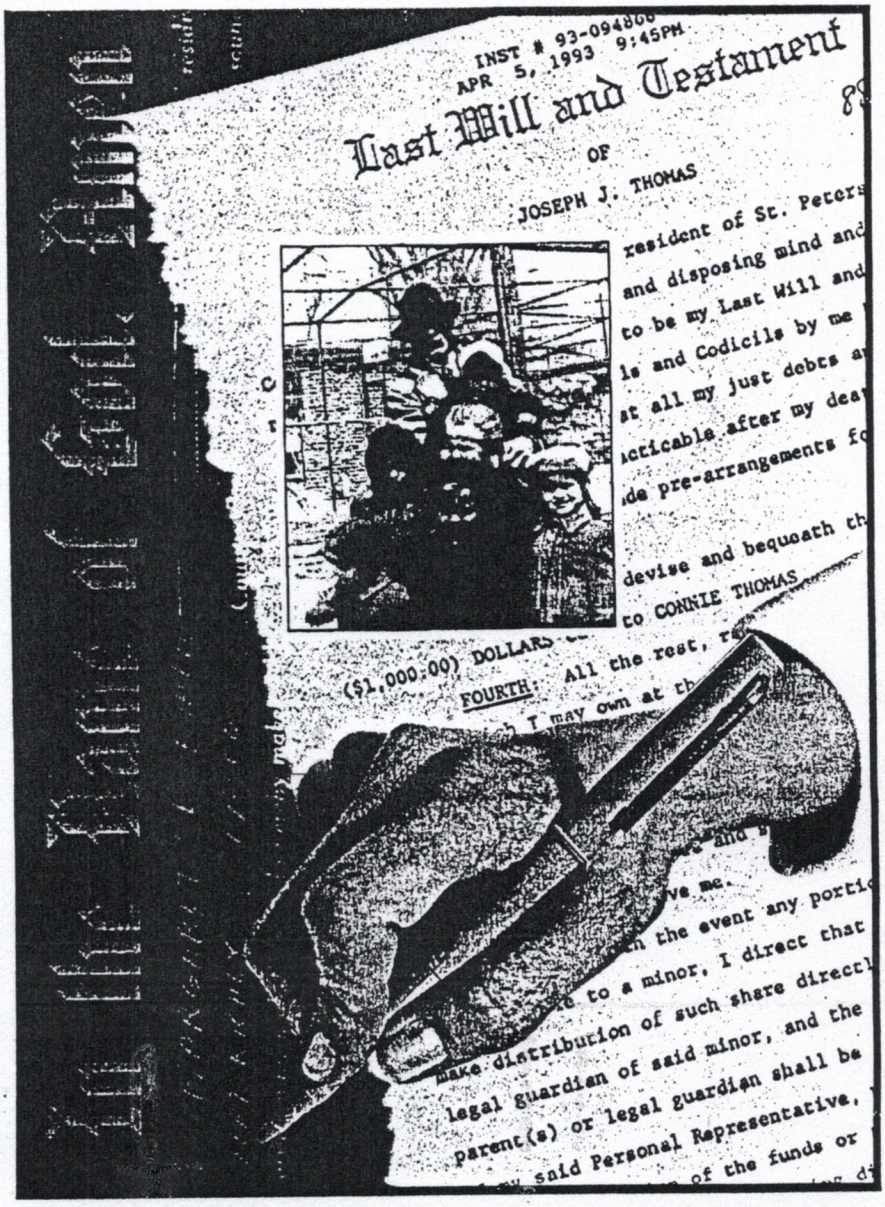
The series was originally published in the *Times* in 1994 between Aug. 28 and Sept. 18. The followup report was published Dec. 11. In this compilation, we have included a Postscript, which updates some of the events mentioned in the series and reports on the current attempts to reform the probate system.

BROKEN PROMISES

■ Florida's lax probate system too often betrays the last wishes of its deceased citizens.



Joe Thomas wanted to end his life as he lived it: with quiet dignity. In Florida, that was too much to ask.

For most of his nine decades, Thomas had made do without the help of others. He paid his bills on a parks department salary, saving pennies by sprinkling warm water on his cereal. He lived alone, retiring to a modest boarding hotel where he bothered no one and even made his own funeral plans.

But there was one job Thomas could not do alone: Leave a final gift to 32 beloved grandnieces and grandnephews. He wrote a will asking Florida's probate courts to carry out his wish.

When Thomas died in 1988, he left enough for each beneficiary to inherit about $8,500. The heirs made earthy plans for Uncle Joe's bequest: help a child through college, put money down on a house in a safer neighborhood, weather a spell of joblessness.

A judge appointed St. Petersburg lawyer Lauren Sill to serve as executor of the Thomas estate. Although she was supposed to begin distributing the inheritances within one year, the courts let her keep the cash for nearly five.

By the time a judge asked Sill what had become of the money, it was too late. She had stolen $270,000, nearly all the dead man's savings. With help from Florida's probate court, she had stolen something else: Joe Thomas' final dignity.

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Each year, more than 140,000 people die in Florida. Many are like Joe Thomas: They work for decades and retire to this place in the sun. As the end nears, they write wills leaving a final gift to friends, family, a favorite charity. Somewhere along the way, a lawyer says, "Don't worry. The courts will take care of your last wish."

