THE COLLABORATIVE TEAM MODEL
THE WASHINGTON PERSPECTIVE

A Brief Historical Introduction

Collaborative Law came to Washington in 2002, give or take a year or a month. Many track the introduction of the process to the Northwest to a presentation made by Bellevue attorney, Rachel Felbeck to the annual Washington State Bar Family Law section annual meeting. The talk was straightforward and drily informative, yet the energy that coursed through the ballroom that day - the peppering of questions by many curious practitioners - is a memory that remains strong with those who were there that day. The Collaborative Law "movement" grew in a very organic fashion in Washington - with the first practice group forming in Seattle/Bellevue and going through a number of transformations. The first cases were a trickle and engaged on the energies of attorneys. There was no team approach in the early years of 2002 and 2003. The first national trainers, Marion Korn in 2005 and Pauline Tesler in 2006, came to our community and promoted the attorney centered (or attorney only) model of collaborative practice.

This attorney centered focus was entirely natural, given the enormous shift that was expected of attorneys. Lawyers are trained in the adversarial process of dispute resolution. It is an article of faith among teachers and practitioners of law in the United States that this is the optimal avenue for achieving a just outcome to disputes that eventually engage the attention and efforts of attorneys. Law students learn about the law through the "case method" which involves the study of appellate court opinions and the exercise of promoting the best arguments of each side in the classroom discussion. Most lawyers will describe the education as more of a crucible than a path to enlightenment. Many are the memories of being challenged before a classroom of peers by a series of penetrating and often impossible questions by professors. Young people emerge from law school having learned to "think like lawyers," which is a significant paradigm shift. Feelings, values and concern for the well-being of those who are not the client are excised

from the law student's thought process. Despite the deletion of "zealous advocacy" as an ethical directive in the ABA ethical code in the 1980's, this remained a guiding principle for attorneys. The effort to understand the needs and concerns of the "opposing side" served only to sharpen the arguments used to prevail in the adversarial forum.

Small wonder, then, that when a growing number of attorneys found this approach to be damaging to both their clients and to their own professional/personal satisfaction, that once again a paradigm shift was in order. What is insufficiently appreciated is that this paradigm shift needed to overcome an earlier paradigm shift which had been inculcated during people's formative young adult years. The very notion that lawyers could sit in a room with one another and their suffering clients and work together - in a collaborative fashion - to uncover the needs, fears, hopes and "better angels" of their clients to arrive at a durable agreement in which neither party felt defeated, disrespected or unduly harmed, was revelatory. This hunger among attorneys to find a less destructive method of assisting their clients gave rise to what professor Susan Daicoff terms the "Comprehensive Law Movement." Collaborative law is joined by other "healing" approaches such as Restorative Justice, Therapeutic Jurisprudence and Facilitative Mediation, among others. Lawyers in the Northwest found the collegiality of a shared purpose intoxicating and with the assistance of trainers like Korn and Tesler, Collaborative Law began to expand.

Yet, as the decade matured, the attorneys who had marked this new path began to learn the lessons that can only come with practice and experience. What emerged was a whole new series of challenges and learning opportunities. Northwest attorneys showed great vigor and talent in forming bonds with one another, communicating about the needs of their clients and modeling collaboration. There was an enthusiasm for training and expanding their skill sets. Empathic reflective listening became increasingly natural. The knee-jerk resort to "my client's position" and fear that the dollar left on the table will be a sign of failure were shed with what many would have thought was surprising ease only a few years before. Yet there were holes in the fabric. No matter the extent of the shift, lawyers still struggled with limits to their

professional skills. Perhaps the greatest of these could be found in the face of client anger and conflict. Despite the increasing level of skills of the collaborative attorneys, cases were "blowing out of the collaborative process." The realization began to dawn on Northwest collaborative attorneys that certain professional skills and experience, which were not part of their training, were needed. Their training in analytical thinking, advocacy and clear communication was overmatched by the pain of a family breaking apart. A review of CL's evolution throughout the country brought home to Washington lawyers that the Collaborative Team was the established form of practice throughout the IACP community. In 2006, many Washington lawyers were faced with the next step in the evolution of Evergreen collaborative practice. The question became: When do we use a team?

