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The Calling of the Counselor in Counseling Families, Part 2

Ronald D. Aucutt

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I. Background

It is always meaningful for me to come to San Diego, because in 1970 through 1973, when changes in the draft law had interrupted my law school experience, the Navy ship I was assigned to, when it wasn't in the Gulf of Tonkin, was home-ported at the 32nd Street Naval Station – Naval Base San Diego. When I arrived here Richard Nixon was the President, after previously serving in Congress (from the district now represented by Speaker Nancy Pelosi), as a Senator from California, and of course as President Eisenhower's Vice President, and Ronald Reagan was the Governor of California. I remember believing that Richard Nixon would be remembered as one of our best Presidents, but that Ronald Reagan would not amount to much. I tell you this, so you'll trust what I'm about to tell you! If you ever hear me make a prediction about the future, I want you to know exactly what my level of predictive ability is. For example, if I were here to predict what Congress will do with tax legislation! But I'm not. I have a more important message this morning.

Looking back, though, and thinking about tax legislation, I wonder if one of the reasons for having good expectations for Richard Nixon was the way he worked in such a bipartisan manner to put together, for example, the Tax Reform Act of 1969, which included some principles that are still in effect today. (But that probably wasn't the example I was thinking of on my ship.)

Also looking back, I suppose that while I was growing up in the Twin Cities I had been prepared for that Vietnam interval in my life by the example of my father, who had been onboard ship in the Merchant Marine during World War II, including at Normandy Beach, and also my mother, who left St. Paul for a time to work in a New York office operating a comptometer, which has been described as "the first com-

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mercially successful key-driven mechanical calculator."[1] But the war ended, and Mom and Dad returned to St. Paul before I was born, so I also had the benefit of being close to and very often seeing my grandparents, who cared for me, cooked for me, taught me, played with me, and prayed for me. I still remember my mother's father as probably the most significant mentor and model of lasting values in my life. Another one of his daughters married a litigator in a Minneapolis law firm. I remember that he visited our house frequently, and he and I would talk, and he made an impression on me. I don't recall that he ever told me I should become a lawyer, but he demonstrated the fulfillment he got from being a lawyer. And it's largely because of that impression that I went to law school – I suppose to become a Twin Cities litigator.

But during the interval after the change in the draft law during my first year of law school, I worked about six months in Washington, D.C., which I had never even visited before. Again, I was impressed, and both Washington, and then tax law, became intriguing possibilities. In 1974 I was a summer associate in Washington when President Nixon resigned. In 1975, after finally graduating from the University of Minnesota Law School, I started at the Washington tax firm of Miller & Chevalier, and in 1976 a Miller & Chevalier partner, John Bixler (who went on to become an ACTEC Regent), drew me into his estate tax and estate planning practice to help him deal with the changes made by the Tax Reform Act of 1976.

So, San Diego represents for me a five-year delay in my life, a detour, an inconvenience – but which providentially turned into positive opportunities.

And I had learned three things. First, family support and family values provide a great start. But second, they work best when they provide a disposition of flexibility to adapt to changing circumstances. And third, it is important to see background as the foundation of the future.

But it has taken a half a century for me to figure out how to articulate that.

My grandson, who is sitting in the front row, did not get me into ACTEC. He is not the reason I am in ACTEC. He is not the reason I am here – that is, here with all of you in San Diego. But he, and his cousin, my granddaughter who is due in July, are an important part of the reason I am "here" – at this podium with a message for you about counseling families.

My sons did not get me into ACTEC either. They're not the reason I am here. But they are the reason I got introduced to some things like

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[1] *See Comptometer*, DBpedia, https://dbpedia.org/page/Comptometer [https://perma.cc/7G54-QLUU] (discussing the history of the comptometer).

high school and college football games and practices. For ten years. That was a big deal. It gave me an opportunity to observe closely the way coaches worked. And I learned about the importance of *coaching up*. I learned that when a coach was on your back it was a good thing. He was on your back so he could have your back. He was on your back so he could push you forward.

"Coaching up" means motivating players to improve, encouraging them to bring their commitment and performance to a higher level, and coaching them up to that higher level of play, with the objective of reaching a higher level of achievement, success, and fulfillment.

