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Book Review: The Willowbrook Wars. by David J. Rothman and Sheila M. Rothman.

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THE WILLOWBROOK WARS. By David J. Rothman[1] and Sheila M. Rothman.[2] New York: Harper & Row. 1984. Pp. 405. $27.95.

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This book tells the story of the Willowbrook State School, an abysmal state institution for the mentally retarded located in New York City, and of the litigation that forced the state to move many residents from the institution into small community group homes. It recounts the history of one of the most well-known institutional reform cases in the country. The book also provides an account of the implementation of a complex consent decree. It is worth reading by students and teachers of constitutional law alike.

Surprisingly, the book delivers more than it initially seems to promise. Its jacket (although not its cover) contains a subtitle—*A Decade of Struggle for Social Justice*—sure to raise the hackles of any reader concerned about judicial activism. Such a reader would not be assuaged by the authors' descriptions of themselves in the first chapter. For example, David Rothman admits being "more deeply involved in policy questions than most historians."[5] He is on the boards of the New York Civil Liberties Union and the Mental Health Law Project.[6] Similarly, Sheila Rothman acknowledges having "little patience for discovering the reading of a constitutional clause that would convince a federal judge to intervene when the evidence of an institution's inhumanity should spark some sort of ameliorative action."[7] She is "[b]y training . . . a social worker who recognized that a lengthy confinement in a custodial institution was almost always psychologically destructive."[8] In other words, she has a strong bias in favor of deinstitutionalization, one of the most sensitive issues in the Willowbrook controversy.

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5. D. ROTHMAN & S. ROTHMAN, *supra*, at 3.

6. These affiliations arose out of the publication of his 1971 book *The Discovery of the Asylum*, a study of the origins of prisons and mental hospitals. *Id.* at 3-4.

7. *Id.* at 7.

8. *Id.*

One ought not judge this book either by its jacket or by the authors' candid self-descriptions. The Rothmans provide a reasonably careful and generally balanced look at both the Willowbrook story and some of the larger issues in institutional reform litigation. What of the subtitle on the jacket? In one sense, it is probably accurate: the Willowbrook "wars" did range over a decade, and that institution was so shocking that only the most hardened disciple of Felix Frankfurter or Alexander Bickel could cringe at labeling this litigation a "struggle for social justice." In any event, dispassionate or even cynical readers should not allow the subtitle to irritate them, for they can learn much from the Rothmans if they ignore what is probably only Harper & Row's effort to sell more books.

I

In 1972 Willowbrook was a disaster. It was grossly overcrowded with retarded children and adults. Staffing was minimal. Staff pay was so low and working conditions so unpleasant that absenteeism was rampant. The institution was filthy, and hepatitis and shigella were common. Residents moved about naked or in tatters; feces often adorned the walls. Not only were therapy and medical care largely nonexistent, residents commonly suffered injury due to the acts of themselves or others. In short, Willowbrook was a human dumping ground.

The Rothmans attribute these conditions in part to the orientation of the psychiatrists in charge of New York State's Department of Mental Hygiene. According to the authors, these doctors all had a triage mentality about the allocation of their admittedly scarce medical resources. The doctors saw the Willowbrook residents, many of whom were severely or profoundly retarded, as incurables akin "to the senile, the chronic schizophrenic, the brain-damaged alcoholic." These physicians "believed that available funds had to go first to the hopeful—to the curable mentally ill."[9] This result was reinforced, the Rothmans suggest, by their

> deep-seated prejudice against the retarded. . . . [P]sychiatrists had been taught that the failure of their discipline, more particularly the failure of the mental hospital, to deliver on its promise to cure patients was mostly due to the inability to separate the . . . treatable from the nontreatable. . . . For psychiatry to achieve its proper rank in medicine, it had to maintain a rigid distinction between rehabilitation and custody. . . . Put in this context, Willowbrook was the price that had to be paid for advancement elsewhere. Squander resources on its incurables, and psychiatry in general and the treatable patients in particular would never progress.[10]

9. *Id.* at 25.
10. *Id.* at 25-26.