Additional questions became germane, like: Should the team be mandatory? What should be the composition of this team? What specific roles would fall upon each team-member? What kinds of credentials should a mental health or financial team member have? Is there a natural team "leader?" Once coaches are utilized, do we use the "one coach" or "two coach" model? While other communities throughout the country had struggled with their own evolution - and to be sure, their experiences were valuable antecedents to efforts here, Washington professionals chose to fashion their own, organic, take on the team model.

Initially, many attorneys would accede to the wishes or concerns of their clients, who balked at introducing more professionals - and their fees - to the mix. Early on, the team notion was optional. Indeed, at the very early stages, many mental health professionals were lassoed into the process after it had already started to head "south." Needless to say, this was a virtual guarantee of failure, as the train was already off the tracks and the escalation and polarization of unchecked conflict irrevocably damaged the atmosphere of cooperation and good faith that the

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My colleagues have chided me for the use of that phrase, so usually I resort to less dramatic descriptions, like "leave the collaborative process" or " roll out of the collaborative process." Yet, the intensity we have all seen in some clients does leave us at times with the inevitable description that the case, indeed, blew out of collaboration.

Given how many Washingtonians feel about California, we certainly didn't want it to go THAT for south!

lawyers needed to successfully assist their clients. Thus, as 2006 rolled along, attorneys began to insist in greater numbers that all cases utilize a team approach. At first, the number of therapists and financial professionals were very meager. Seattle cases often utilized Carol Goodwin, a coach who practiced primarily in the southern part of the state and in Portland. Carol was gifted and experienced, but eventually recognized that she was stretched too thin and Puget Sound collaborators were left to their own devices. One group of psychologists and experienced parenting evaluators became trained in the process, but for reasons that were never entirely clear to this writer, they chose to stay on the sidelines, offering more criticism to the burgeoning movement than active assistance. Indeed, the early mental health professionals who stepped into the collaborative process with both feet (and made their salutary marks on our community) had rather unconventional training and qualifications by IACP standards. They consisted of an experienced registered counselor with a preference for deep, transformative therapeutic work in his own practice, an experienced therapist with a psychiatric nursing background and a former teacher who had just graduated from the masters degree counseling program at Antioch Seattle. For about a year, these were the only available mental health professionals and while the former teacher was available for the child specialist role, the early teams consisted of a coach and financial specialist. (In the early, early days of collaborative law in Seattle, the only "coach-type" representatives were this writer who was both a marriage and family therapist and attorney (but who did not engage the coaching role) and a "life coach" who was trying to figure out if collaborative law was going to be a way to market her real estate sales and life coach businesses. Indeed, in the first years of exploration around the team model, it was interesting to watch different professionals drift into and then out of the collaborative community when they found that it was not the rich trove of prospective business they had hoped. Some lawyers who were about as temperamentally equipped to practice collaboratively as Attila the Hun found the approach unfitting to their predilections. "Wealth managers" abandoned collaboration when the incipient ethical guidelines prohibited continued work with a client after the divorce.

One ongoing debate within the Board of Washington Collaborative Law (later to take on its current name of King County Collaborative Law) involved the utilization of one coach or two coaches. Mindful of the preference within the national community of two coaches, the Washington preference was for a one coach model. The thinking was that an experienced and competent couple's therapist could effectively bond with each person, thereby assuring a trust in their neutrality. There was a concern in this community that if each person had their own coach, this would exacerbate their sense of polarization. Practical concerns reinforced this one-coach approach, as there simply were not enough people to go around that the lawyers wanted to work with. The pool was exceptionally small for the first year or two that the team became the natural approach to collaborative practice. What is quite interesting is that over the past year (2008), as the number of competent coaches has grown, teams are utilizing a two coach model to a greater extent. It is quite conceivable that in the next two years, the two-coach model of collaborative practice may predominate in Washington. Coaches who have worked this way, report much higher success and satisfaction, *so long as the working relationship with the other coach is strong*.

