WHAT IN THE WORLD IS A PARADIGM.... AND WHY DOES MINE FEEL LIKE IT'S SHIFTING??????

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TABLE OF CONTENTS

I. Personal Introduction. 1

II. From "Put together" to Paradigm. 1

III. Digression Into The Search For A Meaning. 2

A .Word Processor Thesauri Fall Short 2

B. Old Dictionaries Are Little Comfort 2

C. The Internet Gets Us There......Almost 2

D. Paradigm Defined...At Last 2

IV. Do We Shape Our Paradigm Or Does It Shape Us? 3

V. Are All Changes Within A System Paradigm Shifts? 3

VI. Why Do Paradigm Shifts Occur? 3

VII. Some Paradigm Shifts That May Be On The Horizon 4

VIII. When Personal and Professional Paradigms Collide 7

I. Personal Introduction

One of the secrets to anyone's success is the ability to anticipate a need, and to be prepared to fill the need when it arises. My good friend Stewart Gagnon frequently expresses that idea by quoting one of the great professional ice hockey players of all time, Wayne Gretzky, who has said that the secret to his success is in playing the puck "not where it is, but where it will be". I wholeheartedly concur. Success at the point of contact with the puck is of course the result of many other factors, including one's individual talents and other resources, but unless you are within reach of the puck as it passes by, your strongest assets will be of no use to you. We, as professionals, need to be "close the puck" at all times if we are to serve the public effectively.

What follows is largely personal to me. It reflects my personal opinions and intuitions about anticipating "where the puck will be", so that I can then decide for myself where I want to be in relationship to it, and upon what terms. Nevertheless, I hope it will be useful to you as well.

II. From "Put together" to Paradigm

I believe that for the most part people get their sense of the way the world "ought to be" from the way they discover the world is (their world view) during their formative childhood years. I have long described it as a child's "put together" as in "everything put together" This explains to me why change, even positive change, creates a subtle sense of unease in the minds of even the most rational among us. How else can I account for my firmly held belief that if God had intended school to start before Labor Day it would have started before Labor Day when I was in school? Or my conviction that we would all be better off if we could just return to the good old days of World War II, regardless of the obvious violence that notion does to the truth? It would be almost impossible to overstate the degree to which those times shaped my personal paradigm, not because it was a time of particular virtue, but rather because it was a time of particular sensitivity for me. Many events have occurred in the intervening years which have altered my perceptions, many new relationships have left their marks on my values, countless experiences have shaped my views and modified my awareness and acceptance of the world around me. But one thing remains a constant, and that is the ever present if subconscious tendency to measure all things in terms of their deviation from "the way we were".

In like manner, it is my belief that we each acquire and collectively value a professional paradigm, acquired in like manner, equally central to our professional existence, and equally resistant to change, even when obviously for the better.

Sometimes personal and professional paradigms can co-exist painlessly. Sometimes they conflict to a degree that causes great pain and even destruction.

So what is a *paradigm* anyway? We all use the word, so we must have some sense of its meaning, but have you ever actually tried to define it? Is it the same as a "paradime, which is how many people want to spell the word without even giving much thought to what it means"? Or is it a different word, pronounced with a hard "g", as in paradig'em? I have heard it pronounced that way by several presumptively educated people, at least learned enough in the eyes of our society to be allowed to hold a law license, and even sit a bench. I would wager many of you have as well. Is a paradigm something akin to pornography, something that defies definition but is clearly identifiable when you see it? Is it one of those words like "gestalt", that all sophisticated persons should be able to pepper conversations with, but few could define if pressed?

Could you define it in a way that matches your instinctive understanding of what it means? Most could not. And finally , who cares? What could paradigms possibly have to do with the practice of Family Law in the year 2000?

III. Digression Into The Search For A Meaning

I have had my own personal theories about personal paradigms for many years, I just didn't know that was the word I was looking for. But for the moment let me report on a more systematic search into what the word means to us as members of the legal profession. A "professional paradigm" so to speak. I used the tools around my law office in my quest.