The charge that the retarded were willfully neglected is explosive, but the Rothmans present their indictment credibly, buttressed by citations to lectures, interviews, and writings by, with, and about two of the three named psychiatrists.[11]

A few reform-minded physicians and staff working at Willowbrook, along with some parents of children who resided there, began the effort to improve conditions. Picketing and marches got some media attention but no results. Dissatisfied staff arranged for a raid on the institution by television journalist Geraldo Rivera and a camera crew. In typical fashion, though, after the media exposed and castigated Willowbrook for a while, the story was dropped. Finally, Willowbrook parents, sympathetic professionals, and civil liberties lawyers—including Mental Health Law Project co-founder Bruce Ennis, who would become lead counsel—participated in a "Policy and Action" retreat. All concerned shared "a widespread and well-warranted distrust of going to the New York legislature[,] the body that had neglected Willowbrook for years."[12] The consensus was that a lawsuit was the only practicable remedy.

Even before the complaint was filed, a major issue arose concerning the nature of the relief to be sought for Willowbrook residents. Should the federal court simply be asked to require the state to run a clean, safe and habitable institution? This was the goal of many Willowbrook parents, who could not take their children back home and knew of no acceptable alternative to institutionalization. Others, however, including many professionals in retardation-related fields, had a more radical vision: the retarded had a "right" to live in the least restrictive residential alternative possible. To these reformers, even the severely retarded should be treated like ordinary people to the extent possible. Thus, these persons pushed for "normalization," under which the retarded would be returned to the community to live in small group homes or in foster care that would allow them to experience life in the real world. Based on intuition more than scientific proof, community placement advocates asserted that the retarded could not progress in any large institution; even severely retarded people needed the stimulation of daily life activities, not merely custodial care.

The civil liberties lawyers embraced normalization as compatible with their abiding distrust of large institutions and of the segregation of the powerless. In the end, the lawyers' choice was critical because they were in command of remedial as well as litigation strategy. During the preremedial stages, however, these differences

11. *Id.* at 25-26 (footnote at 381).
12. *Id.* at 59.

of opinion about the proper relief to be sought did not sharply divide the parents from other supporters, in part because everyone agreed *something* had to be done and in part because it was not then clear that such a sharp dichotomy in remedial goals existed among those in the plaintiff camp.

The Rothmans report that the plaintiffs' attorneys purposely filed the complaint along with a motion for emergency relief in federal court late on a Friday afternoon, operating on the myth "that liberal judges work longer and harder, and thus are more likely to be in chambers" at that time.[13] Instead of drawing Judge Jack Weinstein, whom they most desired, however, the case ended up with Judge Orrin Judd, a moderate Nixon appointee. Early in the litigation, plaintiffs' attorneys asserted that their clients had a constitutional "right to treatment" that was being denied at Willowbrook. No doubt some supporters of the litigation—many Willowbrook parents among them—hoped that this doctrine would lead the federal court to turn Willowbrook into a true educational and treatment facility rather than a warehouse for those who came out last in triage. The Rothmans note, however, that "[m]any lawyers, including Ennis, wanted to use the doctrine as a way of emptying mental hospitals; confident that the states would never be able to make the institutions therapeutic, they saw right to treatment as a tool for prying patients loose from horrendous settings."[14] Again it seems that the mixed and somewhat conflicting interests of those involved in the litigation were not fully recognized, much less resolved.

Judge Judd rejected any constitutional right to treatment. He did discover a constitutional right to protection from harm, however, found it violated at Willowbrook, and ordered some immediate improvements. The result pleased no one; the state resented the intrusion, and at least some on the other side of the suit feared that in the long run Judd would only "make Willowbrook into a safer warehouse."[15] The parties trusted their own bargaining skills more than the judge, and after months of negotiations the plaintiffs and the state agreed upon a consent decree.

