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Illustration by Jon Reinfurt

The Lawyers Behind the 0.1 Percent

By Susan Beck

After Prince died unexpectedly in April, Joshua Rubenstein, the leader of Katten Muchin Rosenman's trusts and estates practice, wasn't surprised to learn that the 57-year-old artist apparently didn't have a will.

"It's actually reasonably common for a singer, or composer, or other creative person to pay no attention to their personal affairs. Their brains work differently," says the lawyer, who is not involved in Prince's legal matters. "Andy Warhol's estate was a mess, and Bob Marley didn't have a will. His estate was in court for decades." In Prince's case, the absence of a will could likewise mean a long fight over the artist's recordings and other property, estimated to be worth more than $300 million.

Not all artists are so cavalier, Rubenstein points out. The Katten Muchin partner, who served as the executor of Richard Rodgers' estate, says the Broadway composer did meticulous trust and estate planning. "He had a spectacular estate," he gushes.

High-end trusts and estates lawyers such as Rubenstein have some of the most fascinating practices in Big Law, with client lists packed with entertainment stars, business moguls, Internet entrepreneurs and reclusive billionaires. While drafting wills, setting up trusts for wayward children, crafting prenuptial agreements for third wives and structuring complex vehicles to reduce taxes, they're privy to the intimate personal and financial details of the lives of the creative and the ultrawealthy.

"You hear everybody's problems. You find out about their affairs, their problems with their children and their problems with their marriages," says Henry Leibowitz, a T&E partner in Proskauer Rose's private client services department.

Although their stories could fuel the plots of dozens of soap operas, most T&E lawyers won't breathe a word about current clients. Some will discuss clients of long ago, or matters that have become public. Proskauer's Leibowitz represented the estates of George Balanchine and Leonard Bernstein, and currently advises Philip Seymour Hoffman's estate. Georgiana Slade, the leader of Milbank, Tweed, Hadley & McCloy's T&E group, counseled Jacqueline Kennedy Onassis on her will. Adam Streisand, who heads Sheppard, Mullin, Richter & Hampton's private wealth and fiduciary litigation team, last year won a court battle for Gore Vidal's estate. (As of May, two Minneapolis firms had petitioned to represent Prince's estate.)

Henry Leibowitz

Putting aside the glamour factor, the practice has taken on increasing relevance, with top T&E lawyers on the front lines of one of the most pressing political issues of our time: the shocking wealth disparity in the country. Their typical client sits in the top 0.1 percent of U.S. households, defined as those with more than $20 million in assets. These individuals own 22 percent of the nation's total wealth—roughly the same amount held by the bottom 90 percent, according to Federal Reserve data. These are the lawyers who help ensure that the 0.1 Percent stay comfortably at the top.

With the increasing concentration of riches, some firms are refocusing on these clients. "I know a lot of big firms want to start estate planning practices," says Julie Miraglia Kwon, a T&E partner in McDermott, Will & Emery's Menlo Park office. Noting the number of calls she's received lately from recruiters, she remarks, "Maybe they see headlines about all the wealth."

'AN INTIMATE PRACTICE'

Once a staple of every big firm, T&E practices dwindled over the last few decades, with many big firms showing them the door or paring them to a lonely partner or two. The practice has been hurt by the fact that in the last 15 years, Congress has slashed the ranks of the rich who are subject to an estate tax. Weil, Gotshal & Manges; Debevoise & Plimpton; and Wilmer Cutler Pickering Hale & Dorr are all firms that decided that a T&E practice didn't fit their economics.

It's no different in millionaire-saturated Silicon Valley and San Francisco. "In the Bay Area it seems like most firms have dismantled their T&E practices," says Kwon, who represents many private equity and venture capital titans. The region's biggest firm, Wilson Sonsini Goodrich & Rosati, eliminated its private wealth group in 2010. Peter LaBoskey, who headed that group, says that conflicts and rate pressures prompted the move. "Our fee structure was getting too rich for a lot of the clients," says LaBoskey, who moved the group to San Jose's Hopkins & Carley. Even the ultrawealthy balked at paying big-firm fees. "When it comes out of your pocket, you think a little differently than when it's coming out of the company's pocket," he notes.

Other firms have also concluded that a T&E practice can't compete with profit spigots such as M&A, IPOs and private equity work. For one thing, when drafting a will or probating an estate, it's hard to use the profit-generating technique of leveraging a team with lots of associates. A seasoned partner and one associate or paralegal usually suffice. Conflicts can also arise: The interests of a CEO, whom the T&E partner may represent, may differ from those of her company, whom the firm may be involved with in various matters.

Yet a small group of outlier firms still view a large T&E practice as a good bet, including McDermott, Holland & Knight, Katten Muchin, McGuire Woods, Proskauer, and Steptoe & Johnson LLP. Several firms in the second half of The Am Law 200 also have major practices, including Loeb & Loeb, and Choate, Hall & Stewart.