A .Word Processor Thesauri Fall Short

All the popular word processing programs in the law office have thesauri, which while unable to define "paradigm" can give us a bunch of synonyms we all know the definition of. That should help. Consulting Corel 8, Word Perfect 5.2, Microsoft Works, and Symantec's Q&A Write reveals that they all agree that the most common synonyms are "archetype", "model", "pattern", and "standard", along with a few others of similar ilk and equal inadequacy for the task at hand. None of these words captures the concept of "paradigm" the we have in mind. They are just too narrow. I looked elsewhere.

B. Old Dictionaries Are Little Comfort

Every law office has a couple of old dictionaries laying around. My office is no exception. The second definitions of "paradigm" offered by both *The American College Dictionary, Random House, 1970,* and *The American Heritage Dictionary, Houghton Mifflin, 1976* offer the same synonyms produced by the word processors. Of even less apparent value for our purposes are their first definitions, "the set of all forms containing a particular element, especially the set of all inflected forms of a single root, stem or theme", and " a list of all the inflectional forms of a word taken as an illustrative example of the conjugation or declension to which it belongs" respectively.

C. The Internet Gets Us There......Almost

Since I was getting nowhere with these old fashioned methods I turned to the Internet. All law offices these days are connected to the Internet...right? Well, almost all. It's part of the new paradigm, whatever that means. *Merriam-Webster's Collegiate Dictionary* online at www.m~w.com finally approaches a definition helpful to our cause, but only as a third usage of the word, here in the middle of July, 2000:

> "..3: a philosophical and theoretical framework of a scientific school or discipline within which theories, laws and generalizations and the experiments performed in support of them are formulated"

Definitions one and two are the same found in the old dictionaries.

Moving beyond conventional dictionaries, but still included in the results of a simple search entitled "dictionaries" I finally found reference to the pioneering work of someone named T.S. Kuhn, *The Structure Of Scientific Revolutions, University of Chicago Press, 1970,* wherein he defined a paradigm as:

"the total pattern of perceiving, conceptualizing, acting, validating and valuing associated with a particular image of reality that prevails in a science or branch of science".

This sounded much closer to what I was instinctively searching for so I delved deeper into the web and discovered that Mr. Kuhn is clearly a renowned and respected thinker\scientist and that his work is highly regarded in the scientific community. Thinking to myself "if it's good enough for rocket science it's good enough for me" I decided to adopt and adapt his formulation into our own definition of a "professional paradigm".

D. Paradigm Defined...At Last

For the purposes of our discussion, then, a "professional paradigm"is ***the total pattern of perceiving, conceptualizing, acting, validating and valuing associated with a particular image of reality that prevails in a given profession.*** This will certainly serve as a working definition of our personal paradigm as well, with scant alteration.

In our case I submit the professional paradigm within which "we live and breathe and have our being" and which shapes each one of us most of the time is commonly known as the *adversary professional system*. It is from that paradigm that we get our "image of reality".

IV. Do We Shape Our Paradigm Or Does It Shape Us?

A. For the most part, once we become a member of a profession its paradigm tends to dictate what we do and how we do it

1.We get many of the dictates of the profession consciously and intentionally.

a. Through law schools where we learn to "think like lawyers", analytically and without emotion, and to look to the past for the answers to our questions.

b. Through early apprenticeship in the practice where we learn that what matters is winning for our clients, and to never to impose our own personal value judgements on the goals and actions of our clients so long as they are within the law.

2. We receive equally significant dictates unintentionally and even subconsciously.

a. We are conditioned by sights, sounds, and experiences that profoundly influence our view of reality.

b. Demonstration

B. The result is that we see the world as professionals not as it is, but as we are[i] and since that is the work of the paradigm that shaped us, change of the paradigm from within is a rare thing indeed.

V. Are All Changes Within A System Paradigm Shifts?

A. Even major changes in the way we do things within the system are not necessarily paradigm shifts, for while they may significantly alter how we do things within the system

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[i]This insight is hardly original with me, but in fact was first expressed to me in the ground breaking work of Stephen R. Covey, most specifically in *The 7 Habits of Highly Effective People*, Stephen R. Covey, Simon & Schuster, New York, 1989. If you have not read this book stop whatever you are doing, even reading this, and go get it. As my granddaughter Natalie would say, "just do it, and do it now".

