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## Advising the Family Business Owner in Succession Planning: The Daughter Option

Debra G. Simms

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## ADVISING THE FAMILY BUSINESS OWNER IN SUCCESSION PLANNING: THE "DAUGHTER OPTION"

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### I. INTRODUCTION: SOCIAL CHANGE AND WOMEN IN THE WORKFORCE

The women's liberation movement grew out of the civil rights marches and the Vietnam War protests. Betty Friedan's *The Feminine Mystique*<sup>1</sup> was published in 1963. By 1966, Friedan and other women had formed the National Organization for Women (NOW).<sup>2</sup> By 1969, consciousness-raising groups had begun to organize in many major cities. Women gained heightened awareness of themselves, their rights, and their work situations. Women made demands for equality in the areas of day-care, promotion into middle-and upper-level management, equal pay for equal work, flexible working hours, part-time jobs, and increased admission for women into legal and medical graduate programs.<sup>3</sup>

The revolution in women's roles can be considered one of the single most important phenomenon of this century. This "mass exodus from home to office" has been an integral part of both a changing economy and a changing society.<sup>4</sup> The number of women at work is unprecedented in

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<sup>1</sup> B. FRIEDAN, *THE FEMININE MYSTIQUE* ( ed. 1963).

<sup>2</sup> M. RYAN, *WOMANHOOD IN AMERICA* 309 (1983).

<sup>3</sup> P. BERNSTEIN, *FAMILY TIES, CORPORATE BONDS* 160-61 (1985).

<sup>4</sup> *Id.*

history. In 1950, women comprised approximately 29.6 percent of the total civilian workforce. Today, that number exceeds 44 percent.<sup>5</sup>

Nearly 3.5 million American women own their own businesses, and women are starting new businesses at three times the rate of men.<sup>6</sup> Woman-owned firms represent about 24 percent of all businesses in the nation, excluding large corporations.<sup>7</sup> Yet, despite the impact of the women's movement upon the nation's workplace, women are not being invited to join in their families' businesses or share in their families' wealth. Noting that wealthy families who have only daughters frequently look for suitable sons-in-law to run their businesses, feminist Gloria Steinem declared, "family wealth is like hemophilia—it passes through women and men get it."<sup>8</sup>

This article will explore the role of the family business in our economy, discuss the importance of its continuity, and suggest that women should be given a greater opportunity to succeed in their own family's business. The final section will analyze whether lawyers can respond to the changing values prompted by the women's movement and counsel clients to explore the possibility that their daughter may be the best successor to the family business.

## II. THE FAMILY-OWNED BUSINESS

### A. *Economic Impact*

A family business has been defined as:

a small business started by one or a few individuals, who conceived an idea, worked hard and, while operating under a constraint of limited capital, built a business which has achieved from \$500,000 up to several million dollars in sales; and they have retained a substantial portion, if not all, of the ownership of the business.<sup>9</sup>

The family business owner is seen as a hard-working, highly motivated entrepreneur whose personal reward is the development and maintenance of a successful business enterprise.

The family business is a significant factor in the American economy.

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<sup>5</sup> *Id.* at 161-62 (citing statistics from the Women's Bureau, U.S. Department of Labor Statistics).

<sup>6</sup> Kisner, *Women-Run Businesses Increasing*, Crain's Cleveland Bus. Oct. 19, 1987, at 17, col. 4.

<sup>7</sup> WOMEN-OWNED BUSINESSES, U.S. DEP'T OF COMMERCE, BUREAU OF THE CENSUS, 1982 ECONOMIC CENSUS 3 (April 1986).

<sup>8</sup> Speech by Gloria Steinem to the Mt. Sinai Hospital Junior Auxiliary (Oct. 28, 1987). Ms. Steinem is currently working on a book on the masculinization of wealth.

<sup>9</sup> B. BECKER & F. TILLMAN, *THE FAMILY OWNED BUSINESS* 4 (2d ed. 1978).