For one thing, many of these smaller firms aren't as leveraged and charge lower rates. "We have found that this is a terrific practice," says Bruce Wexler, the co-chair of Loeb & Loeb's trusts and estates group, which has 51 lawyers and 30 partners. The practice often generates work for other departments, he notes, when wealthy business leaders steer their company's work to the firm.

Beth Tractenberg, who recently started a T&E practice at Steptoe, says moderate sized firms can be a good fit. Because of the personal nature of the client relationships, she needs to feel extremely comfortable with the partners that she refers clients to. "We're sort of an intimate practice," she says. "It's important to know who your partners are."

There may be signs that some firms are rethinking their decisions to turn their backs on trust and estates practices. Several have recently grown their T&E groups, including Sheppard Mullin and Sullivan & Cromwell. The elite Wall Street firm has eight partners in its estates and personal practice, as it calls it. The firm says the practice has grown somewhat in recent years, but declined interviews.

Trusts and estates departments at many big firms have dwindled, but these firms (listed alphabetically) claim some of the deepest T&E groups in Big Law.

HOLLAND & KNIGHT (21 PARTNERS, 49 ASSOCIATES & OTHERS)	**MCDERMOTT, WILL & EMERY** (50 PARTNERS, 25 ASSOCIATES)
KATTEN MUCHIN ROSENMAN (72 PARTNERS, 30 ASSOCIATES & OTHERS)	**MCGUIRE WOODS** (24 PARTNERS, 20 ASSOCIATES & OTHERS)
LOEB & LOEB (30 PARTNERS, 21 ASSOCIATES & OTHERS)	**PROSKAUER ROSE** (19 PARTNERS, 23 ASSOCIATES & OTHERS)

Carol Harrington, the global head of McDermott's private client practice, puts a practical spin on the trend: "It's an exciting time for trusts and estates bar. There's a lot of wealth in the country in the baby boomer generation. These people will die like everybody else."

THE PSYCHIATRIST/TAX GEEK

Unlike their counterparts in M&A or litigation, T&E lawyers don't succeed if they're prone to bluster or bullying; patience and compassion are viewed as strengths, not weaknesses. "Many of these people are in crisis," says McDermott's Harrington about the clients. "Their spouse has died, or you get the call when somebody's kid is busted on a drug charge. They don't know who else to call."

"You need to be 50 percent psychiatrist and 50 percent tax geek," says Proskauer's Leibowitz. Being a good listener is also crucial. "Even though you know exactly what [your client] will say, you have to listen to the whole thing so they feel heard," says Katten Muchin's Rubenstein. "You can't cut them off after five minutes."

"Wealthy people have a wide variety of personalities," says McDermott's Harrington. "Many are nice, some not so nice." Every T&E lawyer knows stories about families at war after a parent marries for the second or third time or more, causing children to battle with a stepparent. "The vast, vast, vast majority [of estate litigation] involves second and third spouses," says Leibowitz. "That's where the problems come from."

The defining factor for a client's personality is not so much their level of wealth, but whether they made the money themselves. The self-made rich tend to be more assertive with their T&E counsel. "They know best about everything," says Hopkins & Carley's LaBoskey. "You get used to that." Says Rubenstein: "People who made explosive wealth at a young age, these people are so smart. Young guys like hedge fund managers, you have to boil [your advice] down to sound bites. They all function as if they have ADD. Older clients need more handholding."

Top T&E lawyers are more than a sympathetic ear for the rich. They also must master devilishly complex tax laws. With estates that can run into the billions, and federal estate and gift taxes topping out at 40 percent, a skilled estate lawyer can save families hundreds of millions of dollars.

Strategies usually revolve around the creation of complex trusts that allow individuals to make large gifts to their children or others during their lifetime while avoiding or minimizing gift taxes. T&E lawyers also craft trusts to protect clients' assets from creditors. Choate's co-managing partner Charles Cheever notes on the firm's website that he helped a venture capital client transfer $66 million to his children free of gift tax. A small circle of Facebook insiders, including Mark Zuckerberg, used trusts to skip a reported $200 million in estate and gift taxes, according to The Wall Street Journal.

Despite the enormous sums at stake, most of the T&E lawyers interviewed say that they bill by the hour, and shy away from charging a percentage of the tax that they save clients. Not all wealthy people see the value in high-end estate planning. Many young tech entrepreneurs don't want to spend a lot for it, according to McDermott's Kwon. "Some of the younger rich who are new to wealth are very cost-conscious and may not want to pay for a big firm," she says. "They're loath to spend a lot up front."