Among other things, the consent decree created a panel to monitor compliance consisting of seven persons—two chosen by the state, three by the plaintiffs, and two by the panel itself. Through a combination of shrewdness by plaintiffs' counsel and inattention by the state, proponents of deinstitutionalization filled not only the

13. *Id.* at 64-65.
14. *Id.* at 54 n.*.
15. *Id.* at 90.

three spots chosen by the plaintiffs, but also the two positions picked by the panel. Although a variety of disputes arose during the period in which the monitoring panel was in existence, none approached the importance of the question of the degree to which the consent decree obligated the state to place Willowbrook residents in the community. The Rothmans report that although the state and plaintiffs' counsel had agreed on the language of the consent decree concerning deinstitutionalization, they failed to appreciate their differing approaches to this goal. The state, in essence, thought it was obligating itself to the use of group homes to the extent feasible; plaintiffs' counsel, on the other hand, were committed to community placement of every Willowbrook resident and the closing of that institution. In the end, it was the monitoring panel's strong commitment to deinstitutionalization, not the bare language of the consent decree or any contested judicial order, that by 1983 resulted in half of the plaintiff class—2600 persons—being in community placement. (Twelve percent had died, seventeen percent remained in a Willowbrook still objectionable on many grounds but nonetheless improved due to the litigation, and the others were in other institutions.)

The state's efforts to comply with the consent decree and with the monitoring panel's edicts illuminate many of the difficult problems of achieving institutional reform in modern America. According to the Rothmans, a number of capable individuals—many either brought into state government or reassigned for this purpose—performed invaluable service in implementing the consent decree. However, they faced a hostile state bureaucracy that was threatened by the changing conditions. Indeed, bureaucratic reorganization was required—the creation of the Office of Mental Retardation and Developmental Disabilities (OMRDD) separate from the entrenched Department of Mental Hygiene—to free the hands of highly placed officials committed to complying with the consent decree. Some of the Willowbrook staff, fearful of losing their jobs as a result of deinstitutionalization, did what they could to sabotage community placement. But even without unusual bureaucratic fetters the task of implementing community placement was formidable. State officials cajoled nonprofit organizations that had never before cared for the retarded to run foster care programs and group homes. The officials led these groups through the maze of state requirements, helped locate sites for group homes, and did their best to quell community opposition.

The Rothmans assert that, in the end, the deinstitutionalization program was remarkably successful. No group home, once

open, was the object of vandalism or even picketing; the homes offered decent accommodations and services in acceptable neighborhoods; there was no evidence that group homes decreased surrounding property values or otherwise damaged neighborhoods; vigilant monitoring of the homes demonstrated that the wide majority provided services of high quality to their residents. Most important, and perhaps most surprising to the casual observer, is the Rothmans' clear conclusion that the retarded—even those severely afflicted—are functioning much better and learning many more "life skills" in this setting.

Along the way, however, the judicial commitment to institutional reform waivered dramatically. In 1980 the New York legislature refused to continue funding for the monitoring panel. Judge John Bartels, who had taken over the case after the death of Judge Judd, ordered the governor and OMRDD to fund the panel or suffer contempt. The Second Circuit reversed, concluding that, in requesting legislative appropriations for the panel, the governor had fulfilled his duty under the decree to use best efforts "to ensure the full and timely financing of [the] judgment, including, if necessary, *submission* of appropriate budget requests to the legislature."[16] In further litigation, plaintiffs requested a special master[17] to take over the functions of the defunct panel. The state countered with a request to modify the decree to allow it to place Willowbrook residents transitionally in settings larger than the ten to fifteen bed limit originally agreed upon. The district court granted the plaintiffs' request and denied the state's, but again the Second Circuit reversed.[18] The court of appeals upheld the lower court's appointment of a special master, but determined that the state's requested modification should be granted. It stressed that even in the context of the modification of a consent decree, substantial deference must be paid to the professional judgment of state officers.

