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REFORMING FLORIDA'S JUVENILE JUSTICE SYSTEM: A CASE EXAMPLE OF *BOBBY M. V. CHILES*

JODI SIEGEL*

I. LITIGATION AS A REFORM STRATEGY

The Racial and Ethnic Bias Study Commission Report¹ is an excellent example of official acknowledgment and exposure of a problem that is not always publicly recognized. Unfortunately, reform does not always follow exposé. Often, those who have the power to institute change must be prodded by advocates to do so.

Many advocacy tools exist to help force change: lobbying for statutory changes and increased funding in the Legislature, urging agency officials to modify their policies or practices, challenging agency rules in formal administrative hearings, organizing local initiatives, garnering public and media support for certain issues, and vindicating civil rights through litigation.²

Litigation becomes necessary when other avenues of reform fail. However, systemic reform litigation generally is a long, cumbersome process in which patience as well as persistence is necessary to achieve the ultimate goals.³ Often, enforcement of consent decrees and judi-

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Southern Legal Counsel is lead counsel representing the plaintiffs in the monitoring phase of *Bobby M.* As one of plaintiffs' counsel in this case, this author's role is to advocate. However, in writing this Article, an effort was made to fairly and objectively present the facts and issues.

The author wishes to express her appreciation to Alice K. Nelson and Albert J. Hadeed for their assistance.

1. REPORT AND RECOMMENDATIONS OF THE FLORIDA SUPREME COURT RACIAL AND ETHNIC BIAS STUDY COMMISSION (1991), reprinted in 19 FLA. ST. U. L. REV. 591 (1992) (reprinted with permission) [hereinafter BIAS STUDY COMMISSION REPORT].

2. The private enforcement of public interests through civil rights litigation is referred to as the private attorney general concept. To encourage private enforcement efforts, Congress provided that prevailing civil rights litigants are entitled to attorney's fees and expenses paid by the losing party. Civil Rights Attorney's Fees Awards Act, 42 U.S.C. § 1988 (1988). For discussions of the policy bases for the "private attorney general" concept, see Carl Cheng, *Important Rights and the Private Attorney General Doctrine*, 73 CAL. L. REV. 1929 (1985); Bryant Garth et al., *The Institution of the Private Attorney General: Perspectives from an Empirical Study of Class Action Litigation*, 61 S. CAL. L. REV. 353 (1987); Comment, *Court Awarded Attorney's Fees and Equal Access to the Courts*, 122 U. PA. L. REV. 636 (1974).

3. For an excellent treatise on the winding 10-year path of the federal litigation to reform the Willowbrook institution for persons with developmental disabilities, see David J. Rothman & Sheila M. Rothman, *THE WILLOWBROOK WARS* (1984) (on history of *New York Ass'n of Retarded Children v. Carey*, 596 F.2d 27 (2d Cir.), cert. denied, 444 U.S. 836 (1979); 631 F.2d 162 (2d Cir. 1980); 706 F.2d 956 (2d Cir. 1983)).

cial orders takes longer and is more adversarial than the litigation to obtain the desired relief. But where otherwise intractable problems go beyond an individual's particular circumstances, and where the remedies involve transforming a service delivery system, litigation is an indispensable element of reform efforts.

Such was the case in 1983 when child advocates⁴ filed a federal class action suit against several state officials for their failure to improve the inhumane and unsanitary conditions of Florida's juvenile training schools.⁵ As discussed below, state officials had known about the deteriorating conditions of the training schools for several years before the lawsuit, but no changes had been made.⁶

Moreover, litigation was especially warranted because the youths victimized by the unconstitutional conditions had neither political nor social power to effect change. It is a truism that juveniles adjudicated delinquent are often illiterate and unsophisticated in accessing the political process. As a group, they evoke little sympathy.⁷ They do not comprise a constituency capable of hiring a powerful lobbying machine. Furthermore, as the Study Commission Report reveals, minority youths are underrepresented in the judicial process,⁸ even though they are overrepresented in the delinquency system.⁹

4. The suit was filed by attorneys from several public interest organizations: the National Prison Project in Washington, D.C.; Southern Legal Counsel, Inc. in Gainesville; and the Youth Law Center in San Francisco.

5. Bobby M. v. Graham, No. 83-7003-MMP (N.D. Fla. filed Jan. 5, 1983) (through FED. R. CIV. P. 25(d), automatic substitution of successor Governors, case now known as Bobby M. v. Chiles).

6. See *infra* notes 29-40.

7. See, e.g., Hon. F.D. Alvarez, *The Failures and Inadequacies of the Juvenile Justice System*, 1 HILLSBOROUGH COUNTY BAR ASS'N LAWYER 11 (1991) (delinquent children are "victimizers" not "victims").

8. See BIAS STUDY COMMISSION REPORT, *supra* note 1. Cf. FLORIDA BAR/FLA. BAR FOUND. JT. COMM'N ON DELIVERY OF LEGAL SERVS. TO THE INDIGENT IN FLA., OPENING THE DOORS TO JUSTICE—THE QUEST TO PROVIDE ACCESS FOR THE POOR IN FLORIDA 38 (1991) (Special needs groups such as children and institutionalized persons have unique legal problems and are at risk because of inadequate resources to ensure protection of their legal rights and well-being.).

9. Minority youths account for 68% of the youths confined inside the fence at the two training schools, which are the most restrictive placements in Florida's juvenile justice system. CHILDREN, YOUTH & FAMILY SERVS., DEP'T OF HRS, OUTCOME EVALUATION REPORT 382 (Dec. 1990) (statistics for the 1989-90 fiscal year). Interestingly, the minority population percentage is lower for the transitional nonsecure cottages outside the fence of the training schools: Dozier is 66.4% minority and Eckerd is 62.1%. *Id.* Minority youths account for 59% of those placed in the less restrictive nonresidential and residential community-based commitment programs. *Id.* at 348, 366. One delinquency service program, Eckerd Wilderness Camp Program, serves primarily white males—only 24% are minorities. *Id.* at 394. The Wilderness Camp serves severely emotionally and behaviorally disturbed youth in an outdoor environment.

Unfortunately, the disproportionate incarceration of minority youth is a national trend. See IRA M. SCHWARTZ, (IN)JUSTICE FOR JUVENILES 47, 143 (1989) (Overrepresentation of minority

This Article focuses on *Bobby M.* as one case example of the opportunities and challenges faced by advocates who attempt to reform a social service delivery system through federal litigation. It details the history of the suit, explains the consent decrees, and examines the successes and obstacles of implementing the decrees. The Juvenile Justice Reform Act of 1990 and the impact of the recent budget shortfalls are also discussed.

II. HISTORICAL BACKGROUND OF FLORIDA'S TRAINING SCHOOLS

On January 1, 1900, Florida joined the national trend¹⁰ to separate juvenile offenders¹¹ from adult criminals and opened its first juvenile institution. Located in Marianna, it was called the Florida State Reform School,¹² and it served both black and white boys and girls. The Marianna school was built with two campuses: one served black youth and the other served white youth. The Act, which authorized funds for the original school, mandated that "the colored and white convicts shall not be in any manner associated together, or worked together, or instructed in the same building."¹³ In 1965, a plan was drawn for total integration at the school—two years after a federal court action alleged violations of the Fourteenth Amendment on behalf of several black children in Florida training schools.¹⁴ Two years later, the school finally was integrated. Also in 1967, the school was named after Arthur G. Dozier, a superintendent for many years.

Reform schools also opened in Ocala (1913) and in Okeechobee (1959). Ocala initially housed only girls; Okeechobee housed only boys. Both were racially segregated. Although both became coeducational, in 1978 all girls were transferred to Ocala and no girls have

youths in publicly operated juvenile detention and correctional facilities, and of white youths in private facilities, suggests an evolving national trend with black, Hispanic, and Native American youth in public institutions and whites in private facilities, including private psychiatric hospitals as the "new jails" for middle and upper-middle class children.).