We face death believing this promise, trusting that our passing will be marked with a final measure of dignity. Too often, the trust is broken.

Make no mistake: Most estates are administered honestly and well. But these successes come not because the system demands it, but because individual executors, lawyers and court officials choose to do the right thing.

Florida's probate system is designed to be "self-administering," that is, the courts generally don't get involved unless someone raises a red flag. That system works fine when estate administrators are honest, efficient and open about their work.

But in other cases, the system's loose oversight opens the door to wrongdoing. Trusted executors loot estates, while court officials look the other way. Wrongdoers receive light punishments, while victims get an empty promise of repayment. And as the probate horror stories mount, elderly Floridians take refuge in living-trust plans that leave them even more vulnerable to exploitation.

The probate system is not intrinsically evil. Run properly, it is a fine way for people to pass wealth from one generation to the next. Assets are gathered, bills are paid and bequests are passed to the rightful heirs — all under the court's watchful eye.

But the system is no better than the law that governs it, or the people who run it. In the first of a series of editorials on Florida's estate system, the *Times* explores how probate court fails the people it is designed to protect.

Too often, the people who take advantage are the ones in whom the courts — and the public — place the greatest trust: lawyers.

Broken deadlines

Would you give someone a one-year deadline for distributing $283,000, then wait five years to ask what had become of the money? That's exactly what Pinellas County judges did with Joe Thomas' life savings.

Florida law gives nearly unchecked power over

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While beneficiaries expect the court to be protecting them, officials expect beneficiaries to be savvy enough to protect themselves. In the canyon between those expectations, deceit flourishes.

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estates to the executors — also known as "personal representatives" — appointed to administer them. In return, executors are supposed to begin distributing inheritances within a year, or provide a good reason why they have not.

That time limit is written into law, but court officials don't always enforce it. As Sill blew off deadline after deadline, the judges granted her extension after extension. Sill celebrated by writing herself fresh checks from Joe Thomas' bank account. After Circuit Judge Helen Hansel gave Sill a 60-day extension in 1992, for instance, Sill stole nearly $97,000.

In 1993, after Sill had enjoyed eleven deadline extensions, Hansel finally called her bluff. Sill was summoned to court and asked: Where is the cash?

"In the bank," Sill replied.

All $283,000?

"That's correct," said Sill.

Then an amazing thing happened. After five years of lies, someone thought to check up on Sill. Five minutes later, he reported, "Your Honor, I have been advised by the Chase Bank that the balance in the estate account at this time is $3,611."

Five minutes and a phone call. That's all it took to expose Sill as a thief and a disgrace to the probate system. That's more than the courts had been willing to do — until it was too late.

Last year, Sill was convicted of stealing money from four estates, including Joe Thomas'. She was sentenced to 2½ years in prison. While the delays in her case were extreme, they are far from unusual.

As of last March 31 — the most recent date for which statistics are available — nearly half of all Florida estates were open past the one-year limit. The percentage of overdue estates varied widely among counties. For instance, Pinellas had 31 percent over deadline, while Hillsborough had 49 percent and Palm Beach a whopping 86 percent. (These figures are for estates under $600,000 that don't involve a legal contest; more complicated estates have longer deadlines.)

In recent years, court officials have done a good job sending out warnings on delinquent cases. But they need to do more. They need to demand proof that executors are not delaying estates to drain them.

The system failed when it didn't demand that proof of Lauren Sill. Joe Thomas, 1901-1988, deserved better.

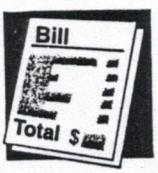
The probate process

How wealth passes from one generation to the next:

1 A person signs a will outlining how his or her life savings, real estate and personal mementos should be distributed upon death. The will often names an executor, also known as a "personal representative," who is to gather assets, pay bills and distribute inheritances.

2 After death, an estate is opened in probate court. If the executor is not named, or cannot serve, the judge will appoint one. If the executor is not a lawyer, one must be hired to provide legal guidance.

3 Creditors have three months to submit bills to the estate for medical care, funeral services or other unpaid debts. After those debts are paid, the executor can distribute inheritances.



4 Unless there is a federal tax return or other complication, the executor should file a financial accounting and close the estate within one year.

Times art

Cozy deals

Overseeing an estate isn't always as simple as calling the bank. Many people die leaving not only cash, but also antiques, art, jewelry and rare stamps.

Florida law gives estate administrators vast power to sell such valuables and distribute the proceeds to heirs. In a logical world, the law would require the administrators to prove they had conducted these sales honestly and in the best interest of the estate.

But this isn't a logical world. It's Florida.

State law does not require executors to obtain objective, professional appraisals. Because of this loophole, the courts don't know if executors are protecting estates — or looting them.

Consider the case of Margaret Fiala.

Mrs. Fiala was a widow who died in Pasco County, leaving her life's treasures to two grown children. Because the heirs lived out-of-state and could not properly administer the estate, a judge appointed Pasco lawyer David C. Gilmore to carry out Mrs. Fiala's final wishes.

Gilmore needed to sell the estate's stamp collection and distribute the proceeds to Mrs. Fiala's children. While not required by law, an appraisal was important; the untrained eye can't distinguish between a 10-cent stamp and a $10,000 one. So, Gilmore hired a professional appraiser.