Another development in Washington over this past year is the greater utilization of the child specialist. Originally, the child specialist was contemplated here as the person who would assist the parents in the development of the parenting plan. With the paucity of mental health professionals and the concern of overloading the clients with professionals and thereby destabilizing their commitment to the process, child specialists were sparingly used. Initially, this person would meet with the parents, meet with the chid(ren) and then work with the parents on putting together a residential schedule. However, a rich discussion ensued this year among the mental health professionals regarding the roles and purposes of the different mental health professionals. As cogently stated by Karen Bonnell (a Bellevue therapist), one of the original mental health team members, here, and a driving force in the establishment of practice norms, it is helpful to view the coach as working with the parental subsystem and the child specialist as working with the child subsystem in a family. This, of course, fits with the long held trope that

the child specialist is the "voice of the child." Under this concept, it is the coach(es) who will work with the parents on the issues germane to the adults, which includes the development of a parenting plan (with the involvement of the attorneys). The child specialist works to create a safe transition for the child(ren) and advises the parents of the major concerns of the child(ren). This model is gaining traction in Washington and will probably be the dominant form of collaborative team practice for families with children in the coming years here.

By far, the easiest team member to "sell" to the clients is the financial specialist. One reason is that this person engages in many tasks which the attorney's would otherwise do. They have superior training in financial issues, can model various outcome for the clients, are possessed of software that simplifies the task of identifying and organizing financial data and their involvement is undeniably cost effective. Many is the collaborative attorney who has found the way to settlement greased by the clarity of the output from the financial specialist. In jurisdictions that utilize a two coach model, the financial specialist is the one true neutral and this role is emphasized in team trainings.

The High Functioning Team

The effective team is characterized by the following characteristics:

1. **High level of communication**
2. **Well defined and understood roles**
3. **Seamless, non-conflicting action**
4. **Accessibility to both the clients and one another**

Communication: There are a lot of moving parts when a team is in place. The lawyers are working with each other and their own clients - meetings need to be scheduled, incipient

impasses identified, high end goals and deepest concerns established and prioritized. The significance of the legal process and the scheduling of its various steps are crucial elements to the collaborative *divorce* process. The parties meet individually and together with the coach(es). These meetings can occur over a long or brief period of time. Clients will want to discuss issue of legal settlement in coach meetings. Issues will be raised with the coach(es) which need to be shared as well with the lawyers and financial specialist. The financial specialist is running scenarios with the clients, as well as building a picture of their financial present and future. The parenting specialist may have information he/she feels is naturally best shared with the coach.

There is an enormous amount of information sparking throughout the professional team. That team will be in the best position to help the family if a clear protocol of communication is established. Team telephone conferences are of greater utilization in Washington now than only a year ago. As with much in the collaborative process, initially these team conferences were scheduled on an "as needed" basis. When problems cropped up around an emotional issue or with parenting, a team conference would be called. Important as that is, the situational, haphazard nature of these team conferences deprives the team of the ongoing value of constant communication and the *team cohesion* which this will facilitate. It has become axiomatic in team collaborative practice in Washington that if any part of the team suggests a process to clients unilaterally and that course is changed after a team conference, the "container" of the team is deeply compromised. The notion of a container is a often used metaphor in collaborative practice here. The intent is to project a sense of safety, security and competence to this ruptured and wounded family. In the earliest collaborative practice group in Washington, the logo or symbol was a bowl - a safe container. This has informed the team approach from its inception. As the team practice has become more effective and sophisticated in Washington, the necessity of smooth, congruent functioning of the parts has become a given. Experience has shown us the damage that can be caused when clients loose faith in the safety of this container when one person says one thing and another (or the entire team) says something different. The *only* way this can be prevented is a strong, consistent and rigidly followed protocol of communication.

Many teams, now are scheduling team conferences of an hour or hour and a half in one or two week intervals. An additional advantage of this will address one of the most frequent complaints of collaborative clients - that the process takes too long and sometimes seems to drag on. While to be sure, clients have unrealistic expectations of the speed with which resolution is to come, and this is often fueled by their heightened anxiety, a sense of sporadic meetings and a meandering process is anathema to the projection of an efficient, effective and salutary process.