10. For a history of how juvenile delinquents were treated in this era, see A. PLATT, *THE CHILD SAVERS* (1960). It is a long-standing principle that the purpose of juvenile justice is to rehabilitate and to reduce delinquency rather than to punish. See SCHWARTZ, *supra* note 9, at ch. 1. That axiom continues today. See Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. §§ 5601, 5602(b) (1988); FLA. STAT. § 39.002 (Supp. 1990).

11. Several years later, the Legislature approved sending "incorrigible children" to the reform school as well as convicted offenders. See FLA. H.R. SELECT COMM. ON JUVENILE JUST., SUBCOMM. REPORT OF FLORIDA'S TRAINING SCHOOLS 2 (1982) [hereinafter SELECT COMM. REPORT].

12. *Id.* Reform schools today are referred to as training schools.

13. "An Act to Provide for the Locating and Erecting a State Reform School, and to Appropriate Money Therefor," FLA. STAT. ch. 4565 (1897), *quoted in* SELECT COMM. REPORT, *supra* note 11, at 1.

14. See SELECT COMM. REPORT, *supra* note 11, at 6.

since been admitted to the other two schools.¹⁵ The Ocala school, eventually named after its long-time superintendent Alyce D. McPherson, was closed in 1984 as a result of the *Bobby M.* suit.¹⁶ Also in that year, services at the Florida School for Boys in Okeechobee were contracted to a private agency and became the Eckerd Youth Development Center.

In 1968, the Constitution of the State of Florida was revised.¹⁷ Through the newly authorized executive structure of state government, the Legislature created the Department of Health and Rehabilitative Services (HRS).¹⁸ The previously autonomous agency responsible for training school management was transferred to HRS' Division of Youth Services and its Bureau of Training Schools. In 1975, HRS was reorganized into eleven districts around the state, with program policy development at the central (Tallahassee) office.¹⁹ At that time, the administration of each training school was assigned to the local HRS district in which it was located.

Also in 1975, the Legislature directed that status offenders—runaways, truants, and ungovernable children—be considered dependent rather than delinquent children.²⁰ With status offenders no longer placed at training schools, the school populations were substantially reduced.²¹ Despite these reductions, by May 1981 the training schools were overcrowded and housed almost 900 children, more than half of whom were black.²² Dozier was budgeted for a capacity of 270 youths, but it had a population of 380 in August 1981.²³ Cottages built to serve 25 youths were housing more than 35.²⁴ McPherson was serving about 180 children (half boys and half girls), exceeding its budgeted capacity.²⁵ The Florida School for Boys was budgeted for 360 boys, yet at times it housed more than 415.²⁶ Adding to these problems, or perhaps in response to them, escapes were increasing at all three schools.²⁷

15. *Id.* at 7.

16. *See infra* note 71.

17. FLA. CONST. art. XII, § 1 (constitution of 1885 superseded).

18. The purposes, structure and powers of HRS are set forth in section 20.19, Florida Statutes.

19. SELECT COMM. REPORT, *supra* note 11, at 6.

20. *Id.*

21. *Id.*

22. *Id.* at 16. Fifty-two percent were black. *Id.*

23. *Id.* at 18.

24. *Id.*

25. *Id.* at 24.

26. *Id.* at 29.

27. *Id.* at 19, 26, 29.

In 1982, the Florida House Select Committee on Juvenile Justice issued a report on Florida's training schools. The Committee was alarmed at the overcrowding, lack of security, understaffing, lack of aftercare, deficient academic and vocational programs, and "top heavy" HRS administration.²⁸ Recommendations included increasing youths' lengths of stay to allow for proper programming and habilitation,²⁹ implementing monthly in-service training courses for houseparents,³⁰ establishing a diagnostic and evaluation team to develop a rehabilitation and one-year tracking plan following release from a facility,³¹ improving quality and increasing quantity of vocational programs,³² and reviewing the managerial structure between HRS and the training schools.³³ In addition to these constructive recommendations, the Committee focused on seemingly trivial concerns in suggesting that to improve security it "strongly support[ed] the implementation of rules and regulations governing the hairstyles of the children within the training schools. The youth should be required to have their hair cut to a reasonable length, within good taste, and they must be clean shaven."³⁴

Later that year, HRS' Inspector General issued a scathing report on Dozier that confirmed many youths' complaints about the inhumane conditions under which they were confined.³⁵ For example, youngsters were shackled and hogtied³⁶ while in locked isolation cells—frequently for such minor reasons as "cussing" staff, being loud, and beating on doors; youngsters placed in isolation cells were seldom afforded exercise (a violation of HRS rules);³⁷ youngsters also were placed in general lock-up³⁸ for slight infractions (again in violation of HRS rules);³⁹

28. *Id.* at 33-40.

29. *Id.* at 34.

30. *Id.* at 37.

31. *Id.* at 37. These concepts of aftercare and reentry have been implemented as required by the *Bobby M.* consent decrees.

32. *Id.* at 38.

33. *Id.* at 40.

34. *Id.* at 36.

35. OFFICE OF INSPECTOR GENERAL, REPORT TO THE SECRETARY OF HEALTH AND REHABILITATIVE SERVICES: ARTHUR G. DOZIER SCHOOL IN MARIANNA, FLA. (Oct. 25, 1982).

36. Hogtying is a restraint practice in which hands and feet are shackled together behind the back. *See also infra* text accompanying notes 54-56.

37. FLA. ADMIN. CODE ANN. r. 10H-2.36 (1982) (currently codified at r. 10H-2.036).

38. Lock-up was euphemistically called the "adjustment unit." At Dozier, the adjustment unit contained three larger rooms housing about six boys each and 10 isolation rooms. These units have since been closed. *See infra* note 70.

39. HRS rules permitted the use of the adjustment unit if a child was a danger to others, was a definite immediate threat to the security of the program, maliciously destroyed property of others, or had an unauthorized absence from the grounds. FLA. ADMIN. CODE ANN. r. 10H-2.36

older and larger youngsters were used to control the behavior of other youngsters in the cottages; and there was an immediate need to reestablish a viable treatment program.

Despite official reports and recommendations concerning the deteriorating conditions and environment of the training schools, little changed. Overcrowding swelled and violence increased. In short, conditions were shockingly abusive and inhumane. When the officials failed to improve the training schools, litigation ensued.

III. THE LITIGATIVE RESPONSE

A. Initial Phase

Bobby M. v. Graham was filed in January 1983. The plaintiff class sought declaratory and injunctive relief from the cruel, abusive, inadequate, and inappropriate conditions of confinement that violated rights guaranteed by federal⁴⁰ and state⁴¹ law. As discussed,⁴² these conditions endangered plaintiffs' physical and psychological health and safety; deprived them of meaningful access to, or opportunity for, rehabilitation, treatment and education; and restricted their access to and communication with their families, the community, and the juvenile courts. In particular, plaintiffs sought prospective relief from the intolerable conditions at the institutions. These included the abusive disciplinary practices outlined above, overcrowding, inappropriate placements, unsanitary and dangerous physical conditions, poor security, lack of adequate staff, inadequate medical and psychological care, inappropriate educational programming, lack of due

(1982) (currently codified at r. 10H-2.036). A considerable number of youths were placed in the adjustment unit in technical compliance with HRS rules under the catch-all category of "threat to the security of the program." Although the rule continues to contain the same criteria, the federal court in *Bobby M.* issued a 1984 order superseding the state rule. The order provides that youths will be placed in the "security unit" only to quell a riot, prevent immediate physical injury to the youth or another person, prevent immediate and real damage to property, or to prevent an imminent escape. For more details about this order, see *infra* text accompanying note 70.