(paradigm) they do not alter how we see the system as a whole, or how we relate to it. For the most part the purposes and goals of the system remain the same, and therefore the existing means of validating and valuing performance within it remain intact.

B. Examples of significant changes which do not constitute paradigm shifts.

1. Statutory changes
2. New procedural rules
3. Major case law decisions
4. Virtually universal application of mediation as a settlement tool.

VI. Why Do Paradigm Shifts Occur?

A. Some paradigm shifts occur as the result of scientific or technological breakthroughs, which are readily identifiable, even if their full implications are not seen for centuries.

Some examples are:

1. The sun centered universe.
2. The rounding off of earth.
3. Germs

The profundity of world view change wrought by these three conceptual breakthroughs , all by-products of the development of the telescope/microscope, are almost beyond measure. But contemplate the forces for change set in motion by the printing press, and its younger cousin the computer!!

B. Many of the paradigm shifts we deal with as lawyers have evolved so slowly that dramatic change can only be seen by a long look back. Consider some of the norms in the disposition of legal disputes in the western world that have moved, or are moving across the stage of recorded history:

1. Trial by combat
2. Trial by oath
3. Trial without witnesses
4. *Trial with witnesses, jury or court...is this an endangered species?*
5. *Decisions without trial.....could that be where we are headed?*

C. Sometimes major changes within paradigms are the direct result of powerful social forces, which when set in motion bring about change so rapidly as to be clearly discernible within the professional lifetime of a single generation. Collectively these changes can qualify as a true paradigm shift. Witness the progeny of Consumerism:

1. Lawyer advertising
2. The para-professional movement
3. Law as a business/industry
4. Client (in) control phenomena
5. Multi-disciplinary practice movement
6. Unbundling of legal services
7. Alternative dispute resolution

VII. Some Paradigm Shifts That May Be On The Horizon

While I do not presume to be a prophet and make no predictions about future the shape of paradigms within which the Family Lawyer of the new millennium will serve, **what if:**

A. **The alternative dispute resolution system developing in our practice becomes the "private sector" competitor to the court system** much like Federal Express and its colleagues have taken on the Post Office? Ask yourself what percentage of significant communication of any sort comes to your office from the U.S. Post Office. The fact is that for the vast majority of us the mail brings us advertising, solicitations of money, and confirming hard copies of messages we have already received by fax and or e-mail. The only exception is "the check in the mail", and that is rapidly becoming a thing of the past and was certainly hastened along by the recent Federal Legislation recognizing electronic transmission of signatures as the equivalent of an original. The Post Office was the pioneer of the targeted information transmission industry at a time when circumstances and technology demanded a publicly financed effort, and it remains a revered institution in our culture today. It has served us well, but for most of us, with time and efficiency at a premium, despite the advantage of continuing taxpayer subsidies it has become at best one of several alternative avenues for accomplishing the transmission of information, and at worst is a relic of days gone by propped up by that "way we were" mentality.

Just as society requires the ability to transmit information in order to function, it likewise must have a means of resolving disputes for its members when they cannot for some reason resolve these disputes for themselves. We like to clothe this activity in the virtuous raiments of "truth and justice", but the *real truth* is that society must have a way to make decisions for people who cannot make decisions for themselves, and having done so, be able to move on. If the result is "just" and "truthful" so much the better, and certainly that is a goal to aspire to. But such a result is invariably subjective in any event, and not the real function of the court system, campaign rhetoric notwithstanding. Hence in a very real sense, I submit that *the civil court system is in the "dispute resolution industry*", has had the benefit of taxpayer subsidies in the past and will continue to do so, but is vulnerable to competition and is likely to become only one of a number competitors providing this decision making service to society. There seem to be few if any real barriers to this happening. There is nothing procedural or substantive to prevent a private sector replication of the current civil justice system, at least through the decision making phase of the trial level, and ample case law precedent for entry into the legal system at that point for the purposes of appellate review or for enforcement purposes. *As a matter of fact, if current trends toward an application of administrative law principles continue, a strong argument may be made that Alternative Dispute Resolution, with its ability to be whatever the contending parties choose it to be, may be the last best hope for true adversarial advocacy and for the preservation of jury trials in family law cases*.