The appraiser, Pasco Coins & Jewelry owner Tim Carr, set the collection's value at nearly $5,000. Did Gilmore then use that appraisal to guide him as he put the stamps on the market, seeking the highest price? No. Gilmore simply turned around and sold the stamps to Carr for $5,000 — without seeking any other bids.

Gilmore and Carr insist that was a fair price. One of the heirs, Diane Fiala, has her doubts. Fiala has obtained professional estimates setting the stamps' value as high as $100,000 — 20 times Gilmore's sales price.

Fiala initially approved Carr's hiring. But now she wonders if Gilmore and the appraiser struck a deal to get the stamps cheap and then resell them at a profit, a suspicion both men vehemently deny. What is the truth? That's the $95,000 question — one the courts can't answer, because they didn't require Gilmore to prove he had sold the stamps at arm's length. In fact, Gilmore didn't even have to tell court officials who had appraised and purchased the stamps.

Pasco Circuit Judge Lynn Tepper, who oversaw Gilmore's work, refused to answer questions from the *Times*. But a veteran probate judge not involved in the case said selling property to an appraiser raises serious questions. Pinellas-Pasco Circuit Judge Thomas E. Penick Jr. said, "That's loose operations."

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A license to steal

In Florida, it's perfectly legal to rob an estate. All lawyers and bankers have to do is belly up to the trough our elected representatives built for them.

Estate lawyers and executors do important work when they transfer wealth between generations, and they deserve a reasonable fee. For years, "reasonable" was defined as a percentage of an estate. But in 1991, the Florida Supreme Court scrapped that practice, which overpays those who handle large but simple estates. The court ruled that estate managers should simply charge for the time worked.

The bankers who often serve as estate administrators didn't like that. Nor did the lawyers. They argued that billing strictly by the hour encourages unethical professionals to pad their time sheets and discourages good ones from working efficiently.

Those are valid points, but they don't justify what happened next. Under pressure from the Florida Bar and Florida Bankers Association, legislators in 1993 handed estate professionals a license to steal. Consider how the new pay law could bleed a typical Florida estate, one worth $300,000:

- Under the old law, a $150-an-hour lawyer who worked 20 hours on the estate would collect $3,000. The new law says the lawyer can keep that money, plus charge 2 percent of the estate as a "reasonable" fee. That's an extra $6,000.
- The executor cleans up, too. Regardless of how much work was done, he pockets 3 percent of the estate, or $9,000. And if there's another executor — who could easily be the estate lawyer — the estate is out another $9,000 fee.
- Don't think a living trust will necessarily avoid this penalty. Lawyers can now take a 1 percent cut of assets that bypass probate in large trusts.

Heirs can save money by negotiating a lower fee or challenging an excessive one in court. But the new law burdens them with proving the fee is "unreasonable." Many heirs — particularly ones who are drowning in grief, live out-of-state, or can't afford a lawyer — are not going to challenge fees. Greedy estate professionals know that; they're banking on it.

While decent lawyers are not abusing the new law, unscrupulous ones are. As he considered fees in one Orange County case, Circuit Judge R. James Stroker called the law what it is:

An invitation to gouge.

It's time for legislators to put the law where it belongs: in the trash.

Promises from Page 4

It's also an insult to a woman who put her faith in the courts. Margaret Fiala, 1911-1985, deserved better.

Protection lost

Diane Fiala might never have known how much the stamps in her mother's estate had sold for, if she had done what too many beneficiaries do: waive her right to a final accounting.

The law requires executors to submit a detailed financial report before closing an estate, unless they get a waiver from the beneficiaries. Many lawyers urge their clients to sign away this important protection, saying, You can trust me.

Really? Consider the case of the red Mercedes. After Esther Specht died, Tampa lawyer Karl Stevens Jr. administered her estate and asked the beneficiaries to waive a final accounting. Not suspecting any skullduggery, they signed the forms. No longer accountable, Stevens bled the estate, taking a $16,400 "loan" to treat himself to a Mercedes-Benz convertible. The color: Sunset Red.

Normally, Stevens' cash grab would have gone undetected; a judge would have seen the waivers and closed the estate. Luckily, though, Stevens' secretary had a conscience and tipped off the Florida Bar.

After he was caught, Stevens repaid the money and pleaded guilty to grand theft and related crimes. But his case reveals a serious flaw in the probate system: While beneficiaries expect the court to be protecting them, officials expect beneficiaries to be savvy enough to protect themselves. In the canyon between those expectations, deceit flourishes.

Even in cases where accountings are completed, court officials do little more than stuff the documents in a forgotten file. A survey of court officials in six estate-heavy counties — Pinellas, Hillsborough, Broward, Palm Beach, Orange and Pasco — found that none routinely audit accountings.

Said Orange County probate manager Robert Herndon: "If they (beneficiaries) have no objections to how the funds are managed, or mismanaged, then the court has no concern."

Herndon is right, and the system couldn't be more wrong.

In many cases, beneficiaries live out of state, are unfamiliar with probate law, or lack the financial knowledge to police an estate administrator. They count on the courts for that protection.

People facing death have a right to expect that their money will go to chosen beneficiaries, not to a crook in a convertible. Esther Specht, 1909-1987, deserved better.