40. The plaintiffs sought to redress rights secured to them by the First, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution; section 504 of the Rehabilitation Act of 1974 (codified at 29 U.S.C. § 794 (1982)); and the Individuals with Disabilities Education Act (codified at 20 U.S.C. § 1400 (1982)).

41. The pendent state claims were voluntarily dismissed after *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89 (1984) (federal courts prohibited under Eleventh Amendment from awarding damages and retroactive injunctive relief against state officials on the basis of state law). For a discussion of the impact of *Pennhurst* on systemic litigation, see David Rudenstine, *Pennhurst and the Scope of Federal Judicial Power to Reform Social Institutions*, 6 CARDOZO L. REV. 71 (1984).

42. See *supra* text accompanying notes 28-39.

process in disciplinary matters, mail censorship, deprivation of access to courts and attorneys, and lack of aftercare.⁴³

The four original named plaintiffs⁴⁴ were deposed in 1983; two were again deposed in 1986. They testified to the atrocities they endured. For example, Susan S. testified that residents often found insects in their food. When residents refused to eat, however, they were confined to an isolation unit.⁴⁵ Susan herself was confined once for thirty-eight consecutive days, and another time for twenty-one days, in a small, bare cell without heat or adequate ventilation and without any treatment, counseling, recreation, or other activities.⁴⁶

Salvadore S. described inadequate control of contagious diseases and unhygienic and medically unsafe infirmaries. When he contracted chicken pox at the training school, Salvadore was locked with three other boys in a small, hot, unairconditioned storage room. He was not allowed to bathe or to change his clothes or his bed sheets daily.⁴⁷

Bobby M. testified to the staff's use of children to discipline other children and to the use of tracking dogs to hunt down those who attempted to escape.⁴⁸ He alleged that he was once hogtied, a practice prohibited by HRS policy but routinely used at the schools.⁴⁹

Charles W. revealed that because of institutional overcrowding he and many others were required to sleep on mattresses on the floor for extended periods. Some boys slept on the floor in the dining room.⁵⁰ Charles also detailed the lack of educational programs. Although nine years old when originally confined to a training school and in need of special education services, he had been placed in the same classroom and given the same work as the sixteen- and seventeen-year-olds.⁵¹

Unusual incident reports⁵² revealed that an abusive and inhumane environment was pervasive and not limited to the named plaintiffs' experiences. Sexual abuse, physical abuse, and attempted suicides were common.⁵³

43. Pls.' Third Am. Class Action Compl. for Inj. & Declaratory Relief (Jan. 26, 1987).

44. Three named plaintiffs, Raymond C., Richard O., and Thomas P., were later added as a prudent measure to avoid mootness because the court had not yet certified the class. See Pls.' Second Am. Compl. (June 2, 1986). Two of the original named plaintiffs had become adults and none was confined to a training school at that time.

45. Dep. Susan S. at 60-61 (Apr. 8, 1983).

46. Dep. Susan S. at 121-22 (Apr. 8, 1986).

47. Dep. Salvadore S. at 70-71, 100-01 (Apr. 8, 1983).

48. Dep. Bobby M. at 74-77 (Mar. 22, 1983).

49. *Id.* at 27-29.

50. Dep. Charles W. at 93 (Apr. 4, 1983).

51. Dep. Charles W. at 30-31 (Apr. 29, 1986).

52. Unusual incident reports are forms filled out by institutional staff for incidents that are considered out of the ordinary.

53. See Pls.' Req. for Admis. to HRS Defs., app. at 32-85 (Sept. 6, 1985) (32-50, Okeechoo-

Perhaps the most abusive condition was the practice of hogtying. In this painful form of restraint, wrists were handcuffed behind the back, legs shackled, and the wrist and leg shackles joined together behind the back so that the child was forced to lie with only chest, abdomen, and upper thighs touching the ground. To make matters worse, some hogtied children were forced to lie on bare floors or concrete beds, or were shackled to toilets or other fixed objects in the lock-up units. Youths severely acting out were even rolled in bed sheets to create makeshift straight-jackets. These inhumane practices continued even though the defendants' own policy manuals specifically prohibited them.⁵⁴ Contemporaneous with the filing of their complaint, plaintiffs moved for a preliminary injunction to stop hogtying.⁵⁵ The court granted the preliminary injunction and entered an order prohibiting the restraint of children in any unnatural position, regulating the use of permissible restraints, and appointing a monitor to oversee the order's implementation.⁵⁶

The serious concerns raised by the litigation were supported by various governmental agencies and their reports. These bureaucratic responses acknowledged the problems. Yet despite the existence of the litigation and the preliminary injunction, recommendations for improvement were weak. For example, the Governor's Office conducted a management review of HRS' Youth Placement Office in October 1983.⁵⁷ Regarding the placement of delinquent juveniles, the review found that the primary factor determining where youths were placed in the juvenile justice system was the availability of a vacant bed.⁵⁸ Further, "special needs" delinquents—those with mental health problems or developmental disabilities—usually were placed in the more restrictive programs such as training schools because of the absence of necessary services in less restrictive community placements.⁵⁹ Thus, the findings revealed serious flaws in the juvenile justice system. Yet the major recommendations merely were that the issue of special needs required detailed study, that HRS should seek an expansion in commitment resources, that HRS should continue its dialogue with juve-

bee: Selected Reports on Sexual Abuse; 51-65, Okeechobee: Selected Reports on Attempted Suicides; 66-85, Okeechobee: Selected Reports on Physical Abuse).

54. See, e.g., Dep't of HRS Reg. 175-1 § 6(b) (Mar. 1983) (youth will be restrained in a natural position; no youth may be restrained by being shackled to any fixed object).

55. Pls.' Mot. for Prelim. Inj. (Jan. 04, 1983).

56. Order on Prelim. Inj. (July 14, 1983).

57. OFFICE OF THE GOV., MANAGEMENT REVIEW OF THE OFFICE OF CENTRAL ADMISSIONS AND INTERSTATE COMPACT, M-83-32A (Oct. 1983) (on file with Southern Legal Counsel).

58. *Id.* at 36.

59. *Id.* at 37.

nile judges, that the statutory five-day placement requirement⁶⁰ should be waived for special needs youths, and that the feasibility of developing in-depth assessment services and of automating should be examined.⁶¹

Further, in response to various complaints, the Statewide Human Rights Advocacy Committee (SHRAC)⁶² investigated the conditions and treatment of children in the Eckerd Youth Development Center (EYDC).⁶³ Among other findings, SHRAC reported that, although approximately sixty percent of the youths were black and a "sizable portion" were Hispanic, only a few black professionals and one Spanish-speaking professional were available to work with the children. SHRAC recommended active recruitment of black and Hispanic professionals.⁶⁴

In a report submitted to SHRAC by EYDC, the institution claimed that it was being used by the juvenile courts and HRS as a "kid warehouse."⁶⁵ EYDC admitted that at least half of its residents were inappropriately placed in its care, because training schools should be used only as a last resort.⁶⁶ Although EYDC identified the problem, it made no recommendations.

The Auditor General confirmed that inappropriate placements at the training schools were a major problem. Data collected in 1986 during site visits to the Eckerd and Dozier facilities⁶⁷ revealed that 62.5% of the youths did not meet the training school admission criteria.⁶⁸ The Auditor General made several recommendations, including

60. The law provided that children must be removed from detention and placed into a program within five days of being committed to HRS. FLA. STAT. § 959.12 (1989). This section was repealed in 1990. Ch. 90-208, § 17, 1990 Fla. Laws 855, 917. The current statutory provision mandates release from detention within five days of commitment to HRS, but it allows HRS to seek a court order extending the use of detention care to 15 days. FLA. STAT. § 39.044(11) (Supp. 1990).

61. *Id.* at 40-42.

62. SHRAC is a statutorily created body whose members are appointed by the Governor to monitor HRS programs and its contract providers, to investigate complaints, and to make recommendations for resolution. FLA. STAT. § 402.165 (1989).