Well Defined and Understood Roles: Clients need to know where they turn to deal with financial questions, parenting concerns or interpersonal difficulties between them, among other things. A crisp, well managed team will clearly lay out to the clients who attends to what. This will also lessen the risk of team members stepping on each other's toes. In the early days of team practice here in Washington, some coaches would facilitate settlement discussions with the clients around financial issues. This, of course, raised the hackles of the lawyers. When asked about why they did this, the coaches responded that they thought they had been asked by the lawyers to do this. In another context, the child specialist may wish to engage in discussions around a residential schedule while the coach believes it is within her purview to do this. Without a clear understanding of roles, a team can look to the clients like a bunch of keystone cops. Once again, communication is the means for avoiding these difficulties.

Seamless Nonconflicting Action: A team is like any system. It can move as a single organism at its highest level of functioning, or can rupture into many different (sometimes competing) individuals. How meetings are scheduled; what issues are to be addressed, how specific challenges to the process can be dealt with - these and many other points are most effectively addressed by the team acting as one. As an example, in a recent case, there was reason for the parents to meet with a parenting specialist. One lawyer suggested this route to their client. While this was a very sensible way to go, it was also problematic because there were a couple of intense non-parenting emotional issues that were going to impact the parenting discussions. In a team meeting it was agreed that some coach work should precede the parenting

work. Again, this shift left the clients in some doubt as to the cohesion and effectiveness (and safety of their team). The best way to assure this seamlessness is.....communication.

Accessibility: Many collaborative professionals are busy. They may not feel they have the time to make themselves accessible to their clients and each other. However, as cogently observed by an excellent local collaborative attorney, Mark Weiss, our job as collaborative attorneys (as distinguished from our role as litigators) is to be mindful of our clients' levels of anxiety and be available to quell this anxiety. This is an excellent observation, as it can be argued that the reason that people come to the collaborative process is to have safe support as they manage an incredibly stressful life passage. Collaborative practitioners need to be especially responsive to their clients *and to each other*. Calls from a colleague really ought to receive a response that day - the next day at the latest. Obviously the same applies to clients with even more force. Through accessability, we are able to promote the greatest team responsibility which is.....communication.

When Teams Struggle

Each professional must make his or her own paradigm shift in order to engage effectively in the collaborative process. We each have our own professional shortsightedness and struggles.

Attorneys are raised in a professional ethos in which the highest value may well be control We are analytical, goal oriented professionals and in order to reach the desired goal, we need to have control. Ask any old style, successful litigator and they will tell you that the biggest problem with therapists and other professionals in the divorce process is that it interferes with the lawyer's control. While unimaginable for a collaborative lawyer, many old line litigators have counseled their clients not to communicate with their spouse. Lawyers need to be careful about this desire to maintain control of the process. Indeed, this willingness to share control may be a more daunting "paradigm shift" for lawyers than release of the adversarial model.

Lawyers must also be careful not to be too outcome oriented. Therapists are far more comfortable with attending to process. Attorneys' can learn from their co-professionals and let

go of over-focus on outcome. This applies with particular force with lawyers who become committed to a particular outcome. We often struggle in our efforts to support and assist our clients in realizing that our (often traditional) view of a good legal outcome may not be that of our clients.

An additional hazard for the attorney is that we are raised in a culture of attack. It is natural to judge a person who is acting in a self- or team-destructive manner. These judgments are enormous impediments to an effective collaborative process.

Therapists bring their own professional identify struggles to the collaborative process. Much therapy involves assisting individuals in achieving transformation in behavior and/or deep personal well-being. The trauma of a divorce will make individuals particularly vulnerable and in that state, much more open to exploring the need for personal change. While therapists are trained in so many skills that are essential for collaborative coaching, psychotherapy is arguably not one of them. There is a risk that the therapist will take the couple and virtually "disappear" with them for a month or more as he/she engages in restorative work to remake their system. Maybe one of the spouses is still struggling with the impact of being raised by alcoholics and their behavior during the divorced reflects this stress. Perhaps the coach is faced with a seemingly intractable wresting match between two personality disordered people - the narcissist going to the map with the borderline. Harkening back to failed therapeutic experiences with these kinds of folks, the therapist may succumb to a hopelessness - in achieving an outcome which is not even called for in a collaborative divorce.