The phrase "Coach 'em up" has been attributed to Don James, the head football coach at the University of Washington from 1975 to 1992,[2] but the phrase has been quite widely used. It appears on sports academies, camps, and programs around the country, and it is also the title of a number of books published in the last few years.[3] "Coach 'Em *Way* Up" is the name of a book published in 2020 about the coaching principles and practices of the legendary UCLA men's basketball coach, John Wooden.[4]

II. ACTEC's Engagement with the Calling of the Counselor

Against that background – that foundation – when ACTEC President Karen Moore asked me to give the Joseph Trachtman Lecture in 2011, I resolved to "Coach Up" – to aim above the plane of my own experience in order to encourage the audience to do the same. I titled my 2011 lecture "Creed or Code: The Calling of the Counselor in Advising Families." My theme was that ACTEC Fellows are counselors – "Counsel" is ACTEC's last name, or family name – and our calling includes the fostering, feeding, fortification, and fulfillment of families.[5] And when Presidents Steve Akers and Ann Burns asked me to give the Trachtman Lecture again this year, I chose to return to that same theme, and to continue to try to "Coach Up."

So let me start this morning by reviewing how ACTEC and ACTEC Fellows have been doing with that counseling theme. For example, let's

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2 Skip Hall & Heather Goetter, Coach 'Em Up: The Skip Hall Story 19-20 (2021).

3 *See e.g.*, Caz McCaslin & Matt Litton, Coach 'em Up: Reclaiming Sports for the Benefit of the Athlete (2017); Hall & Goetter, *supra* note 2; Nathan Stanley, Coach 'em Up!: A Guide to Coaching Coaches (2018); Jay Zeller, Coach 'Em Up: Going Beyond the "W" in Sports (2016).

4 *See* Lynn Guerin et al., Coach 'Em Way Up: Five Lessons For Leading The John Wooden Way (2020).

5 Ronald D. Aucutt, *Creed or Code: The Calling of the Counselor in Advising Families*, 36 ACTEC L.J. 669, 672 (2011).

look at ACTEC's programs listed in the Bibliography at the end of this article.[6] Now I'm not saying that ACTEC has presented all these good programs because I called for it in 2011. No, as usual, I must give *ACTEC* the credit for giving *me* the ideas. In fact, the programs I have listed started with that very same meeting, the 2011 annual meeting, with a seminar titled "They Don't Call Me Counselor for Nothing," and I cited its materials in my 2011 lecture.[7] A big one was the 2012 Summer Meeting Stand-Alone CLE in Colorado Springs on "All in the Family: How to Counsel Family Businesses and Business Families."[8] I was joined by many of you, including five other ACTEC presidents – past presidents Danny Markstein and the late Dennis Belcher, then current president Lou Mezzullo, and at that time future presidents Cynda Ottaway and Ann Burns. I had the honor and privilege – and *pressure*! – of sitting on a panel with the late Jon Gallo and being watched from the audience by the late Gerry Le Van, two of the most passionate and inspiring champions of these principles I have ever known.

Notice in the Bibliography Dennis Belcher's Trachtman Lecture in 2016 – "Do We Need a Canary or Did the Canary Stop Singing and We Missed It?" – urging us toward a "Star Trek practice," not a "Beverly Hillbillies practice" by becoming a "trusted advisor."[9] Dennis was *coaching us up*!

And finally – not in the Bibliography because the materials are no longer available – in the 2021 Annual Meeting, held virtually, there was the terrific presentation of Dr. Laurie Santos, Professor of Psychology and Cognitive Science at Yale University, titled "Top 10 Tips from the Science of Well-Being."[10]

These programs were not all the same. Some focused on the client's family. Of those, some focused on the client – the senior generation – on how to develop in the younger generations the character and outlook of the senior generation. Others focused on the younger generations – on empowering them to "find their own identities." Others focused on building family legacies in a blended way. Some focused on the well-being of *us*, the advisors. Others focused on society and social issues.

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[6] *See infra* Appendix.

[7] *See* Aucutt, *supra* note 5, at 673-74, 677.

[8] Ronald D. Aucutt et al., All in the Family: How to Counsel Family Businesses and Business Families: Pre & Postmortem Issues, Presentation at the 2012 Summer Meeting (June 13-14, 2012) (on file with ACTEC).

[9] *See* Dennis I. Belcher, *2016 Joseph Trachtman Memorial Lecture March 19, 2016: Do We Need a Canary or Did the Canary Stop Singing and We Missed It?*, 43 ACTEC L.J. 7, 22-24 (2017).

[10] For similar ideas, see *10 Happiness Tips from Dr. Laurie Santos*, PodClips (Mar. 16, 2022), https://medium.com/@podclips/10-happiness-tips-from-dr-laurie-santos-c962ef8dee0d [https://perma.cc/C8PD-D6N3].