This judicial reluctance to overrule a state's preference for institutionalization rather than community placement finds support in a prior Supreme Court opinion[19] and is likely to continue in the future.[20] Indeed, in a later decision the Second Circuit has seem-

16. New York State Ass'n for Retarded Children v. Carey, 631 F.2d 162, 163 (2d Cir. 1980) (emphasis added).

17. *See generally* Levine, *The Authority for the Appointment of Remedial Special Masters in Federal Institutional Reform Litigation: The History Reconsidered*, 17 U.C.D. L. REV. 753 (1984).

18. New York State Ass'n for Retarded Children v. Carey, 706 F.2d 956 (2d Cir. 1983), *cert. denied*, 104 S. Ct. 277 (1983).

19. Youngberg v. Romeo, 457 U.S. 307 (1982).

20. The Supreme Court's recent decision in City of Cleburne v. Cleburne Living Center, 105 S. Ct. 3249 (1985), reinforces a limited judicial role in scrutinizing treatment of the insti-

ingly slammed the door on any constitutional right to a least restrictive residential alternative.[21] The court recognized that the institutionalized retarded have certain constitutional rights in the institution—the right to adequate food, shelter, clothing, medical care, safe conditions, freedom from undue bodily restraint, and training sufficient to *preserve* basic self-care skills from deteriorating. The court emphatically rejected, however, "an entitlement to community placement or a 'least restrictive environment' under the federal constitution."[22] Rather, the Constitution is satisfied if "a decision to keep residents [institutionalized] is a rational decision based on professional judgment."[23]

II

Since the germinal article by Professor Chayes in 1976,[24] a host

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tutionalized retarded. In *Cleburne Living Center*, the Court refused to apply some version of heightened equal protection scrutiny to classifications based on mental retardation, despite the fact that the institutionalized retarded share some of the same characteristics as other groups that have received special judicial solicitude under the equal protection clause. This deference to legislative prerogatives concerning the retarded strongly reinforces the 1984 decision of the Second Circuit in *Society for Good Will to Retarded Children v. Cuomo*, see notes 21-23 *infra* and accompanying text, which rejected any constitutional right of the retarded to live in the least restrictive environment.

The Court in *Cleburne Living Center* did, however, invoke the rational basis test to invalidate a municipal ordinance requiring a special use permit for the operation of a group home for the retarded. The Court concluded that "requiring the permit in this case appears to us to rest on an irrational prejudice against the mentally retarded." *Id.* at 3260. This holding seems consistent with the theory that only "public values," not just any reason, must be rationally fostered by legislative classifications. *See id.* at 3261-62 (Stevens, J., concurring); Sunstein, *Naked Preferences and the Constitution*, 84 COLUM. L. REV. 1689 (1984); Sunstein, *Public Values, Private Interests, and the Equal Protection Clause*, 1982 SUP. CT. REV. 127. After *Cleburne Living Center* it is clear that a community's fear of the retarded is not a public value that can justify a classification disadvantaging the retarded. Thus, *Cleburne Living Center* indicates that, although a state legislature might have constitutionally sufficient reasons for not placing the retarded in group homes, if the legislature does decide to embrace a policy of normalization, any steps taken at the municipal level to thwart the implementation of that goal will be vulnerable to constitutional attack. This outcome bears some resemblance to the concept of "structural due process" or "due process of lawmaking," which suggests that judicial scrutiny of a public policy ought to depend in part upon how broadly based and democratically legitimate is the entity that adopted the policy as well as upon how carefully that entity considered the relevant factors. *See, e.g.*, Fullilove v. Klutznick, 448 U.S. 448, 548-54 (1980) (Stevens, J., dissenting); Regents v. Bakke, 438 U.S. 265 (1978); Hampton v. Mow Sun Wong, 426 U.S. 88 (1976); Linde, *Due Process of Lawmaking*, 55 NEB. L. REV. 197 (1976); Sager, *Insular Majorities Unabated*: Warth v. Seldin *and* City of Eastlake v. Forest City Enterprises, Inc., 91 HARV. L. REV. 1373 (1978); Sandalow, *Judicial Protection of Minorities*, 75 MICH. L. REV. 1162 (1977); Tribe, *Structural Due Process*, 10 HARV. C.R.-C.L. L. REV. 269 (1975).