Financial specialists are used to giving people the answers. John Twitchell, the local "dean" of financial specialists often jokes that collaborative law is contrary to the natural desire to "just tell them what they should do." The restraint called for is often critical, though dauntingly counter-intuitive. Additionally, the financial expert has, perhaps, the best sense of anyone in the process about what financial outcomes will work in the future and which won't. There may, therefore, be a pull to persuade (strongly) a party that the path they wish to take (despite all of your explanations) is just a disaster for them.

The least experienced of the practitioners on your team will be the most inclined to succumb to the risks described here. So how do we address these concerns as they arise? It is a 13 letter word starting with "c" and ending with "n." (no, not cornucopiatun). This leads to the central (and ironic) challenge of the team. At the same time we are encouraging our clients to deal with conflict in a healthy way, we avoid conflict. If there is practitioner acting in a way that is troubling to one (or the rest)of the team, how is this brought to the attention of this individual?

Conflict Within the Collaborative Team

We must be vigilant that the subterranean conflict within the team does not derail the process. Yet lawyers, for all their training in formal legal conflict resolution, are often out of their depth when faced with their own interpersonal conflict. Lawyers are conflict avoiders as a general rule. When faced with the potential of conflict in their own lives, lawyers will fall back on the more common methods of conflict avoidance.

Ignoring: We can simply proceed as if the dissatisfaction or concerns don't really exist. There is the almost magical belief that if we act and think that the issue isn't there, the issue will go away. If the professionals need to work again in the future, the path has been mapped out for future conflict and resentment. We ask our clients to sign a commitment agreement in which they won't judge their spouse's current behavior from past experience. Yet, we will do precisely that if we fail to work out our misgivings, disagreements, aggravation or other concerns now. However, even in the context of the current case, we are sowing seeds of dishonesty and falsity. If we believe that we can assist people in arriving at a resolution based on integrity and good faith while we ignore the discomfort inside ourselves, we are deluding ourselves.

Sniping: We may choose not to ignore our unease or irritation, but instead share our misgivings with our colleagues. This is a classic example of triangling and it is a very draining and harmful interpersonal process. As famed family therapist Murray Bowen described it, the two person "system" is inherently unstable. When things are going smoothly and there is no disagreement - not vexing negative affect - these two people may be comfortably in each other's world. However, this absence of distress between two people is never permanent. Two

individuals, by their very nature as separate people, will have some conflict. When this arises, the "anxiety" in this two-person system rises along with it. Bowen describes anxiety as a visceral, biological process of deep (almost cellular) discomfort. The degree of discomfort is determined by a number of factors, including the personal histories of the individuals, the expectations each has for the relationship and the extent to which either or both feels threatened by conflict within the relationship. Stress in a marital "dyad" is obviously impacted by these factors. However, the same is true among professionals or other people who have close personal or professional interaction. Maybe the level of anxiety, or uncomfortable energy, is high because one or both professionals is inexperienced and feels threatened. Maybe it's because one feels "put off" by the way the other conducts him/herself. Maybe personal stress in our own professional or intimate lives will cause the anxiety to be intense. Whatever the source, the painful energy, or anxiety, increases. The people need to dissipate this energy because it becomes progressively uncomfortable. This can manifest itself in preoccupation with the conflict or a refusal to deal with or work with the other person or the tendency to overreact at what the other person does or says. So how do we dissipate this painful energy? The process is called "triangling." One or the other person will bring someone within the "two person system" and create a "three person (or more) system." This is commonly accomplished by one person complaining about the other person. The key move by the new participant, according to Bowen is "side taking." "Yeah, ain't he or she rotten (or annoying or a bad professional, etc.)." Once one person comes in and takes sides, the tension is relieved and the original two can be in each other's sphere of existence again. What commonly occurs is that the tension or conflict can be transferred to the *other* relationship. Energy can be transferred throughout a system (or team). Bowen describes this as a very natural process that if not addressed and rectified, will continue naturally. While it is a way of dissipating uncomfortable energy, the hazard, of course, is that the original conflict is never addressed. It's an easy way out of conflict, but unlike ignoring, it spreads and shares the conflict to others within the work or family system. Howe is triangling best addressed? Bowen posited that if the third person simply refused to be "triangled in," which

to him meant to decline to take sides in the conflict between two other people, the conflict will be left to them to manage. Their conflict will not "infect" the system in which they are placed. So, what's the recommendation when one of our colleagues comes to us complaining about someone else? Gently, but firmly, recommend that they take it up with the other person.