Family-owned businesses employ nearly half of this country's workforce<sup>10</sup> and currently generate 50 percent of our gross national product.<sup>11</sup> The number of family businesses in America has been estimated to be approximately 13 million.<sup>12</sup>

Leon Danco, president and founding director of The Center for Family Business in Cleveland, Ohio, notes that "about 97 percent of all companies inhabit the world of the private business owner."<sup>13</sup> Dr. Danco maintains that "if the privately owned businesses were to disappear, it would be a socio-economic disaster to our way of life."<sup>14</sup> The value of the family business owner to our society is evident when one considers his role in the manufacturing industry as supplier and distributor; owner-managers are, for example, contractors, builders, bankers, business service professionals, and owners of life insurance companies. Moreover, in many of America's small towns, the owner's business may be the backbone of the community. Privately owned businesses are chief supporters of private schools and charitable organizations.<sup>15</sup>

#### B. Mortality Rates of Family-Owned Businesses

The family business has an average lifespan of only twenty-four years.<sup>16</sup> Of the estimated thirteen million family businesses in the United States, only about 30 percent will survive into the second generation.<sup>17</sup>

Dr. Danco is convinced that the privately held, family-owned corporation is an endangered species.<sup>18</sup> Says Danco, "[t]he threat lies not so much from competitors, regulatory legislation, consumer movements or other outside forces, . . . [but that the real threat] . . . lies primarily within the business practices and policies of its owners."<sup>19</sup> Specifically, Dr. Danco believes that most of the problems facing family businesses revolve around the emotionally charged issue of succession—when and how the

<sup>10</sup> *Id.*

<sup>11</sup> Wander, *Family Businesses—Hand-Me-Downs or Heirlooms?* SELF-SERVICE STORAGE ASSOC., Mar. 1987, at 10.

<sup>12</sup> Nelton, *Making Sure Your Business Outlasts You*, NATION'S BUS. Jan. 1986 at 32.

Exact statistics on the number of family businesses in this country are not available. This writer contacted the following agencies in an attempt to learn current statistics: Greater Cleveland Growth Assoc. (Council of Small Enterprises); Small Business Administration, Office of Advocacy; U.S. Department of Commerce, Census Bureau (in Chicago, Illinois), John Dodd; Internal Revenue Service (Washington, D.C.), Fritz Scheuren.

<sup>13</sup> L. DANCO, *BEYOND SURVIVAL 12-13* (1977)[hereinafter L. DANCO].

<sup>14</sup> *Id.* at 15.

<sup>15</sup> *Id.*

<sup>16</sup> Blank, *Leon Danco: Family Business "Shrink"*, MGMT. REV. July 1987, at 16.

<sup>17</sup> *Id.* BROWN, *Succession Strategies for Family Firms*, Wall St. J., Aug. 4, 1988, at 19.

<sup>18</sup> L. DANCO, *supra* note 13, at 4.

<sup>19</sup> *Id.*

company is passed on to the next generation. The succession dilemma is becoming more pressing, particularly for founders of the numerous companies started in the post World War II boom who are now reaching retirement age.

### C. Succession—A Difficult Choice

As the business entrepreneur grows older, he must face the difficult question of whether to retain the family business for his family, or to merge or sell and relinquish his business identity. Often, the owner ignores this dilemma with the result that the business self-destructs because the founder has not planned for his own succession.<sup>20</sup> This phenomenon is known as “corporeuthanasia” — the owner’s act of willfully killing off the business he loves by failing to provide in his lifetime for a viable organization with clear continuity.<sup>21</sup> Says Dr. Danco,

too often the owner who had the ability, vision, and guts to build his business from nothing, does not have the courage to face the problems of the future, then his banker and attorney will do it for him on the way back from his funeral, four cars back from the flowers.<sup>22</sup>

The following are considered the central reasons for the succession dilemma: business owners are so busy running their businesses that they neglect to plan their own exit; they do not have confidence in their offspring; and they do not view family perpetuity as an important concern.<sup>23</sup> The business owner may also neglect to plan for the continuity of the business because he cannot face his own mortality; or he may decide to run his business like a monarchy—his oldest son as president and allowing succeeding sons or sons-in-law to assume roles based on order of birth. As an unfortunate result, no roles will be filled on the basis of competence or motivation.

Dr. Danco advises fathers to “[u]nderstand that the hairs on your chests are numbered and that your primary goal should not be to generate more money and sales than anybody else, but to perpetuate your businesses.”<sup>24</sup> Danco believes that neither selling, merging, nor “going public” is the best final option for family businesses. Says Danco, the founder “can try to keep the family jewels in the family vault. . . . The jewels were created for the family in the first place.”<sup>25</sup>

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<sup>20</sup> *Id.* at 5.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> B. BECKER & F. TILLMAN, *THE FAMILY-OWNED BUSINESS* (1975).

