Bringing About Systems of Change Through Class-Action Lawsuits

Lenore B. Behar, Ph.D., Moderator
James A. Tucker, Attorney
Ivor D. Groves, Ph.D., MAPP

The Symposium Has Three Parts:

The legal basis for class-action lawsuits about children; RC v. Walley as an example (Tucker)
The impact of system of care principles on shaping lawsuits; the value of policy change in outcome (Groves)
The importance of parents, advocates, and internal support (Behar)

Questions for the Discussants

What questions/thoughts do you have about whether or not a lawsuit is the most effective way to implement change? What other options do you see as effective and what are the positive and negative factors in these options?

What essential elements/key factors would you add, given your experiences with systems of care and sustainability?

Questions for the Discussants

One of the struggles with systems of care projects is making them statewide or “bringing them to scale.” Do you see litigation as a way of accelerating this?

James A. Tucker, Attorney
Alabama Disabilities Advocacy Program (ADAP)
Tuscaloosa, AL
Strategic Choices about Litigation

To Litigate or Not to Litigate?
Arenas for advocacy
Executive
Legislative
Courts

Strategic Choices about Litigation

What Ends Are Sought? (Substance)
Improved lives of children/families
Improved system performance

Strategic Choices about Litigation

What Means Are Used to Achieve Desired Ends? (Process)
Causes of action:
Constitutional
Statutory

Strategic Choices about Litigation

What Is the Bottom Line?
Choices by lawyers (both sides)
affect how SOC operates
Choices by officials affect how SOC operates

Possible Approaches to Litigation

Issues in Child Welfare/Foster Care:
Family Preservation - abuse/neglect, i.e., the "front end"
Foster Care Conditions
Family Reunification - permanency, i.e., the "back end"

Possible Approaches to Litigation

How to do the Work:
Geography - statewide (RC) or metro/county (NYC)
Issues - all (RC) or limited (EPSDT)
Combinations - all/some issues for all/some children and families
**Possible Approaches to Litigation**

- Considerations:
  - Substantive principles v. adequate resources
  - Principles of human services as framework
  - Collaboration v. adversarial proceedings
  - Sustainability
    - Compare *RC v. Wyatt*
    - Principles v. Conditions/resources

**How Does It End? What Outcome?**

- Litigation
  - Conclusion of litigation
  - “Wraparound lawyering”?

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**SYSTEM OF CARE PRINCIPLES IMPACT ON CLASS ACTION LITIGATION**

- Shifted focus of orders and agreements from resources and capacities to practice in accordance with principles of System of Care.
- Shifted focus of measurement to quality and functionality of practice and quantitative indicators of process and outcomes.

**CLASS ACTION LITIGATION IMPACT ON SYSTEM OF CARE**

- Applied System of Care Principles across whole systems and broad range of needs (not just SED or geographically limited projects).
- Created the political will to sustain efforts of implementation over a sustained period of time. Including increased funding.

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Ivor D. Groves PhD, MAPP

Human Systems and Outcomes

Tallahassee FL
**CLASS ACTION LITIGATION IMPACT ON SYSTEM OF CARE**

- Required practical, regular and timely measurement of the quality and consistency of practice using random samples of children served.
- Provided opportunities to refine beyond basic practice, Hawaii-evidence based practice, Alabama – impact of supporting children and families to prevent entry into care.

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**SYSTEM OF CARE PRINCIPLES IMPACT ON CLASS ACTION LITIGATION**

- Mandated interagency collaboration and coordination.
- Provided demonstration that SOC could be implemented statewide and that improvements in practice could be measured and shown to be dramatically improved.

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**Key Elements for System Transformation**

**LEADERSHIP:** consistent focus and message that the quality and consistency of practice of SOC principles within and across agencies is the **# One Priority**.

**CLEAR EXPECTATIONS:** a shared understanding by managers, supervisors and frontline staff of PRACTICE PRINCIPLES and critical practice functions.