But the important news – and I think good news – is that we are addressing human issues, not just technical legal issues, in our educational programs.

Speaking of educational programs, my friend, the late ACTEC President Waller Horsley, in his President's Message in the Fall 1990 issue of ACTEC Notes, wrote of "two themes . . . The first is education."[11] And he concluded his observations about education by writing that "Membership in the College confers its own kind of diploma, and surely education in our field is never over."[12] Then he wrote:

> The second theme is caring, principally about others. Fellows of the College care about how well they care for others.
>
> Some clients want to know how much you care before they ask you to apply how much you know. They are confident that your caring enough will yield enough knowledge to help them. You will find serving these clients to be the most rewarding part of your practice.[13]

Waller's challenge could be paraphrased as "Clients want to know how much you care before they care how much you know."

Caring. Building trust. Unselfish. Not self-centered but others-centered. Listening. Not avoiding difficult issues but tackling them with sympathy and gentleness.

And, it is not just ACTEC programming that has demonstrated an interest in such human issues. Many of our colleagues are giving emphasis to those issues, and many share their insights with the rest of us through blogs, emails, and the like. A good example is Marvin Blum in Fort Worth. He publishes by email a "Family Legacy Planning series" with titles like "What Are Your Rose and Thorn This Week?"[14] and "20 Questions for Your Thanksgiving Table Talk"[15] and "What Keeps This Family Connected? The Answer May Surprise You."[16] And Marvin's not the only one who does things like that.

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[11] Waller H. Horsley, *President's Message*, 16 ACTEC Notes 69, 74 (1990).

[12] *Id.*

[13] *Id.*

[14] *See* Marvin E. Blum, *Family Legacy Planning Series: What Are Your Rose and Thorn This Week?*, The Blum Firm (Dec. 7, 2021), https://www.theblumfirm.com/family-legacy-planning-series/ [https://perma.cc/9DT4-6DUJ].

[15] *See* Marvin E. Blum, *Family Legacy Planning Series: 20 Questions for Your Thanksgiving Table Talk*, The Blum Firm (Nov. 23, 2021), https://www.theblumfirm.com/family-legacy-planning-series/ [https://perma.cc/9DT4-6DUJ].

[16] *See* Marvin E. Blum, *Family Legacy Planning Series: What Keeps This Family Connected? The Answer May Surprise You.*, The Blum Firm (Aug. 24, 2021), https://www.theblumfirm.com/family-legacy-planning-series/ [https://perma.cc/9DT4-6DUJ].

We often call these less technical, more human, issues "soft" issues. Not "soft" in the sense of "squishy" or "mushy" or "weak" or "inferior." "Soft" in the sense of "caring" or "sensitive" or "empathetic." Coaching up!

III. Encouraging a Legacy of Family Values

What is there to "care" about in the representation of clients? Managing wealth? Sure. Transmitting wealth to the right people with the right people in charge of the process? Of course. Saving taxes? I suppose. But, while we "care" about *things* like that, before we can design the kinds of estate planning structures and draft the kinds of estate planning documents to address those issues, we need to understand what the client's real – ultimate – values, objectives, and priorities are. In other words, we need to *care* about *the client as a person* and *the client's family as a community of persons.*

Wealth can play a role. And where wealth is recognized not as the end, but as a means to the end, it can play a fantastic role. For example, if regular family meetings and retreats are a part of the strategy for preserving the family legacy, as many writers on the subject advise, then a source of funding, such as a long-term trust, can provide the support for travel, lodging, meeting facilities, and recreational activities and thereby encourage and facilitate attendance. Even a particular tangible investment like a vacation home can foster family unity as both a place for nostalgic visits and a possible site for family retreats. That could be true even if there are not significant other funds, although, again, a long-term trust can help with the maintenance and upkeep of a vacation home too.

But we all know about long-term trusts. That's the easy part. The hard part is the soft part – the soft issues! The hard part, occurring at the human level, is creating an interest in these kinds of family initiatives. Not just leaving a legacy – *living* a legacy – *building and sharing* a legacy. Identifying, understanding, preserving, nurturing, and transmitting family values – to keep the family together and to empower the family to give back to the community.