<sup>24</sup> Poe, *The SOB's*, 17 *ACROSS THE BOARD: A CONF. BOARD MAG.* 25 (May 1980).

<sup>25</sup> *Id.* at 27.

#### D. *The Options*

To perpetuate a business, there must be a younger generation willing and able to continue the tradition. Many sales of companies take place either because there are no heirs, or because the available children made other career decisions. Usually, the pool of "available" children is composed of sons.

Some sons are not interested in their father's business. Some sons have the interest, but lack the aptitude. Some are not well-motivated. "The attitude of unmotivated sons in Dad's business can create a disastrous [sic] management atmosphere for the future,"<sup>26</sup> writes Danco. Another commentator has observed that "sons have tended to view the business as their birthright and have not taken the time or trouble to go out and get other experience. The top job has been something they expected to inherit, not earn."<sup>27</sup>

Some fathers have no sons. Often they choose a son-in-law as a potential heir. Many fathers refuse to even consider a daughter. In her book on women in family business, Katy Danco writes that the thought that a daughter could inherit and run a family company—other than a boutique or some other frilly business—has seldom been entertained by business owners.<sup>28</sup>

Leaving the business to children who do not understand or even want the business, despite all of the father's good intentions, is usually a disaster. If he would only see it, the founder may have another option. His daughter may be smart, aggressive, and very much interested in a career.

### III. THE SHAPE OF CHANGE

Federal legislation has enhanced the status of women in the labor force by prohibiting discrimination based on sex in all terms, conditions, and privileges of employment.<sup>29</sup> The Equal Employment Opportunity Commission promulgates guidelines on sex discrimination and has been given

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<sup>26</sup> L. DANCO, *supra* note 13, at 145.

<sup>27</sup> Hartman, *Why Daughters are Better*, INC. Aug. 1987, at 44.

<sup>28</sup> K. DANCO, *FROM THE OTHER SIDE OF THE BED* 57 (1981).

<sup>29</sup> Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, prohibits discrimination in employment based on sex as well as race, color, religion or national origin. Other major U.S. laws which affect female employees are: Executive Order 11246, effective October 14, 1968, which prohibits discrimination based on sex by federal contractors or sub-contractors whose contracts exceed \$10,000; and Title VII of the Civil Rights Act, 1974, as amended by the Pregnancy Disability Act of 1978 which prohibits discrimination on the basis of pregnancy, childbirth, or related medical conditions in hiring, promotion, suspension, discharge or in any other term or condition of employment. See Greenfeld and Zauer, *Policies for Women Managers in the 1980's: What Corporate America is Doing to Foster Career Development and Organizational Commitment*, in *WOMEN IN MANAGEMENT* (C. Cooper & M. Davidson eds. 1984).

the power to institute lawsuits in the federal district courts on behalf of aggrieved persons.<sup>30</sup> Companies have developed affirmative action programs geared to recruiting significant numbers of women.<sup>31</sup> Recent statistics on women in management demonstrate that women are willing to dedicate themselves to careers with managerial responsibilities.<sup>32</sup>

While opportunities for women in the corporate world continue to expand, competent daughters face tough discriminatory behavior right in their own backyard. Dr. Danco admits, "as long as there is a son as successor, nobody really expects a daughter to do anything except inherit a portion of the stock. . . . She will always be in a stepped-down position in relation to her brother and his wife. . . . Dad usually sees to that."<sup>33</sup>

How do founding fathers justify such blatant sexism? Consider the following statements gathered from discussions with several family business owners in this community:<sup>34</sup>

- Women shouldn't take on too much responsibility.
- Women are terrible bosses and men don't like to work for them.
- Women are terrible bosses and other women don't like to work for them.
- Women bosses aren't lady-like.
- Women are too emotional to run a large company.
- Women aren't respected by customers/clients.

