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Divorce Muda[1]

FRODO: What are we holding on to Sam?
SAM: That there is some good in the world, Mr. Frodo, and it's worth fighting for.
Lord of the Rings: The Twin Towers

Taiichi Ohno (1912-1990), the father of the Toyota production system, coined the term Muda to describe wastefulness, futility and purposelessness. These concepts have been extended to various business and service production systems through the work of James Womack and Daniel Jones (*Lean Thinking 1996)*. Ohno was opposed to any form of waste. Ohno, Womack and Jones identified areas of production and service wastefulness and applied penetrating ways of thinking about how to better accomplish human tasks.

The purpose of this paper is to apply the concept of Muda to the divorce process. Only by identifying wastefulness and purposelessness can we seek methods of intervention which will create a better experience for all family members involved. The task is not an easy one as the divorce process is often a disruptive, highly emotional and difficult experience for family members. Scant research exists on the normative length of the divorce process. What is suggested by the research is that families take twelve to fifteen months to reorganize themselves in functional ways under the best of circumstances. High conflict divorce (HCD) families are presented with an even greater challenge.

There is however always reason to believe we can achieve a positive result out of sadness and despair. It is a hope that the painful experience of divorce will result in a more mature human being, a more resilient child and a healthier family organization. It is that challenge that keeps those of use who work with HCD families hard at work.

A fact that is often forgotten by those who work with HCD families is that approximately seventy-five percent of all divorcing families handle this difficult life transition without accessing the legal/mental health system. The HCD population is therefore a smaller segment of a larger population which negotiates this life transition in a reasonable and less wasteful manner. As Mavis Hetherington (2002) has demonstrated so aptly in relying on her longitudal data, there is a diversity of response to divorce ranging from very healthy transition to long term, entrenched mal-adjustment. For the HCD population however, Muda often predominates. Arenas where Muda predominates in HCD divorce are delineated below, along with suggestions for how we might improve our psychological and legal interventions.

[1] Any human activity which absorbs resources but creates no value (Natural Capitalism 1999).

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Gender Politics: The danger of prescriptive solutions

At the root of divorce Muda is the age old struggle between men and women to obtain their fair share of the human pie. In the divorce arena this is often translated into a political struggle governed by the gender-driven beliefs. Unfortunate for children, these beliefs have led to misguided results and wasteful interventions. For example, it is now well understood that for many years fathers were denied reasonable access to their children in regards to parenting time. Through the 1980's and into the early 1990's, many of us who worked with HCD families routinely recommended parenting time arrangements which marginalized parenting time for fathers. We did so under the rubric of a prescriptive answer, namely, a primary caregiver and every other weekend for non-residential parents (usually father) followed by a Wednesday dinner.

Significant research began to emerge which pointed to the fact that children can tolerate different parenting time schedules (Lamb and Kelly 2001). We began to learn that many children in intact families have multiple caregivers and that children of divorce eventually can and do respond well in dual caregiver circumstances. What matters above all is the quality of care that is received. Research also revealed how much gender politics influenced our decision-making about the post divorce family (Braver 1998). The antiquated notion of one primary caregiver in all cases gave way to research based parenting time plans which allowed two parents to care for children along with other significant caregivers.

In many courts in Colorado today parenting time plans involve more efficient and appropriate use of fathers as caregivers. The danger however of creating further divorce Muda arises from the same gender politic movement. The assertion that all divorcing families a priori should involve "equal" parenting time along on a presumptive and prescriptive basis poses dangers for children and families, particularly those involved in HCD process.

Adequate assessment of family-specific dynamics can and should lead to better orders, which reflect an appropriate understanding of the emerging family system. Orders should not be made at the cost of imposing artificial numbers on parenting time schedules.

Frequently, parenting time disputes in divorcing families are based on one or both parent's emotional reactions to the divorce: their desire to hold on to some part of what has been lost. While much good has been achieved by enfranchising fathers in divorce family parenting, much can be lost if we continue to do so in a prescriptive, rather than family-specific manner. In short, 50/50 presumption is a bad idea, just as every other weekend parenting time for most fathers was in the 1980's.

"At Risk" Divorce Families: The need for early assessment

A great challenge for judges, attorneys and mental health professionals working with HCD families is the early identification of families in need of intervention. In Colorado, timely access to the legal system followed by family-specific court orders is all too often a missed opportunity due to the financial constraints imposed by a slowed economy. Simplified court procedures have assisted in some ways but the overwhelming need for emerging HCD families begs for new procedures and interventions.