63. Pls.' Req. for Admis. to HRS Defs., *supra* note 53, app. 12-21 (1984) (reprinting SHRAC TRAINING SCHOOL SUBCOMM., REPORT ON ECKERD FOUNDATION YOUTH DEVELOPMENT CENTER, OKEECHOBEE).

64. *Id.* at 17.

65. Pls.' Req. for Admis. to HRS Defs., *supra* note 53, app. 22-31 (1984) (reprinting EYDC CLIENT SERVS. DEP'T, NO OTHER ALTERNATIVE? A REPORT ON INAPPROPRIATE PLACEMENTS AT EYDC).

66. *Id.* at 23.

67. AUDITOR GEN., PERFORMANCE AUDIT OF THE TRAINING SCHOOLS OF HRS 44 (Sept. 22, 1987) (available in Office of Auditor Gen., Tallahassee, Fla.).

68. *Id.* at 11. The Auditor General noted that by diverting these youths to a less restrictive residential program the state could save approximately \$3 million in annual treatment costs. *Id.* at 19.

that HRS reexamine its delinquency continuum and shift resources so that boys would more likely be assigned to programs at the restrictiveness levels that best matched their needs and offense histories.⁶⁹

Meanwhile, the litigation progressed and some changes were effectuated through negotiation. Before the final consent decrees, the parties preliminarily resolved several other issues. The court granted a joint proposed order establishing criteria for admission to the security unit and to the isolation units, providing minimum standards of care, limiting the time youths may spend in isolation, establishing administrative and medical review of isolation use, and appointing the monitor overseeing the implementation of the hogtying injunction to also oversee this order.⁷⁰ The court also approved the parties' stipulation to close the McPherson training school and bar from admission to the remaining two schools boys aged thirteen or younger, all girls, and all status offenders.⁷¹

The defendants also agreed to reduce the populations at the training schools, although the parties could not agree to a specific plan. They did stipulate, however, that two mutually agreed upon experts would develop a comprehensive assessment of existing community programs for committed delinquent youth and develop a preliminary plan for systematically reducing the training school population to the lowest number possible.⁷²

As is typical in federal class action systemic reform litigation, however, all issues were not resolved through amicable negotiations. The agreement to agree on a population reduction plan was the last substantive preliminary agreement reached between the parties. The experts' preliminary plan was to be made final by a further agreement between the parties, but those negotiations broke down and this particular effort was never completed.⁷³ From late 1985 until the final

69. *Id.* at 19. Although the Auditor General's investigation was conducted before the entry of the final consent decrees in *Bobby M.*, the report was not published until after the suit was settled. The report thus noted that HRS had committed itself in the consent decree to reexamine its existing programs and to develop new programs in order to maximize the state's resources to meet individual youths' needs and public safety interests. *Id.* at 20.

70. Order on Use of Security Units and Lock-up (July 5, 1984).

71. Order (Aug. 6, 1985). Status offenders were defined as children who are committed to HRS on the basis of: (a) a dependency order; (b) a violation of a court order, the underlying offense for which is a status offense; or (c) the nonfelonious running away from a nonsecure placement. Order ¶ 5.

72. Stip. & Order (Aug. 28, 1985).

73. The experts' plan made a number of recommendations to improve the placement process, restructure particular individual programs, and redesign HRS management of the juvenile system. DeMuro's Report on Plan to Reduce Population at Training Schools 3-34 (Apr. 5, 1986). Additionally, the consultants addressed issues concerning implementation of a phase

negotiations in early 1987, the State vigorously defended the suit primarily by objecting to the plaintiffs' pretrial discovery.

B. *The Consent Decrees*

On the eve of trial,⁷⁴ the parties feverishly negotiated the terms of three consent decrees. The first decree to be resolved was the issue of youths' right to counsel and access to courts.⁷⁵ Youths in training schools often were presented with a multitude of legal issues. Some had pending criminal charges in their hometowns. Some were admitted to the training schools under illegal commitment orders. Some had judges who illegally denied their release from the training schools. Some had family issues that needed to be resolved through the dependency system before they could be released. And many were misclassified for treatment purposes at the training schools and lacked any aftercare upon release. Yet, as the complaint alleged, the defendants deprived training school youths of access to the courts by failing to inform them that they could make or receive phone calls to and from attorneys and by failing to assist the children in any way with their legal problems.⁷⁶

The lack of access to attorneys was complicated by the location of the training schools. Because the schools were distant from cities, an on-campus visit by an attorney was rare. Further, public defender representation typically ended with the commitment order and did not extend to placement, treatment, or discharge issues. Children lacked the financial means to retain private counsel and were incapable of representing themselves because of their age, educational, and intellectual levels.⁷⁷ Also, because of illiteracy, lack of sophistication, or distrust, youths could not or would not articulate their legal problems to training school staff.

The right-to-counsel decree provided that the defendants⁷⁸ would present a plan for providing independent legal representation to train-

down of population and eventual closing of the training schools. *Id.* at 35-43. They suggested an initial goal of capping the training school population at approximately 120 youth per facility before any closure could be accomplished. *Id.* The Department filed a response to the plan stating that 160 youths per facility was the optimal daily population, but that it would take at least three years and sufficient legislative appropriations for aftercare and reentry services. Response to DeMuro Report 2-3 (June 4, 1986). The final consent decree, however, resolved the overcrowding issue. See *infra* notes 88-89 and accompanying text.

74. Trial was scheduled for May 1987.

75. Order Granting Stip. Mot. Resolving Right to Counsel Claim (May 4, 1987).

76. Third Am. Compl., count 10, at 23.

77. See Stip. Mot. Resolving Right to Counsel Claim at 1.

78. All of the defendants except the Commissioner of Education were a party to this decree.

ing school youths on issues that included: appropriateness of placement at the training school, discharge and aftercare issues, and civil matters arising after commitment to HRS.⁷⁹ The decree further provided that children would be advised of the availability of legal assistance upon admission and that no attorney-client contact would be impeded.⁸⁰

The next decree to be settled involved the claims against the defendant Commissioner of Education.⁸¹ The plaintiffs had complained about the inadequacy of the regular, vocational, and special educational programming at the training schools.⁸² The parties agreed that the Commissioner would provide all youths in training schools with general educational services—and where appropriate—with special education. The special education aspects of the decree were the most detailed. These required identifying and screening children with disabilities; establishing an adequate evaluation system; designing appropriate individual education plans; recruiting, training, and appointing surrogate parents where necessary; providing appropriate special education and related services as determined in youths' individual education plans (IEPs); training special education teachers and aides; fulfilling confidentiality and procedural safeguards; and providing appropriate transition services when youth were returned to their home school districts.⁸³ Also, two educational monitors⁸⁴ were agreed upon by the parties to assess the Commissioner's compliance with this decree.⁸⁵

The third decree governed claims against all defendants except the Commissioner of Education⁸⁶ and mandated comprehensive improvements in the training schools as well as throughout the juvenile justice system.⁸⁷ Regarding changes at the training schools, the decree re-

79. Stip. Mot. Resolving Right to Counsel Claim ¶ 1, at 2. See *infra* text accompanying notes 104, 119-21 (discussion on obstacles to implementing this decree).

80. *Id.* ¶¶ 4-5, at 3.

81. Settlement Agreement Governing Claims Against Def. Castor (filed May 8, 1987), *approved by* Final Order Approving Consent Decrees (July 2, 1987) [hereinafter Settlement Agreement].

82. Third Am. Compl., count 7, at 18-20.

83. Settlement Agreement, *supra* note 81, § VII, at 7-13.

84. Michael C. Nelson, a special education professor at the University of Kentucky in Lexington, and Robert Rutherford, a special education professor at Arizona State University in Tempe, were plaintiffs' experts who subsequently were appointed as court monitors.