And if transmitting wealth is the motivation for clients to come to see us in the first place, wealth is not necessarily the root, or the foundation, of the family values system I have in mind. For some, that root, that foundation, is faith, for some ethnic identity, for some culture, for some family achievement, for some stewardship of the environment, for some philanthropy, for some even political persuasion. Politics is not as durable a foundation though, not just because of the cringe you all felt when you heard me mention it, but because politics is actually just a means to an end, not a common objective or value in itself. (By the way, a better understanding of the role of politics as just a means to an end might help a lot in reducing the intensity of divisiveness that politics has acquired.)

So how? How does the counselor help the client identify and develop that root, that foundation, for a transferrable legacy of values?

I confess: I'm really more passionate about the "why" than the "how." Like many of the things that we do dealing with the more technical demands of our practice, if we can be stirred up enough to embrace the "why," we will figure out how to encourage it in ways that, like the other things we do, are tailored to the needs, desires, and circumstances of our respective clients. Besides, there has been so much of great value written on the *hows* of this subject, particularly in the books in the Bibliography. Family "governance," mission statements, values statements, vision statements, constitutions, bylaws, family assemblies and councils, family meetings, storytelling, traditions and rituals, codes of conduct. And leadership – both to make policies and decisions, and to do the work, for example, in planning and hosting family meetings. Those resources compiled in the Bibliography lay out in great detail the "how" of family nourishing, which I will summarize under five points:

- Spending time together
- Shedding tears together
- Sharing joys together
- Serving others together
- Sustaining values together

1. Spending Time Together

Spending time together. Interacting. Communicating. This is crucial. This is existential. Holding family meetings is a major topic in many of the resources listed in the Bibliography. It was one of my focuses 11 years ago – 12 of the 22 pages in the ACTEC Law Journal version of my 2011 lecture were devoted to the subjects of Communication and Information Flow.[17] Family meetings, frequency dependent on the geographic dispersion and other attributes of the family, ages for admitting the youngest generations to be determined by the family, inclusion of spouses usually a good idea, inclusion of individual family members' lawyers usually a bad idea, a non-technical agenda often beginning with a tribute to an older family member or remembrance of a deceased family member, encouragement of discussion through the use of questions, and appropriate rules of civility such as encouraging the subjective first person ("I see it differently" or "I believe") rather than the second person ("You're wrong" or worse), and so forth.

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17 *See* Aucutt, *supra* note 5, at 672-80, 683-87.

Meeting – it's a good thing all right. Some family meetings by their family nature may have been affected less by the last two years of social distancing. But many extended families have also been cautious of meetings, not to mention cautious of travel. Technology has enabled more contact without travel, a positive display of resilience in the last two years. We are all delighted with how technology, employed by our resourceful officers and staff, has enabled us to interact over the last two years – and even in this transitional meeting to permit many of our colleagues to join virtually. I welcome everyone watching on-line. But I believe that our *fellowship* and *collegiality* as *Fellows* of this *College* are immeasurably strengthened when we gather in person, and virtual meetings have worked well for us largely because of the empathy and patience that come from that fellowship and collegiality we had built over many years by gathering in person.

Even more so, in a family, while virtual meetings can provide a convenient way to catch up between in-person meetings, they should always be understood as a distant-second-place replacement for in-person meetings with eye contact, gestures, smiles and frowns, other body language, hugs and handshakes, and even the sound of children playing in the background. And the same can be said about the benefit of face-to-face meetings of the counselor with the client to clearly learn about values, concerns, and needs, and to explain recommendations.

The Covid pandemic has also been accompanied by a sharpening of the blades and barbs of political and public discourse. No matter what any person's views are, there almost certainly will be different views that person thinks are at least goofy, and possibly outrageous. When these clashes arise within the family, it makes things particularly tense. And even when there is *little or no diversity* of political views, a family meeting can become a hot pot for bringing the views they share to a boiling point, magnifying the polarization and belligerence, regardless (as I said) of what point of view it is. In a few minutes I'll focus more on what a family that nourishes its values can give back to society. But sharper polarization certainly is not it.

2. Shedding Tears Together

The next point is shedding tears together. I don't know – maybe I just covered that in talking about politics! But probably not. What I mean is mourning *with each other* and comforting *each other*, whether the occasion is a rejection, a setback, an illness, a death, a miscarriage, or something else. Making that kind of communication natural, regular (whenever needed), and as personal as possible – don't write if you can call, don't call if you can visit – that's the point.