Already the consumer is demanding ADR in its various forms. The cat is out of the bag. The individual who experiences a real paradigm shift, has the vision to see ADR as competition to the court system and not a part of it, and has the courage to go public with that vision, could be the next Sam Walton. Think about it.

B. **We saw our divorce clients as people with personal problems which significantly impact them and those in close relationship with them, which problems could be and usually are affected by the law, rather than people with substantial legal problems who could be and frequently are affected in their decision making by their personal emotional state?** It is a matter of how we focus our energies and attentions. These people

have somehow managed to find a way to resolve the important questions in their lives on their own up to this point in time. They have managed to do this without a lawyer, much less two. Their way might not have been our way, but then who are we to impose an entirely new paradigm upon people simply because they are undergoing a wrenching personal crisis that includes that at least one of them has chosen not to be married to the other anymore? Do we have the right, much less the responsibility to invade their kitchens and even their bedrooms to rewrite their values and make sure that their decision making process weighs most heavily the "legal rights" we hold so dear, as well as determine whether their conduct is within the current range of acceptable behaviors? Isn't it really true that what we refer to as their "legal rights" is really nothing more than the arbitrary set of legal rules, dictated by the accident of geography, that spell out the consequences of their choices, should they not choose to adopt some set of their own rules to follow? Is it "fair" for children in Texarkana, Texas, and for 807 miles to the west, that a child's wishes are weighed heavily in custody disputes whereas the child's best friend across the street to the east in Texarkana, Arkansas has no such voice? Is it "equitable" that the custodial parent's wealth and income are irrelevant to a determination of child support to be paid in Wichita Falls, as well as everywhere south for 615 mile to Brownsville, whereas commuters who live in bedroom communities 15 miles to the north in Oklahoma are entitled to have such things taken into consideration? Are our rules of characterization, reimbursement, just and fair division etc. prescriptions for "legal rights" chipped in stone and handed down from a mountain or simply some of the rules that may affect the consequences of ones' decision to terminate a relationship at a particular time, in a particular place, if some other set of rules is not adopted by the individuals involved? I am not suggesting that we should consider some sort of uniform set of laws to apply to the family. God Forbid! But a paradigm shift might allow us to view the needs of our clients with a new understanding and impart to them a new power to work through the issues presented with their own *total pattern of perceiving, conceptualizing, acting, validating and valuing associated with their particular image of reality, not ours.*[ii]

Many of us, I suspect, have been tempted to step over the line and try out this new vision from time to time, and may even have made some brief forays across that border, but our resolve has been weak and our courage fleeting. For an amusing but painful reminder of why that seems to be, I urge you to read the attached Appendix A, and see if it doesn't pinch just a little.

Steven Keeva in his important new work, Transforming Practices, makes this observation;

"Our laws are *about* relationships; they affirm them by clarifying and enforcing the rights and responsibilities that we, as a society, believe they should entail; and they help us deal with them when they founder or fall apart. It is only in its relationship to the *relational* nature of human beings that the law makes any sense. Yet we sometimes make the law *about* relationships more important that the relationships themselves, allowing doctrine to eclipse humanity."[iii]

[ii]For an articulate, meticulously reasoned and powerful development of these ideas see *Divorce Mediation, A Practice In Search of a Theory*, Lenard Marlowe, Harlan Press, Garden City, New York, 1997. Warning! Be prepared to challenge your most sacred lawyerly assumptions.

[iii]Steven Keeva, *Transforming Practices, Finding Joy and Satisfaction in the legal Life*, Contemporary Books, 1999. An ABA Journal Book. Buy this book and give yourself permission to breathe deeply once more. Chapter 1 alone will enhance your hopes for eventual harmony between your personal and professional lives.

Enough said.