Asked about their own daughters, these fathers often replied that their business "was no place for a woman. And besides, how would she ever find a man to marry, raise his grandchildren and run an entire company at the same time?"<sup>35</sup>

In 1984, one commentator noted that ten years ago it was barely conceivable that a company owner without sons might choose a daughter to succeed him; the writer then estimated that fifty thousand daughters will become potential owners of family businesses in the next decade.<sup>36</sup> Today, daughters account for approximately ten percent of the attendance in Leon Danco's seminars.<sup>37</sup>

Times may be changing—somewhat. Daughters are beginning to take an interest in joining their fathers' businesses. Their fathers may even be beginning to see their daughters as just as competent and aggressive as

<sup>30</sup> See generally, E. LYNCH, *THE EXECUTIVE SUITE, FEMINE STYLE* 157-70 (1973).

<sup>31</sup> *Id.* at 165-66.

<sup>32</sup> See *Women in Business*, *Crain's Cleveland Bus.*, Oct. 19, 1987, at 17 (articles on the progress of women as entrepreneurs and managers).

<sup>33</sup> L. DANCO, *supra* note 13, at 50-51.

<sup>34</sup> Personal interviews with father/owners in the fields of scrap processing, retail apparel, banking, grocery, and manufacturing.

<sup>35</sup> *Id.*

<sup>36</sup> Keene, *Family Businesses that Beat the Odds*, *INDIANAPOLIS MAG.* (Apr. 1984).

<sup>37</sup> Telephone interview with Leon Danco, president and founding director of The Center for Family Business in Cleveland, Ohio (Nov. 24, 1987) (hereinafter telephone interview).

their male counterparts. A recent issue of *Inc.* magazine proclaimed that when it comes to easing the pains of succession, daddy's little girl is probably the better choice!<sup>38</sup> "The very hurdles that she has to leap even to be considered an appropriate heir make her more likely to succeed. . . ."<sup>39</sup> Nevertheless, the author cautions that even in this age of sexual equality, the daughter option is just beginning to sink into the consciousness of family business owners who will pass on their companies in the coming decade.

While currently fifty percent of the potential successors are daughters, less than five percent are actual successors.<sup>40</sup> According to *Inc.* magazine, "You wouldn't call it a trend, so much as a trickle."<sup>41</sup> The following section will explore how attorneys as business advisors and estate planners can help to accelerate this "trickle" and help to make the daughter option a reality.

#### IV. ROLE OF THE ATTORNEY IN HELPING THE BUSINESS CLIENT PLAN FOR SUCCESSION

##### A. *Counseling Function in General—Preventative Law Practice*

The lawyer's role as counselor-advisor has long been recognized as distinct from the lawyer's role as litigator-advocate.<sup>42</sup> Unlike the litigator who deals with past facts, the legal counselor structures future transactions to prevent future conflict. Further, the legal counselor is seen as having a "definite obligation to advise the client of the risks involved in any action proposed by the client, and to recommend action that will achieve, with the least amount of risk, the client's ultimate objective."<sup>43</sup>

Preventative law is a modern term of art which describes the techniques and methods that are intended to diminish the probability of future legal problems. In application, it too can be seen as distinct from the traditional "adversary" approach to practicing law. Like the counseling function, the purpose in a preventative law practice is to learn about, then prevent or resolve, legal problems in their very early stages.<sup>44</sup>

In this sense, preventative law jurisprudence is a helping-person jurisprudence; the lawyer is counselor rather than advocate or

<sup>38</sup> Hartman, *supra* note 27, at 41.

<sup>39</sup> *Id.*

<sup>40</sup> Telephone interview, *supra* note 37.

<sup>41</sup> Hartman, *supra* note 27, at 44.

<sup>42</sup> See H. HAYNESWORTH, *THE PROFESSIONAL SKILLS OF THE SMALL BUSINESS LAWYER* 3 (1984).

<sup>43</sup> *Id.* at 5. See also MODEL RULES OF PROFESSIONAL CONDUCT RULES 2.1-2.3 and 3.1-3.9 (1983)(these provide different rules for a lawyer's counseling and adversary functions).