85. Settlement Agreement, *supra* note 81, § IX, at 13-15.

86. At the time of this decree, the defendants were Governor Bob Martinez, Department of HRS Secretary Gregory Coler, Dozier Superintendent Roy McKay, and EYDC Superintendent Samuel Streit.

87. Consent Decree (filed May 8, 1987), *approved by* Final Order Approving Consent Decrees (July 2, 1987) [hereinafter HRS Decree].

quired that the population be reduced to 100 boys "within the [perimeter] fence" at each facility by July 1, 1990.⁸⁸ Further, the decree required that each training school immediately have no more than thirty youths placed in nonsecure transition programs outside the fence.⁸⁹ Because the plaintiffs viewed overcrowding as a primary cause of the chaotic and nonrehabilitative atmosphere of the training schools, population reduction was essential to implementing a safe and therapeutic environment. The decree also specified exclusionary admission criteria for the training schools so that the smaller population would consist only of individuals who exhibit serious and/or chronic delinquent behavior.⁹⁰

To alleviate the inhumane and unsanitary conditions that youths in training schools endured,⁹¹ the decree detailed extensive standards for institutional operations. These standards governed: programming; living conditions and sanitation; medical, dental, psychological, and substance abuse treatment services; staff training; and juvenile rights and discipline.⁹²

The decree also envisioned statewide reformation of the juvenile justice system to accommodate the population reductions and restructuring of the training schools. Population reduction in the most restrictive environment—training schools—was to correspond with an increase in the diversity and quantity of lesser restrictive residential and nonresidential commitment programs around the state. As prior reports indicated, the entire system was inadequate and placements were slot driven—based on the availability of a bed—rather than needs driven—based on the appropriateness of the program for a particular child.⁹³

HRS agreed to establish a system of programs and services designed to meet the needs of the individual juvenile.⁹⁴ The primary goal of the

88. HRS Decree, *supra* note 87, § V, at 6-7. This deadline was extended because of a shortage of cottage beds at Dozier and of placement beds generally throughout the system. Stip. Am. Pop. Reduction Schedule of Consent Decree (filed July 16, 1990), *approved by court* (July 21, 1990).

89. HRS Decree, *supra* note 87, § V, ¶ D. A nonsecure transition program was defined as a residence or cottage where a transitional program is operated under the authority of a training school and in close proximity to it. *Id.* The decree allowed the population in the nonsecure programs to increase in direct proportion to the number of youths below the 100 population cap in the secure program. *Id.*

90. *Id.* § VIII, at 9-10. A waiver system was established for those extraordinary circumstances where HRS determines that a training school placement is warranted for a juvenile within the exclusionary criteria. *Id.* § VIII, at 10.

91. *See supra* notes 28-53.

92. HRS Decree, *supra* note 87, app. B.

93. *See supra* notes 57-69, 73.

94. HRS Decree, *supra* note 87, § VI, at 7-8.

system was to ensure successful reintegration into the juvenile's family and home community.⁹⁵ To accomplish this goal, the decree mandated that HRS develop a continuum of care and services allowing juveniles to develop and to receive appropriate services and support throughout their commitment.⁹⁶

Before the decree, assessment by HRS workers of delinquent youths' needs had been totally inadequate because there was no working system of determining appropriate placements. This failure reinforced the slot-driven nature of the system. Thus, even had there been a full continuum of services and placements available, there was no assurance that youths would be appropriately placed. To rectify this, HRS agreed to develop an assessment, classification, and placement process for delinquent youths.⁹⁷ The assessment would be an individualized, multidisciplinary process identifying the priority needs of each individual for rehabilitation and treatment.⁹⁸ The classification system would assign a relative risk factor to each juvenile based upon an objective evaluation of risk to the child and the community.⁹⁹ The placement process would ensure for each juvenile the most appropriate setting to meet the juvenile's programmatic needs and provide the minimum security while ensuring public safety.¹⁰⁰

Finally, to assist in implementing the decree and ensure compliance, the parties agreed upon Paul DeMuro as the lead monitor.¹⁰¹ Mr.

95. *Id.*

96. *Id.*

97. *Id.* § VII, at 8.

98. *Id.* § VII(1). The regulation drafted as required by the decree provides that where a youth's prior placement history and/or service intervention do not reflect a need for a specialized assessment or treatment, a routine case assessment may be conducted. Dep't of HRS Reg. 175-14 § 4(d) (Jan. 1, 1990). However, where a specialized assessment or treatment is indicated, assessments of a youth's treatment and service needs are to be conducted by trained professionals from such disciplines as education, social services, psychiatry and mental health, medical, developmental disabilities, and vocational rehabilitation. *Id.* § 4(e). See also FLA. STAT. § 39.046 (Supp. 1990) (providing that juvenile court may order assessments and treatment in areas such as education, mental health, substance abuse, or developmental disabilities).

99. HRS Decree, *supra* note 87, § VII(2), at 8.

100. *Id.* § VII(3), at 8.

101. *Id.* § IX(2), at 11. Mr. DeMuro is an expert with considerable experience in operating and reforming juvenile institutions and service delivery systems.

Court monitors can have a variety of roles in systemic reform litigation. For a good discussion on the various roles and their effectiveness, see Roy Reynolds et al., *Court Monitors and Special Masters in Mental Disability Litigation: Variables Affecting Implementation of Decrees*, 12 MENTAL & PHYSICAL DISABILITY L. REP. 322 (1988). See also Murray Levine, *The Role of Special Master in Institutional Reform Litigation: A Case Study*, 8 LAW & POL'Y 275 (1986). On the importance of monitoring in institutional reform cases, see ROTHMAN & ROTHMAN, *supra* note 3, at 314-21.

DeMuro had available a team of experts to help in his technical assistance and monitoring duties. The initial expertise at Mr. DeMuro's disposal covered institutional conditions and programming, psychology, health services, and environmental conditions.¹⁰²

IV. THE LITIGATION'S RESULTS

A. *Implementation Successes and Obstacles*

With considerable technical assistance from the court monitor and his team of experts, significant improvements at the training schools were made in the first two years following the consent decrees. The population reduction was on schedule. Both the staffing levels and quality of medical and psychological care improved. The discipline cottages and restraints were properly used. The use of isolation was eliminated. Serious environmental hazards were corrected. And, importantly, only youths who met the admission criteria were admitted. To be sure, some critical issues remained,¹⁰³ but for the most part HRS was reasonably complying with the aspects of the decree that involved conditions at the training schools. In sum, improvements were extensive and the horrors of the past were eliminated.

One major exception was the failure of HRS to establish on-site legal services. Through two one-year Florida Bar Foundation grants, onsite legal services were provided at EYDC at the time the final decrees were entered. These grants were intended as seed money and not as general, ongoing support. After the grant money was expended, however, HRS refused to supply continuation funds.¹⁰⁴ Plaintiffs' counsel attempted to help HRS by seeking outside foundation fund-

102. HRS Decree, *supra* note 87, § IX(3), at 11.

103. Incomplete medical records were transferred to the training schools upon a youth's admission, consents were not obtained from youths' parents for dental care, the renovation of cottages and preventive maintenance at EYDC were not on schedule, and aftercare and performance agreements were not always sufficient. See Court Monitor DeMuro Report to Court (July 26, 1989). Also, compliance with the educational consent decree has been slow. As of the monitors' June 1991 reports, Dozier was in substantial compliance, but EYDC had some issues to resolve—primarily involving the lack of certification of their special education teachers. See Robert Rutherford & Michael C. Nelson, *Dozier School for Boys/Washington County Schools Program Monitoring Report* (June 17, 1991) (on file with Southern Legal Counsel); Rutherford & Nelson, *EYDC/Washington County Schools Program Monitoring Report* (June 17, 1991) (on file with Southern Legal Counsel).

