

Collaborative Review

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FROM THE EDITORS: It's Been a Good Ride

by Jennifer Jackson, JD, San Francisco California
and Pauline Tesler, JD, Mill Valley California

Welcome to the "Book Review Issue" and our last issue as editors of the *Collaborative Review*. It has been a long, wild and wonderful ride, which we would not have missed for the world. What a privilege it's been to envision this journal, make it a reality, and watch it take on a vital life of its own.

The *Collaborative Review* was born in 1999 as the *Collaborative Quarterly*, at the same time as its parent, the International Academy of Collaborative Professionals (founded in 1999 as the American Institute of Collaborative Professionals). All the best collaborations seem to happen over food, and the IACP - and its journal - are no exception. The core group that became the IACP's founding board met for many months over lunch in Emeryville, California, poised at the right time and place to launch the entity that has grown to be our international movement's umbrella organization. Starting with little more than the conviction that "if we build it, they will come" and with no members except ourselves, we boldly named ourselves, incorporated, designed our logo, launched our website, and took it upon ourselves to publish the journal that we knew our rapidly-expanding collaborative movement would need.

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In the summer of 1999, two of us convened the first editorial meeting of the *Collaborative Quarterly*: Jenni with her laptop and Pauline with her ideas of what a Collaborative Law journal could be. Jenni pulled up a blank Microsoft Publisher template, and we sat down together at Pauline's conference room table, brainstormed ideas, and laid it out, trying to figure out how to get Stu's picture (the only photo we've ever run) in the center of the front page. To this day, Jenni still does the design, "typesetting" and layout and, after her sister Paula Jackson (our outstanding administrator-cum-copy editor since 2001) makes sure it is letter-perfect, Jenni sends each issue camera-ready to a printing house. The look and feel of our journal has become increasingly professional as Jenni has upgraded to more sophisticated design software programs.

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SHIFTING GEARS: How Do I know If I've Made the Paradigm Shift?

Ed. note: we've just heard about the collaborative process as a plane...and now...how about the collaborative process as a car!

by **carlMichael rossi, JD, LPC, Chicago, IL**

The essential element of Collaborative Practice is the "paradigm shift". We've all heard it talked about and all nodded our heads in agreement with its importance and all genuinely avowed that we have embraced the shift.

But how do we know we have? How can I tell that I have actually changed the way I approach a dispute from the way I have for 5, 10 or 30 years to the way in which I agree that I would prefer to approach it?

I remember when I learned to drive a car that had a manual transmission. I was told that you could say that you had changed gears all you wanted to, but the car would tell you - loud and clear - whether you had or not. That is to say, you listened to the sound that the engine made.

As with a manual transmission, you can tell whether you've changed gears simply by listening to the sounds you make while you're in motion. It's what you say while you're in the process that will tell you: **not** what you say in a training, at a practice group meeting, during a client intake, at lunch or any other time you are talking about yourself rather than *being* yourself.

My goal here is to give you some of the "sounds" to listen for: the ones that will tell you 'loud and clear' whether or not you have shifted gears. I'm not going to talk about the nature of the shift, first because it has been adequately talked about, not just in your training(s) but in many writings (See the books reviewed in this issue.) And....I might want to write another article.

I have no doubt that you will agree with the nature of, the importance of, and your embrace of the "paradigm shift". My intent is to give you some bases for self assessment of the extent of that "embrace."

The best way to do that is to give you some simple, clear things that you should **Never/Always** hear yourself say. Like an engine sounding like a can of bolts being shaken, if you hear the "nevers", you'll know that you haven't quite made the shift. And, like a smooth, calming whirring of an engine, when you hear the "always", you'll know that you're in gear.

NEVER

What's a 'good' idea

The restructuring family has several sets of needs that have to be met if their lives post-divorce are to move them closer to their goals. The crux of Collaborative Practice is to come up with ideas about how best to do that for this particular family. Toward that end, we each come up with as many ideas as we can and test them out to see if they will work.

However, **NEVER** even make a proposal if all you can say about it is that many or even most other couples "do that". **NEVER** make a proposal if all you can say about it is that it's what "a court would likely do" or that it is "within the guidelines". And **NEVER** describe your own proposal as "fair", "reasonable" or the like.

If you can't explain **how** the proposal advances both clients' needs, then either a) you don't know what the clients have determined they'll need for their post-divorce lives [*Have you talked with the clients' coaches? What's that, the clients don't have coaches?*] or b) this particular proposal doesn't relate to their needs. Either way, *do ya hear those bolts rattling?* You're not in gear. You're simply peddling an idea you're familiar with as opposed to one that fits these clients.

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Shifting Gears

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Talk, Talk, Talk

A main element of the change that Collaborative Practice provides is the creation of an environment in which the clients talk to each other and come to an agreement that is of their own crafting. Remember, "client-centered"?

So **NEVER** talk more than the clients. Time it if you need to. But if you are talking more than the clients, no matter what you're saying, then you are just making noise. A big, gear-grinding noise that's signaling that you haven't yet shifted out of the "it's my show" gear.

