

**Session 4.07 - Is a Class Action Lawsuit an Effective Mechanism for Change?  
How Do We Evaluate These Efforts?**

**Panelists:**

Howard Davidson  
William L. Grimm  
Jess McDonald  
William Meezan

*Please note: The following is a direct transcription and has not been edited.*

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Howard Davidson: Good morning thank you for coming to the session. I have an announcement to make that as a reminder the audio for the session will be digitally recorded and once formatted for accessibility standards will be made available through the Summit website. In lieu of written consent participants who ask questions or provide comments during the session we will be giving their permission or consent to this recording. And if you have any questions about this recording please feel free to talk with one of the Summit support staff we have David Kelly from HHS here in the front row but I also understand that these sessions are being broadcast live to the HHS regional offices around the country.

So good morning I am Howard Davidson I am the director of the American Bar Association Center on Children and the Law here in Washington, D.C. and so I only needed to walk about six blocks to get here and I know some of you had may have had challenging times to get here particularly if you travel here on the weekend. But I am pleased that you came to the session and I hope you find it very informative. I am going to briefly introduce now the speakers I'll tell you about a little bit about them. To my immediate right is Bill Grimm at the National Center for Youth Law. He has been there since 1988 and he has been lead counsel in a number of class action lawsuits. And before that he ran a Child Law Program at Maryland Legal Aid Bureau which he really build that up into a specialized child advocacy office.

And he has been involved with speaking and training on foster care issues for many years. He has been he has received an award from the National Legal Aid and Defender Association for his work on behalf of low income children and he has received an award from the American Bar Association on for his public service related work. Jess McDonald served as director of the Illinois Department of Children and Family Services from 1994 to 2003 where there was a remarkable turnaround in the performance of the agency and people began to recognize Illinois as a model for Child Welfare System Reform in state-wide systems. He has been recognized by his work has been recognized by the National Foster Parent Association with recognized the agency the Department of Children Family Services a state agency of the year. And he in addition to having been the defendant in a number of class action suits.

We have a very interesting balance on the panel. We have two lawyers who have been involved in the initiation and the monitoring of the class action lawsuits and this

**Session 4.07 - Is a Class Action Lawsuit an Effective Mechanism for Change?  
How Do We Evaluate These Efforts?**

development of settlement agreements in class action lawsuits. In addition to just his work where he was the defendant in a number of class action lawsuits he currently serves on a panel overseeing Child Welfare Reforms in the state of Washington and impacted as a result of a class action lawsuit brought in state court in the state of Washington. And then lastly we have Bill Meezan he is director of policy and research at Children's Rights, Inc which is currently involved in foster care class action litigation in 12 jurisdictions. Prior to this he was Dean of the College of Social Work at Ohio State University. He is a Fulbright Scholar he has authored five books co-edited six volumes published more than 50 articles and book chapters and he has received Society for Social Work and Research Outstanding Research Award and a Child Welfare Article Award and we really feel honored to have these three people here at this session. Now they are not going to be doing separate presentations. They are going to be responding to questions that we have developed here. And we will be going down these questions and you will see them on the screen and there is a microphone in the audience and we really want to as our panelist react to these questions. We invite you to react to these questions. How many people in the audience have some experience either defending a child class action lawsuit being up party in some way to a class action lawsuit or having been impacted by the effect of a class action lawsuit raise your hand you know. Well so there is a number of people in the room who have experience in connection with these suits. I want to bring there may going to be materials available on the valuations Summit website.

One of those a materials is something that we put together in 2005 which we collaborated with the Child Welfare League of America called CWLA Child Welfare Consent Decrees Analysis of Thirty-Five Court Actions from 1995 to 2005 and you can download that and print that out at your convenience. So we are going to start right now with the questions and we'll kind of go across the room and then on question to maybe we will go the other way to give different people a shot at early responses to the questions. So we will start with the first question which was maybe in your response to this first question you can also say a little bit more about your particular involvement with these suits. Given the history of these class action lawsuits why don't agencies with similar problems that have not yet been sued pursue the reforms that could help avoid litigation. So let's start in response to that question Bill Grimm. Please use the mic.

William L. Grimm: Okay. I think. Can we put the question back up?

Howard Davidson: No, I didn't mean to take.

William L. Grimm: Thank you. I would sort of like to address the middle point of it because I'm not sure that it's the fear necessarily of class action litigations that is the problem or the motivation. I think the core of the question is what don't agency with similar problems pursue the reforms that are sort in litigation. And I think that there are multiple reasons for that. I think part of it very much is simply a lack of leadership at the agency. And our office obviously has been involved in not only suing agencies but in discussions around reform with other agencies and unfortunately they were really is a dearth of qualified leaders in these positions. Often times the positions are filled as political appointments often times they are filled by people with not whole lot of

**Session 4.07 - Is a Class Action Lawsuit an Effective Mechanism for Change?  
How Do We Evaluate These Efforts?**

experience in these areas. Often times they are filled with people who really do not know how to change in organization and I think just at some point in the discussion this morning is going to talk about the importance of organizational change. So first I think it is a lack of lead quality leadership in the positions that could drive this kind of reform. I think it also is a lack of support for those agencies from other agencies that are necessary partners in order for those reforms to be achieved. I think most of you who have been involved in working with Child Welfare agencies that we've heard and or believe that for those agencies to succeed and proving outcomes for children. There has to be collaboration and an effective good partnerships with other agencies that are also serving the children in the Child Welfare System and all too often that doesn't happen for a variety of reasons and I think there is a session here for example on data silos well there are also sort of service silos and other obstacles to those agencies coming together. Unless you have an umbrella agency and a leader at the top of the umbrella agency that brings those partners together in a way to achieve reforms affectively it just doesn't happen. I think one of the good things that has happened in Washington as a result of the litigation itself is that we have basically sort of forced agencies that didn't work together in the past to come together under the leadership of secretary Dreyfus. To say these are our children and we have to work together to serve them and their families effectively. When we started out in the Braam discussions there was a belief that there was no way to engage the school districts in the state of Washington with the Child Welfare agencies. And as time as gone on we've shown and the agency has shown that's just not true. There are over a hundred MOUs now between the agency and local school districts in the state of Washington.

There are also was a feeling and a belief that the Medicaid agency and the Child Welfare Agency and the Mental Health Agency and the Child Welfare Agency couldn't share data in a way that would help to drive good outcomes and that has also proven under the leadership of the secretary. And also with a bit of prodding by Jason and his fellow panel members not to be the case in Washington and the Fostering Well-Being aspect of the project in Braam has shown at Medicaid and Mental Health and Child Welfare can work together. So though I could obviously more obstacles I can talk about but those are two that I would put on the list for this morning and then maybe later as Jess and Bill have other comments. We can come back to that.