104. The consent agreement provided that defendants were not required "to provide the *sole costs* associated with providing said representation." Stip. Mot. Resolving Right to Counsel Claim, ¶ 3, at 2 (emphasis added). The defendants, however, offered only to provide inkind assistance, *e.g.*, office space, utilities, phone, and use of copier. The lack of funds meant that no attorneys, travel, or court costs could be paid.

ing, but such efforts yielded only a very small amount—certainly not enough to satisfy the decree. The parties were at a stalemate.

In stark contrast to the improvements at the institutions, HRS' reformation of the juvenile justice service delivery system was nonexistent. HRS failed to meet the June 30, 1988, deadline for designing the multidisciplinary assessment process.¹⁰⁵ According to the monitor's reports, the "assessment" process was a pretense for placing youths in any available slot.¹⁰⁶ Strengths, weaknesses, problems, and needs of individual youths were not adequately addressed at the planning conferences.¹⁰⁷ Thus, informed placement recommendations were impossible.¹⁰⁸ Placements were determined by availability of beds irrespective of either children's needs or public safety concerns.¹⁰⁹ Determination of which youths needed a multidisciplinary staffing was often made by staff with insufficient skills training and inadequate case information.¹¹⁰ Further, key staff did not regularly attend the multidisciplinary staffings.¹¹¹

The monitor also reported that HRS had neither defined an appropriate continuum of care and services nor reexamined its existing programs.¹¹² It thus had failed the decree's mandate to evaluate, plan, and provide an appropriate continuum of care and services in the juvenile justice system.¹¹³ The entire placement system was strained and in crisis. Children were placed in programs far from their home districts, which frustrated any family reintegration attempts.¹¹⁴ Youths with vastly different treatment needs were placed together in the same program, which caused program quality to rapidly deteriorate. And

105. See *infra* notes 122-23.

106. See, e.g., Court Monitor DeMuro Report to Court 3-4 (Apr. 17, 1989).

107. Planning conferences should be meetings between key HRS personnel, the child, parents, and other knowledgeable persons, with the goal of determining what programs and services the child needs.

108. See Court Monitor DeMuro Report to Court, *supra* note 106, at 3-4.

109. *Id.*

110. Court Monitor DeMuro Report to Court 7 (Nov. 3, 1990).

111. *Id.*

112. See, e.g., Court Monitor DeMuro Report to Court 2 (July 26, 1989). After much insistence by the monitor to define a continuum, HRS commissioned the monitor and Dick Rachin to study and propose improvements in the juvenile justice system. Their report was critical of the current system and offered comprehensive resolutions. DICK RACHIN & PAUL DEMURO, JUVENILE JUSTICE REFORM: A PROPOSAL TO IMPROVE JUVENILE JUSTICE SERVICES IN FLORIDA (Apr. 1989). HRS did not adopt the report but instead issued a response to it. Memorandum from Samuel M. Streit, Ass't Sec'y, Dep't of HRS, to Bob Williams, Deputy Sec'y, Dep't of HRS (June 2, 1989) (on file with Dep't of HRS).

113. See HRS Decree, *supra* note 87, § VI, at 7-8.

114. See, e.g., Court Monitor DeMuro Report to Court 5 (Apr. 17, 1989).

an unfortunate side effect was an increase in the number of youths treated as adults in the criminal justice system.¹¹⁵

In December 1989, the federal court convened a status conference to address the major compliance issues. The court approved a stipulation, hammered out after the conference, establishing timetables for HRS to submit various plans for implementation.¹¹⁶ HRS was to submit a plan to meet the environmental and fire safety requirements of renovating cottages at Dozier, a plan for onsite legal services, a multi-disciplinary assessment process, and a continuum plan.¹¹⁷

The cottage renovation issue at Dozier involved double bunking youths until the population was reduced to the final target of 100. This issue arose because the renovation of Dozier's cottages could not be scheduled to coincide with the timing of the population cap dates. Thus, Dozier's cottages were renovated for a bed capacity of 100, necessitating double bunking until the population was reduced to that cap.

Adding to the training school bed crisis was the shortage of new placement beds in the rest of the system—a shortage creating a waiting list for placements in the training schools. To alleviate the bed crunch, the defendants requested an extension of the target date to meet the population cap of 100. The parties agreed to extend the target dates for reaching the cap to March 1991 for EYDC and to December 1990 for Dozier.¹¹⁸

Regarding the onsite legal services, the defendants submitted a plan to plaintiffs' counsel "to aid children confined to training schools

115. See Court Monitor DeMuro Report to Court 3 (Nov. 21, 1991); Court Monitor DeMuro Report to Court 5 (May 30, 1991). One indicator of the escalating reliance on the adult criminal justice system for juveniles is that the number of juveniles admitted to adult county jails increased by more than 61% between 1986 and 1988, from 6502 to 10,475. Compare FLA. CTR. FOR CHILDREN & YOUTH, KEY FACTS ABOUT THE CHILDREN 1 (1988) (available from Fla. Ctr. for Children & Youth, Tallahassee, Fla.) with FLA. CTR. FOR CHILDREN & YOUTH, KEY FACTS ABOUT THE CHILDREN 1 (1990) (available from Fla. Ctr. for Children & Youth, Tallahassee, Fla.).

Another indicator is that the total number of delinquency cases transferred to adult court (including direct files, waivers of juvenile sanctions, and indictments) has escalated. The total number for fiscal year 1986/87 was 3449, but for 1989/90 the number increased to 5792. Gov.'s JUVENILE JUST. & DELINQUENCY PREVENTION ADVISORY COMM. OF HRS, PROFILE OF DELINQUENCY CASES AT VARIOUS STAGES OF THE FLORIDA JUVENILE JUSTICE SYSTEM: 1982-83 THROUGH 1989-90, Ch. VIII, 1st graph (unpaginated) (undated). Further, out of those totals, the number of blacks and other minorities who were transferred during the same period increased from 1574 to 3181. *Id.* at 6th graph.

116. Status Conf. Order Implementing Compliance with Monitors' Findings (Dec. 20, 1989) (corrected version entered Mar. 8, 1990).

117. *Id.*

118. Stip. Am. Pop. Reduction Schedule of Consent Decree (filed July 12, 1990), *approved by court* (July 21, 1990).

with legal representation.”¹¹⁹ The plan primarily relied on a nonlawyer staff person to serve as a legal services coordinator accessing legal services from Public Defenders, Legal Services attorneys, HRS district legal counsel, and others. No provision of onsite legal services was envisioned. After plaintiffs objected to this plan, Monitor DeMuro effected an interim compromise whereby the defendants’ plan would be implemented at Dozier and an attorney would be hired through a grant from the Eckerd Youth Family Alternatives Foundation at EYDC. A monitor was to examine the two methods to determine if the youths were obtaining access to legal representation.¹²⁰

Implementation of the legal plan at EYDC became problematic. Plaintiffs objected to the contract terms between EYDC and the attorney it hired because the contract did not provide sufficient money and prohibited travel by the attorney. After the initial contract expired, the parties negotiated another plan whereby EYDC would replicate the Dozier model.¹²¹ The Legal Services Monitor recently found that both plans were being implemented in reasonable compliance with the consent decree.¹²²

To comply with the status conference order, the multidisciplinary assessment process was completed on paper,¹²³ although it still has yet to be fully implemented.¹²⁴ Finally, regarding the implementation of a continuum of care and services, HRS in early 1990 convened a state-wide task force of various HRS personnel to determine the ideal continuum.¹²⁵ The task force never submitted a final report. Under the pressure of a federal court deadline, and in the absence of any HRS continuum plan that the 1990 Legislature could review, however, the Legislature fashioned its own continuum plan.¹²⁶ In addition, to conform the existing juvenile code to the *Bobby M.* requirements, and to improve the functioning of the juvenile justice system, the Legislature embarked on a wholesale revision of the various statutes affecting delinquency.¹²⁷

119. Stip. Concerning Legal Servs. at the Training Schools, Ex. A (filed Sept. 11, 1990), *approved by court* (Sept. 18, 1990).