For years now District Court Judge Jane Tidball, has been requesting a rapid response process whereby the court can access a mental health professional for immediate assessment[2]. The logistical difficulties of immediate assessment however are daunting. Many times serious allegations need to be investigated and that process must be undertaken in an orderly fashion. This implies the need for time and financial resources. There are however models of intervention such as the rapid response assessment (RRA) procedures employed today in many settings, e.g. emergency rooms, disaster relief efforts. Emerging HCD could be identified early and a divorce-specific RRA protocol developed as targeted service, if those

[2] Judge Tidball would only use RRA for temporary orders.

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in the legal, judicial and mental health systems collaborated more efficiently to create such assessment/intervention opportunities.

Special Advocate Investigations: Neither fast food nor a gourmet meal

While the need for RRA is pressing, the misuse of the Special Advocate (SA) statute can also create Divorce Muda. Since the addition of 14-10-116 C.R. S. in July 1997, many families have experienced SA investigations. The language of the SA statute calls for an efficient investigation in a timely fashion followed by a brief report. However, SA abuse of investigative authority by producing results too quickly and without considered judgment is neither efficient nor purposeful. In short, SA investigations should not be reduced to a fast-food model.

Yet SA investigations should, by their very nature, be circumscribed and not turned into quasi-parental responsibility evaluations (PRE). We must establish reasonable time lines for both procedures. It is suggested here that SA assignments in most cases should take between four to six weeks to accomplish. This allows the evaluator and family time to work together in an efficient, circumscribed assessment model, which can provide the courts with needed, family-specific information leading to reasonable recommendations.

In some circumstances, emerging HCD will require the expertise of the SA to produce a more in-depth assessment. Decision-making in regards to the expansion of an SA investigation should not be taken lightly. Philip Stahl, Ph.D. recently commented (CIDC Conference 2003) that SA investigations should be conducted by those who are fully experienced in PRE. Novice investigators can produce poorly formulated understandings of family dynamics, which result in Muda recommendations. Far too often, SA investigations become PRE's without need, raising costs and wasting family resources.

Alienation: The corruption of reality

Perhaps the most daunting challenge for those in the legal and mental health professions working with divorcing families are situations in which there are allegations of alienation. The debate over whether or not alienation process actually exists as a disorder continues to be argued among experts (Warshak 2003). The nay-sayers (Ricci 1997) indicate that alienation is "in the eye of the beholder". Others however (Warshak 2001) are clearly convinced that the disorder is often parent-driven and onerous. They describe brainwashing and manipulative techniques employed by vindictive parents, which essentially distort and ultimately corrupt the reality of children.

Recent professional writing about alienation process (Kelly and Sullivan 2002, Stoltz 2003, Warshak 2003) has shifted the focus away from the alienating parent towards a more considered treatment of the alienated child. Due to a complex interaction of general and family-specific dynamics, children can become alienated. Eventually a child internalizes the divorce conflict, including the adversarial aspects engendered by the legal system.

Advances in our thinking about alienation have forced us to understand what is occurring as a more complex process than first thought. It is far too simple to assume that alienation allegations are some sort of pregnancy test. Rarely is an appropriate assessment done early enough for the courts to produce informed and specific recommendations for most HCD families with alienation allegations. Often a polarization of experts occurs, creating an environment of "tribal warfare" among professionals and family members. Sadly the very professionals vested with the responsibility to assist such families, create and/or support an iatrogenic (treatment based) illness. This is Divorce Muda at its worst.

A proper course of action in alienation allegation cases would involve either RRA and/or PRE assessment. In the case of an RRA assessment, if factors related to alienation process are indicated, the court can order a further PRE assessment, while insisting that the children maintain contact with the alienated parent.

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In complex parent alignment/alienation cases, collaborative teams can be established and supported by court orders, while the family's emerging reorganization around post divorce parent roles and authority is managed in a less adversarial and more cooperatively therapeutic environment. All family members can and should participate in a coordinated effort to sort out alignment based conflicts. Therapists must "re-tool" their individualized approach to psychotherapy and work more cooperatively with other professionals towards establishing a framework in which each parental concern is addressed on its own merits and responded to in a timely and efficient fashion without adversarial Muda.

Our best understanding of alienation process includes recognition that there are severe alienation cases, which involve both overt and covert parent participation in the corruption of a child's reality. While factors related to the alienated parents behavior remain in such circumstances, efficient intervention is rarely undertaken. Too often an unending series of poorly formulated recommendations, non-specific court orders and incomplete and/or inappropriate interventions are the norm. Sadly Divorce Muda is the result in many families where alienation process has been substantiated.

Severe alienation must be see for what it is – the corruption of a child's reality and the rape of a parent's authority and place in a child's life. If treatment has failed, sanctions, removal and at times criminalization of parent behavior are the purview of an informed and alarmed judiciary. When gross parent misconduct is in evidence, therapists, attorneys and judges can act in concert to protect children from such abuse.

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