Uncaring courts

When problems do surface in estates, judges have the power to ask the tough questions and make things right.

Judges can order estate administrators to court and put them under oath. They can demand documentation of bank balances and estate sales. In the worst cases, they can appoint investigators and throw errant administrators off the case or into jail.

Used judiciously, these powers allow judges to ferret out wrongdoers and strike fear in potential villains. Yet, some judges seem ridiculously reluctant to use them.

In the Thomas estate, court officials issued warning after warning to attorney Sill, but didn't back them up until it was too late. In the Fiala estate, the judge seemed more interested in making excuses for attorney Gilmore than in investigating legitimate questions about his work.

Probate is a cozy club. The same judges see the same lawyers every day inside the courtroom, and often outside. When the lawyers say something is so, the judges tend to believe them.

Diane Fiala was like many beneficiaries of Florida estates. She lived a thousand miles away, didn't understand Florida law and could only communicate with the court by letters, phone or an occasional visit.

Gilmore says Fiala has no right to complain now, because she didn't protest the stamp sale when it was done. But court records show that while Diane Fiala did not specifically object to the appraiser buying the stamps for $5,000, she did tell court officials that a stamp club president said her parents owned "very good stamps, worth over $25,000." And in a formal objection to Gilmore's financial accounting, Ms. Fiala protested that Gilmore "has failed to properly account for the true value of the personal property of the Decedent."

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That objection forced Pasco court officials to address her concerns. But when they did, Ms. Fiala didn't have a friend in the right place.

Probate judges often rely on court clerks to watchdog problem files. In the Fiala case, that job fell to Pasco deputy clerk Lisa A. Peters — who had worked nearly three years as Gilmore's probate secretary before she began examining his work on the Fiala estate.

Neither Peters, her bosses, nor Judge Tepper would answer questions about how that past relationship affected the court's actions. They don't have to; Peters' conflict-of-interest clearly disqualified her from being an objective overseer.

When Fiala raised questions about Gilmore's actions on the stamps and other estate issues, the judge should have appointed an independent investigator, sometimes known as an administrator ad litem. Instead, Tepper brushed off the protests and closed the estate — leaving questions that have hounded Fiala and Gilmore through years of legal feuding.

Diane Fiala once trusted Florida's legal system, but now she is justifiably bitter. "The people who are supposed to uphold the trust are more geared to their personal networks," says Fiala. "It isn't a system of checks and balances. It's more like a good ol' boy network."

We all deserve better.

Probate professionals who care

For many probate professionals, reforming the system won't mean extra work. They're already doing things the right way.

While some judges regard their time in probate court as a long nap, others take seriously their duty to deceased Floridians and grieving heirs. Pinellas-Pasco Circuit Judge Thomas E. Penick Jr. is one who cares.

Penick has forged a statewide reputation as a probate judge who doesn't sit back and wait for someone else to identify problem estates. Penick scours case files for warning signs, appoints independent investigators and cracks down on wayward executors and lawyers. With Penick's heavy caseload, that often means working from dawn to dark.

Other judges call Penick "The Hammer." He says, "I've never been a person to keep my mouth shut."

Judges have an easier job when the lawyers who appear before them are hard-working and honest. Recognizing that Florida law doesn't always require vital safeguards, these lawyers voluntarily take steps to protect the wishes of deceased clients and their loved ones.

St. Petersburg lawyer Thomas Churchill Dunn, for instance, advises clients against waiving estate accountings. When he administers an estate, Dunn says, he routinely prepares a detailed explanation of where the money went.

"I'm proud of our work and I want everybody to say, 'Yes I understand what's been done here,' " says Dunn. "It's a valuable protection that should only rarely be waived."

Penick

Dunn

Rutland

While the law doesn't require executors to obtain appraisals when selling estate goods, responsible professionals take the extra step. It's a way to insure that beneficiaries are getting the best price, and a protection against even the suggestion of hack-alley deals.

"I always get them, always," says Charles Ian Nash, a Melbourne lawyer and co-chairman of the Florida Bar's probate consumer protection committee.

What's more, Nash said, he makes sure appraisers are objective. That means they aren't tempted to lowball a price on something they also plan to buy. Nash says, "Most reputable appraisers will not buy something they appraise."

While some lawyers are abusing Florida's probate fee law to inflate bills, others are behaving honorably. Although the law allows lawyers to charge hourly rates plus a percentage of the estate, St. Petersburg attorney Nancy E. Rutland charges strictly by the hour. "It's fair," says Rutland, who charges between $155 and $195 an hour on most estates. "People pay for the services they're getting."

To lawyers like Rutland and judges like Penick, probate is more than an occasion to soak fees and push paper. It is a solemn opportunity: to carry out final wishes, to insure a final dignity.

BROKEN TRUSTS

■ Living trusts are no estate cure-all, but that doesn't stop promoters from bombarding elderly Floridians with hard sells and half-truths.

You've heard the sales pitch: Living trusts are the best way to escape the "horrors of probate." Simply sign a trust and, after you die, every dime of your estate will automatically pass to chosen friends, family and charities.

Sounds wonderful, doesn't it? Too bad it's a lie.

For some people, living trusts are a legitimate alternative to the traditional will-based estate plan. But promoters often frighten and mislead people into buying expensive trusts when a simple will would serve them better — and provide more protection against exploitation.