120. *Id. passim.*

121. Negotiations continue toward finalizing a new stipulation concerning legal services.

122. Legal Services Monitor Spudeas Report to Court 12 (Nov. 18, 1991).

123. Notice of Filing Comprehensive Case Assessment Policy (Jan. 19, 1990).

124. *See* Court Monitor DeMuro Report to Court 8 (May 30, 1991).

125. Dep’t of HRS, Children, Youth & Family Servs., Juvenile Justice Continuum Task Force Agenda for Meeting (Jan. 30, 1991).

126. Ch. 90-209, 1990 Fla. Laws 920, 1095, 1104 (line items 978A, 1000A).

127. Ch. 90-208, 1990 Fla. Laws 1082.

B. The Juvenile Justice Reform Act of 1990 and Its Aftermath

Around the time that HRS was convening its task force, juvenile justice issues were gaining momentum around the state because of the delinquency system crisis. The Save Our Children Campaign, spearheaded by House Speaker Tom Gustafson,¹²⁸ was underway in the Legislature.¹²⁹ The Juvenile Justice System Review Task Force, created by the 1989 Legislature, submitted its final report in 1990.¹³⁰ The Florida Bar formed a Commission on Children and proposed legislative changes.¹³¹ The statutorily-authorized Crime Prevention and Law Enforcement Study Commission issued its report with a section addressing juvenile offenders.¹³² Justice Fellowship also commissioned a report.¹³³ In addition to the various reports condemning the status quo and calling for restructuring and a significant enhancement of resources, there was a firestorm of support from the editorial boards of the state's major daily newspapers.¹³⁴

Children were a top priority in the 1990 legislative session, with many important initiatives developed to improve the quality of their lives. Because of the *Bobby M.* decree requirements and the widespread concern for the juvenile justice system's management-by-crisis, the Florida Legislature passed the Juvenile Justice Reform Act of

128. Dem., Fort Lauderdale, 1976-1990.

129. See FLA. H.R., SAVE OUR CHILDREN (Univ. S. Fla. 1990).

130. JUVENILE JUSTICE SYSTEM REVIEW TASK FORCE, FINAL REPORT OF FINDINGS AND RECOMMENDATIONS TO THE GOVERNOR, ATTORNEY GENERAL, PRESIDENT OF THE SENATE, AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES (Mar. 1990) (on file with Southern Legal Counsel).

131. THE FLA. BAR COMM'N FOR CHILDREN, 1990 LEGISLATIVE PROPOSALS (Jan. 1990) (available from The Florida Bar, Tallahassee, Fla.).

132. CRIME PREVENTION AND LAW ENFORCEMENT STUDY COMM'N, MASTER PLANNING FOR FLORIDA'S CRIMINAL JUSTICE SYSTEM (Jan. 1990). The Commission was authorized by Ch. 87-243, § 54, 1987 Fla. Laws 215, 291, amended by Ch. 88-381, § 16, 1988 Fla. Laws 1447, 1459, amended by Ch. 89-526, § 49, 1989 Fla. Laws 2657, 2688.

133. H. TED RUBIN, INST. FOR CT. MANAGEMENT OF THE NAT'L CTR. FOR STATE CTS., FLORIDA'S JUVENILE JUSTICE SYSTEM: A TURNING POINT (Feb. 1990) (available from The National Center for State Courts, Denver, Colo.).

134. A sampling of the editorial headlines follows: *Grand Jury Should Investigate Lack of Juvenile-Care Funding*, FLA. TIMES UNION, July 22, 1990; *Dead Aim at Juveniles—Legislature '90*, MIAMI HERALD, May 25, 1990; *Prevention is Better—Help Juveniles Before They Become Career Criminals*, LAKELAND LEDGER, May 17, 1990; *Juvenile Justice Aid So Pressing That It's a Matter of Conscience*, FLA. TIMES UNION, May 15, 1990; *Kids Need More Than Prison—There's Still a Chance to Help Young Offenders*, FT. MYERS NEWS-PRESS, May 14, 1990; *Youth Rehabilitation Can Pay Off by Cutting Down on Adult Criminals*, FT. LAUDERDALE SUN-SENTINEL, May 7, 1990; *Youth Injustice: Right This Wrong—Move That Bill*, TALLAHASSEE DEMOCRAT, May 3, 1990; *Juvenile inJustice—Florida Errs on Priorities*, MIAMI HERALD, Apr. 27, 1990; *State's Children in Trouble Not Getting Juvenile Justice*, PENSACOLA NEWS JOURNAL, Apr. 1, 1990; *Schools for Crime—Revamp Juvenile Justice*, GAINESVILLE SUN, Feb. 8, 1990; *Smaller Programs for Delinquents Would Help Youths, Cost State Less*, FT. LAUDERDALE SUN-SENTINEL, Jan. 23, 1990; *Fixing Juvenile Justice, A System Out of Control*, GAINESVILLE SUN, Nov. 13, 1989.

1990.¹³⁵ The Act was premised on the creation of a variety of small, community-based programs and services.¹³⁶ Some facilities would offer services for special needs offenders, such as treatment for drug and substance abusers, sex offenders, serious habitual offenders, and those in need of mental health services. The programs also would vary in their level of security so that a continuum could be created that was based on the programmatic needs of individual youths as well as their security risk to the public.¹³⁷

The Act also established a case management system whereby case managers would be responsible for a particular youth throughout his or her care with HRS.¹³⁸ Further, nonsecure detention, a new alternative to secure or home detention, was authorized.¹³⁹ The development and use of a risk assessment instrument for intake detention decisions also was mandated.¹⁴⁰ A juvenile civil citation system was authorized to provide an efficient and innovative alternative to HRS custody for children "who commit nonserious delinquent acts and to ensure swift and appropriate consequences."¹⁴¹ The Act also created an independent, ongoing Commission on Juvenile Justice to monitor the Act's implementation and to make recommendations to the Legislature on juvenile justice programmatic and fiscal policies and practices.¹⁴² The Legislature appropriated approximately \$52 million in new funding for these programs,¹⁴³ which would have annualized to \$101 million for fiscal year 1991-1992.¹⁴⁴

HRS immediately began to implement the Act; however, the euphoria of obtaining sufficient resources to design an appropriate continuum soon began to fade. Substantial revenue shortfalls were projected for the State; budget cuts were mandated. In November 1990, \$9.6 million¹⁴⁵ was cut from the juvenile justice reforms. When another

135. Ch. 90-208, 1990 Fla. Laws 1082.

136. See, e.g., *id.*, § 5, at 1034-35 (codified at FLA. STAT. § 39.055 (Supp. 1990)).

137. *Id.* § 2, at 1038.

138. *Id.* at 1120-24 (codified at FLA. STAT. § 39.047 (Supp. 1990)). Case managers are assigned only to those youths who are not released or referred to a diversionary program, community arbitration, or some other agency or program for the purpose of nonofficial or nonjudicial handling. FLA. STAT. § 39.047(1)(a) (Supp. 1990).

139. Ch. 90-208, § 3, 1990 Fla. Laws 1082, 1089-90 (codified at FLA. STAT. § 39.01(16) (Supp. 1990)). Nonsecure detention is a group home-type environment for children who are permitted to be on home detention but who do not have a viable home for release.

140. Ch. 90-208, § 5, 1990 Fla. Laws 1094, 1111-12 (codified at FLA. STAT. § 39.042(3) (Supp. 1990)).

141. *Id.* at 1103-04 (codified at FLA. STAT. § 39.0255 (Supp. 1990)).

142. *Id.* at 1099-1101 (codified at FLA. STAT. § 39.023 (Supp. 1990)).

