**Creativity, Innovation, and Collaborative Divorce**

What do creativity and innovation mean to you? Imagination, invention, and ingenuity are vital elements of what I now do every day at work, in the collaborative dispute resolution process. It’s why, when I first witnessed the [magic](https://openpalmlaw.com/magic-ii/) of collaborative practice, it shredded my life’s ambition of thirty years, “To make new law,” and reconstructed it into an even more **epic goal, “To change the way the world gets divorced.”**

World Creativity and Innovation Week

WCIW is a world-wide community dedicated to celebrating human creativity. **Creativity makes the world go ’round.** Beginning when man first tamed fire, it’s how man invented the wheel, harnessed electricity, and eventually illuminated the light bulb. We are surrounded today by the products created by minds thinking differently, rejecting the status quo, challenging the norm, taking risks, and learning from trial and error. WCIW’s mission is to encourage people to imagine novel ideas, make new decisions, and take the steps towards making the world (and our place in it) better through creativity.

Litigation As We Know It

So let’s talk about litigation. I know it well, having worked in it for 42 years. I even taught trial practice in law school. From the time we’re kids, **we see litigation all the time, right? All around us.** Think about it. Starting with [*Perry Mason*](https://www.smithsonianmag.com/arts-culture/moral-order-perry-masons-universe-180975140/) in the 1950’s, the courtroom drama has played in our living rooms every day. *LA Law, The Practice, Law & Order, Suits, The Good Wife, The Good Fight*…. Our children are used to seeing winners and losers, lawyers as heroes, dramatic cross-examinations, courtroom confessions, and bad guys as losers.

**We grow up imagining a judicial system that is blindly infallible.** In my experience, however, at least with the divorce process, the system is deeply flawed. When applied to families, it doesn’t ferret out what’s “fair” and what will work best to restructure a family.

Why? Because **it is, by definition, so positional.**

Litigation is [W-A-R](https://abovethelaw.com/2014/07/the-4-rules-of-warfare-and-litigation/), with both sides out to win. What happens? First, both spouses dig up, emphasize, and even **blow out of proportion all the unkind and stupid things that their loved one did during their marriage**. Things that, by the way, their loved one often regretted at the time. Or, conversely, things that were no big deal when the two were still together. (My classic example is the spouse who uses “S/He smokes marijuana every night!” as justification for demanding “full custody” of their children.)

Moreover, **in the heat of battle, they say and do things that can never be forgiven.**

And with lawyers and judges and court clerks all playing their parts, **the process quickly spins out of the spouses’ control**, devolving into a series of confrontations in which they (and often their family and friends) become more and more embattled and bitter.

What About Mediation?

Mediation is a better way of handling a divorce; it was originally (30 or so years ago) touted as a gentler approach. Compared to litigation. But that’s not saying much. [Mediation](https://openpalmlaw.com/family-law-mediation/) and **other forms of dispute resolution often collapse into the same old positional negotiations. “I want what I want because I want it.”**

Why? Arguably because this is what lawyers do. We are taught to represent our client’s position and to win it at all costs. We are the armored knights riding in on the white horses to save the day by fighting for (and winning) our clients’ positions!

So even in mediation, **this is what we do, this position-based negotiation.**

The Kinder Approach

In law school, we lawyers are never taught to dig deep and discover what truly drives our clients. But collaborative practice begins with and continually emphasizes an interest-based approach. **Not “What do you want?” but “*Why* do you want that? How do we get you what you actually need, *not* what you say you 'want'?”**

The collaborative approach is far kinder than litigation. In it, a multi-talented team of professionals unearths the spouses’ true interests, and then brainstorms means for satisfying them in the best possible way.

**Positional negotiating is avoided; it is toxic in collaboration.**

I am fond of pointing out that divorce should not be a “one-size-fits-all,” and yet, traditionally, it often is. But **every family is unique**; everyone deserves a divorce that fits their one-of-a-kind family, a positive restructuring rather than **the destruction that litigation guarantees,** and we all take for granted, growing up as we did.

The collaborative approach is that singular process that allows each family contemplating divorce to create its own unique solution to the restructure problem. Intuitively, you can see how, more than anything, that requires imagination, ingenuity, and invention.

How Can Collaborative Divorce Practice Improve the World?

**Can we agree that divorce is the first major conflict most children witness?** It was certainly mine. When I was seven, my parents divorced. In court. Then my mom loaded us kids into the van and drove us 3000 miles away. I never saw my father again.

However you define it, the “family” is the first social group to which a child belongs, a group from whom the child learns the fundamentals of coping with others, of sharing goals and values, of managing communications, and of handling conflict. If divorce – this conflict in the family, which children witness too often and **in which they are often also *collaborators*** –is handled compassionately and kindly, wouldn’t their view of how best to handle conflict improve?

And wouldn’t our culture evolve, taking a huge step forward as a result?

If collaborative divorce became the norm, and children saw it being used in their own families, wouldn’t that shift in perspective permeate society and alter how our future generations solve all kinds of problems?

True Stories: Divorce Innovations

My client had called a break in a team meeting to privately express his anger that his sobbing wife was using tears as a weapon. Instead of agreeing with him, I suggested, my heart in my throat, that he apologize and assure her he would replace the funds he’d taken from their joint account. I had never done such a thing before, but my gut told me that she needed to hear that, **to know that he still cared, that he was not abandoning her.**

His immediate reaction was shock. But, on reflection, he returned and did just that. She stopped crying (she was so surprised) and the meeting ended successfully.

I created a ceremony to celebrate another couple’s signing their collaborative settlement agreement. Now, our team professionals all sign certificates of congratulations for each spouse, and we gift each a crystal lotus to symbolize the kinder conclusion of their marriage and the fresh starts of their unmarried lives.

I assured *my* sobbing client that the team would help her husband hear her, and that he *would* listen. After we completed their divorce, he said that he emerged from their divorce “a better person.” She revealed that she had learned, during the process, to hear him again, realizing **“It just sounds different when a team member tells me the same thing my husband said.”**

I once told my *own* client that it was time for *her* to listen. She and her husband had tried mediation three times before she retained me as collaborative counsel, but this time, I helped her *hear* him. They then problem solved their issues successfully.

Since then, they’ve both referred me clients, and she recently reported that they’ve remarried, and they and their new spouses are all good friends.

Moving Forward

So how do we get it out there? Get it on TV? Get it into the law school syllabi? Teach specific interest-based negotiation skills in high schools? **You tell me…**

If you want a better result than you’ll get in a traditional litigated divorce, reach out to a collaborative divorce professional and ask your questions. You’ll like the answers. And the results.

You can always visit us at [Open Palm Law](https://openpalmlaw.com/) or email me at Joryn@OpenPalmLaw.com. Change is always hard, but you can choose to make that change collaboratively.