3. Sharing Joys Together

Parallel to shedding tears together is sharing joys together. Celebrating and rejoicing *with each other*. Obviously celebration is a lot easier than mourning and comforting, right? Yes, it should be, and often is. But in my experience, sometimes mourning together is easier to do. It is natural to say, "I'm sorry for your loss; what can I do to help you?" – and even mean it. But "I'm happy about your gain, your success, your achievement, your recognition"? Not so fast. What if that was a promotion *I* wanted? What if I think I worked harder than you? Or "I always wanted that picture; why did you get it?" Now I know you are thinking to yourselves: "We're talking really small stuff here. A picture? That's just household effects. That's never a problem in a family, is it?" But it is. It can be the biggest problem.

4. Serving Others Together

Serving others together. Just as a lawyer is not really fulfilled without clients, and what makes an attorney-client relationship most fulfilling is what I've labelled the calling of the counselor, a family is most fulfilled when its enthusiasm for family values and its devotion to those family values spills over to others, when it has an opportunity to shine a light into the world. Giving back. ACTEC itself embraces and models that. The family culture of giving back, sharing, and making the world (or at least a part of the world) better provides an encouragement – an accountability, if you will – for keeping that family culture strong. And likewise, seeing someone else helped because of a family's values can provide the best affirmation that those family values really are – well – valuable.

I'll say more about giving back to the community in a few minutes.

5. Sustaining Values Together

The fifth point is sustaining values together. And that of course is *the* point. "Family values" is the subject here. And in a sense it is just the sum of all the other points. When quality time is spent together in genuine interaction and communication, when both tears and joys are shared together, and when the family is able to leave the imprint of its values on others, then those values are not just ratified, they are incredibly strengthened. There's something about doing that beats just talking.

Now, 11 years after my first venture into this topic, I still think it is important that counselors know how to guide families in these steps and encourage families to follow. If anything, I feel more strongly than ever in light of the affirmation of the ACTEC programming I have mentioned, and in the face of even more need for living a legacy of values presented by the Covid pandemic, by greater coarseness in public dialogue, and by greater awareness of injustice and danger in the world.

If not now, when? And if not us, who? Coach 'em up!

IV. Challenges

Still, whatever the level of resolve, there are challenges that a client or a counselor might encounter with making these things happen. How can the counselor help? I'm going to address ten challenges or questions that might come up. But what I am about to say are just illustrations. I don't mean to suggest that I am going to tell you how to handle every challenge or fix every problem, or that I even could do that. And solutions will be different for each client anyway – like much of what we do, it is not one-size-fits-all. I just want these illustrations to show that with a little determination – and with the resources listed in the Bibliography, ideas offered by people who really do know what they are talking about – it is possible to come up with solutions, or at least potential solutions to try out.

1. Presumption

The first of these ten challenges is something I call "presumption." Legacy is important. But is *my* "leaving a legacy" all about *me* – so people will think better of *me*? Many who write on this subject, as I did 11 years ago, urge that every major family meeting feature some tribute to an older family member – or remembrance of a deceased family member. Use photos, videos, writings, memorabilia, or, if nothing else is available, just good stories. This will remind participants of what they have in common. There should be candor about where wealth came from, as well as where it goes.[18]

Stories are great. "That is what Grandpa did!" "That is who our great-grandmother was!" Their contributions had value. We should be encouraging our older generation clients to make a record of their stories to facilitate this type of remembrance. But we must avoid what J. R. R. Tolkien described in "The Lord of the Rings" when he wrote that "Kings made tombs more splendid than houses of the living and counted old names in the rolls of their descent dearer than the names of sons."[19] We do value those who have gone before us, as I value my grandparents. But the value I see in my grand*parents* should include what they modeled for me to pass on to my grand*children*. That, I think, is what we

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[18] *See id.* at 678.

[19] J. R. R. Tolkien, The Lord of the Rings: The Two Towers 286 (Houghton Mifflin Co. n.d.) (1955).

mean when we say their legacy lives on. Not splendid tombs, but a loving family.

So, the conversation with the client should not be limited to "You have been a success if your grandchildren love you." Not even "You have been a success if you love your grandchildren." It should include "You have been a success if your grandchildren love *their* grandchildren." That's what you are building – a legacy of hereditary unselfishness. It is fine for your descendants to honor you, but, from your perspective, "it's not about you."

2. Selfishness and Difficulty Feeling Love

But that can lead to another, even more fundamental, challenge. What if the client really can't celebrate others' joys because the client really is selfish? What if the client has trouble, for example, loving, empathizing, putting others (such as children) first? I imagine that we have all had clients who just didn't love their children, or grandchildren, or trust them, or *care* about them. At least not all of them. Or all of them the same. Maybe they really love the ones who are just like them – who share their ambitions, or talents, or tastes, or styles, or politics – but not the others. We can say to a client, "Start loving all your children." Or we can make it a little less authoritative: "It would be better if you loved all your children." But that seldom works. We can ask, "Remember how your parents – or your grandparents – loved you?" But that might not work either – they might not have the fond memories that approach presumes.