<sup>44</sup> W. Sogg, Private Corporation Seminar Lectures, Cleveland-Marshall College of Law, Aug.-Dec., 1987.

manipulator.<sup>45</sup> This helping person model reflects the view of those who believe the lawyer's role should include giving practical and moral advice as well as the strictly legal considerations involved in a particular situation. This approach is reflected in the Code of Professional Responsibility<sup>46</sup> and the Model Rules.<sup>47</sup> Both the Code and the Rules recognize that most problems confronting business clients contain non-legal as well as legal factors, with non-legal considerations at least "[impacting] on the range of visible legal alternatives. . . ."<sup>48</sup>

Non-legal factors involved in any complex business decision include both the sociological and psychological components of the lawyer-client relationship. Contrasted with concern only for good technical work, sensitivity to this human dimension in a legal practice can form the bedrock of professional competence.<sup>49</sup>

The late Chief Justice Arthur Vanderbilt wrote:

First of all a truly great lawyer is a wise counselor to all manner of men in the varied crisis of their lives when they most need disinterested advice. Effective counseling necessarily involves a thoroughgoing knowledge of the principles of the law not merely as they appear in the books, but as they actually operate in action. In equal measure counseling calls for a wide and deep knowledge of human nature and of modern society. Most difficult of all, truly great counseling calls for an ability to forecast the trends of the law.<sup>50</sup>

Preventative law practice, with its emphasis on value-conscious, analytically-oriented, decision-resolved counseling can and should be viewed as an appropriate forum to help effect positive social change. Formal anti-discrimination measures alone are not enough to achieve equal opportunity in all areas of employment. Legislation must be complemented by informal steps to achieve change in stereotypical behavior arising from social attitudes which influence conscious and unconscious decisions. Advisors who understand this useful and important role can raise their client's consciousness as to all available alternatives in the estate planning process.

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<sup>45</sup> See T. SHAFPER, *LEGAL INTERVIEWING AND COUNSELING IN A NUTSHELL* 253 (1976).

<sup>46</sup> See MODEL CODE OF PROFESSIONAL RESPONSIBILITY EC 7-5, 7-8 (1982).

<sup>47</sup> See MODEL RULES OF PROFESSIONAL CONDUCT Rule 2.1 and comment (1983).

<sup>48</sup> H. HAYNESWORTH, *supra* note 42, at 6.

<sup>49</sup> *Id.*

<sup>50</sup> Vanderbilt, *The Five Functions of the Lawyer: Service to Clients and the Public*, 40 A.B.A.J. 31 (1954).

*B. Coping with Social Change—Counseling in the Area of Succession*

Lawyers who advise clients and draft documents in the estate planning practice are counselors in more than the traditional legal sense. They are also counselors in the therapeutic or developmental sense. They live with their clients an experience which results in change and in choice. They are companions in another man's world.<sup>51</sup>

In *The Family and Inheritance*,<sup>52</sup> Sussman, Cates and Smith studied probate records in Cuyahoga County, Ohio and through interviews conducted with probate lawyers, found that the lawyers had an "ideal" image of the client.

The ideal probate client should be "reasonable." He should have a "close working knowledge of the probate estate," and he should not bother his attorney with trivial details ("feelings") about it. The ideal will-making client "realizes the need for a will . . . [is] willing to completely confide in his attorney, [or] . . . to consider problems . . . in an objective manner, and will finally make decisions . . . in accordance with the legal advice of counsel. . . ." In a phrase, the Cleveland probate study suggests that lawyers want clients who will shut up and do what they're told, and clients want lawyers who will communicate with them and who are capable of giving and receiving human feelings.<sup>53</sup>

In analyzing their findings, the authors concluded that the lawyer must not only write a will that successfully disposes of the client's property to his chosen successors, but may also be called upon to influence the client's choice of successors.<sup>54</sup>

The extent to which lawyers influence their clients in estate planning was of particular interest in the study. The authors found that, consistent with the concept of testamentary freedom, attorneys urged their clients to make their own decisions regarding the disposition of their property. However, the authors also noted, "it is impossible to overlook the fact that the lawyer, like his client, is a product of our culture and that in subtle and unobtrusive ways he influences his client to make the right decision."<sup>55</sup>

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<sup>51</sup> Shaffer, *Death Property and Lawyers*, in *PLANNING BY LAWYERS* 733 (L. Brown & E. Dauer eds. 1978).

<sup>52</sup> M. SUSSMAN, J. CATES & D. SMITH, *THE FAMILY AND INHERITANCE* (1970)[hereinafter *THE FAMILY AND INHERITANCE*].

