THE TERRY D. LAWSUIT: TRANSCENDING TWENTY YEARS OF LITIGATION

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ABSTRACT

This paper discusses the issues of institutional abuse against children and the consequences given a lack of appropriate treatment to meet their psychosocial needs. An overview of the federal consent decree instituted in this case is presented as well as the results of an audit that was implemented and aimed for the dismissal of the decree after twenty years of litigation. Post-litigation changes are also highlighted.

INTRODUCTION

The issue of institutional abuse against children residing in public facilities across the U.S. garnered much attention in the early 1970's (Wooden 1976). The State of Oklahoma was not exempt from scrutiny during this period (Sherwood and Hanchette 1982). This monograph sets the context for the Terry D. lawsuit by summarizing some of the turning points over the two decade history of the litigation. Moreover, findings are presented from an audit examining the assessment and case planning practices in the State child welfare system. The results of this audit were instrumental in obtaining the final order of dismissal in the lawsuit (Herrerías 1999). Finally, a highlight of substantive improvements in child welfare demonstrates the Oklahoma Department of Human Services' (ODHS) attempt to help ensure the safety, well-being, and permanency of its children and youths.

Background

In 1978, attorneys from the Legal Aid of Western Oklahoma, National Center for Youth Law, and the American Civil Liberties Union's National Prison Project filed a class action suit in federal court alleging violation of human rights and unconstitutional practices against youths in Oklahoma's institutions (Terry D. et al. v. L.E. Rader et al. 1978; Trzcinski 1996). The Terry D. vs. Rader lawsuit identified institutions as situated in isolated rural areas and improperly staffed. Four of the five facilities were located in small rural locations –Boley, Helena, Pryor, and Taft. The fifth institution was near Tulsa (Beyer et al. 1990; Trzcinski 1996). Moreover, the suit alleged that deprived and delinquent youths were housed together and that deprived minors were occasionally moved from non-secure settings to more restrictive placements in secure facilities intended for delinquent youths (Trzcinski 1990). Another allegation

pointed to physical punishment and use of extreme restraint procedures (Beyer et al. 1990; Trzcinski 1990).

A consent decree was agreed to by the parties to the lawsuit in 1984 (Terry D. et al. v. L.E. Rader et. al. 1984). Some of the conditions of the Consent Decree included removing deprived children from large congregate care, restrictions on the use of physical restraints and isolation in institutions, and a requirement for the State to obtain professional accreditation for its child welfare and juvenile justice programs. Youth were being physically restrained and sometimes housed with prisoners. Staff had to learn how to restrain without physically touching the minors. Youth had little outside contact because of their proximity to family.

In 1982, legislation was passed that made accreditation a statutory mandate (Trzcinski 1990). This involved pursuing certification by three separate accrediting organizations. The Consent Decree (Terry D. et al. v. L.E. Rader et al. 1984) required the Department comply with the American Correctional Association (ACA) Standards, "...except where such standards are inconsistent with the terms of this Decree... (p. 8)." The Department's treatment centers were required to comply with the Joint Commission on Accreditation of Hospitals (JCAH) Standards. Juvenile justice programs received accreditation from the ACA in 1986. Then in 1992, accreditation was attained from the Council on Accreditation (COA) for the Department's child welfare programs with the distinction of being the first state child welfare system in the country to reach this milestone (Trzcinski 1990).

The Terry D. Consent Decree served as a catalyst for two other benchmarks. The first was the development of community-based supportive programs for youths in ODHS custody (Trzcinski 2001). The second resulted in the closing of five large institutions; two that served deprived children and three that served delinquent youths (Trzcinski 2001). A third requirement of the Consent Decree was the development of a "strengths and needs based" assessment and treatment plan.