Howard Davidson: Bill one quick question before you just start. So I am hearing you say that you don't have to have these other agencies be named defendants I mean to get the Mental Health Agency the substance of these agency, the Public Health Agency, the schools involved you just need strong leadership within the Child Welfare Agency to bring those folks together.

William Meezan: Well I'm not sure that's absolutely the case. You have to have strong leadership and then you have to have that leadership involved in the litigation that has control and authority as an umbrella agency over those agencies that I was talking about, but not necessarily all together. I think it's a key but maybe not an essential key.

**Session 4.07 - Is a Class Action Lawsuit an Effective Mechanism for Change?  
How Do We Evaluate These Efforts?**

Howard Davidson: I was particularly struck with you bringing the school your example well again in your schools.

William Meezan: Right. And you're right the schools, schools are not parties to the Braam Litigation but they've been brought on board basically.

Howard Davidson: Great. Okay, Jess.

Jess McDonald: First let me, I have a whole bunch of qualifiers. So I am a recovering Child Welfare Administrator. I've never got no with that party. And I probably and party to more of these pieces of litigation and any other I mean what do we say there are at least a 11 federal lawsuits and now agreement settlements and consent decrees in Illinois which I was part of them and they and I am certain I had a lot to do with the conditions that led to the any of that. So I but then I always believed in revisionist history. So I am I am moving on. I got couple of points on this. One why don't agencies get it I think one most people aren't aware of the nature of the systems problems and frankly not interested in finding out. And I am not joking about that I mean they are not aware of the limitations of frontline staff that they face and trying to achieve desired performance that's as if the strategy for improvement is the biddings will continue till performance improves I mean so a little higher there is some major studies out there that by Walter R McDonald on caseloads. You can't work with more than 12 to 13 child cases in a caseload and do all the things that are required under any set of state and federal rules. I don't know why it is people think caseloads that are twice and three and four times that amount makes sense. Why would you expect to get anything after that after you don't even have a foundation for compliance let alone actual practice?

There is at the top of the organization there is always the political pressures to manage more or less. My own personal experience I ran the Mental Health Department for a while most folks in a governor's office and I guess I don't have to worry about this anymore. So I'll just say don't really care about any other special relationships they have by virtue of running state government. And we'll talk I think a little bit about the 14<sup>th</sup> amendment and what I begin to understand is a special relationship that really boils down to this. This was the hardest argument to make, I inside the agency and outside the agency and governor's offices and elsewhere and I used to work in all those places. Is that if you take a child from a family for reasons of abuse and neglect you are not permitted to actually abuse and neglect that child as you know government acting as parent right.

People don't get that. They actually don't I say we are doing our best. How many times you hear we are doing our best. I used to say it a lot. And I think that you know for me those are kind of the core things that happen but that a lack of knowledge about the system. A total lack of knowledge about what frontline staff are facing and actually getting the work done and often time I think I had to buy an unwillingness to find out. The political pressures to manage more or less which has always been the case in states and local jurisdictions worse now no question but there is they've always had this

**Session 4.07 - Is a Class Action Lawsuit an Effective Mechanism for Change?  
How Do We Evaluate These Efforts?**

problem and not understanding fundamentally and advocating for that special relationship that I think exists between the state and the families that they are involved with.

Howard Davidson: Meezan?

William Meezan: Let me just start by saying we are involved in eight jurisdictions not 12 that must be the...

Howard Davidson: Could you come close to the mic?

William Meezan: Okay. I'm sorry. Let me say first of all the Children's Rights is involved in 8 jurisdictions not 12. Let me just start that record straight. I think there are number of reasons why these kinds of class action suits are why reformed doesn't happen before class action litigation. I think I would agree fully about the lack of leadership and a lack of knowledge of the leaders often both about the Child Welfare System what they are directing and in some ways the purposes of the system and that special relationship. I would also agree that we expect an enormous amount with very little from staff don't train them well don't require them to be trained well etcetera but I think there are a couple of other things as well. There is a cost to reform there is a large monetary cost to reform a system. And there is a competition for those these various gas resources among various departments we've been.

We've been in the state government and so I think that the cost of reform and making the system right and bringing caseloads that and that kind of thing is a huge barrier towards really making reform happy. I think the second thing and I don't know that we recognize this particular well as that reform is extraordinarily difficult. It's just very hard these are very complex precocious that have been doing what they have been for a very long period of time and many places they are diffused particularly in county run systems where the county directors in some ways are stronger than the state department that's being sued or could be sued etcetera. And I think the third thing that's really; really critical is that very often the top administrators don't have the information that they need. The reports that are produced too often by the state information systems are poor if at all available they are not read and if they are read they are often not understood in terms of what they mean and I think those things add to what both Jess and Bill have said.

Howard Davidson: Thanks.

Jess McDonald: Just on the money issue. I just want to make a point that it cost more to run a really bad system then to run a good system. You know if you don't have if you keep staking kids in Substitute Care like court could that's what we did in Illinois. We just bring him in. And there were a whole lot of dynamics related to that. But its gets a point of where you're going to spend your money and if you aren't making good investments don't have a good strategy for, it makes a you know you'll continue to spend more in the wrong way.

**Session 4.07 - Is a Class Action Lawsuit an Effective Mechanism for Change?  
How Do We Evaluate These Efforts?**

William L. Grimm: I just going to echo. I just like to echo I think what Jess said we have had somebody a volunteer working with me for a while. Just to sort of figure out in California county run system basically. How much money has been spent where on what services and what activities and Ned continues to be Stymie by trying to get accurate data about how the money that goes into the system is been spent. And to me that's an area of totally unexplored research basically. We you know the public really doesn't know even the advocates have a hard time figuring out how is money for these services in Child Welfare been parceled out and I think you're right Jess the question is that a badly run system cause more and how much less could a good run system actually spend in a way that would be better spend for Children and Families.

Howard Davidson: Before we move on to the next question. Let me again say that what we would like to do is that you have a question or comment on this response to this question or wish to comment on something that you've heard the panel say we have a mic in the audience just stand up with the mic and you'll be recognized. We don't want to jump we don't want to hold all questions to the end or comments to the end. So if you go for question or comment remain to the question on the screen feel free to come forward stand at the mic and you'll be recognized. Okay we are going to move on to question number two. And that is what alternative actions by Child Welfare Agencies and I might add by state or local government more broadly or generally. What alternative actions might avoid a class action lawsuit entirely and we'll start with Bill Meezan at the other.