The concept of a living trust is simple. When you die possessing worldly goods, probate court steps in to oversee the estate. By transferring substantial assets into a trust before death, you can leave the court with nothing to supervise.

Probate has its failings. But the answer to these problems is to fix them, not run away. Once it has proper safeguards and affordable fees, probate will remain the best system for carrying out most people's last wishes.

In recent years, Florida attorneys have successfully crusaded against the non-lawyers who push unsuspecting consumers into flawed or unnecessary trusts. The Bar should continue that campaign, but it should also take out its own trash. When it comes to slimy trust peddling, nobody beats a lawyer.

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"READY TO DIE?"

That was the headline, big and bold, of an ad taken out in the *Times* by the Palm Harbor law firm of Frank and Judy Spees. The ad went on: "Find out why you need a Living Trust no matter how big or small your estate is! Find out how anyone who tells you not to get a Living Trust is misinformed or profiting by your mistake!"

Truth is, it's people like Spees & Spees who are spreading the misinformation — and pocketing the profits.

The ad touched a nerve. At a May 2 seminar last year sponsored by the husband-and-wife legal team, the room quickly filled with elderly people for whom death was no abstraction. One woman could only take a few steps before stopping for breath. Another man complained of the insomnia that followed his wife's passing. Most everyone worried that the money they wanted loved ones to inherit would instead disappear into some probate black hole.

Spees & Spees played on those anxieties.

Frank, tall and handsome, began by demeaning his profession. "What do you have when you have a lawyer who's up to his neck in cement?" he joked. "Not enough cement."

Next came Judy, tall and wholesome, who assured the crowd that Spees & Spees were not typical lawyers. They left behind flashy careers in television and LA-style law to help the little people — by selling them living trusts.

Frank and Judy Spees are not typical lawyers. They are typical hucksters: people who make money by feeding unrealistic fears of probate, while failing to disclose the perils of living trusts.

Cutting through to the facts

Here is the sales pitch — and the truth.

Probate costs swallow estates, the hucksters say. Judy Spees told her elderly audience that probate costs "will eat up 5 to 15 percent of your estate."

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The fact is, very few people need a living trust. For most, it is too much money, too much trouble, and an invitation to abuse.

Trusts from Page 6

The Spees present these frightening figures as *fact, and then open the cash register as clients line up* to pay from $450 to $2,190 for a trust package. There's just one problem: The numbers are bogus.

Most experts say that Florida probate costs seldom exceed 5 percent of an estate. When asked to prove otherwise, Frank Spees hemmed and hawed before saying that his information came from a living trust book and an article in the *Wall Street Journal*. The *Times* examined both sources; neither backed the sky-high figures quoted by Spees.

When challenged later, the Spees backed away from their claim. Frank Spees said, "You may have pointed out something that I need to change in the seminar."

Certainly, probate can cost too much, particularly if lawyers and executors charge the outrageous fees allowed by current state law. But those same fees can be duplicated by the trustees and lawyers who administer trusts. And because trusts have little court oversight, no judge is standing by to cut excessive fees.

The Spees inflate their estimates by talking about the expense of notifying creditors, sorting out tax issues, and accounting to beneficiaries. Those expenses are no different in a properly administered trust, says Tim Flanagan, a Jacksonville trust lawyer. "The work is virtually the same."

The only automatic extra cost in probate is the court fee, the price of admission to a court system designed to protect against fraud and mismanagement. In Pinellas County, that fee is $170 — a fraction of the price of a Spees & Spees living trust package.

Probate takes too long, the hucksters say. At his seminar, Frank Spees claimed, "According to a recent survey of attorneys, the average probate takes 2½ years."

When questioned after the seminar, Spees couldn't produce that "recent survey." The best he could do was point to that same newspaper article. The article — which is 7 years old — said, "The average probate takes two years to complete in California."

We live in Florida. Here, court officials say there are no reliable statistics on the length of probate. But lawyers in various parts of Florida say they can process most estates in three to nine months. One of those lawyers was none other than Judy Spees, who said her average probate estate requires seven months.

Probate court backlogs can account for a few days or weeks of that delay. Beyond that, however, living trusts take just as long.

Florida law requires probate estates and revocable living trusts to give creditors three months to submit bills for medical care, funeral services and other unpaid debts. Other delays are caused by factors unrelated to the legal form of estate: tax returns, trouble selling property — and foot-dragging by trustees, executors, lawyers and heirs.

Here's something the hucksters won't tell you: Living trusts can take longer.

Florida law sets a 3-month deadline for contesting a will, but there is no such time limit on people trying to break a trust. And because living trusts lack probate's clear procedures for settling disputes, feuds can drag on for months and even years.

"For married couples," say the Spees, "Living trusts can save up to $235,000 in estate taxes."

Here's what they didn't say: A will-based estate plan can do the same thing. The key to saving on taxes is to properly organize assets before death, a goal that can be reached through a will or a living trust.

When confronted, Frank Spees acknowledged this point and said he may disclose it at future seminars. He said, "It's important not to misrepresent."

"There are very few people who don't need a living trust," said Judy Spees.