Trzcinski (1996) indicated that at least three efforts were made between 1984-1991 to produce an acceptable response to bring an end to the lawsuit. The first two efforts were unsuccessful. In 1989, the Honorable Ralph G. Thompson, U.S. District Court judge, appointed a panel consisting of three members to assist the parties involved with the development of the implementation plan required by Section XIV of the Consent Decree (Terry D. et al vs. L.E. Rader et al. 1984). Panel members designed and completed a comprehensive study of programmatic and service needs of class members (defined as youths ages ten and older) who were at risk of becoming delinquent, in need of supervision, in need of treatment, or deprived (Beyer et al. 1990). This report yielded thirty specific recom-

mendations emerging from three principles: (1) The need to re-invest dollars in the front end of the system, (2) the need to expand and diversify the service delivery system, and (3) the need for openness and accountability.

On April 30, 1991, the Court Plan of Implementation was approved, ordering specific required actions necessary to bring an end to the litigation (Terry D. et al., v. L.E. Rader et al. 1991; Trzcinski 1996). The Implementation Plan also ordered the appointment of a court monitor who "...will review, assess, and report to the court on the Department's progress and compliance (Terry D. et al. v. L.E. Rader et al. 1991, p. 29)." At about the same time, the ODHS developed a Request for Proposals (RFP) for contracted community-based services that would provide an array of needed supports to class members under the Oklahoma Children's Initiative (OCI). Services comprised educational advocacy, home-based services, independent living, day treatment, and non-residential substance abuse treatment (Trzcinski 2001).

In addition to the existing provisions under Terry D. the court instituted the requirement that the two ODHS youth shelters for deprived children (those removed from their parents' custody or abandoned) (Pauline Mayer in Oklahoma City, and Laura Dester in Tulsa) would cap admissions to the facilities. The expectation was that there would be no admissions for those five and younger (less than 24-hour stay) and those six and older would not remain in the youth shelter for more than thirty days. The numbers of the youth transitioning through the shelter were more than the established cap. This was a result due to the relatively small number of available foster homes. Some of the children were actually returned to their homes without foster home placement.

In 1994, another significant change took place–the signing into law of the Oklahoma Juvenile Reform Act [H.B. 2640, Oklahoma Session Laws, 1994, Ch. 290]. The Act made both substantive changes in the state law relative to juvenile offenders and created a new state agency–the Office of Juvenile Affairs (OJA), which assumed responsibility for the State's juvenile offenders and youths in need of supervision (Terry D. et al. v. L.E. Rader et al. 1995b). The ODHS continued to maintain responsibility for child welfare programs. Little more than a year later, the Court approved a revised implementation plan for ODHS (Terry D. et al. v. L.E. Rader et al. 1995a; Terry D. et al. v. L.E. Rader et al. 1995b). Each agency proceeded to successfully bring closure to the lawsuit with their respective legal representatives and renegotiated implementation plans (Trzcinski 2001). An Order of Dismissal was entered on April 5, 1996 for OJA with the condition that substantial compliance would have to be maintained with the terms and conditions of both the Consent

Decree and the Amended Plan of Implementation for six months. If substantial compliance was found at the end of the six months' period, the dismissal of the lawsuit would be complete. If not, OJA's inaction might reinstate a motion by the plaintiffs (Terry D. et al. v. L.E. Rader, et al. 1996). On the other hand, the Department's Order of Dismissal contained no carryover requirements saying that once the Court Monitor certified that the DHS defendants had achieved substantial compliance with the Revised Implementation Plan, the Settlement Agreement would be deemed "fully satisfied" (Terry D. et al. v. L.E. Rader, et al. 1998).

THE INDIVIDUALIZED SERVICE PLAN AUDIT

The Individualized Service Plan (ISP) audit was the final condition for dismissal of the Terry D. Settlement Agreement. The objectives of the audit were designed to determine the extent to which: (1) unique family assessments and treatment plans were completed by child welfare workers on each child in ODHS's custody, (2) family assessments and treatment plans were completed on each of the siblings that had been named in court petitions, (3) children's needs were reflected in each of the treatment plans, and (4) children's needs as identified on the needs assessment were met through the provision of appropriate services as delineated in the Settlement Agreement (Terry D. et al. v. L.E. Rader et al. 1998).