21. Society for Good Will to Retarded Children v. Cuomo, 737 F.2d 1239 (2d Cir. 1984).

22. *Id.* at 1248.

23. *Id.* at 1249. The court cited a number of other decisions in accord with this conclusion. *See id.*

24. Chayes, *The Role of the Judge in Public Law Litigation*, 89 HARV. L. REV. 1281

of scholarly writings has focused on institutional reform litigation.[25] From Chayes onward, most commentators have described this form of public law litigation as raising sensitive issues of the legitimacy of judicial activism. To some, this kind of lawsuit threatens the legislative prerogative of allocating scarce resources among competing concerns and the executive prerogative of administering the law.[26] Others stress the institutional advantages of judicial intervention. For example, Chayes suggests that the parties can adequately present the relevant information upon which a decision must be made and that judges have some structural advantages over the legislature and the executive branch: they are nonbureaucratic and insulated from political pressure; unlike the legislature and executive branch, they are obliged to respond to grievances; they can tailor flexible remedial relief to fit particular problems; and they are "governed by a professional ideal of reflective and dispassionate analysis of the problem [and are] likely to have had some experience in putting this ideal into practice." Yet he also raises some serious practical questions, such as whether the disinterestedness of the judge can be sustained when the judge "is more visibly a part of the political process," whether the unspecialized trial judge can handle the complex issues in such cases, and whether the insensitivity of the legislature or the bureaucracy to a particular problem "represents a political judgment that should be left undisturbed." Moreover, Chayes notes that "although courts may be well situated to balance competing policy interests in the particular case, if as is often true the decree calls for a substantial commitment of resources, the court has little basis for evaluating competing claims on the public purse."[27]

Does *The Willowbrook Wars* inform this debate? In some ways this case was typical of the institutional reform genre. Plaintiffs were suffering grievous harm on account of the state and had no

(1976) [hereinafter cited as Chayes I]. Professor Chayes has updated and revised his views. *See* Chayes, *The Supreme Court, 1981 Term—Foreword: Public Law Litigation and the Burger Court*, 96 HARV. L. REV. 4 (1982).

25. Current bibliography may be found in O. FISS & D. RENDLEMAN, INJUNCTIONS 827-30 (2d ed. 1984); Levine, *supra* note 17; Levine, *Calculating Fees of Special Masters*, 37 HASTINGS L.J. 141, 142 n.5 (1985).

26. *See, e.g.*, Frug, *The Judicial Power of the Purse*, 126 U. PA. L. REV. 715 (1978); Horowitz, *The Judiciary: Umpire or Empire?*, 6 L. & HUM. BEHAV. 129 (1982); Mishkin, *Federal Courts as State Reformers*, 35 WASH. & LEE L. REV. 949 (1978); Nagel, *Separation of Powers and the Scope of Federal Equitable Remedies*, 30 STAN. L. REV. 661 (1978).

27. Chayes I, *supra* note 24, at 1307-09. There have been some attempts to answer these questions empirically. *See, e.g.*, M. REBELL & A. BLOCK, EDUCATIONAL POLICY MAKING AND THE COURTS: AN EMPIRICAL STUDY OF JUDICIAL ACTIVISM (1982). *But see* Levine, Book Review, 34 HASTINGS L.J. 1325 (1983) (questioning some results of M. Rebell & A. Block on methodological grounds).

hope of obtaining legislative relief. Remedial relief was achieved by a consent decree, not through a judicial order imposed upon the parties. As has happened elsewhere, the parties negotiated the consent decree against the backdrop of a judicial finding of liability and the threat of an imposed remedy. Moreover, under the decree the court, through a monitoring panel, had ongoing responsibilities to ensure compliance. More in reaction to the judicial affront to its power than to the scandalous conditions at Willowbrook, the legislature reasserted itself at a later stage. Finally, the appellate court curbed what it took to be some undue judicial activism by the district court. In the end, according to the Rothmans, the litigation benefited a great many people and irreversibly altered public policy in New York.