The fact is, there are very few people who do need a living trust. It can be useful for people who own property in many states, because it reduces the need for opening probate files in different places. It can also appeal to celebrities like former Bucs owner Hugh Culverhouse, who would rather keep their finances out of a public court file.

But for most people, a trust is too much money, too much trouble, and an invitation to abuse.

Money: While offering few benefits, a revocable living trust costs two to four times as much as a will-based estate plan. For people on limited incomes, the difference between a $300 will and a $1,000 trust can mean a lot of groceries.

Trouble: A living trust is worthless unless its creators legally transfer bank accounts, stocks and other assets to the trust. For younger people, that can mean decades of title changes and inconvenience. And if you forget one asset, guess what? That part of your estate is headed for probate.

If a trust is improperly written, it could unravel your estate plan after you die, leading to costly litigation or a distribution decided by the court.

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Trust became a slush fund

Promoters sell living trusts as a way to pass on an inheritance without sacrificing privacy. What they don't say is that because living trusts have no probate court oversight, their "privacy" opens the door to abuse. Consider the case of the good father and his crooked lawyers.

Peter J. Mooney was a retired Catholic priest who was dying of liver disease when he asked St. Petersburg lawyers Burt D. Moore and Jacquelyn M. Bowsman to draft an estate plan. They set up Father Mooney with a living trust.

The priest had made his wishes clear. He wanted to make an anonymous gift of his life savings — nearly $83,000 — to the St. Petersburg Free Clinic, which provides the working poor and elderly with services including medical care, food, shelter and emergency financial assistance.

If the estate had gone through probate, court officials would have read his will and seen that the charity got its inheritance. Father Mooney's living trust came with no such safeguards; his wishes rested solely in the hands of his lawyers.

After Father Mooney's death, a friend got suspicious about those lawyers and called the Florida Bar. When a Bar investigator asked Burt Moore what had become of the dead priest's money, the lawyer refused to answer, citing the trust's "sacrosanct privileges" of freedom from official oversight.

Times photo —BILL SERNE

Charity abused: Funds left to the St. Petersburg Free Clinic through a trust were instead spent by two attorneys. Here, Dr. Gene Hanson works with patient Jack Fielding at the Free Clinic.

The lawyers: Burt D. Moore and Jacquelyn M. Bowsman pleaded guilty to grand theft in connection with the looting of Father Peter Mooney's estate.

The Bar pressed on, working with prosecutors to uncover a trail of heartless deceit. According to them, Moore and Bowsman began plundering the priest's estate a month before his death. By the time the law caught up, the money was gone.

Father Mooney's gift could have purchased nearly a year's worth of medicine for 1,200 Free Clinic patients, said executive director Marcie Biddleman. That's *one thousand, two hundred* men and women who cannot otherwise afford medications for high blood pressure, diabetes, heart disease and other chronic ailments.

What became of the cash? According to prosecutors, attorneys Bowsman and Moore played the stock market, paid personal loans and covered office expenses. In other words they used Father Mooney's legacy as a personal slush fund.

The two pleaded guilty to grand theft and, earlier this year, were sentenced. Bowsman, who cooperated with authorities, was given probation. Moore, who had fled, was sentenced to 30 months in prison for notary fraud and probation for theft. They are supposed to repay the stolen $82,725, although the Free Clinic has not yet seen any of the cash.

Living trust advocates will dismiss this case as a fluke, arguing that most trusts are administered properly. But think about it: What would have happened if one of Father Mooney's friends had not grown suspicious and contacted the Bar? Working in the "sacrosanct" privacy of the living trust, the lawyers could have stolen the money and never been caught.

Maybe that only happens once in a while. Or maybe it happens all the time.

FORGOTTEN VICTIMS

■ Florida's lax probate system too often betrays the last wishes of its deceased citizens.

How long must Karen Wanich wait?

Ms. Wanich is a 50-year-old woman with cerebral palsy who uses a wheelchair. When her Aunt Myrtle died, she waited for the inheritance that would help her face old age with more than a government disability check.

The money never came.

When St. Petersburg lawyer Dennis D. Correa was convicted of stealing $900,000 from seven estates and punished only with probation, Ms. Wanich and other beneficiaries waited for Correa to make good on his promise of speedy repayment.

They're still waiting.

Twice trusting, twice betrayed: After seeing lawyers plunder their inheritances, victims of estate rip-offs suffer again when the legal system leaves them empty-handed.

A judge set Correa free to make restitution, but officials have collected only a pittance. The Florida Bar promises justice through a victim's repayment fund, but fails to deliver. State law provides for insurance policies to compensate the victims of looted estates, but judges routinely skimp on this important protection.

It's bad enough that Florida law provides so many opportunities for dishonesty in probate estates and living trusts. It's doubly outrageous that when money is taken, officials forget the victims.

After scraping for decades on a secretary's wage, Myrtle Trembley turned to lawyer Dennis D. Correa for help in leaving a final gift to her niece and other loved ones. She trusted Correa completely, said Mrs. Trembley's sister-in-law, Rosemary Dent. "He was like a god to her."

Correa returned that faith by stealing $391,000 from Mrs. Trembley's savings, and more than $500,000 from six other estates. On Nov. 8, 1993, he stood before Pinellas Circuit Judge Claire Luten to admit his guilt and plead for mercy.

Correa didn't come to court alone. An impressive parade of supporters filled the courtroom with talk of remorse and restitution.