<sup>53</sup> T. SHAFFER, *LEGAL INTERVIEWING AND COUNSELING IN A NUTSHELL* 208 (1976)(quoting *THE FAMILY AND INHERITANCE*, *supra* note 52).

<sup>54</sup> *THE FAMILY AND INHERITANCE*, *supra* note 52, at 217-18.

<sup>55</sup> Shaffer, *supra* note 51, at 726.

What is a “right” decision, of course, depends in many cases upon the lawyer’s own biases and values. A lawyer who has not given much thought to the possibility that a daughter may wish to join the family business will not be sensitive to this fact when his client complains that he cannot get along with his sons, or that his presumed male heir has demonstrated an amazing lack of talent in managing the affairs of the company. The attorney may counsel that serious dissension is likely to develop unless the founder chooses one strong leader capable of unifying the various factions in the family. However, solutions offered to such problems will differ depending on the attorney’s attitudes concerning a woman’s place in the business world.

Choosing a daughter to succeed is sometimes an act of desperation: An aging founder finally admits to himself that working with his son is a no-win situation, or that the son’s strengths or abilities do not offer all that the company needs in a chief executive officer. The founder faces the fact that for whatever reason, things just have not worked out with his son. For years he worked hard, thinking of this business as his legacy, but now—he is considering selling out. The company has grown too big for dad to do it all. Should he decide he wants his business to survive, he may, in response to his frustration and helplessness, ask his daughter to join the firm.

An attorney’s ability to apply a preventative law approach and deal with issues involving a commingling of legal, business, and family-related problems will enable him to present the daughter option to his client before the owner reaches this stage of desperation. An owner benefits in significant ways when he takes responsibility for choosing and installing his successor while he is still healthy and active in the business.

First, the owner who chooses his successor well in advance of retirement will be able to communicate that choice to all family members involved.<sup>56</sup> It will be important that everyone understand and accept the fact that there can be only one chief executive officer and that the decision as to who will fill that position has been made. This is especially important when one considers that family discord, particularly jealousies and conflicts which arise between children active in the business, can paralyze a business enterprise. Dr. Danco warns that family businesses that spend time and energy on internecine warfare will always fail.<sup>57</sup> “It’s the old story of Cain and Abel. It’s the Old Testament revisited with economic terms instead of biblical phrases. It’s the problems of power and lust and envy and greed and hope and love all mixed up.”<sup>58</sup> The parent

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<sup>56</sup> Keene, *supra* note 36, at 65.

<sup>57</sup> Wander, *Family Business-Hand-Me-Downs or Heirlooms?*, SELF STORAGE SERVICE ASSOC. Mar. 1987, at 11 (quoting Leon Danco).

<sup>58</sup> *Id.*

who selects his successor can address the problems of sibling rivalry and can communicate his plans to his family so that they, hopefully, will have confidence in his decision.

Second, once the successor is selected, he must be trained.<sup>59</sup> Dr. Danco strongly encourages that the successor gain experience working from someone else to help him develop confidence in his own abilities and to help him earn the respect of employees and other family members.<sup>60</sup> Then the owner must prepare his successor for the job. This will include shared decision-making, recognition of changed business practices, and acceptance of his successor's new ideas.

Third, the aging founder must prepare the company for the forthcoming management change.<sup>61</sup> Unrelated employees need time to adjust and it is important that they understand the founder's commitment to his chosen successor. In terms of preparing employees to accept a daughter-successor, this step will be particularly crucial during the transitional period. Bringing a child into the business always raises questions about favoritism and nepotism, "but for daughters, there is an added layer of prejudice to overcome—the same prejudice faced by ambitious women anywhere."<sup>62</sup>

Planning a succession is said to take at least five years.<sup>63</sup> The process should begin by the time the entrepreneur is in his mid-50's, with the children possibly in their mid-20's. It is during this time in a founder's life that attorneys can be most effective in counseling clients not to neglect their daughters. The lawyer, being ever cognizant of the fact that most entrepreneurs prefer passing a business on to non-relatives instead of a daughter, can advise clients that when they do not give daughters a chance, they lose fifty percent of potential offspring successors.<sup>64</sup>

*Death, Property and Lawyers*<sup>65</sup> studied the effect of lawyers' attitudes in testamentary counseling. The study concluded that "[a]lthough most lawyers do not realize the influence they exert on clients, the realities and values of the client's situation are heavily influenced by the verbal and non-verbal reactions of the lawyer to what the client says."<sup>66</sup> Acknowledging this influence, and recognizing that laws alone will not ensure that women achieve equal opportunity in employment, lawyers can begin to change their own deep-rooted perceptions and behavior.