143. Ch. 90-209, 1990 Fla. Laws 1165, 1340-43, 1349-55 (line items 978A, 1000A).

144. COMM'N JUVENILE JUST., 1991 ANNUAL REP. TO FLA. LEG. 19 (1991).

145. Court Monitor DeMuro Report to Court, at app. 1 (Feb. 18, 1991). The appendix states

shortfall in January 1991 threatened to cut up to \$44 million from the original \$52 million,¹⁴⁶ plaintiffs informed the Governor that they would seek enforcement and contempt if the continuum reforms were dismantled.¹⁴⁷ In response, the defendants agreed to phase in the programs and services over a three-year period to take into account the revenue shortfalls. The 1991 Legislature appropriated \$8 million in "new" juvenile justice revenue,¹⁴⁸ which essentially served to restore a portion of the earlier cuts.

Recent monitoring reports express continuing frustration at the chaotic condition of the juvenile justice system.¹⁴⁹ In fact, the system seems to be worsening. One indicator of its worsening status is that the waiting list for placements throughout the juvenile justice system has grown to more than 1000 youths.¹⁵⁰ The solution, however, involves more than additional resources.¹⁵¹ According to the monitor, many of the current programs have extremely high recidivism rates and other indicators of poor program development and management.¹⁵² Further, in light of a recent Dade Grand Jury report¹⁵³ and a programmatic evaluation conducted by HRS,¹⁵⁴ the problems with the current programs are well known within the system.¹⁵⁵ Better program management throughout the delinquency system remains a serious goal.

that the 1990 appropriation was approximately \$37 million. This amount covers only Specific Appropriation 1000A for Department of HRS Children, Youth & Family Services. The remaining \$15 million was funded in Specific Appropriation 978A for Department of HRS Alcohol, Drug Abuse & Mental Health, which was largely unaffected by the budget cuts. See Court Monitor DeMuro Report to Court, app. 1 (Aug. 9, 1991).

146. Letter from Elaine P. Krupnick, Chair, Comm'n on Juvenile Just., to Colleague (July 10, 1991) (form letter accompanying transmitted results of two commission surveys).

147. Letter from A.J. Hadeed, pls.' counsel, to Gov.-elect Chiles & Lt. Gov.-elect MacKay (Jan. 4, 1991) (on file with Gov. and with Southern Legal Counsel).

148. Ch. 91-193, 1991 Fla. Laws 1622.

149. See Court Monitor DeMuro Reports to Court (Nov. 21, 1991) & (May 30, 1991).

150. Court Monitor DeMuro Report to Court 2-3 (Nov. 21, 1991); Court Monitor DeMuro Report to Court 4 (May 30, 1991).

151. Court Monitor DeMuro Report to Court 2-3 (Nov. 21, 1991); Court Monitor DeMuro Report to Court 7 (May 30, 1991).

152. Court Monitor DeMuro Report to Court 1-2 (Nov. 21, 1991); Court Monitor DeMuro Report to Court 5 (May 30, 1991).

153. The Dade Grand Jury made many negative observations of the programs in Dade County. It referred to community control as a "headless monster doing more harm than good" and stated that the Dade Halfway House "as presently structured, left us with a sense of institutional gloom and ultimate criminal doom." See Court Monitor DeMuro Report to Court 5-6 (May 30, 1991) (quoting Dade Grand Jury Report).

154. DEP'T OF HRS, CHILDREN, YOUTH & FAMILY SERVS., OUTCOME EVALUATION REPORT (Dec. 1990).

155. *Id.* at 5-6.

A July 1991 survey conducted by the Commission on Juvenile Justice confirms that the reforms envisioned by the *Bobby M.* consent decree and subsequently by the 1990 Legislature are far from being realized. The responses from HRS personnel reflect a deep frustration and loss of morale since the funding cutbacks.¹⁵⁶ Regarding the failure to establish a continuum of care, one survey respondent wrote:

The litany of failure continues. Florida continues to place youths in juvenile detention centers in large numbers for long periods without providing meaningful programs or alternatives. Early intervention and prevention are important and potentially successful. However, we are past that point. We have a generation of youth who[m] we have failed to intervene with and redirect. We must have programs at the commitment level to deal with this growing group of repeat offenders. If we are not going to deal with the problem in the juvenile system, lets [sic] admit defeat and treat 16 year olds as adults and quit trying to deceive ourselves and the public.¹⁵⁷

In October 1991, more budget cuts were threatened. However, the Florida Supreme Court ruled that it was an unconstitutional delegation of legislative authority for the Governor to cut the state budget.¹⁵⁸ In response, the Governor called a special session to address the budget shortfalls. No juvenile justice programs were impacted.

V. USES AND LIMITATIONS OF SYSTEMIC REFORM LITIGATION

Bobby M. certainly vastly improved the conditions at the training schools. Today, they are relatively safe, sanitary and rehabilitation-oriented environments. Its impact on reforming the rest of the juvenile justice system, however, cannot yet be determined—efforts are still underway to bring the defendants into compliance with the community programs sections (VI and VII) of the consent decree.

The cumbersome process of federal action changes systems with neither ease nor swiftness, yet federal court orders have the advantage of superseding the broken promises of state officials.¹⁵⁹ Although the

156. COMM'N ON JUVENILE JUST., 1991 STATE-WIDE SURVEY RESULTS: DISTRICT PERSONNEL OF HRS (July 12, 1991) (on file with Comm'n on Juvenile Just., Tallahassee, Fla.).

157. *Id.* at 5.

158. *Chiles v. Children A, B, C, D, E, & F*, 589 So. 2d 260 (Fla. 1991).

159. State and local laws, practices and policies that conflict with federal constitutional, statutory or regulatory requirements are invalid under the supremacy clause of the United States Constitution. *English v. General Elec. Co.*, 110 S. Ct. 2270 (1990) (statutory preemption); *Reynolds v. Sims*, 377 U.S. 533, 584 (1964) (constitutional preemption). See also *Badgley v. Santacrocce*, 800 F.2d 33, 38 (2d Cir. 1986) (federal court consent decree entitled to supremacy overriding conflicting state law or state court order).

full vision of *Bobby M.* is not yet realized, it is possible that, without the consent decrees in place, state officials would ease the current waiting list and budgetary and management crisis by filling the training schools far beyond capacity. In the words of a former training school superintendent, without limitations on the numbers or kinds of children admitted, the schools would become "rubber walls." Overcrowding would lead to deteriorating conditions, potentially leaving the training schools in worse shape than when the suit was initiated.

To accomplish a truly appropriate juvenile justice system, advocacy efforts must continue by all those concerned with the welfare of children. The *Bobby M.* court monitor and team of experts must persevere. The Commission on Juvenile Justice must proceed with its oversight of the implementation of the Juvenile Justice Reform Act. Those involved with the delivery of services must carry on despite high caseloads and a fragmented continuum. The media must continue to make the public aware of the successes and shortfalls of the juvenile justice system. Local initiatives must continue to establish Children's Service Councils.¹⁶⁰ And concerned citizens across the state must persist in legislative lobbying for increased money and better agency management.

Systemic reform litigation is more effective when conducted in tandem with other efforts. Federal judges can hold state officials accountable,¹⁶¹ but it is not the judge who must implement reforms. Only state officials can move the enormous and resistant bureaucracies. If the two forces unite, a court order coupled with vigilance by all concerned may generate the necessary resources and move the system to true reforms.

160. See FLA. STAT. § 125.901 (1989); See also *McDaniels v. Florida*, 583 So. 2d 349, 351 (Fla. 4th DCA 1991) (Glickstein, J., concurring).

161. See Abram Chayes, *The Role of the Judge in Public Law Litigation*, 89 HARV. L. REV. 1281 (1976); Donald L. Horowitz, *Decreeing Organizational Change: Judicial Supervision of Public Institutions*, 1983 DUKE L.J. 1265 (1983); Frank M. Johnson, Jr., *The Role of the Federal Courts in Institutional Litigation*, 32 ALA. L. REV. 271 (1981).