C. **We saw ourselves, our clients , and opposing counsel as all part of the same team, dedicated to treating a divorce as a set of problems to be analyzed and solved rather than as a contest to be won?** Wow. This really would be a paradigm shift! Imagine what it would take for us to abandon the deeply held belief that the best way for our clients to be treated reasonably and fairly by "the system" is for each side to develop and present to the trier of fact the most one sided and unreasonable distortion of the facts that a straight face will allow, so that it will balance the equal and opposite distortions advanced by the other side. Our personal values strain against this practice, we would never use it in our own homes and with our own families, yet we time and again reaffirm its efficacy by our participation in it. Never mind the attendant damage to our client's finances and relationships, unfortunate but unavoidable, for the fact remains that we must do unto others before they do unto us, or at least at the same time. Our clients don't need to be paranoid, for in fact there really is someone out there trying to get them, and usually being paid to do it with their own money

.

I know I exaggerate, but I think you will agree not very much if you will be honest with yourselves. I know this isn't true in all cases, but the exceptions are few in reality. We are all knowledgeable lawyers, so I wont bore you with tales of the needless waste and economic carnage of unnecessary and redundant discovery, three hour waits for two minute hearings, and fortunes paid to mental health professionals who in the final analysis dare not voice any dispositive opinions for fear of getting sued. Worst of all, we so frequently find ourselves accomplices in the literal destruction of a child's innocent "put together", which included a mommy who was love and nurture incarnate, and a daddy who could do anything, and no wrong.

We do all this with sadness, and cluck .."isn't it a shame, but that's the way the system works, and besides it's the client's decision and the client's responsibility." But is it fair to place that responsibility on our clients? This is the usually the only divorce they have seen up close. How many have we seen? Could we not exercise some leadership here? Do not our clients look to us to model appropriate behavior in this critical time? What if we lawyers got together with our clients and developed and committed to our own approach designed to get each side the information to which they are entitled, identify all the issues that needed to be addressed, and apply our combined energies to finding solutions to their problems present and the future, not assignment of blame for the events of the past. It would take the commitment of both lawyers and clients, and the support of the court system to shift the paradigm so that there is no longer anyone out there who is "out to get" anyone", but it can be and has been done. The potential benefit to the litigants, and to the lawyers is staggering. It's called Collaborative Law and its coming soon to offices near you.

The poet Archibald MacLeish, addressing the student body of Harvard Law School in 1972, opined that"We have to treat others as a part of who we are, rather than as 'them' with whom we are in constant competition". POGO, an even more famous commentator on human nature wryly once observed that "We have met the enemy, and he is us".

VIII. When Personal and Professional Paradigms Collide

It is my contention that the epidemic career dissatisfaction we are experiencing is the direct

result of the collision between personal and professional paradigms, two inconsistent realities existing side by side, both very real, competing with one another for our time and attention, but more deeply than that for our very souls. Deep inner conflict is usually addressed with some degree of success by living lives where professional and private worlds are kept in balance. Absent this balancing act one or the other usually wins out, and the result is failure in one role and a sense of that defeat that carries over and handicaps one's satisfaction in the successes obtained in the other. Careful attention to balance allows us to cope with this state of being "between two worlds", and sometimes do it quite nicely. Being able to say that "being a lawyer is not what I am, it's just what I do", and truthfully meaning it is of great comfort in easing the private versus professional frictions of our lives. Effective coping techniques abound, and you have some of the very best readily available to you right here, right now.[iv] But coping is a defensive mechanism, one that allows us to tolerate conflicts not eliminate them, one that does not allow for passion, and what is life without passion?. *What if......just what if we could transform our professional practices so that every value, every validation, every reality would be congruent with our personal highest and best? What a paradigm shift that would be!!!*

[iv] Our very own John McShane has demonstrated time and time his leadership in the art of devising coping strategies for lawyer professionals. Witness *Divorced From Stress - Practicing Family Law Painlessly (Almost)*, 1999 Adv. Fam. L. Course, Ch. B; *Family Law for fund and Profit: Practical Tips for Avoiding Pitfalls and Enjoying Success Solvency and Sanity in the Practice of Family Law*, (with G. Nickelson and J. Loveless) 1998 Adv. Fam. L. Ch. DDD. In deed John devotes a portion of his professional life to the personal coaching of other lawyers, and has developed a system for bring more health, balance, and fulfillment to the way law is practiced. See *Passionate Practitioner*, ABA Journal, June 2000, page 56.