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<sup>59</sup> Keene, *supra* note 36, at 65.

<sup>60</sup> *Id.* at 64-65.

<sup>61</sup> Hartman, *supra* note 27, at 46.

<sup>62</sup> *Id.*

<sup>63</sup> Nelton, *Making Sure Your Business Outlasts You*, NATION'S BUS. 32, 34 (Jan. 1986).

<sup>64</sup> *Id.* at 35.

<sup>65</sup> Shaffer, *supra* note 51.

<sup>66</sup> *Id.* at 742.

## V. FIELD RESEARCH

A. *Coping with Change—Views of Estate Planners*

Gary Dinner,<sup>67</sup> an estate planning practitioner, has not perceived any significant prejudice in the succession planning process.<sup>68</sup> Dinner maintains that by the time he becomes involved with the client, a son has already been active in the family business for some time and the father has determined that this son will control the business when he's gone. Where more than one son is involved, Dinner's role is to help determine how the property will be distributed among the children. Usually, dad wants the sons to have equal ownership, despite the fact that one child will be designated as president of the company. Dinner often advises that one son should have majority control, but thus far this issue has arisen only in same sex situations.<sup>69</sup>

Dinner does see situations where a son will be favored over the son-in-law, despite the fact that the son-in-law has worked longer in the company or may have greater managerial responsibilities.<sup>70</sup> Often, this means that the daughter of the owner will be left with shares which will be worth considerably less than her brother's in the event of liquidation. Dinner recently advised a client to create a class of non-voting shares to leave to the daughter because he felt the distribution contemplated by the owner was extremely unfair.<sup>71</sup>

Dinner is currently advising a father who is seeking a way to include his daughter in the family's business.<sup>72</sup> The father is considering leaving the smallest of his three companies to his daughter, while the two sons will be given control of the two larger businesses. However, the father is concerned about the arrangement since the small business would require his daughter's manual labor.

Dinner attributes the low numbers of daughter-successors to the ages of fathers who today are planning succession, rather than sexism.<sup>73</sup> "Most of these men are in the 60's-plus age bracket," he noted, "and their daughters are of the generation of women who chose to stay home and raise families rather than choose a business-related career."<sup>74</sup> Dinner believes it is the choices of daughters, and not the prejudices of fathers,

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<sup>67</sup> Telephone interview with Gary Dinner, Partner at Arter & Hadden, in Cleveland, Ohio (Nov. 1987).

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> Telephone interview with Gary Dinner, Partner at Arter & Hadden, in Cleveland, Ohio (Nov. 1987).

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

which have kept daughters in a disadvantaged position. According to Dinner, it is too early to see any major changes in the estate planning process, but "more and more daughters will pursue business-related educations in the coming years."<sup>75</sup>

Dinner perceives it as appropriate to his counseling function to call attention to any prejudicial attitudes his clients might display. He would also feel free to voice his own values. However, the final decision is, of course, the client's.

Mr. James Roseman shares Mr. Dinner's perception that there is no obvious gender-based discrimination in his clients' attitudes during the estate planning process.<sup>76</sup> He believes that succession decisions are a function of which child is already involved in the business. Furthermore, he believes that in situations where an owner does not opt for equal ownership in his heirs, this decision is based on ability and not gender.<sup>77</sup>

Mr. Roseman stated that he would not take an active role in helping a client decide which one of his children should succeed him. He views his counseling role as providing structure in which a client can make his own decisions, but never communicating, even subtly, to a client that his attitudes toward his female offspring are biased.<sup>78</sup>

Frances Schaul stated that she rarely, if ever, sees a situation where a founder's daughter is active in the family business.<sup>79</sup> Generally, the daughter's husband is involved, even though it is the daughter who owns the company stock.<sup>80</sup>

Ms. Schaul does not see this situation as a function of sexism. "Fathers love their daughters as much as sons [but] this is the way they [the daughters] were brought up."<sup>81</sup> She added that if any prejudice toward the daughters existed, it occurred early on in the daughter's life, well before the time when career plans were being made.