Correa's therapist said the lawyer felt deep sorrow and had "worked really hard in therapy." A financial planner talked of giving Correa a job with a potential "six-figure income" that could help quickly repay victims. Banking scion Hubert Rutland III pledged "my personal financial support."

Finally, there was Correa himself. He declared, "I will repay these people."

Judge Luten has slapped other rip-off artists with long prison terms. In this case, she went easy.

State sentencing guidelines allowed a 7-year prison term, and even Correa's lawyer hoped for no better than 2½ years. But Luten decided instead to release Correa on probation. She cited his "strong support group," his "sincere remorse," and his "desire to pay restitution."

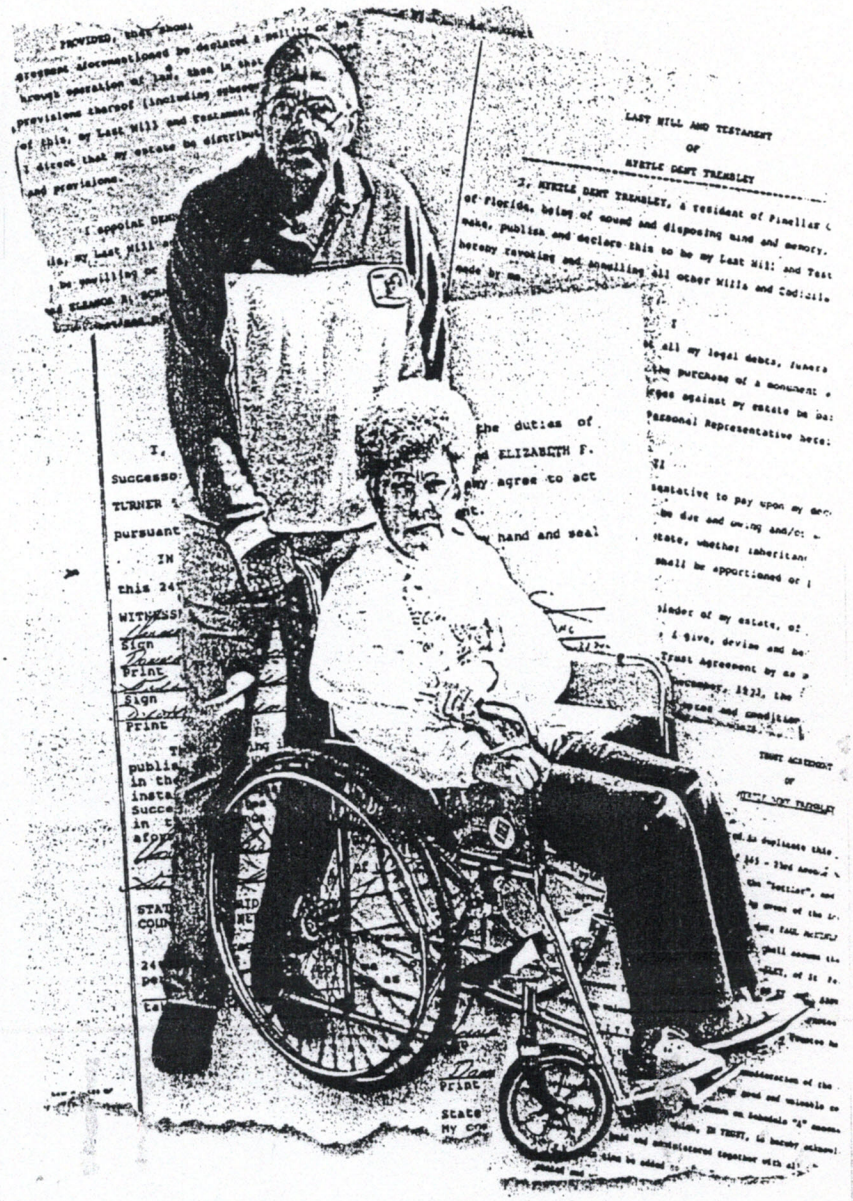

Photo — BURCE A. D.

Still waiting: Bill Wanich and his daughter Karen Wanich.

Some 10 months after the sentencing, the restitution should be cascading in, right?

Wrong. Correa has paid less than 1 percent of his $910,000 debt. Karen Wanich's share so far totals only $272.

Although Correa technically stole from his deceased clients, it is their beneficiaries who suffer. Take Ms. Wanich. She is forced to rely on her father to make up the difference between a modest government disability check and her needs for shelter, food and heat in the hard Pennsylvania winter. Bill Wanich does his best, but he worries about what will happen when he's gone.

"I'm 74 years old," he says. "Who's going to take care of her?"

In stealing Aunt Myrtle's gift, Correa stole Karen Wanich's financial security and her father's peace of mind. Wanich is outraged that the legal system set

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Correa free without demanding that he make good on the promise of rapid repayment.

"As I see it, there's no penalty," Wanich said. "It's a joke on the whole legal system."

Correa has his excuses. His lawyer, Shawn Burklin, said Correa can't begin his "six-figure" job until a higher court rules on prosecutors' appeal of Luten's probation sentence. Correa's prospective employer doesn't want to train him for a job if he might go to prison, Burklin said.