William Meezan: I think the most important thing to talk about in this on this question is the fact that so many states every four, five years to a Blue Ribbon Commission Panel whatever about the state of Child Welfare in their state. Point out all the problems and the report sits on a shelf. It makes very good fodder for lawyers who are thinking about suing the system because they are basically machines have faults in the system. I think states that take their own reports very seriously can avoid class action lawsuits in some ways. I believe that states that take initiatives on their own that show those of us who use the very heavy hammer the very heavy hammer of litigation on that this is a place that is trying and is making some progress that's demonstrated and if that's the case I think you are much less likely to go in with a lawsuit if you see a state that is in fact both taking their own reports seriously and making progress on what they say they are going to be making.

Howard Davidson: Jess.

Jess McDonald: All right. There is an expression I think destiny favors the prepared I mean it's, you the minute you're appointed to the position of heading a Child Welfare Agency you got better than a 50-50 chances that get sued. And it isn't a federal action it's going to be a tort actions. And the tort actions actually may cost you more than the other than the federal lawsuit. So I think you just need to, you just need to have an aggressive risk management of strategy. You may not have the best information system in the world but it never gets better if you don't use it. And the easiest way to make these things effective I used to have people complaining all the time that I use the information system to about the flow of their cases and where they were and I would lug around these

**Session 4.07 - Is a Class Action Lawsuit an Effective Mechanism for Change?  
How Do We Evaluate These Efforts?**

reports and we'd have conversations about him and I say well it's not accurate why not because when not all the data saying. So how far we get it and then we'll talk about it next month when I visit and it's really interesting what happens when you start using data in a system. At least it bring some clarity to the relationship between what you see and reports and what actually was going on it doesn't tell you and you think about the nature of the work, but it does, it does start a good conversation. The best way I think to avoid then is you would it would be good if you could get good outcomes. Probably getting the right outcomes for Children and Families would allow you to avoid being sued for not getting.

Now that's easier set and done but there is a little focus on that on outcomes and then building strategies for outcomes would avoid getting litigation that is going to focus on inputs and compliance activities as oppose to the outcomes. It's really hard to structure the outcome orientation to some of these lawsuits. Although I think it's been done more and more. I think Children's Rights has moved in that direction. I think you're going to have to commit your system to the highest practice standards. You know I've personally strongly believe you go for something like your accreditations standards if you use private agency you have a mix of public and private agencies. There ought to be just one set of standards and it ought to be based on its not best practice but it's kind of like little higher floor than the basement. And you know Illinois and Mastered you know going after private agencies and ignoring its own condition which was the fundamental reason we had problems.

You have to always understand the frontline staff and what they have to address to improve outcomes if you're not willing to look at that. You're not going to have some strategies to avoid that you need to be able to address that and then I think you really you're going to had to be transparent with about progress and about the problems of the system faces with the public with advocates and with the governor's office. I know people think you can't talk about these things but frankly if you don't there is someone out there that's going to they are going to do it first. But you're going to have to be willing to put the problems on the table and people don't always like you being the messenger of doom going into the governor's office asking for money or wherever you are going. If you don't do it they are going to be they are going to ask you why didn't you tell us?

William L. Grimm: Looking at this question I was struck by one of the other sessions that's occurring this afternoon it's entitled an overlooked aspect of improving Child Welfare outcomes paying more attention to evaluating and learning about foster parents. Because I think one of the alternative actions by Child Welfare Agencies to avoid lawsuits is to address the problems of those people that are the linchpins in your system. And in large part and in many ways those are the caregivers the foster parents the relative caregivers the perspective adoptive parents. And I can tell you that in virtually every jurisdiction where we have a litigated cases or considering litigating cases or decided not to litigate cases. Foster parents where in large part a driving force for our decision to go ahead with litigation for the information that led us to believe that litigation was necessary. And I continue to be amazed that years and years after federal governments

**Session 4.07 - Is a Class Action Lawsuit an Effective Mechanism for Change?  
How Do We Evaluate These Efforts?**

said foster parents should have notice and an opportunity to be heard how many, many times and how many, many states foster parents still are excluded from the process and not true partners in working with Children and Families. So one of the ways to address problems arising and having to face class action litigation it seems to me is agencies have got to do a better job working with the people that are critical to providing care for the children that are in the system. Another aspect of it I think is and this is in some ways maybe counter intuitive or agencies think counter indicted it's a sharing of information. The agencies talk a lot about transparency with the public but really don't practice it because they fear in some ways probably legitimately that sharing information about how bad things are or where the deficits are its just going to be turned around and used in litigation but I can tell you we are going to get the information anyway eventually. So you might as well fess up early on and engage in a dialogue about those problems and issues and begin to engage in a dialogue about remedies. And I think for the most part you will find those of us who litigate these cases understand at least now I think maybe in the early days we didn't necessarily accept this as a principle of reform but now we accept sort of a principle of reform that for an agency that has many issues and many needs of Children and Families that have to be addressed. There has to be some prioritization of reform and so come the one way of deterring litigation is to come with an idea about here is the list of our problems and here is why we think certain things should be prioritize and here is the reason why those things should be prioritized in the way that we're suggesting. And I think those kinds of things can lead to a dialogue of that if it doesn't prevent litigations at least delays litigation and probably limits the issues that ultimately maybe the subject of the litigation.

Howard Davidson: I am going to take the prerogative before going to the next question to make a personal observation about something that I've been involved in the city of Philadelphia. Philadelphia you know the Pennsylvania's county-administered system. Philadelphia says the largest of the obviously of the Child Welfare Agencies and the state and a number of years ago. There was a horrible child death, child fatality of a medically fragile child in Philadelphia. And there is one response to that death was the major of Philadelphia convened a Blue Ribbon Panel to look at the issues involved in that case and out of the Blue Ribbon Panel which was actually cheered by the former Head of the Children's Bureau Carol Wilson Spigner out of that Blue Ribbon Panel came something called the community oversight board.