It was expected that the ISP audit be conducted on a random sample of children in the ODHS's custody. However, a random sample was not feasible due to there being insufficient numbers of children in each of the counties in Oklahoma. Hence a nonrandom sample of Child Welfare cases of children 8-18 years old in the department's emergency, temporary and permanent custody were sampled. A second modification needed to be made to the original audit design, which changed the required lower age range of ten years old to be pushed back to eight years old, again because there were insufficient numbers of children in each county. The audit's design was descriptive-exploratory in that it would describe the status of children's needs assessments and treatment plans at the same time that it would suggest questions for further examination. Control or comparison groups were not employed.

Procedures

A sample of 125 was drawn from all opened or re-opened cases of [deprived] custody children on or after 02/01/1998 through 07/15/1998 in Oklahoma (n=59) and Tulsa (n=40) counties. The remaining sample was taken from all cases opened or re-opened on or after 10/01/1997 through 07/15/1998 in four other counties (Caddo, 6; Kay, 11; LeFlore, 6; and Pittsburg, 3). The initial timeframe was 02/01/1998 to 07/15/1998, but the sample pool needed to be expanded in the latter

counties.

A 43-item questionnaire was used on which the seven-person audit team would record data. Items on the questionnaire included basic demographics, type of placement, specific needs and strengths for both family and child, congruency of strengths and needs with treatment goals, services to meet the child's identified needs, and the extent to which the case plan was complete in each case. In general this process examined whether the needs of the entire family were documented and addressed in a timely, appropriate manner.

In order to gather the data, a series of case planning documents (e.g., Treatment Plan, Court Report, Child Placement History, Case Summary, etc.) were printed in advance for review and extraction of the data. Personal interviews were also conducted as a part of the audit. A total of 147 interviews were conducted with parents (n=31), children (n=38), child welfare supervisors (n=25) and workers (n=25), and private vendors (n=28) providing services under Oklahoma Children's Services (OCS). OCS was established and implemented in July 1998 and consisted of comprehensive home-based services to families of deprived youth.

Demographics

Children had a mean age of 12.2 years. Thirty-seven (29.6%) were between 8-10 years old, 45 (36%) were between 11-13, and 43 (34.4%) were between 14-18 years old. Females accounted for 62.4%. Fifty-six percent of the children were preadolescent. Racially children were 26.4% African American, 21.6% Native American, and 49.6% Caucasian. Ethnic/racial background was indiscernible in three or 2.4% of the children. Class members had an average of 1.9 siblings with a mean of 1.4 in ODHS's custody. Nearly 95% of the children had up to three siblings in Department's custody. Almost 6% had four to eight siblings in custody.

Findings

Most class members were placed in Oklahoma (35.2%) or Tulsa (31.2%) counties. The remaining 42 children were placed in 13 different counties across Oklahoma. Ninety or 72% of the class members had a treatment plan goal of returning to their own home. Another 10% had a goal of long-term out-of-home placement. Only 6% of the class members were being maintained in their own homes. Eight (6.4%) youths had a treatment plan goal of independent living. Details of the ISP can be found in Herrerías (1999).

The Family Strengths and Needs Assessments were completed in 95.2% of cases. There was congruence between each Family Strengths and Needs Assessment and the Treatment Plan in 96.8% of the cases. Services identified on the Treatment Plan were actually provided to class members in 89.6% of the time. The underlying causes of problems identified in the Family Strengths and Needs Assessment

were addressed in the Treatment Plan in 95.2% of cases. Of 82 Treatment Plans needing to be updated during the audit period, 91.5% had incorporated relevant changes. Treatment Plans were signed by at least one parent or primary caretaker in 80.8% of the time. Treatment Plans were actually found in 99.2% of the cases. The latter was instrumental in the dismissal of the consent decree.