But what of Correa's other resources? Property records show that he and his wife sold their home for $327,000 shortly before Correa's arrest; what happened to the money from that sale? Burklin promised to answer that question, but never called the *Times* back. Correa also owned a pleasure boat, which was sold in 1993 for $3,000. Once again, Burklin did not explain where that money went.

Correa did not answer questions from the *Times*, but his lawyer said, "He has a great desire to make full restitution."

Correa's desire won't buy Karen Wanich one loaf of bread. Meanwhile, officials are doing little to hold Correa to his promises.

The Department of Corrections, which oversees Correa's probation, has established a "suggested schedule" of restitution that would have Correa paying $3,198 a month. Although Correa has paid just over one month's worth of that sum, DOC spokeswoman Laura Levings said officials are satisfied: "The guy is making an effort."

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The lesson of Correa's case is clear. A lawyer who robs nearly $1-million from vulnerable clients can walk away without a prison term or significant financial penalty. All he has to do is show up in court with some fancy promises, and then stroll out the courthouse door.

As Correa enjoys his freedom, Karen Wanich waits for justice.

A fair share for lawyers

Many thieving lawyers are like Correa. They can't, or won't, repay stolen money. To help these people and improve the legal community's image, Florida lawyers have created a victim's reimbursement fund.

The Florida Bar Clients' Security Fund is one of the oldest in the nation. It is far from the best.

Teresa Hile is one of the victims who went to the fund looking for a measure of justice. Hile had trusted St. Petersburg lawyer Jay M. Thorpe to handle her mother's estate; instead, the lawyer stole $172,000.

Hile was devastated. At a hearing in May, Hile testified that the theft forced her to file bankruptcy, lose her car, and forgo important care and medication for her learning-disabled son. Rather than being able to benefit from her mother's life savings, she had to take a $5.50-an-hour job, even as she struggles to overcome breast and bone cancer.

"Before all this happened, I could borrow $30,000 on my signature and I did," the 47-year-old testified. "Now that's not possible, probably never will be in my lifetime. At a time when I should be retiring or be able to be at home to take care of my health, I have to work in order to try to keep some insurance."

Thorpe was convicted of grand theft, ordered to repay the money, and sent to jail. So far, he has made no restitution. In hopes of speeding reimbursement, Hile filed a claim with the Clients' Security Fund in late 1993.

She shouldn't hold her breath.

According to a 1993 study by the American Bar Association, Florida's fund was the second-slowest in the nation in paying claims. When and if the Bar gets around to paying Hile, it will likely reimburse only a fraction of what her lawyer stole.

To appreciate how badly Florida's legal community treats its victims, consider a similar program in New Jersey. While Florida takes a year to 18 months to pay most claims, New Jersey takes six months. While Florida pays a maximum of $50,000 per claim (and often much less), New Jersey pays up to $200,000.

The key to New Jersey's success — and Florida's failure — is money. And not a lot of money.

In New Jersey, most lawyers contribute $50 a year to the victims' fund. In Florida, by contrast, each lawyer chips in only $11. Starved for cash, the Florida fund relies on a hard-working but tiny staff and the lawyers who serve as volunteer investigators.

Although on paper the fund pays up to $50,000 on large claims, it is so short on money that last year's maximum payment was $35,000 — in a state where lawyers have stolen ten times that much.

The Florida Bar clearly wants to use the Clients' Security Fund to improve its public image. It's time lawyers put their money where their PR is.

The solution is simple: a modest increase in the fees lawyers pay to the victims fund. Increasing each lawyer's yearly contribution by $40 would generate an extra $2-million for the fund, enough to elevate it toward New Jersey's level of consumer service.

Forty dollars. That's how much an average estate lawyer would charge for fifteen minutes of his time. But ask lawyers about that modest contribution, and listen to them howl.

We're honest professionals, the refrain goes. Why should we pay for the crimes of the bad apples?

Because decency demands it. Citizens trust lawyers to uphold the law that provides them with a handsome living. When one lawyer violates that trust, every lawyer is diminished. The victims are waiting for Florida lawyers to recognize that fact, and make amends.

Skimping on bond coverage

When all else fails, the law provides for an insurance policy to cover theft of estate funds. But all too often, judges blithely eliminate this important safeguard — and beneficiaries are left empty-handed.

The family of Inez Michelsen-Hoyer learned this lesson the hard way. When Ms. Michelsen-Hoyer died, the family and judge saw no need to require a bond of the lawyer serving as executor of her estate. After all, Michael L. Nikolas was the family lawyer, a man they trusted absolutely.

Nikolas returned that trust by stealing $414,000. According to court records, he used the money to pay office expenses, make mortgage payments on his parents' home, and help run a place called Lou's Restaurant.

Nikolas pleaded guilty to grand theft in 1993, was sentenced to a year in jail and ordered to repay the money. By September 1994, he had paid about 1 percent of his debt. A bond could have repaid the entire amount, but the judge presiding over the case said he generally waives that insurance policy for lawyers handling estates.

"I rarely require lawyers to post bonds," said Palm

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Times files

Lauren Sill: The St. Petersburg lawyer was appointed to serve as the executor of Joe Thomas' estate. After five years of delays, a judge asked Sill what had become of Thomas' money. It turned out that she had stolen $270,000, nearly all the dead man's savings.

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