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INTRODUCTION

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It has been nearly fifteen years since I met with a group from the Pennsylvania Association for Retarded Children at Brandeis University's Florence Heller Graduate School. We met to develop a plan of action intended to alleviate the abuse and neglect rampant in Pennsylvania's state mental retardation institutions and to curb exclusionary practices which denied many thousands of Pennsylvania's children the right to a minimal level of elementary education. Until that time, the Association's efforts to improve the level of state services had included meetings with the Secretary of Welfare, appearances before legislative committees supported by experts of international reputation, and efforts to increase citizen awareness and governmental action through the media. All these efforts to improve the quality of services to persons with disabilities and handicaps had failed. The realization of this failure led those present to an unexpected conclusion: Because the executive and legislative branches of the state government had not succeeded to bring relief to the myraids of wronged Pennsylvanian children and their families, it was time to take the problem to the courts and to invoke the corrective powers of the judiciary.

The ensuing action in federal court, *Pennsylvania Association for Retarded Children v. Pennsylvania*,[1] became a landmark case in the struggle to secure a right to education for children with mental retardation. This case was closely followed by *Mills v. Board of Education of the District of Columbia*[2] which extended this right to include children with all types of disabilities. Both of these cases created the foundation for a series of similar litigation around the country, calling for decisive changes in the education of children with

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1. 343 F. Supp. 279 (E.D. Pa. 1972), *modifying*, 334 F. Supp. 1257 (E.D. Pa. 1971).
2. 348 F. Supp. 866 (D.D.C. 1972).

handicaps.[3]

Contemporaneously, *Wyatt v. Stickney*[4] broke new ground for another series of cases concerned with the right to treatment, and the right to protection from harm and the imposition of peonage in the massive mental retardation institutions which confined children and adults under conditions inferior to and more repressive than those in our prison systems.[5]

These lawsuits have been the subject of considerable controversy and the ensuing court orders have been characterized as unnecessary intrusions by the judiciary, largely ineffectual, and unsound in the day to day practice. I strongly dissent from such negative appraisal of these developments over the past ten years. The legal process exposed, as nothing else could have, the truly incredible record of human abuse and neglect and of governmental irresponsibility and indifference.

One example must suffice: Blatt and Kaplan[6] had provided the nation in 1967 with a pictorial presentation of institutional abuse that subsequently was featured in *Look*,[7] one of the most popular magazines of the time. Senator Robert Kennedy followed this presentation with a strong televised message about the inhuman conditions existing at the Willowbrook institution in New York. But neither the public nor the involved professional associations in the field of psychiatry, psychology, or social welfare felt called upon to

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3. For cases involving the right to education for children with retardation, *see e.g.*, Armstrong v. Kline, 476 F. Supp. 583 (E.D. Pa. 1979), *remanded sub nom.*, Battle v. Pennsylvania, 629 F.2d 269 (3d Cir. 1980), *cert. denied sub nom.*, Scanlon v. Battle, 452 U.S. 968 (1981); Fialkowski v. shapp, 405 F.2d 946 (E.D. Pa. 1975); Harrison v. Michigan, 350 F. Supp. 846 (E.D. Mich. 1972). For cases broadening the right to education to include children with all types of disabilities, *see*, *e.g.*, Board of Educ. v. Rowley, 102 S. Ct. 3034 (1982); Tonya K. v. Chicago Bd. of Educ., 551 F. Supp. 1107 (N.D. Ill. 1982); Davis v. District of Columbia Bd. of Educ., 522 F. Supp. 1102 (D.D.C. 1981); Panitch v. Wisconsin, 371 F. Supp. 955 (E.D. Wis. 1974).

4. 334 F. Supp. 1341, (M.D. ala. 1971), *orders entered*, 344 F. Supp. 373 (M.D. Ala. 1972) (order for mental illness facilities), *aff'd in part, rev'd and remanded in part sub nom.*, Wyatt v. Aderholt, 503 F.2d 1305 (5th Cir. 1974).