Many lawyers still view T&E practices as a sleepy corner that's quaintly genteel, a characterization that raises the hackles of T&E lawyers. Indeed, the hours can be more predictable than those of other lawyers, but they're no longer the 9-to-5 routine that they once were for some. "They can be insane, but they are controllable," says McDermott's Carlyn McCaffrey, who co-heads the private client practice in the New York office. "We are on our own o'clock."

That is one reason T&E partners typically don't burn out in their 40s. "Not only do T&E lawyers tend to love their job, but they tend not to peak early," says Rubenstein. "The practice requires so much knowledge. By the time you are 60, you are finally, finally hitting it." McDermott's Harrington echoes that: "I found that after age 50 I got the big picture."

ELECTION BRAWL

While everybody dies, it's not clear if the estate tax will always be around. Politicians continue to attack it, and they succeeded in eliminating it for one year, in 2010. Among those "lucky" to die that year and avoid the tax was George Steinbrenner, whose estate was estimated at $1.1 billion. This quirk of timing theoretically could have saved Steinbrenner's heirs more than $500 million, but the actual savings was probably less. Before his death Steinbrenner likely planned his affairs to significantly reduce any estate tax that might apply. Holland & Knight, which represented the family, declined to comment.

This year, the first $5.45 million in an estate is exempt from tax; that means for a couple it's just under $11 million. (An estate consists of all the assets you own when you die.) Most couples with less than $11 million don't have to worry about the sort of sophisticated estate planning that would justify big-firm fees. Fifteen years ago, in 2001, the exemption was a mere $675,000 per person.

At the same time that the estate tax is demonized, there's rising concern about the concentration of wealth. Ray Madoff, a professor at Boston College Law School who is one of the nation's leading authorities on estate and gift taxes, says that it's odd that this hasn't translated into support for the estate tax. "It's surprising that there

CELEBRITY SNAFUS

When famous people die, their missteps and family feuds often play out in public. These celebrities either did inadequate estate planning, leading to confusion and tension, or their families and friends fought over their estates.

PRINCE The 57-year-old artist apparently didn't have a will; court fights with family members and the IRS may follow.

MICHAEL JACKSON The pop star had a will when he died in 2009, but his brother Randy later claimed that it was fake.

WHITNEY HOUSTON Her family tried to stop daughter Bobbi Kristina from getting too much of her inheritance at too young an age.

HEATH LEDGER When the actor died in 2008, his will wasn't updated to include his 2-year-old daughter, causing conflict.

PRINCESS DIANA Her "letter of wishes," listing who should get some personal belongings, was deemed faulty.

MARLON BRANDO His housekeeper sued after his 2004 death, claiming that she was cheated out of his estate. She settled.

BOB MARLEY The reggae legend died without a will in 1981, and litigation plagued his estate for years.

MJ KIM/GETTY/EDSTOCK/ISTOCK (PRINCE); MICHAEL JACOBS/ZUMAPRESS/NEWSCOM (JACKSON); GETTY IMAGES/EDSTOCK2/ISTOCK (HOUSTON); BRYAN BEDDER/GETTY/EDSTOCK/ISTOCK (LEDGER); GEGODEJU/WIKIPEDIA (DIANA); NEWSCOM (BRANDO); PETER MAZEL/SUNSHINE/ZUMAPRESS/NEWSCOM (MARLEY) is widespread agreement across the political spectrum that wealth inequality is one of the most pressing issues facing America today," she says. "But nobody mentions the one tax that was created specifically to address this problem." Instead, Republican politicians have successfully recast the estate tax as a cruel "death tax." Says Madoff: "It has become a bit of a third rail for Democrats and Republicans alike."

The two leading presidential candidates hold opposite positions. Democrat Hilary Clinton would raise taxes on the rich by making more people subject to the estate tax. (She'd lower the exemption to $3.5 million a person.) Republican Donald Trump wants to abolish the tax. "The estate tax has been a disaster," he said in a TV interview last October. "It's a horrible weapon that has destroyed many families."

For T&E lawyers, Trump's proposal, if adopted by Congress, would decimate their practice, while Clinton's approach would be a boon. Congress' antipathy toward the estate tax has created a basic problem of supply and demand for T&E lawyers, as ever fewer people have to worry about the tax. In 1977 a total of 139,115 estate tax returns were filed, representing nearly 8 percent of all deaths that year. That figure fell to an infinitesimal 0.18 percent in 2013, according to the Internal Revenue Service, when only 4,687 estate tax returns were filed.

"In a 10-year period the exemption went from [just over] $600,000 to more than $5 million," says Lee-Ford Tritt, a trusts and estates professor at the University of Florida College of Law. "It wiped out a lot of the tax business." Some firms have responded by expanding their traditional trusts and estates practices into private wealth services. David Scott Sloan, the co-chair of Holland & Knight's private wealth practice, has recast his role to act as a general counsel to ultra high-net-worth individuals, who typically have more than $75 million in assets. At Choate, the firm's wealth management group offers a concierge option that includes a service to pay clients' bills, from children's tuition payments to utility bills. Most firms don't make investment decisions for clients, leaving that to financial advisers. The exception is some Boston firms, which have traditionally run investment management arms. Choate Investment Advisors, for example, has more than $4 billion under management.