Regarding the class members' understanding regarding being under ODHS's care, all of the children knew of their status and who their child welfare worker was. Children responded that of all the services they had received, they best liked counseling, new clothing, foster/ relative placements, and visits with their mother and siblings. Children indicated that there needed to be better design in services for them to include staff who understood children's experiences, staff who asked children what they liked or needed, stable foster or relative home placements and frequent contact with friends and kin. During interviews with a select number of children yielded many comments. Two examples are:

> *"Try another home for one or two weeks and see how it works out —do something about what happened— but go back to mother. Ask [perpetrator] what they did. Persons [perpetrators] should go to jail."*
>
> *"Listen to kids —especially little kids, and give importance to what they say; don't always give great weight to adults. Also loosen up restrictions on overnight visits to homes— if someone is in your life for a while, you should be able to spend time with them."*

There were some statements directed to Child Welfare workers. An example of one was: *"Tell me what you know about plans for me. Who will I live with and what is the house like? Give me more input. I know me best!"* A large number of children posed a question they would like their mothers to answer. "*When are you going to get well?*" An example of a message for their caretaker (other than a parent) was voiced by one who exclaimed:

> *"You're unfair! You treat your natural children differently. You're in [foster care] for the money. Stop lying to us —we're not little children, and we can find out the truth!"*

Parents indicated seeing a copy of the treatment plan in 67.7% of the cases. Parents also reported seeing their child welfare worker at least monthly in 77.4% of the time. Ninety percent of parents perceived services they received were at the very least somewhat helpful. Parents reported being involved in developing the Treatment Plan in 45.2% of the cases. They indicated having received from one to five services from Child Welfare in 80.6% of the cases.

Child welfare workers said that they always discussed risk-related

issues with respective parents. Nearly 61% of service providers (those entities external to ODHS) felt there was no communication with child welfare workers concerning children on their caseloads. Workers believed that counseling, home-based services and stable placements were the most beneficial to children in ODHS's custody. It was felt that children were still lacking sufficient specialized placements, mentoring/tutoring, independent living services, and medical/dental services. Workers believed that workload, staffing, foster care and other specialized placement resources, and management issues as central to improving the Child Welfare system overall. Workers said that workload issues and receiving support from all levels (e.g., Legal Division, court, management, State Office, community, clericals, and case aides) were the two most influential actors in performing their jobs.

Child Welfare supervisors yielded that home-based services and counseling were the most beneficial services for families in 72% of the cases. Supervisors indicated that drug and alcohol services were the most critically needed resource for families followed by counseling, psychological evaluations, and parenting skills development. Overall, supervisors believed that Child Welfare provided quality services, safety/protection for children, and responded well to priority referrals. Supervisors reported that resolving staffing, workload and management issues would improve the Child Welfare system in general. It was felt that resolving workload issues, receiving better support from all levels, having well-qualified staff, and better training would help them perform their supervisory responsibilities more effectively.

Finally, service providers were surveyed and found that Child Welfare workers always discussed risk-related issues and Treatment Plans with them. The Child Welfare system worked well regarding preventive/home-based services, other services/resources, good communication between providers and Child Welfare, and child protection. Nearly 61% of providers said the Child Welfare workers needed smaller caseloads and that the staff turnover was too great. As a matter of fact, more than 50% of Child Welfare staff has been with the Department less than one year. Thirty-nine percent of providers felt there were no communication problems between themselves and Child Welfare, while 25% wanted return telephone calls to be made in a more timely fashion. More than two-thirds of the service providers had at least weekly contact with Child Welfare staff; nearly all had monthly contact.

The ISP audit contained several limitations. First, the cases were selected from a narrow field of eligible participants within an abbreviated timeframe of cases being opened for service. Staff was aware of the time parameters for the audit and likely "crammed for the test."

Admittedly, a random sample of all open foster care cases may have yielded different results. Second, the audit focused on quantitative issues, such as whether assessments and treatment plans were completed on class members and their siblings. Issues of the quality of assessments, treatment plans, and actual services provided to class members were not evaluated. Third, there were no process questions, which frequently allow for the identification of impediments to client engagement, service delivery, and overall efficacy of a service system. Fourth, some of the interview questions may have yielded socially desirable responses thereby affecting their general reliability.