Here is a better approach: Simply ask what they *would* do, how they *would* act, what they *would* say, or what they *would* write, or what decisions they *would* make – *if* they *did* love and *did* empathize and *did* put others first – *if* they *did* love all their children. Or ask what they would want if they were, say, one of the children. Not what they would want in a *selfish* way, but what would make them *grateful.* Then, whatever they come up with, challenge them to just *do it*, just act that way, whether or not they *feel* like it. Coach 'em up! It can be amazing how that can work, not only to produce the outcome that love would have produced, but to actually work in reverse by beginning to build the very feeling of love the client claimed, or appeared, not to have.

And, by the way, this can work for the counselor as well as the client. Counselors who really are having a hard time liking their clients can just *do* what they imagine liking the client would *prompt* them to do. Sometimes that can work, not just for the issue at hand, but as a model for the client to follow.

3. Difficulty Giving up Control

A third challenge is that even some clients who really want to help their families still have trouble giving up *control*. That makes sense. Successful people want control. Many, if not most, successful entrepreneurs and even investors *achieved* their success by being in control. And it is unnatural for them to give up that control. And for many successful people, especially successful businesspeople, what keeps them awake at night are two dreadful fears about transferring that control to younger generations. The one they tell you: "What if they don't do as well as I have done?" and the one they don't tell you: "What if they do better?"[20]

This is a tough one. We can pester the client with slogans like "Failing to prepare is preparing to fail." But a better approach might be to take small steps. Remember that they don't want to *give up* control because they think they *are* in control, so we dare not act like *we* are in control. We can only make suggestions and let the decision be *their* idea. And one suggestion is: What smaller thing can they give up control of, and see how it works? What part of the business, what portion of the portfolio management, or even what part of the estate as an early outright lifetime gift?

What's the worst that could happen? The younger generation could fail. They could mess it up. They could lose it. (Remember I'm talking about a modest portion here, not the entire business or portfolio or family fortune.) But failure permits correction. The correction process builds character and commitment to the family's values system. As that renowned philosopher Yoda said in "The Last Jedi," "The greatest teacher failure is."[21] The children (for example) have been made better stewards of control and better stewards of the parents' transferable values system. And now that the parents' commitment to stewardship has been passed on to the next generation, we might be able to talk about passing more significant *control*, because we all know that at some point it has to happen. All anybody ever has is a life estate.

Does this approach end up rewarding failure? No – if anything it rewards risk-taking, if we're careful to tell the difference. And because many successful clients became successful by taking risks, they should understand that – maybe the ninth or tenth time you bring it up!

4. Defining the "Family"

The fourth challenge – perhaps the most fundamental of all – is how to define the "family" in the first place. Remember Hugh Magill's Trachtman Lecture in 2018 – "It's All in the Family. . . What's a Fam-

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20 *See* Aucutt, *supra* note 5, at 679.
21 STAR WARS EPISODE VIII: THE LAST JEDI (Lucasfilm Ltd. 2017).

ily?" No one could explore the recent development of the contemporary family more thoroughly and meaningfully than Hugh did in his lecture and his associated ACTEC Law Journal article.[22] But, against that background, it is important to define the scope of the family legacy initiatives that are my focus today. For example, as I mentioned earlier, it was pretty clear to me 11 years ago that spouses of family members (including "significant others" situated similarly to spouses) should ordinarily be included in discussions of family legacy, because they are so influential in the life of the family member. I still believe that as a general rule. Meanwhile, children should be introduced at an appropriate age. That age, and all the other details like that, will be determined by each family to suit their own circumstances. Clarity and consistency are crucial.

5. Determining How Long it Should Last

That leads to the fifth challenge – maybe even more important because it is not always considered – and that is determining how long the legacy framework should last. "Forever" is a natural and appealing answer. But think about it. Do any of us have any experience observing "forever"? I have known members of six generations of my family. If each family member has on average, say, three children, by the sixth generation there will be 243 fourth cousins! If each family member has on average four children, that number will be over a thousand. The family will look like a public corporation! Does anyone even know their *third* cousins? I often wonder, by the way, if over that period the so-called dynasty trusts that we design for our clients today will sustain enough growth to provide as much inflation-adjusted income per-beneficiary. But in the context of a family values system, we must assume and allow for the details of the values system to be refined and updated over time anyway. Any family governance mechanism should be flexible and adaptable. And divisions of the family for this purpose will make as much sense as they do in the trust context – per stirpes, so to speak – maybe not every generation, but very likely more often than every six generations in most families.