As exemplified by Willowbrook, the life cycle of institutional reform litigation has very little to do with constitutional theory. Scholarly articles often present constitutional law as a majestic process in which neutral and highly skilled judges discern enduring principles through a combination of deep knowledge of key legal precedent, rigorous philosophical inquiry, historical sensitivity, and appreciation for modern social concerns. What turns the tide in institutional cases, however, is not grand theory but fact—cold, hard human suffering on a level no judge with even minimal sensibilities can abide. As the Realists saw long ago, abhorrence of a wholly unacceptable status quo comes first, and theory comes later, if ever, and only as a peg upon which the court hangs its remedial hat. The preachers of judicial restraint have a strong theoretical point, especially when discussing federal court intrusion into state prerogatives. However, it seems that the federal judge's oath to abide by the Constitution includes, at least for many judges, an implied oath to abide by some minimum level of conscience. So it was with Willowbrook; the Rothmans report that Judge Judd was loath to impose institutional relief until he had seen Willowbrook for himself. One gets a similar impression about the Alabama institutional reform cases not only from a reading of the opinions of Judge Johnson but from a review of his commentary on the subject: the facts spoke loud and clear, and theories were created to justify the remedies imposed.[28]

In the final analysis, institutional reform litigation forces a policymaking partnership, in which the threat and occasional actu-

28. *See* Johnson, *The Role of the Federal Courts in Institutional Litigation*, 32 ALA. L. REV. 271 (1981); Johnson, *The Constitution and the Federal District Judge*, 54 TEX. L. REV. 903 (1976). For examples of cases where poor results may have been achieved because judges refused to pay attention to such facts, see J. NOONAN, PERSONS AND MASKS OF THE LAW (1976).

ality of judicial intervention can prod public officials to address problems that have been neglected. We would not join those who have labeled the judical activism in this setting as unprincipled. Rather, it seems to us that it is more properly seen as nonprincipled: the court's conception of fundamental human values, although often not tied to a fancy constitutional theory, can upset a repulsive status quo and compel public officials to take action. Because reform is frequently the result of consent decrees—to be sure, sometimes the outgrowth of judicial jawboning—the courts often need not even attempt to dress up their value judgments in constitutional garb in a written opinion. In such settings, the courts have left the Land of Neutral Principles and have explicitly become ombudsmen for the least powerful members of society.

Apart from its shaky legitimacy in the eyes of some influential constitutional theorists, what's so wrong about a system that forces society to remedy problems that otherwise would go unaddressed? Perhaps nothing, if we can somehow be certain that the state officials are wearing the black hats and all the plaintiffs wear white hats. Even then, the limited resources available to solve social problems are spent in an ad hoc manner, depending on which group brings which piece of institutional reform litigation. In any event, in modern life things are rarely so clear. Willowbrook provides a classic example: plaintiffs' counsel appeared to be attacking an abominable institution and only asking for humane treatment of its residents; yet their true goal was to close the institution, not to clean it up. The Rothmans, who admit their own preference for deinstitutionalization, concede that the value of this concept was unclear when counsel adopted it as their remedial goal. The Rothmans also recognize that many persons in favor of improving life for Willowbrook residents were opposed to placing the severely retarded in the community. It is no comfort that these disputes about the goals of the litigation were resolved by plaintiffs' counsel, not by relatives or legal guardians of the class members.