DISCUSSION

Based on the data, the court felt that the issues of compliance under the Terry D. Consent Decree were resolved overall. Notwithstanding the high rate of compliance regarding all of the objectives of the ISP audit, there remain a number of compelling issues requiring the Department's attention and continuing effort.

Both the case information data, as well as interviews with class members and parents indicated the need to significantly improve in the areas of client engagement and parents' participation in the development of strengths-based assessments and treatment plans. The findings showed that less than half of the parents were involved in the actual development of the treatment plan and that only slightly more than two-thirds recall seeing the document. While nearly 81% of the parents actually signed their treatment plan, neither the significance of that activity nor its inherent expectations seemed to have made the necessary impact.

Close examination of the contents of the Family Strengths and Needs Assessments of class members and their siblings found that Child Welfare staff frequently recorded the same strengths and needs for all of the children being assessed. Hence, there must be an emphasis on the uniqueness of the children as individuals and the importance of addressing their specific needs. The "cookie cutter" assessment process obscures and even conceals underlying needs and personal resiliency, which are essential in appropriately treating children and building on their strengths.

Service providers reported having good working relationships with Child Welfare. Even so, 25% of contract staff indicated that telephone calls were not returned timely. This aspect of the working relationship must be improved as a means of positively reinforcing professional collaboration with our private partners, who represent an integral part of our children's treatment team.

Concern over Child Welfare workloads and caseload size were expressed by Child Welfare workers, supervisors, and service providers as negatively impacting the ability to deliver effectual services to children

and their families. Moreover, better training and support from county directors and the State Office were cited as critical toward ensuring more effective job performance. These issues must be carefully examined and satisfactorily resolved.

Most Child Welfare workers, supervisors, and contract (service provider) staff agree with the need for the ongoing development of specialized placement resources; increased capacity for immediate, flexible services for their clients; and a better foster care system overall. The need for viable foster homes has grown to more than 500% over the last decade yet the net increase of homes has been less than 25%. The Child Welfare system must engage in a parallel planning and retooling process to ensure that all sides of the complex, compelling issues referenced herein are addressed to everyone's benefit.

HIGHLIGHTS OF CHANGES POST-TERRY D.

A number of action steps have been taken by ODHS toward ameliorating some of the issues brought to light by the audit. Some of the responses go beyond addressing what was found to encompassing broader issues of need, concern, and future development. The Department's commitment towards enhancing staff's ability to more effectively engage client families in the case planning process resulted in specialized training being provided to all Child Welfare workers, supervisors, Child Welfare field liaisons, county directors, area directors, and State Office personnel [responsible for oversight and policy] by the Child Welfare Policy and Practice Group. More than forty sessions were offered in five regional locations in Oklahoma to best accommodate all of the participants. Training participants were expected to complete seven full days of instruction, presented in didactic, role play, group discussion, and case illustration format. Supervisory staff participated in the same seven days of instruction as their social work staff, plus one additional day of training. The seven days of instruction has been permanently added to the supervisory training for all new supervisors.

A short-term expectation was that trained staff would immediately apply the newly acquired knowledge with children and families on their caseload. The longer term expectation involved a reconceptualization of the case planning process within a more user-friendly framework that would facilitate purposeful connections and assure efficacious work with clients. There was an additional training opportunity for staff in their area.

In response to the second area that impacts workers, a Child Welfare Summit was convened by ODHS Director Howard Hendrick, which involved a cross-section of Child Welfare and other administrative program staff (e.g., Family Support, Data Services, Finance,

and Human Resources Management). Representatives from across the state were included in this event. The intention was to identify the Child Welfare system's strengths, limitations, and areas for improvement. Several work groups that emerged from the Summit were actively engaged in strategic planning sessions toward implementing, correcting, or otherwise enhancing system functioning. A follow-up to the Summit was held where work groups shared their plans and next steps were identified. Immediately preceding the Summit, a workload study commenced that provided critical information in the structure and management of workload responsibilities across Child Welfare. There is an annual meeting to discuss where Child Welfare is, what it hopes to accomplish, and strategies to reach those goals.