6. Accommodating the Family that May Not Have a Legacy

The sixth challenge arises with clients who have not received a values legacy – or, maybe more accurately, do not *feel* as if they have received a values legacy. Maybe they do not have any memories – at least not fond memories – of their parents or grandparents. Maybe they never knew their parents – or *really* knew them. Maybe their parents

[22] R. Hugh Magill, *Estate Planning and Trust Management for a Brave New World: It's All in the Family . . . What's a Family?*, 44 ACTEC L.J. 257 (2019).

just didn't share with them at the level I'm talking about. Not necessarily because of the lack of love, but perhaps just because no one ever told them, and it never occurred to them, that a legacy of values could be created and shared distinct from a legacy of wealth – or even when there is no wealth. And sometimes, yes, because of the lack of love. And even if those clients are married, they might not receive that kind of legacy from their in-laws either. Don't write off those clients. Encourage them about the great opportunity they now have to be *creators*. Creators of a legacy of values that they can pass on to *their* children and future generations. There's no clearer sign that something needs to be started than the fact that it hasn't started yet. After all, true satisfaction and fulfillment is more about giving than receiving anyway. *Their* grandchildren will be grateful.

Again, I mentioned wealth. Certainly, it is fair to ask if a substantial fortune is necessary. Shouldn't any family, regardless of material resources, be encouraged to develop a legacy of family values? Sure. But there's no denying that it's almost always wealth that gets clients in our doors. There surely is a place for an outreach about these kinds of values legacies in less wealthy families, but that is beyond the scope of this lecture, which is the calling of the counselor in the context of the wealthier families that come to us with estate planning needs.

7. Expanding Beyond Families

The seventh challenge is whether the benefits of a family legacy can spread *beyond* the family. One obvious answer is that a family that masters the art of preserving a legacy can be a model of unity and collegiality for similar families. There are several examples of that in the resources listed in the Bibliography.

But a more intriguing answer lies in a return to the topic of serving others – shining a light. Using wealth that has been accumulated in the family and both the creativity and accountability that come from sharing ideas, plans, and accomplishments within the family, a family foundation or other philanthropic vehicle can give back to society in meaningful ways. Some examples: Creating or expanding critical wards at hospitals, or just supporting hospitals, endowing scholarships for students or chairs for faculty members, or just supporting schools, or supporting faith-based missions or benevolence, or conservation. Or helping other families develop this type of values legacy and service-minded attitude. And these are just examples. As appropriate in the circumstances, the counselor should be proactive in pointing out the opportunities to give back to the community. And usually, the tax result is a good one!

But I want to return to the vision of reaching out to *people* with *needs* – the underprivileged, the disenfranchised, the marginalized, the unnoticed – for example, the homeless, the hungry, the victim of crime, the victim of shortcomings in the justice system, the aged, the single parent, the orphaned or abandoned or abused child, or the desperate person tormented by debt, a disability, an uninsured illness, an unwanted pregnancy, growing old alone, a death – or the ugly residue of centuries of racial prejudice, exploitation, and degradation. And in all these contexts, especially with regard to the racial justice themes that were the focus of the Symposium yesterday,[23] it is crucial that while we are processing all the details, we are motivated and empowered by the principle that embracing responsibility to everyone and acknowledging responsibility for everyone is the responsibility of everyone. Let me say that again, more succinctly: Responsibility *to* everyone and responsibility *for* everyone is the responsibility *of* everyone.

And we know that philanthropy can play a role here too.[24] And while we yearn for progress and will celebrate progress, let us not be content just with progress. Those football teams my sons were on that I mentioned earlier knew they had to gain yards, but they also knew they could not win just by gaining yards if the ball did not cross the goal line.

Moreover, it is essential that we, and the legacy families we counsel, not be satisfied with just supporting such goals, even with philanthropy, if there is any way to also help by *doing*, not just by *giving*. Volunteering at a place that provides food and clothing to the homeless or counsel and comfort to the abused or desperate, providing transportation to those who have no other option, or tutoring or mentoring a disadvantaged young person. Any way to not only love our neighbors, but love other neighborhoods too.