The community oversight board exists to this day. So we are talking now four, five years after the Blue Ribbon Panel ended its work and the members are appointed by the major of Philadelphia. It's a broad interdisciplinary group and even though I live far from Philadelphia. I live in Silver Spring, Maryland. I was asked by Carol Wilson Spigner to be part of the panel and so I continue to be on this panel and one interesting thing about the panel is it looks at what are critical issues in terms of short comings problems that the agencies face and the board works in a collaborative way with the agency director who has been her name is Anne Marie Ambrose and she has been very receptive to this input from the expert panel. So It's been a very cordial relationship meetings are open the advocates come in the including those who might have potentially sue the agency they brought in to provide input and I don't understand why more agencies don't use that

**Session 4.07 - Is a Class Action Lawsuit an Effective Mechanism for Change?  
How Do We Evaluate These Efforts?**

approach the multidisciplinary before instead of having class action litigation to bring to pull together community experts and even people from outside the community to advice on a variety of issues. So for example one of the key issues for the community oversight panel community oversight board was making sure that there was indeed a frequency of visits of kids and care. Particularly to make sure that the priority was given to the young to visitation by case workers with the youngest and youngest children in care and to also address kids and congregate care setting of the child fatality review process was analyzed and basically the community oversight board takes these issues and then expects to hear reports at every meeting from the agency and the agency staff and so there is a very interesting accountability mechanism. The community oversight board is now chaired by David Sanders. David had run the Los Angeles Child Welfare System and many of you know has been for years and still he is at Casey Family Program. So it's a approach as an alternative to this litigation. So let's move on to question number three series of sub questions here. One of the concerns about class actions is the financial cost to the state of local government defending the suit payment of attorney's fees or these costs important to consider. How can they be minimize given that money spend on the suits is money potentially taken away from services to Children and Families and what are the other downsides and then you know there are positive lots of positive outcomes from class action lawsuits and Bill Grimm has been doing this work for a long, long time and I don't know if anybody in the room saw a PBS documentary of a good number of years ago involving the class action lawsuit in the State of Arkansas and that lawsuit pitted two powerful people like against each other.

On one side you had Bill Grimm and his lawsuit and on the other side you had the Governor of Arkansas William Jefferson Clinton and the this is before he was president and the documentary I think it was a frontline. The frontline documentary really pitted the battle between Bill and but one of the things that impressed me and again this is before he was president was how he turned the lemons of the lawsuit into lemonade and went to the legislature and got more money for the system. So I don't know if that if there is still a way of looking at that documentary it's probably one of the few documentaries ever done about class action litigation and the impact of class action litigation but I want to mention that because we are now going to get the first response this from Bill and Bill was Bill Grimm not Bill Clinton was the true hero of that documentary. You're on.

William L. Grimm: If I was so much younger person. We are the, that's a lot more energy I think. Well I think this is in some way is the answer to these questions is the answer to the first question and that is that a way to avoid the financial cost of litigation is to avoid litigation all together or to once litigation has been initiated to tried to moves swiftly to try to reduce the cost associated with litigation and the costs are not just a financial costs because under section 1988 as some of you know in federal court the attorney's fees provision of the Civil Rights Act when you're prevailing party the losing party pays the costs which often happens in these cases and in fact as a result of a fairly recent U.S supreme court case the only time the defendant can gain any fees is when you're able to show and prove to the court that the action brought was basically of no

**Session 4.07 - Is a Class Action Lawsuit an Effective Mechanism for Change?  
How Do We Evaluate These Efforts?**

merit totally frivolous. So clearly recovering the costs and fees is favored on the plaintiff side and the Supreme Court is made that very clear in its recent decision.

And I think without a doubt that you can look at the litigation brought in this area and see that it's very unlikely would be a rarity to find that the lawsuits brought are in any way frivolous and that the underlying fact supporting them cannot be proven by the evidence in the case. So but if you can't avoid the litigation all together obviously one way of reducing or minimizing the costs is to engage in discussions early on around settlement around working together to arrive at series of remedies that will reform the system because otherwise the cost of depositions the costs of written discovery is any of you've been involved in this litigation no are not only cost the interims of monetary losses but also cost the interims of the diversion of staff particularly staff who may run your database having to respond to the luminous request for production of documents and then having to explain sort of that data. So I in areas where the costs and our litigation have been minimized they've been minimized because there has been first of all an acknowledgement that there are issues and problems and the children are not being well served and then willingness to engage in discussion around well what can we do and agreed jointly to do in a way that will address and improve those outcomes for kids and families.

Howard Davidson: Jess.

Jess McDonald: If you have noticed there is some themes that developed but that we all agree and I think that there is a need for some real time understanding of how your system works and doesn't work and relative to actually getting outcomes and by real time I made it has to be actually relevant to the work of the frontline not just kind of close enough for government work where 10% to 20% error rates are just fine. But if you want to look at the cost and we've had to explain as to people and the past inside state government is that if you keep putting kids in care they stay generally speaking especially in a system that's unprepared to do reunifications because there is another strategy and people fear I am not going to be the person that's going to be responsible and so on. And you know Illinois spend over 10 years \$1 billion more on kids in foster care than it should have.

And it was the cost of them just staking up in care and then the time and cost it took to actually correct for all of that. So that there is this cost of care but someone has to analyze it and you know there has to be some place in the department where someone is looking at what we are doing right now may not make sense here is the cost of doing it as and that's really important and if you look at some of you're the problems that people try to address with litigation stability issues. Well there is a you know when the conversation its only about stability I think people missed the point that in every time you move a kid they cost more in the subsequent placement. All you cared about was the money and say Jezz can we keep the kid in foster care because you know if this kid keeps moving a lot of things happen that means that he is going to be or she is going to be in a higher level of care down the road of piece.

**Session 4.07 - Is a Class Action Lawsuit an Effective Mechanism for Change?  
How Do We Evaluate These Efforts?**

And do we know anything about this kid except their escalating cost to care for them. And that conversation understanding the dynamics of the movement is really important its probably more important discussion than just an argument about what's your rate of stability how many moves are you having in a year. It's you know it just like if you look at any of you take a look our managed the Psychcare Episodes for kids in foster care. Well you know Child Welfare doesn't usually pay for those. State government does. In Illinois they account for half of the Medicaid cost for Psych Inpatient care and its residential facilities largely using Psychcare or at least it was the case in Nancy I don't know if it's still lives but it becomes their form of respite care and for foster parents it's a disruption that they don't know what else to do with and the agency hasn't show up to alleviate a problem. So on a Friday evening the kids admitted to an emergency room and they immediately transferred to a psych setting. Those things drive the cost of the system that's where your costs are in the failure to practice well. And it is and that practice issue is if starts with not understanding. What is happening in your system and how can you intervene in these systems. Instead of having an argument about you know I'm going to shot the next messenger comes in here and tells me I am not doing this well.

Howard Davidson: Bill.

William L. Grimm: I would like to take issue with the third point that about money potentially being taken away from services for children. That's often thrown at Children's Rights as how can you be doing the work that you do etcetera. One of the things that we know however is that once we are successful in the case more money tends to flow to the jurisdiction than in fact into the Child Welfare System within the jurisdiction then in fact wouldn't have flown flowed to it had the suit not take place. So well there is a cost upfront in terms of huge cost upfront very well fit in terms of fighting the suit and prior to a decision in the suit. Assuming that plaintiffs are successful it often leads to an, a huge influx of money to begin to address at least some of the issues perhaps that a systematically as we would want.