Jargo-nonsense

For the Collaborative process to be genuinely client-centered, the clients must understand what's going on. Talk to them only in language they understand. You don't get 'points' for talking in a way that requires them to keep asking you 'what's that?'

NEVER use legal jargon. **NEVER** talk about the rules established to direct the process of litigation; you're not involved in litigation. **ABSOLUTELY NEVER** refer to anything by its statute number. The clients won't hear anything but a loud grinding noise that tells them that you believe that they don't need to really understand this stuff.

Dr. Freud

One of the benefits of the Collaborative process is the opportunity to hear our clients: To understand who they are, where they want to go and how we can support them in getting there. Sometimes, however, we try to "understand" them inappropriately.

NEVER describe your client as "borderline" or "depressive" or "schizophrenic" or by means of any other diagnostic term. It's de-humanizing and insulting....and you're not a therapist. This is true even if you're a coach in the process. You're not doing therapy, so diagnoses are not called for. If you're the coach and you suspect something, refer the client to a therapist. If you describe the client in diagnostic terms to the at-

torneys, the financial specialist or even the other coach, you're just feeding your ego.

It isn't likely you'd ever use such language to your own client, but if you find yourself talking with the other lawyer or any other member of the team about one of the clients having a "personality disorder" or the like, you have just about stripped a gear.

...NEVER use legal jargon...NEVER refer to anything by its statute number...

Settling things

The core principle of Collaborative Practice is that the clients are provided support to help them directly discuss how best to structure their own terms going forward. All the efforts of the professionals are to support their discussions.

NEVER discuss substantive issues only with the other professionals involved. This simply isn't your 'case' to settle. Absolutely **NEVER** come to agreement, even in principle, with the other professionals and then "present it" to the clients.

This will quite simply bring your process to a complete, gear-stripping halt. There is probably no louder cue that you are nowhere near making the paradigm shift into Collaborative Practice. Well, maybe one.

It had to be 'you'

A cornerstone of Collaborative Practice is that it absolutely requires an examination of the self. You must have a genuine awareness of your beliefs about problem solving and conflict resolution and how each is to be accomplished. You've had an entire set of those beliefs. And what you are trying to do - working on doing - is change those beliefs.

One of the biggest stones that can be tossed into the gear box is the belief that "I" have made the shift, that "I" have fully embraced Collaborative Practice, and that "I" am acting "collaboratively"—because I said so. And that means that if there is any impasse, any tension, that indicates that you don't agree with my proposal—then it must be YOUR fault. This is garbage.

NEVER, EVER, NOT UNDER ANY CIRCUMSTANCES accuse another person in the process of "not being collaborative", or insist that their proposal or response to yours is "not very collaborative". The simple fact is that at the moment of your accusation there is only one person who is absolutely, positively, demonstrably **not** engaged in the collaborative process. And that's **you**, the accuser.

It doesn't matter if you're speaking the words to the other person or talking about him/her to a third person. If you hear yourself even thinking such an accusation, you should know that you still have some paradigm to be shifting - that your car may be moving, but it's certainly not in gear yet and it might well be running over some clients along the way.

ALWAYS

Bit of a tease there. I'm sure you'd love to have a list of things that once you said them, it would be "obvious" that you had made the paradigm shift. I've heard several efforts at such vocal indicators.

A fairly common one is "I've always practiced that way." Quite simply, no. You haven't and you probably still aren't. Certainly not if what you are trying to claim is that you've engaged in Collaborative Practice for all the years you were doing litigation.

Sometimes I hear practitioners really focusing on what they label people. But calling someone "collaborative counterpart" rather than "opposing counsel" is no guarantee that you are actually treating him/her as one.

Sometimes I hear them simply saying "let's be collaborative here". As if, the fact that they'd said it guaranteed they were actually going to do it.

While there may be no specific list of phrases that guarantee that you've made the shift, there is certainly one clear "always". Always know that you do not have the answers. No matter how good you are, no matter how much experience you've had, you do not have THE answers.

Ask questions. If you find yourself asking questions more than offering "proposals", you have certainly made a big portion of the paradigm shift - the portion that moves you from being the "provider of the answer" to becoming a partner in creative problem solving.

Some of the questions you might hear yourself asking are: *What do you see happening? How would that work? How does that support both parties' needs? What do you think? Is there maybe a way we can do both of those things?*

If you approach the process, the clients, your colleagues and even yourself with a genuine curiosity rather than with the urge to be the first one to hit the buzzer and "answer the question", you are well on your way to the smooth glide of a shifted paradigm. You will find that you are much more creative in the options that you are able to add to the mix - and the clients will benefit greatly from your input.

Happy motoring !

carlMichael Rossi, an attorney and a therapist, is also available to coach professionals in working in the Collaborative process and in making their own paradigm shifts. cMr@CP-Chicago.net; www.CPChicago.net.

**Join Your Colleagues in Dialogue
On the Collaborative Practice
ListServ!!**

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<http://groups.yahoo.com/group/CollabLaw>**