And, as I said a few minutes ago, the family that finds fulfillment in that finds fulfillment indeed. *Doing* is hard to beat. With one exception. And this should inform all the initiatives we view as philanthropic. Strategically *empowering* and *enabling* others to do for themselves, including making their own decisions, can beat doing it for them.

8. Applying Only Outside of Families

The eighth challenge is how useful the strategies and techniques developed in the context of preserving the benefits of family values and a family legacy can be when in effect there is no family. Some people have no family, or at least have no children and are not optimistic about recruiting their siblings to the mission. Or, even if they have children and maybe grandchildren, it just doesn't seem feasible to them to see

23 *See* Sarah Moore Johnson et al., The Forgotten 40 Acres: Repairing Racial Wealth Disparity Using the Estate Tax and New Charitable Incentives, Symposium II: ACTEC 2022 Annual Meeting (Mar. 11, 2022) (materials on file with ACTEC).

24 *See id.*

that family fitting into the models that family legacy counselors, like those cited in the Bibliography, speak and write about. But they may have other communities where some of the principles of passing on values could still be useful – communities like professional colleagues, charities, places of worship, apartment buildings, neighborhoods, clubs, or just friends.

Maybe. I certainly can't deny that. That also is beyond the scope of this lecture. But it should be kept in mind.

9. Defining "Success"

The ninth challenge is defining "success," which should be an important part of all planning. Of course, 100% success should be the aspirational goal we design our efforts around. But all we can do is all we can do. A family legacy plan that follows all of the advice in the resources in the Bibliography, for example, might still fall short. There might still be a child who doesn't celebrate when a sibling gets more! Future generations might not learn or might not be supportive. Even with an appropriate allowance for flexibility and adaptability, it just might not work.

Or the client just might not follow the counselor's advice or might not even want advice. After all, the client makes the decisions. The counselor can only broaden the client's horizon to see other paths and other objectives.

"Success" would then be defined as caring about the client, learning about the client, identifying the options that seem to the counselor to best fit the client's circumstances, explaining those options clearly, encouraging their consideration, *not* guaranteeing an outcome, and then – having done all that – leaving the decisions to the client.

10. How Can We Help?

The tenth and final question is "How can we help? How can ACTEC help?" This may not be for everyone. Everyone should embrace and support initiatives for encouraging the identification and transmission of family values legacies, but not everyone is best suited to provide the *counsel* to families that these initiatives contemplate. We should encourage our colleagues who have those talents, passions, and – well – "calling."

In addition, colleagues with those specialized talents and passions could make practical contributions to our understanding of issues that I can address only in the abstract. In that light, I encourage ACTEC to affirm specialized talents and passions like that, for example by reevaluating the weight given to speaking and writing in considering nominees for ACTEC membership. To be sure, speaking and writing provide convenient stages for getting to know nominees and validating them through polls of Fellows. But are we missing some very good counselors? Should we be affirming other paths for nominees, including those counselors who shine in offices and in conference rooms and in family retreats – and, I daresay, could shine in committees and task forces – more than they do on speaking and writing stages? Maybe because they don't get the same opportunities to speak and write, or because they don't have the passion or aptitude – it's just not their thing, their strength, their contribution. If we can develop careful and prudent ways to identify such nominees even though they might not have the public credential of speaking or writing, I would like to meet them, welcome them, learn from them, and watch ACTEC flourish even more because of them. Not to *lower* the bar for membership, or *raise* the bar, but to *lengthen* the bar to make it available to those on other paths who are modeling ACTEC-quality ingenuity in their response to *The Calling of the Counselor.*

V. Conclusion

So, I close with a challenge to each of you – to coach you up! Look for ways in your practice to be a counselor – to counsel clients to nourish a legacy of family values. Coach them up! Look for colleagues who have the talent and aptitude to be counselors. Coach them up too. Look for opportunities – in the example you set, for the colleagues you encourage, and for the clients you counsel – to serve and enable others. And always remember that responsibility *to* everyone and responsibility *for* everyone is the responsibility *of* everyone.

Appendix: Bibliography

Books

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ROY O. WILLIAMS & AMY A. CASTORO, BRIDGING GENERATIONS: TRANSITIONING FAMILY WEALTH AND VALUES FOR A SUSTAINABLE LEGACY (2017) (step-by-step guidance on creating family unity and mobilizing the unified family to support all its members).

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ACTEC National Meeting Materials

(available at https://www.actec.org/cle/national-meeting-presentations/)

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