**TRAINING, MENTORING, & COACHING OF PRACTICE:** building and sustaining adequate and consistent, child and family centered practice support and supervision across all practitioners, caseworkers and care coordinators.

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**Key Elements for System Transformation**

**FRONTLINE CAPACITY:** building an effective, adequate/stable frontline staff and working conditions for conducting daily practice.

**PERFORMANCE MEASUREMENT WITH FEEDBACK LOOPS:** providing frequent feedback about frontline performance of practice and results so practitioners can improve practice and facilitate better results for people receiving services.

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**Core Functions in Practice**

- **ENGAGING child, Family Members/Assemble Family Team**
- **ASSESSING & UNDERSTANDING Current Situation, Strengths, Preferences and Needs**
- **COORDINATING & COMMUNICATING ABOUT PROGRESS, BARRIERS AND OUTCOMES across teams**
- **TEAM PLANNING OUTCOMES & STRATEGIES for achieving the outcomes**
- **RESOURCING Planned Intervention Strategies, Aims, and Supports**
- **ADAPTING Services Through Ongoing Intervention Planning**
- **TRACKING Progress, Results, What’s Working; Maintaining Situational Awareness**

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**Birmingham System Performance Change Over Time**

<table>
<thead>
<tr>
<th>Measure</th>
<th>2002</th>
<th>2006</th>
<th>2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assessment</td>
<td>42%</td>
<td>50%</td>
<td>58%</td>
</tr>
<tr>
<td>Long-term Vision</td>
<td>20%</td>
<td>28%</td>
<td>36%</td>
</tr>
<tr>
<td>Service Plan</td>
<td>20%</td>
<td>28%</td>
<td>36%</td>
</tr>
<tr>
<td>Implementation</td>
<td>10%</td>
<td>16%</td>
<td>22%</td>
</tr>
<tr>
<td>Home-based Services</td>
<td>20%</td>
<td>28%</td>
<td>36%</td>
</tr>
<tr>
<td>Overall System Performance</td>
<td>76%</td>
<td>82%</td>
<td>88%</td>
</tr>
</tbody>
</table>
2003 saw the largest number of initial entries into out-of-home care. The current number of children in out of home care is the highest since the inception of R.C.
In Successful Lawsuits

- Expectations are clear and tools are provided
- Workplace/employee fit - ability to use strengths
- Commitment to the mission and sense of belonging
- Opportunities to discuss progress and grow
- In human services, “we do what it takes to make a difference with our clients”.
- “My supervisor makes me feel inspired and motivated”

Lenore B. Behar, Ph.D.
Child & Family Program Strategies
Durham, NC
The Willie M. Lawsuit

Filed in 1979, settled in 1980
Class members were in institutions
Class members were violent, assaultive and had mental health diagnoses
Settlement provided community-based services, well funded

Contributions to System of Care Principles and Practices

Required a continuum of community based services
Provided case managers
Required individualized service plans
Developed wraparound concept
Had a no eject-no reject policy

What Principles Were Missing

Services should be driven by the needs and preferences of the family
Service planning should be strengths based
Plan for services should occur in a multi-agency environment, jointly funded
Services should be integrated into the mental health system and other child systems

More Missing Pieces

Programs should be responsive to the cultural context of families
Families should be the lead partners in planning and implementing the system of care
Costs should be reasonable and appropriate

The Strengths of Willie M. (and Felix and Other Successes)

Plaintiffs’ attorneys were vigilant
Court monitor and panel held the state’s feet to the fire
Funding was extraordinary
Internal advocates kept pressure on state agencies
Judge was sympathetic and involved
Professionals changed their practices
Class members made progress

How and Why Did It End?

Demonstrated that very difficult youth could be served in communities using case management and wraparound services
Lost ground when compared with/ integrated into other services
The new judge was not sympathetic and lost patience, after 19 years