And so often when I walk into a room people will say that to me publicly and then privately say to me but if you pull out I am going to kill you because that means that we are going to get our budgets cuts yearly because we are out from an little lawsuit. And so there is this assumption that the upfront cost take away money from the full costs from Children and Families who are in the system when in fact that money does flow back usually multiple times over I would guess in terms of the cost of running the system later on. Now it's wasteful to run the system deadly and too teed upon the system deadly. It's wasteful for us to be in the jurisdiction for 20 years of me have been in the jurisdiction for 20 years. But it is not wasteful I don't thing to bring more money to bear so that reform can take place. And I think that's what welfare happens within these say in these suits.

Howard Davidson: The combination of the documentary about the class action lawsuit in Arkansas against Bill Clinton is Bill Clinton convening a special session of the legislature specifically to get more money for the Child Welfare Agency to implement the reforms that the lawsuit was all about and again it shows how Bill Clinton rouse above the with

**Session 4.07 - Is a Class Action Lawsuit an Effective Mechanism for Change?  
How Do We Evaluate These Efforts?**

all the negative stuff about the lawsuit to be the hero of getting more money for the Child Welfare Agency at least that's how I remember it. Let's move on to the next question. And this is one that we will start with Jess. Jess actually has suggested this question. No agency director wants to run an agency that's violating the constitutional rights of children, parents. How can we help agency directors better understand there is a special relationship between the agency and the children and its care. And how can we prevent suits that are based on the constitutional violations based on the betrayal of this special relationship between the agency and the children in foster care and let's start with Jess.

Jess McDonald: I really don't know an answer to this one. I guess I mean this is kind of like I have to admit though when I went into at DCFS in '90 I wasn't aware of these settled things like constitutional rights. Then are the, I mean we were we had lots of problems to deal with and that was just you know that's the legal department deal with that. And that I think there is where it usually stays. It after you if you have a really you know then we will from the Roger Baldwin Foundation it's the ACLU in Chicago had an it was just amazing and trying to explain this relationship to us. And he had and he did it mostly by not talking to us who have just ask us questions. Like is it okay for you to beat your kid or beat someone else's kid when you take him from a family or some like actually did it better than that. But there is, there has to be a way and which people who are at the top of these agencies are educated about this issue. You know I am going to you know I remember and I have grown in APHSA and if you ask them about what there is how they would address this I think they would probably tell you that well we want to help state's avoid litigation. But they won't talk about caseloads and they won't talk about some of the conditions. They will talk about work force generally, but they don't want to commit to a public position. I don't want to take them on alone because I think most efficacy groups that represent the public sector side are very careful about saying something that their bosses would not like. And no one wants to say make a statement that is going to result in us having to live up to your statement.

And that's and it's so well and early on and the CFSR process no one was willing to ask the question about caseloads. I don't know if they still do. Do you ask about caseloads in the jurisdictions when you do the CFSR's? Are the caseloads at nationally acceptable standards? I don't think you would do. It is the most fundamental issue in a array of services but we considered at the federal level a array of services doesn't mean people to do the work. So you've got, you've got some unwillingness in government at every level to be honest about the situation. And so you are actually able everywhere to say oh I didn't know that this existed. Now what happens generally is when the first director that settles a lawsuit and we can go we know some of them. They disappear into the night. And in part because they were the ones that had to acknowledge the conditions and we are party to him and everyone else after that and a fitted testosterone outrage is wanting to just dump them and move on to someone that's going to get us out of the consent decree. And more energy is put into getting out of it then complying with it.

Howard Davidson: Bill. Bill Meezan.

**Session 4.07 - Is a Class Action Lawsuit an Effective Mechanism for Change?  
How Do We Evaluate These Efforts?**

William Meezan: I am not sure I have anything more to add to be really honest with you. I am too new to this side of the table with you. To really understand the way in which states react to the notion of the special relationship I just don't know.

Howard Davidson: Bill Grimm.

William L. Grimm: Well this is actually fairly easy for me and the concept of special relationship obviously well established in the law now. I think part of the issue here is that agency perhaps ceases its primary obligation as permanency. Secondly safety or maybe we could reverse the two of those safety first permanency second and very last will be but it is this well being aspect of those three measures that is key to this special relationship legal concept basically. In many ways it's quite bizarre that years before there was sort of legal acknowledgement of this special relationship between the state or the county in a child and foster care. The U.S Supreme Court said in *Estelle v. Gamble* you can't neglect the medical needs of convicted murderers and rapists who are in your state penitentiaries. It took years after *Estelle's* decision for the courts to say affirmatively and resoundingly that you can't take a child in to foster care and neglect their medical or their mental health needs. And still you know now in California KDA case on the mental health needs and the mental health obligation two children in care. It's just recently resolved. Yet that principle was legally established many years ago. It is bizarre in some ways to think that years and years ago in *Youngberg v. Romeo* the U. S Supreme Court said you had to make conditions for the mentally ill and the mentally disabled safe in the institutions and placements where you place them. And still today in some of the circuits although most of them have now decided and lined up. Decided that children in foster care are entitled to those same protections and safety.

The special relationship obligations arises for children when they cross the threshold into foster care when the state assumes an obligation for their care and custody and along with that comes certain obligations affirmative obligations to the child to ensure their health and safety. That goes beyond the issue of way beyond the issue of permanency and in many ways permanency doesn't have doesn't rest upon any constitutional underpinnings but safety and provision of health care and mental health care to children clearly does have constitutional underpinnings. And I think the way to sort of hopefully to get administrators to look at this is to say listen we can't treat prisoners in this way. We can't treat people who are temporarily denied in this way.

We can't treat people who we put in institutions because they are mentally ill or mentally disabled in this way is it so hard to understand that we can't treat children who we take into our custody with the promise of providing better care then you received in your natural parents home and in a relationship that is long constitutionally protected. We can't take you away from those parents and that constitutionally protected relationship without obligating ourselves to do better frankly. Otherwise why did we intervene in the first instance? So I think it's not a fairly difficult lesson to learn but maybe as Jess I think was suggesting by this question when somebody assumes the leadership of one of these organizations they ought to sit down and somebody ought to explain to them. These are fundamental obligations to the children who we take into our care and custody and there

**Session 4.07 - Is a Class Action Lawsuit an Effective Mechanism for Change?  
How Do We Evaluate These Efforts?**

is no way we can get around them and so let's work to ensure that we hold up our and of our obligation to those children who have a special relationship with us.