5. *See*, *e.g.*, Parham v. J.R. 442 U.S. 584 (1979); Kentucky Ass'n for Retarded Citizens v. Conn, 510 F. Supp. 1233 (W.D. Ky. 1980), *aff'd*, 674 F.2d 582 (6th Cir. 1982), *cert. denied sub nom.*, Bruington v. Conn, 103 S. Ct. 457 (1982); Davis v. Hubbard, 506 F. Supp. 915 (N.D. Ohio 1980); Johnson v. Solomon, 484 F. Supp. 278 (D. Md. 1979); Eckerhart v. Hensley, 475 F. Supp. 908 (W.D. Mo. 1979); Halderman v. Pennhurst State School and Hosp., 446 F. Supp. 1295 (E.D. Pa. 1977), *aff'd*, 612 F.2d 84 (3d Cir. 1979), *rev'd and remanded*, 451 U.S. 1 (1981), *on remand*, 673 F.2d 645 (3d Cir.), *cert. granted*, 102 S. Ct. 2956 (1982).

6. B. BLATT & F. KAPLAN, CHRISTMAS IN PURGATORY (1966).

7. Blatt & Mangel, *Tragedy and Hope of Retarded Children*, LOOK Oct. 31, 1967, at 96.

insist on remedial action. The problem was, as one observer noted, "Eyes that see not, ears that hear not, minds that deny the evidence before them."[8] It remained for the courts to force decisive action.

Yet the questions persist. Is the tremendous expense of public moneys, this gross disruption of ongoing administration and service delivery, and the encroachment of executive decisions and professional judgements really justified by the results obtained? The most compelling answer to this query comes from the countless number of those who, as a result of the courts' action, are finally receiving the education so long denied them and from those who are freed from institutional abuse and neglect. They and their families provide eloquent testimony in favor of continued court action. But there are other notable and essential gains that would result from such action. There is a new recognition of the meaning of individual rights within the field of human services and among the wider public. From a practical viewpoint, the United States Constitution had been for many little more than a vehicle for the experiment of Prohibition and for "taking the Fifth." There was little appreciation of the practical implications of the Bill of Rights as it must underlie human services. The court actions have resulted in a new and most welcome awareness in that respect.

The litigation has also clarified issues that reflected muddled professional thinking, such as making a child's admission to public school contingent upon the child's predicted capacity eventually to "return something tangible or intangible to the state."[9] Finally, the court suits have resulted in a new appreciation of accountability, not only to the system, but to the person served. Inevitably, the results fall short of what is desired. Michael Lottman predicted the enforcement of the judicial decrees would be difficult.[10] Such judicial decrees must face bureaucratic subversion as much as any new public policy, and system maintenance is as characteristic of public school administration as it is of the large, essentially autonomous, state institutions.[11]

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8. Sarason, *The Creation of Settings*, in CHANGING PATTERNS IN RESIDENTIAL SERVICES FOR THE MENTALLY RETARDED 341, 345 (R. Kugel & W. Wolfensberger eds. 1969).

9. *See* Goldberg & Cruickshank, *"The Trainable But Noneducable" Whose Responsibility*, 47 NAT'L EDUC. ASS'N J. 623 (1958).

10. Lottman, *Enforcement of Judicial Decrees: Now Comes the Hard Part*, 1 MENTAL DISABILITIES L. REP. 69 (1976).

11. *See* Dybwad, *Action Implications, U.S.A. Today*, in CHANGING PATTERNS IN RESIDENTIAL SERVICES FOR THE MENTALLY RETARDED 383 (R. Kugel & W. Wolfensberger eds. 1969).

Furthermore, much of the implementation does not rest with the court. If the individual education plan (IEP) presents practical problems, it is up to the profession and the administration to work out a reasonable solution rather than suggesting that judicially imposed safeguards for children with handicaps are beyond the capacity of the public schools. In other words, the difficulties in implementing judicial decrees must be shared by administrators, professional workers, legislators, and last but by no means least, the affected individuals, as well as their families and their advocates to assure the protection of individual rights in a democracy.

To be sure, there has been at times poor judgement, too much rigidity, and undue delay, but overall the past ten years have been very productive and we, the practitioners in the field of human services, owe a debt of gratitude to the courts and the attorneys who have fought valiantly so that others may have a more decent, dignified, and richer life.