The Rothmans are surely correct in stating that these cases "by their very nature have something of a runaway quality about them."[29] Consider these fundamental questions they raise:

> Who has the right to speak for disabled persons, especially when, as in the case of Willowbrook, the vast majority are unable to speak for themselves? The parents—who, until the exposé, suffered from personal and political constraints that rendered them immobile or who had never gone out to visit Willowbrook or their children? The state—which had let the facility degenerate? The legislature—which made budget cuts with impunity? The professionals—who accredited the institution even

29. D. ROTHMAN & S. ROTHMAN, *supra*, at 359.

at its most inhumane?[30]

That the attorneys ended up with this authority largely by default is certainly no reason to believe that their vision of a better world particularly deserved to be presented to the court, especially as the unified position of the class.[31] The Rothmans' ultimate conclusion—that "no mechanisms exist, beyond the court itself, to ensure that the public interest is being served"[32]—is surely as true as it is disturbing. And even in the glow of hindsight, plaintiff counsels' (and the Rothmans') belief that across-the-board deinstitutionalization was in the public interest can be sharply criticized, as it has been for example by Joel Klein, an attorney who frequently represents parents in reform litigation involving the institutionalized retarded.[33]

Even with all of these problems, Willowbrook was in one sense an "easy" case: the facts spoke for themselves and begged for some sort of relief. Many harder cases can be imagined in which a state institution is doing an arguably respectable job, but plaintiffs (or their attorneys) believe it has not embraced the most modern or effective techniques.[34] It is difficult to find any supportable rationale for judicial intervention when reputable and credible experts plausibly defend the institution's policies and practices and the facts do not evoke the deep emotional reaction of a Willowbrook.[35]

III

For both students of constitutional law and of institutional reform litigation, *The Willowbrook Wars* is a useful case study. The book provides a good, hands-on appreciation of what happens when lofty constitutional arguments are applied in the real world in an

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30. *Id.* at 63.

31. *See generally* Garth, *Conflict and Dissent in Class Actions: A Suggested Perspective*, 77 NW. U.L. REV. 492 (1982); Rhode, *Class Conflicts in Class Actions*, 34 STAN. L. REV. 1183 (1982) (discussing the ethical problems facing class counsel).

32. D. ROTHMAN & S. ROTHMAN, *supra*, at 360.

33. Klein's critique is contained in his excellent book review of *The Willowbrook Wars*, which is found in THE NEW REP., Feb. 4, 1985, at 28-32. For a collection of other sources suggesting that community placement is not always the answer, see New York State Ass'n for Retarded Children v. Carey, 706 F.2d at 971 n.19.

34. For example, M. REBELL & A. BLOCK, *supra* note 27, at 147-74, describe an unsuccessful attempt to convince a federal court to find the defendants in violation of the Constitution for failing to adopt a novel educational theory that would have required an extensive bilingual-bicultural program for Chicano school children in a rural Colorado school district. If adopted, this wholly untested theory would have required the defendants to furnish such services as extensive health care, clothing, and legal representation as part of the remedial education program.

35. Moreover, in striving to ensure that the institutionalized are treated as people, courts and reformers alike ought not forget that defendants in such cases are people as well—people who are often well intentioned and who have professional reputations that can be sullied, at least in some circles, by a weak case as well as a strong one.

effort to help disadvantaged persons. The Rothmans do not fully address the many theoretical and empirical issues surrounding institutional reform litigation generally, but they ought not be criticized on that score, because that is not what they set out to do. Besides, it would be hollow to critique them in this way when no scholar in the law or the social sciences has ever satisfactorily accomplished that goal. It is also somewhat beside the point to attack them for expressing a rather clear bias in favor of deinstitutionalization, since rarely can scholarly observers be free from strong opinions when the subject of their inquiry is something as emotionally charged as Willowbrook. We are certainly better off when observers forthrightly present their biases and beliefs along with their findings, rather than attempt to pose as disinterested scholars or experts.[36] So long as readers remain aware of both the authors' objectives and their perspectives, they will find much to be learned in *The Willowbrook Wars*.

36. For one example of a situation where the experts were not so willing to be forthright about their perspectives and biases, see A. LEVINE, LOVE CANAL: SCIENCE, POLITICS AND PEOPLE 133-73 (1982) (describing role of ostensibly disinterested scientists, who actually had undisclosed conflicts of interest, in evaluating whether victims of the Love Canal disaster had suffered impairment to their health).