In-classroom and field training were re-conceptualized for all new Child Welfare workers attending the Child Welfare Academy to allow for a deeper understanding of the subject area and greater interaction with actual cases. This practice has enhanced novice workers' experience and greatly facilitated their transition into this area of work. A secondary expectation of this is to minimize attrition, which is 25% annually. The two most significant changes ushered in as a result of the Terry D. Consent Decree and its Order of Dismissal have been the KIDS system and OCS. As the glitches have been worked out of the KIDS system, it has emerged as the single most important innovation that ODHS has realized. It electronically connects every Child Welfare employee in the state of Oklahoma. The KIDS system has made it possible for the hundreds of pages of forms and documents used by the department to become paperless. The KIDS system has also helped facilitate electronic county-by-county audits of Child Welfare cases in lieu of annual 3-4 day visits by a team of quality assurance staff. This has yielded considerable savings in time and resources.

The changes brought about by Oklahoma Children's Services (OCS) have been far reaching. In short, OCS elevated the standard of service in Child Welfare to children at risk of child abuse and neglect. It also provided intervention in the cases where a child in out-of-home placement was at risk of placement disruption. The third aspect of OCS was being instrumental in facilitating the successful reunification of children in out-of-home placements with their families. Under OCS, Child Welfare workers were given relief from providing primary services for some of these families as they were referred to private contractors. Private contractors serve more than 4,000 children annually through OCS.

One of the more perplexing problems in Child Welfare is attrition. One half of the Child Welfare workers have been with ODHS less than one year. In order to help stem the tide of the 'revolving door,' the Continuous Service Incentive Plan

(CSIP) became effective in July 2008 (J.A. Jones, personal communication). It is for Child Welfare Specialist I and IIs, as well as other ODHS staff with social service duties. Child Welfare Specialists must have completed the Child Welfare Academy training and have continuous employment. If so, the incentive amounts are $1,000 at six months and $500 quarterly up to a maximum of $4,000 for 24 months. Program effectiveness of the CSIP will be evaluated sometime in 2012.

CONCLUSION

Presently, there is an annual review that is completed on every county in the state in Child Welfare– perhaps not as extensive as originally done for the ISP audit– but containing the elements that in part brought about the Terry D. Consent Decree into existence. Staff conducting quality assurance audits is examining the extent to which compliance is found with ODHS's policy, reporting, and documentation requirements. Also under review is the quality and quantity of services being provided to children and their families. Issues of noncompliance are noted and plans for corrective action are written up and provided to county directors with a date by which to respond. Each county director replies with a detailed plan of action for rectifying each of the items found to be out of compliance. This plan of action is discussed upon receipt by the quality assurance team before accepted or further negotiation ensues.

The truth is that every child Welfare department in the country stands at the brink of a potential lawsuit. The needs of children are tremendous, the issues that families face are staggering, and the Child Welfare workloads are overwhelming. Children have never been a priority. Children do not have a voice –they do not vote. Funding for children's services is low on the totem pole. Child Welfare workers are expected to accomplish a difficult, sometimes dangerous job with extremely limited resources. Staff burnout occurs frequently resulting in rapid employee turnover. It has a cyclical effect on the quality, quantity and cost of services provided.

The ODHS systematically worked toward the dismissal of the Terry D. Consent Decree over the course of twenty years of litigation. Since the Order of Dismissal, it has taken different steps and put different mechanisms in place to ensure that, among others, the lack of information to clients, absence of engagement with families, absence of treatment plans, and lack of congruence between identified problems and issues on the treatment plan are not repeated. In particular, the innovation of its statewide electronic information system (KIDS), the statewide contractors' electronic system that connects to KIDS (eKIDS), and the establishment of OCS have made significant improvements to the infrastructure. These innovative changes help relieve some of the

administrative work for Child Welfare workers that in turn allows for more face-to-face time being devoted to children and their families. The one-on-one worker-client relationship is key toward effective problem resolution and successful treatment planning. These are definitely steps in the right direction.

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