Howard Davidson: Before we move to the next question I wanted to make another observation how many people in the audience are familiar with the case of DeShaney v. Winnebago County children services. And obviously the panel is this was a U. S Supreme Court case and you've heard about the special legal relationship that exists between the government and the child and government custody. DeShaney case involved a child who was not in foster care but was home living at home with his dad who severely abuse the child was supposed to be under protective supervision by the agency. I just say we are supposed to be regularly visiting the family providing services to the family and there was a suit brought and the Supreme Court held that there was no special relationship there simply the child was not in agency custody and there is fewer and fewer children are placed in foster care and those rates are going down. We need to recognize I think and that's an issue I think ultimately for some of these class action suits how do we should better assure safety permanency and well being for the children who the agency has some responsibility for but who are not in foster care. Who are not in a agency custody because there are going to be many more and actually today many more of those children and the children in foster care and yet the suits really focus because of the special relationship issue really focus on the kids who are in foster care. We are going to move on to the next questions.

Male Speaker: Howard I got a question.

Howard Davidson: You want to I guess absolutely thank you. I didn't see you with the mic. Please identify yourself and identify yourself and then ask your question or comment.

Female Speaker: *[Indiscernible] [0:57:03] [0:59:30]*

Jess McDonald: Howard, Joan I think that getting someone to focus I am going to say someone you don't know who will be the governor, county manager, director to focus on those issues. Issues of what is the frontline staff dealing with isn't going to happen unless they standard that they actually have a legal imperative to if the governor does know to inform the governor that there is this but no one likes these messages. Even operating under the BH consent decree we were going and ask for resources and the budget process and I remember once the deputy governor saying if it's going to be a bad agency let's make it a cheap one. And you know that's there is, there is and then of course you know there is no other we didn't have pork in the Illinois budget you know so there is no other place to find it I am certain. But they don't you know they don't want to hear that their hands are tied but you have to be able to put that on the table.

What I recall so weren't many messages like that I mean you could bring it in internal but there is on the outside until the lawsuit. You don't have those reminders even the union when and asked me it was, it was they are influential. They talk the wage issues, they talk work condition issues but they almost never talk caseload issues. It isn't that they

**Session 4.07 - Is a Class Action Lawsuit an Effective Mechanism for Change?  
How Do We Evaluate These Efforts?**

forget about him it's just that they have, they have a state-wide work force that they're representing and even the Child Welfare pieces of it you know weren't enough to get them to put that on it upfront and I don't know what is like other places but I think they're has to you would almost you almost need to mirandize directors and governors on this issue.

Howard Davidson: Bill Meezan has a reaction you know.

William Meezan: I was thinking. I was really thinking.

Howard Davidson: Okay. Do we have anybody else have a reaction to?

William L. Grimm: I have a, I don't think that in most instances that seeking to punish the individual caseworker is the right, the correct way of handling systemic problems. But I will also say that going into any juvenile court in the country and see the caseworker holding yourself out to the judge as an expert and the judge looking to that caseworker or case manager and believe me that they are an expert. Well from my view point as an advocate along with been considered as an expert comes an obligation to provide service in a way that complies with professional standards and to the extent that an individual doesn't had to hear to their professional standards of conduct. They are to and need to be held accountable. Now if there are reasons why they can't achieve and comply with that professional standard that were laid as Jess has said caseload or lack of training or lack of supervision certainly those are defensives but to say wholesale that those who come into court and make really make decisions because who is making the decisions in most of these cases not the judges it's the caseworkers and what they proffered to the court is in their expert opinion the right thing for this child and family. Then along with that comes an obligation to act professionally. If you want to be treated as a professional and your opinion is considered to be that of a professional along with that comes accountability.

Howard Davidson: Okay we have, we have 25 minutes left and we have a bunch of additional questions. I am going to ask the panel to be concise in the answers to these and not that I don't appreciate the thoroughness in which we've responded to these but the next question and we'll start with Bill Meezan on this one is there a set of fundamental principles to be learned from all of this litigation that could guide Child Welfare reform efforts across the country?

William Meezan: I think there is, we've just done a study on a very small piece of reform at Tennessee and Tennessee actually moved its congregate care numbers from over 20% to less than 9% of kids in congregate care. And we drew a set of lessons that are I think much broader in terms of reform then just reforming the use of congregate care in a state. And so very quickly let me just go through a couple of these. First of all the state has to lead by example you can't expect your private agencies your contracting agencies to do things that the state is are going to be doing. And so Tennessee the first thing Tennessee did was close their own big congregate care institution and place those children. So lead by example is the first. The second is the issue of leadership it was

**Session 4.07 - Is a Class Action Lawsuit an Effective Mechanism for Change?  
How Do We Evaluate These Efforts?**

very clear in Tennessee that leader knew what she was doing knew what the stuff he was a new commissioner and led by example and kept on talking about major issues.

The third is that the state redid its contracting protocols. So that they were now performance based and good performance based contracts are good, bad performance based contracts are pretty horrible but good performance based contracts and lead to the systemic outcomes that you may be looking for. The next thing is that you have to use service technologies compatible with what you wanted the systematic outcomes to look like comprehensive practice models uniform child assessment models those kinds of things where all working from the same set of ideology and the same tools.

Collaboration with local communities and addressing the needs of children and family that was particularly important in terms of recruiting foster parents in order to take very difficult children. The importance of the technology systems has already been talked about but that was critical in Tennessee. External consultants can provide very important guidance to states as they worked through some of these things if you choose the right external consultant and not turn the reform effort over to and the external consultant. And finally this state agency needs to redefine its internal agency partnerships within this state itself. So those are when I think would lead to a comprehensive set of reforms very, very briefly. As I said that's what we drew from the data in Tennessee on congregate care but I think there are much more wide spread.

Howard Davidson: Jess.

Jess McDonald: All right. Remain here a little more general but you get what you're paid for that's number one and related to that if they were your children how would you treat them and you know try and figure out if you can get through the day looking at your work. Now let's going on from the top through the bottom of the organization listen to the concerns of front staff frontline staff have no surprises and don't be surprised by what you see. And that means you got to use your own the information in your system you got to talk to people you've got to look at it you just have that this is you just have to do that. Everyone in every aspect of the organization shares responsibility for outcomes. If the workers having a bad outcome your part of why they are having a bad outcome nine times out of ten or more often they are not. And not everyone that criticizes you is your enemy. There is a tendency not to want to hear anything critical about what you are doing or everything like jeez embrace the pain you just need to. Understand and respect the work remember this is ultimate thing about practice, practice, practice it's the alternative to location, location, location.

But remember the work force makes all the decisions that you're accountable for it. Have you prepared that and you by the way expect and to make perfect decisions every time. So I mean just think about would you let your children adult children work in the system that you're running. And remember that change takes time and that's probably for all the people that are negotiating and expecting around settlement agreements often times they want to say how quickly can we get out. Well if you want to change the culture of an organization you are in it for the long-haul and I will tell you from our

**Session 4.07 - Is a Class Action Lawsuit an Effective Mechanism for Change?  
How Do We Evaluate These Efforts?**

experience in Illinois a good settlement agreement a good consent decree is great catastrophic insurance. And otherwise DCFS would had a huge cuts that and last several years but Mac was Erwin McEwen was able to go into court and you know and he had a settlement agreement of consent decree that protected the agency. You don't over use it it's not the reason you do everything. But it is, it is that insurance policy and the so just understand that you're it takes time to change these systems.