Ms. Schaul would not interpose her own ideas about whether a client should consider his daughter as a potential successor. However, she does broach such value-laden topics in "subtle ways."<sup>82</sup>

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<sup>75</sup> *Id.*

<sup>76</sup> Telephone interview with James Roseman, Ameritrust, in Cleveland, Ohio (Nov. 1987).

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> Telephone interview with Frances Schaul, Partner at Hahn Loeser and Parks, in Cleveland, Ohio (Nov. 1987).

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

## VI. CONCLUSION

These discussions with attorneys demonstrate that for the most part, by the time a client is ready to divide the business and is seeking the assistance of an estate planner, he has already determined who will run the business after he is gone. His children have been working with him for some time and any remaining decisions revolve around whether all children will share equally in ownership; whether one child shall have the power to veto; or whether a daughter should hold her stock in trust, thus preventing the son-in-law from exerting any influence over her. The lawyers did not see preference for any one child as being gender-based, but shared the perception that fathers' attitudes were a matter of generation rather than sex. Mr. Roseman believes that any preferences are usually toward the eldest child, regardless of sex.<sup>83</sup>

These attorneys were reluctant to take on a role which would raise a client's awareness that a female in his family would be an appropriate successor. Clearly, the attorneys were not comfortable with any notion of "selling" women to the client. Any influence they were willing to exert, should the need arise, would be very subtle and unobtrusive. Mr. Dinner stated that he would take issue with blatant sexism because of its inherent unfairness. "I have a daughter," he remarked, "and I need to be able to sleep at night."<sup>84</sup>

These attorneys did not feel that they could play an important role in influencing attitudes toward selection of successors. Barriers to equal opportunity, they noted, occurred, if at all, when the daughters were growing up, not now. By the time an owner was seated in his office, it was too late to suggest that the client consider the daughter option. The grown daughter was either home raising children or employed elsewhere.

In a business world where discrimination is based on assumptions developed from background and experience, influencing attitudes in a positive way is an important contribution that business advisors can make in helping eradicate an environment within which equal opportunity is hindered. Attorneys who counsel owners of family businesses can be especially sensitive to the conscious or unconscious attitudes which are barriers to the recruitment and training of daughters as successors. It is evident that estate planners may indeed be in a poor position to directly influence these decisions. The owner who is ready to sit down and put his plans in writing may already have taken a position which has either included or excluded his female offspring.

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<sup>83</sup> Telephone interview with James Roseman, Ameritrust, in Cleveland, Ohio (Nov. 1987). It is apparent from the small number of female entrepreneurs who are successors that what he really means is the eldest son!

<sup>84</sup> Telephone interview with Gary Dinner, Partner at Arter & Hadden, in Cleveland, Ohio (Nov. 1987).

Business advisors must act earlier in the life cycle of the business if they are to assist the client in thinking more clearly about the priorities he is placing on these alternatives. Overlooking a daughter because she is a daughter is surely discrimination. It cannot be redressed by legislation, by implementation of affirmative action policies, or by monitoring statistics. Business advisors do have an opportunity to provide a client with a new perspective on his options. Estate planners today have apparently yet to face this dilemma. Coping with change in the form of the social revolution of women's roles in the workplace may not yet have reached the offices of attorneys who counsel principals of family businesses in estate planning. This is not to say that change can be neither expected nor made. It is only to say that changing the percentages of daughter successors will be slow and that the "subtle" and "unobtrusive" influences that attorneys are willing to make can only have a less than dramatic long-term effect.

Daughters need to be seen as important potential family business managers. Lawyers can utilize their unique and privileged positions as "counselors" to employ consciousness-raising techniques which will raise the general level of awareness in the selection process. The opportunity to effect positive change presents itself with the lawyer-client relationship, but could also be afforded by awareness seminars conducted by firms, trust departments, or even bar associations. Lawyers could be invited to participate in seminars conducted by established groups.<sup>85</sup> Families, attorneys, and business consultants can work together to resolve the succession dilemma for young women, who also just happen to be the bosses' daughters.

DEBRA G. SIMMS

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<sup>85</sup> For instance, Leon Danco conducts the Center for Family Business Institute.