LUCRATIVE LITIGATION

T&E lawyers interviewed insist that their practices can be quite profitable. "Our realization rates are among the highest in the firm, and our profitability is among the highest in the firm," says Proskauer partner Andrew Katzenstein. "To be successful, you have to do a lot of cross-selling and remember to be an exporter [of work to other departments]." Another key to profitability at many T&E practices is heavy use of paralegals, instead of more expensive associates.

Andrew Katzenstein

For some T&E departments, the problem isn't that they're unprofitable, but that they don't have the critical mass to be relevant at a huge firm. Five years ago, McCaffrey led a nine-lawyer T&E group at Weil. "We were profitable every year, but the size of the profit was a decimal point," she says. In 2011 Weil management told her that it didn't want to grow the department and devote resources to it, she says, so she moved her team to McDermott. (Weil declined to comment.) "Here we have more than 70 lawyers. We contribute a lot to the bottom line," she says.

At Proskauer and other firms, T&E groups have boosted profitability by increasingly handling lucrative litigation involving trusts and estates. "The driver of my profitability has been fiduciary litigation," says Leibowitz, referring to disputes involving an executor, trustee, or beneficiaries. "It takes an awful lot of estate planning to equal one fiduciary litigation." Holland & Knight represented the executor of the estate of Huguette Clark, an heiress who died at age 104 after living for more than 20 years in a hospital suite in New York. The strange facts of her life led to a courtroom fight over her $300 million estate, which settled in 2013. International clients have also fueled growth in many T&E groups, with more Chinese and Russian clients needing high-end estate planning. Proskauer and Holland & Knight are among the firms that have created international private client services groups.

With the rise of the ultrawealthy, firms have shifted their focus. "When I started [in 1988], $20 million was impressive for an estate," says Leibowitz. "It's very typical that most people have nine figures and over $100 million. A billion is still impressive," he admits. His partner Katzenstein says that about half the couples they work with have more than $100 million. "We're not working with anyone under $25 million," he says, citing a threshold noted by several other big firm lawyers.

Representing billionaires is a special niche. "That's a whole other level," Leibowitz says. "You're usually not talking to billionaires, but to their staff." For these clients, Proskauer assigns two T&E partners, instead of the usual one. "When they call, you want to jump."

Clients with that much wealth often take advantage of elaborate tax planning techniques to minimize or eliminate estate and gift taxes. "Over the last 20 years, maybe because the level of wealth has grown more with the top 1 percent, the development and use of tax strategies has become a bigger component of what we do," says Milbank's Slade. T&E lawyers have crafted all sorts of creative and complicated structures to move wealth to future generations with minimal tax burden: GRATs (grantor retained annuity trusts); zeroed-out GRATs; dynastic trusts; and a technique called decanting.

If we get enough lead time, you almost make the estate tax voluntary," says Katzenstein. "If people can get enough money to their kids when they're alive, then they leave the rest to charity."

THE PANAMA PAPERS

In recent months the "Panama Papers" investigation by the International Consortium of Investigative Journalists revealed that the Panamanian law firm Mossack Fonseca helped public officials and other wealthy people hide assets using offshore shell companies.

Some T&E lawyers interviewed say that they use offshore companies, too, but maintain these vehicles don't skirt the law. "I use [offshore companies] routinely for non-U.S. clients who have an interest in the U.S.," says Katten Muchin's Rubenstein. "I use them sometimes for U.S. clients, but not for tax avoidance reasons, but for creditor protection or other reasons." He adds, "There are plenty of reasons to go offshore, but it's less common for Americans because there's no tax avoidance reason to do it." (Income earned by U.S. persons in offshore vehicles must be reported to the IRS, so there are no tax savings.)

Some T&E partners interviewed for this article didn't want to touch the subject of growing wealth inequality. Others, like McDermott's Kwon, emphasized their clients' charitable inclinations. "A lot of my clients are among the wealthiest, but they're quite philanthropic as well," she says. "Many are using their wealth to address important social issues. They believe their money can be deployed more effectively to address these issues than if they paid that money in estate or gift tax."

Katten Muchin's Rubenstein offers a different view. "I do absolutely see it as a problem," he says. "I know I sound like Bernie Sanders right now, but [the disparity in wealth has] gotten too distorted. … It gives too much control to too few." He knows his remarks may sound contradictory coming from someone who spends his days devising techniques for the ultra rich to avoid taxes. "I wish the government would make it harder for me," he says.