Howard Davidson: Bill.

William L. Grimm: Okay I think these are Bill and what Bill and Jess have said but are somewhat different. I think first of all there has to be flexibility in the way in which the you go about the reforms and by that I mean you have to consistently evaluate is what we are doing are the processes in place that we thought would drive the outcomes in the right direction really working and be willing to engage a midcourse correction and I think in Braam we have all along been looking at ways that things we're working and not working. And we've been willing to say okay that process is not working let's come up with something else to achieve the outcome that we all agree is necessary. So midcourse been willing to engage in midcourse corrections. I think also its key that there has to be as Jess suggested a phased in reform it takes time and acknowledgement of that and then also a willingness to engage in a prioritization of the remedies and processes that drive the outcomes.

I think and I have said this earlier foster parents are key to improvement in the system. If you are not working supporting bringing them along see them as the partners that you say they are and actually practicing that on a day to day basis not much is going to change in many ways. I think there has to be a willingness and a ability to bring all the agency serving children together. So that there is a concerted effort to make sure that you are all working in the same direction and then and I think there is a number of sessions about this a willingness to share information across agencies. We have got to aggressively attack the objections that consistently are made well we can't provide that information because HIPAA prevents it we can't provide that information because FERPA prevents it. We have got to breakdown those barriers to the sharing for the information and work together to make sure that all the agencies that are serving children are sharing key information so that, that can then drive the processes and strategies and remedies that helped to improve things for kids and those are.

Howard Davidson: Great. Thank you. All right. Next question. What should be the role of HHS and the Children's Bureau and helping states achieve the reforms to the subject of so many of these suits and let's start with Jess on this one. What's the role of the federal government here and helping the states on these issues?

Jess McDonald: Well the CFSR I mean it's interesting because everyone does case readings. I think Bill what do you do if thousand in Oklahoma.

William L. Grimm: 500.

**Session 4.07 - Is a Class Action Lawsuit an Effective Mechanism for Change?  
How Do We Evaluate These Efforts?**

Jess McDonald: I am thinking that were a little light on the case readings when it comes to the CFSR. So it's a little hard to make draw conclusions from it but that's all right it's a beginning. But it can also make people think they are actually doing really well when they aren't doing really well. So it can be, it may not really be hopeful. It may only be defensive depending on the measure and where you are at. So the other thing I would like to suggest you do is that there is some really critical issues in the Child Welfare System that HHS, Children's Bureau around this process has in my experience refused to look at and what if it was caseloads. I think it's time to look at the fundamental building block and running a Child Welfare System and then you can talk about all the practice innovation you want to talk about but you got to build on something.

So I think that's there are too many jurisdictions were emit that it always shows up in a remedy. You got to have adequate caseloads and it take a long time to get there. So it would be nice if they would pay attention to that and there is enough good solid research out there that's been done and I know you've probably heard of Walter R. McDonald & Associates, Inc they did a couple of studies on this stuff and it all comes out to I mean where everyone thinks it ought to be. And actually you know I think if you can figure out a way to be more flexible and have waivers were tremendous I mean in Illinois getting that four-year waiver on guardianship save the day. It really those things are really important I think figure out how can you come to the table as a partner with the state and say do you need some flexibility to resolve some of your problems. You may not have that ability to do it the way things are structured but maybe they are look towards having that kind of ability to respond. And TA which I think it would be useful if someone could say all the resource centers out there are I think are very useful but if a states having problems maybe or not wait until they ask for help because they may not know they have a problem.

Howard Davidson: Bill Grimm.

William L. Grimm: I'd reiterate the information sharing and the work to let meet the obstacles that FERPA, HIPAA and host of other statue regulations get in the way of agencies that are serving the same children being able to share information and engage and discussions about how to improve that. I think that and I know people this is being a dead horse here but there has to be some more focus on foster parents. There ought to be a close look at what's happening to the notice and opportunity. We heard provision in the federal statute and there has to be a prioritization of that of greater service and support and focus on foster parents.

I think that there has to be also look at CAPTA and greater attention to the provisions of CAPTA. Simply because it doesn't come with the huge dollars at 4E and 4B bring with them doesn't mean that it should be ignored but basically pretty much CAPTA is bring ignored in terms of its enforcement and one of the huge areas I think in which CAPTA is obligation and obligation that existed since has existed since '74 when it was first in act. The obligation to ensure that children have Guardian Ad Litem heat happening in many places in the country and even where there is a warm body its often times just a warm body. You know example of that is our litigation in California 18 now in the Ninth

**Session 4.07 - Is a Class Action Lawsuit an Effective Mechanism for Change?  
How Do We Evaluate These Efforts?**

Circuit of yeah Sacramento Child Advocates was providing a warm body but they had 400, 500 cases per Guardian Ad Litem. So there historically I mean what do we now 35, 37 years of ignoring the Guardian Ad Litem mandate of CAPTA and very little attention to its enforcement around the country. And congress though you know that the history of CAPTA is the congress is periodically improved and strengthen that provision and I would say to your attention to it as diminished over time at the federal level. So they are really needs to be a commitment to ensure that provision it's been on the books for 30 plus years really means what it says and the children are entitled to independent advocates.

Howard Davidson: Bill Meezan.

William Meezan: I think it's critical that we improved the CFSR system not just in terms of number of cases read but in terms of the measurements that are used. There has been a lot written about that it's impacting the field for sure but I think that needs to be built into the CFSR 3 which was coming when it comes but it's in the works. I think that there is but once that CFSR 3 and once we agree that it is a descent way to do things, I think the federal government has to stick to the idea of absolute rather than relative standards in terms of what it holds the states to I think relativism can be very, very, very dangerous because making a bad system a little less bad doesn't work very well.

I think there is an issue though with for years well that we might need that certainly needs to be addressed I don't know if it can be addressed by HHS and the Children's Bureau but if you recall four-year reimbursement for foster care and if we have waivers from the services are based on 1996 property levels and so fewer and fewer federal dollars are running to the states are through 4E because TANF levels. The TANF levels has not been adjusted in terms of the 4E so penetration rates which should to be an important thing to look at I don't mean anything because there just fewer kids in poverty based on the 1996 the 1996 TANF rates that 4E are based on. And I think there needs to be a change there if the amount of money to more comprehensive reform I don't need just till the foster care system but if you go into waivers etcetera that more money can flow to the states for that to happen and maybe unrealistic in this time but I think we need to tackle it.