How We Deal With Conflict: We all have our idiosyncratic ways of dealing with conflict. Some withdraw Some storm. Some try to dominate. Any approach which is not predicated on communication and resolution will damage the team and outcome we seek to achieve with and for our clients. Most of us learned about conflict in our families of origin. We learned, for example, that conflict was dangerous....or that we could avoid conflict through charm or sexuality...or that people never, ever, engaged in open conflict....or that conflict was like a loud storm that passed through and then was gone. These are just a small handful of the ways we may have learned about conflict as children. However, we (as well as our clients) learned important and life-long lessons about conflict from our families of origin and we took these lessons with us into our adult lives. It is important to understand our vulnerabilities around conflict so that we can find says of managing conflict in a healthy way in our adult lives. Many in Washington have turned to the recent classic, *Difficult Conversations* co-written by Bruce Patton of Harvard Negotiation Project and *Getting to Yes* fame.

Principle Problematic Behavior of Groups

Splitting: We will have clients who, for their own internal psychological needs, will need to gain control of the group and its process. At times, both clients will collude (often unconsciously) to wrest control of the process form the professionals. A common method of obtaining this end is referred to as "splitting." Through this avenue, one of the team members will be isolated. The spouses will not want to work with that person. There will be resistance. Oftentimes, the justification for the rejection of that professional will be tenuous at best. If the process is in its early stages, there may no choice, but to engage another professional in that particular role. However, be wary of the process of splitting and isolating. If this voiced dissatisfaction with team members persists, the team will need to clearly communicate its control

of the process and encourage the recalcitrant client(s) to take it up with the objected-to team member.

Recreation: As family therapists will attest, the more we work with families or couples in conflict, the more we will be amazed by what I still believe is the magic of recreation. The basic dynamic of the couple or family will be mirrored in the dynamics of the team. A highly conflicted couple will find the team in conflict. The disengaged couple will find the team communicating rarely. The couple with one underfunctioning person will find members of the team overfunctioning on their behalf...or becoming especially impatient at their refusal to manage. The family with secrets will accentuate the presence of secrets within the team.

One-Dimensional Communication: While it is crucial for a team to remain in communication, we must be mindful of the limitations of "one dimensional" communication. This is communication which may only occur through e-mail transmissions. We are all so busy that resort to e-mail as the only method of communication between group members is quite understandable. However there is a real drop-off in connection with such communication. Instant feedback and clarification; inflection, intensity of speech and other non-verbal expressions are unavailable. Teams must endeavor to expand the kinds of communication to the extent practicable.

Conclusion

The collaborative team is met with a myriad of challenges. Some of these are embedded in the different professional training and personal predilections of the team members. Others arise naturally from the very nature of the collaborative team process itself.

The Washington experience has been organic and evolutionary. Hardly any approach has been adopted without question and analysis. Our form of practice remains a professional petri dish - as we observe the natural development of this form of practice from the two lawyer model to a full on mandatory team approach. As this continues to take root in Washington practice, we will continue to face the natural challenges which will serially confront us in this new form of practice. Each practice group may work out its own set of solutions. Some, for example, will

adhere to a two-coach model; some will make full use of multi-team member meetings with the clients; some will choose not to make a team approach mandatory. There are challenges to practice experienced in much older collaborative communities like those in Minneapolis or the Bay Area or Boston which we will learn of through the list serves. However, at this point, the Washington collaborative community can safely claim that we have been engaged in this practice of law for a long enough period that our discoveries and surprises will be of equal educational value to these more entrenched communities as to our own practitioners.