Howard Davidson: Thanks. Well that second half of the title for this session has to do with how we, how are we evaluating class action lawsuits and this is of course our National Evaluation Conference. So this question is there are role for either in-house or independent evaluators who can study how to prevent a class actions suit or to examine its outcomes what's the role of an independent or in-house evaluators around there is a lot of people at this conference and maybe in this room might like to play a role and some are doing some evaluation work around these suits or what helps to prevent them. So response let's start with Bill Grimm.

William L. Grimm: Well certainly I think there is a role in independent and internal in-house QA people to examine the outcomes that we're working towards in this litigation. And I think you know we've engaged in a lengthy discussion over time in Braam over

**Session 4.07 - Is a Class Action Lawsuit an Effective Mechanism for Change?  
How Do We Evaluate These Efforts?**

exactly how to do that often times it's been colored by the cost associated with doing an evaluation or getting data that's valuable enough. And so what's happening I think in some jurisdictions is a move to a greater and greater utilization of administrative data basically to measure the outcome. And I think that's a mistake I think we are losing the richness of more qualitative evaluations that are necessary component also looking at how the system is changing and perhaps even more importantly why it's moving in one direction or the other. I think it's critical that the agencies build and improved their internal quality assurance because independent evaluator outside evaluators are not always going to be there and there is not going to be a willingness to fund the cost that are associated with those independent evaluators and if you are going to have an ability to do continuous quality improvement you are going to have to have in a adequate internal shop it's doing this kind of evaluation. So I think obviously there is a role for both in the situation. Howard.

Howard Davidson: Jess.

Jess McDonald: I agree with Bill that having both strong internal and having some external agency that are evaluating and if you will reporting on the progress of the system it's really I think they are both valuable and I think they are both necessary. Nancy Rolock is here from Illinois you know part of the original crew won't you. Nancy at the Child and Family Research Center you know set up in order to make the outcomes of the system more publicly available and that was a major issue public you know almost got nothing out of where the Child Welfare System is going except cases reported in the tribunes on time. And they actually did pretty descent research on the cases. So but we needed to have you needed to have that out in front of people. It helps keep the system honest.

Howard Davidson: I really like the model in Illinois in terms of an independent research center to that has access to the data of the system. I think it's a, it's helpful I know Barbara does a lot of that work in California those kinds of reports are very, very helpful. I think we have to keep our eye however and we don't know much about what change what makes change happen. And therefore process if I wish and just to really it's important as outcome evaluations and knowing how the system has changed or how it's been able to change not just how its changed I think it's very, very important.

William Meezan: Howard I want to last comment I like to add on this point and I think I would also like to suggest an urge that as we are looking at the systems and outcomes and processes that there is got to be a greater focus on talking to the children about what's happening to them in the system. We can't depend upon the old aluminize studies we have got to create new ways of getting to children who are in the system and getting real time information about what's happening to them I mean and we've been so far unsuccessfully trying to get a commitment to serve a question ask kids about safety that's occurring in foster care right now. And been really stymied and its difficult to get anybody to commit to doing that kind of research but we have got to be gaining greater access to those kids and their information about what's happening to them and they were totally neglected population and part in terms of evaluating the outcomes.

**Session 4.07 - Is a Class Action Lawsuit an Effective Mechanism for Change?  
How Do We Evaluate These Efforts?**

Howard Davidson: You know I would add Bill it's not just a kids in the system it's their biological parents the relative caretakers the foster parents. We need to be serving them on a regular basis to get feedback on what's not, what's working and what's not working.

William Meezan: Absolutely, absolutely.

Howard Davidson: I am not we are not doing that which brings us I think to the last question that we have time for and that is and significant and widespread Child Welfare System Reform ever happened in the absence of a class action lawsuit and let's start with the guy from the organization that's brought more class action lawsuits and Child Welfare class action lawsuits than any other organization in the country. So Bill you get the first crack at this.

William L. Grimm: I think that a class action lawsuit is a heavy hammer and it's taken only when we are convince that a system has isn't that shape and it's not likely to improve itself. I think that they are necessary and most if not all the cases but I also think that there are ways for organizations like ours to work with jurisdictions to help them take a look at themselves etcetera. We have you know currently monitoring New York City as many of you know we've had a long we had a long-term suit in New York that was ended. We have a No Sue Agreement with New York City to watch and they are providing us data and that kind of thing. That's not to say that there are No Sue Agreement we'll continue forever but the current administrator or the just former administrator of New York has been very cooperative with the effort but I think under most circumstances yes a class action lawsuit is the heavy hammer that eventually has to be brought.

Howard Davidson: Jess.

Jess McDonald: Ben Wu from the UCLA you said about these things that they don't make hard problems easy but they create pressure for structure for accountability and for enduring change that transcends headlines and political administrations. I haven't agree with them. Bottom line is if just to speak for Illinois not a chance in hell what they've been change or improvement without the lawsuits.

Howard Davidson: And finally Bill.

William L. Grimm: I think that I would add maybe another word to this question significant sustained in wide spread Child Welfare System Reform. I don't think can happen without class action litigation. Legislators change legislators turnover leaders on these issues in one session disappear and the next and nobody sort of rises to the floor to take on those issues of children as Jess just pointed out administrations change leaders change and so if you're looking for a sustained reform or the opportunity perhaps for a sustained reform I think class action litigation is one of the major is a key major driving force for that. I mean how what other things sort of drive reforms in this area. You know think about okay well a child fatalities now do first of all the reforms at child fatalities

**Session 4.07 - Is a Class Action Lawsuit an Effective Mechanism for Change?  
How Do We Evaluate These Efforts?**

drive or maybe stimulate are very temporary and short lived just as the attention that the newspapers focus on them is very short lived.

But, also they sometimes drive reforms in the wrong direction because there is a need to react in some way and there is not very good consideration of whether the reaction is the right reaction and going in the right direction. So if we were depending upon child fatalities and the media to drive reforms it's not going to be sustained and sometimes it may not even be in the right direction. Again getting back to legislative solutions to this. Legislative solutions are almost entirely never wide spread they are very narrow and targeted piecemeal approaches to system reform and legislations not self enforcing. You know we talked earlier about the special relationship and the constitutional underpinnings of that and Howard pointed out how and DeShaney you know there really is no constitutional right to Child Protective Services. Well there are in some states state laws that drive the obligations to children who are the subject of Child Protective Services reports who don't enter foster care and so legislation can address that in some way shay performed, but again its sort of a piecemeal approach to a narrow problem and then that legislation has to be enforced in some way shay performed.

Howard Davidson: Well, thank you, thank you to the panel. Please join me and thank our great panel here.