

Oral History Transcript

Robert Feldt, J.D.

Lead Attorney in Willowbrook State School Case

This edited/revised transcript is of an audiotape dictated by Robert Feldt in February 2019 documenting his experiences bringing a legal case on behalf of residents of the Willowbrook State School in 1972.

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Robert Feldt Chronology

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| September 30, 1937 | Born in Paris, France, |
| August 1942 | Arrived in New York City with his parents as Jewish refugees from Nazi-occupied France |
| | Raised in Washington Heights, New York City |
| 1956 | Graduated from Bronx High School of Science |
| 1960 | Graduated from Columbia College (New York) |
| 1963 | Graduated from Columbia University School of Law |
| 1964 | Began employment with Legal Aid Society of New York |
| 1968 | Appointed attorney in charge of Staten Island Legal Aid Society Office |
| 1968 | Married Diane Smith (subsequently had three children) |
| 1972 | Attorney presenting case on behalf of Willowbrook State School residents |
| 1973 | Relocated to Great Bend, Kansas and began private practice specializing in immigration and worker's compensation cases. Career included serving as Municipal Court Judge for thirty years |

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This transcript was reviewed by Robert Feldt who added some material not on the original tape. This added material appears here in brackets.

Dictation by Robert Feldt.

Robert Feldt: My name is Robert Feldt and I will talk about my involvement with the Willowbrook class action federal lawsuit, in which I was co-lead counsel with Bruce Ennis, of the New York Civil Liberties Union.

RF: I was born in Paris, France, September 30th, 1937, and came to the United States as an immigrant in August of 1942. I attended Bronx High School of Science. Got my undergraduate degree at Columbia College, and my law degree at Columbia University School of Law in 1963.

I began working for the Legal Aid Society of New York City in 1964, in their downtown office. In 1968, I was appointed Attorney in Charge of the Staten Island Legal Aid office [Bay Street, Staten Island]. There were four other attorneys besides myself in that office. My office handled only civil matters.

When we moved to Staten Island in 1968 [resided at 212 Natick Street, Staten Island], my wife Diane [née Smith; originally from Kansas] began working in the social services department of Willowbrook State School [helping higher functioning residents prepare for placement into the community. I remember that she had problems getting eyeglasses and hearing aids for residents who needed them in order to make it into the community]. Not long after, she was awarded educational leave and the state paid for her master's degree program at New York University. In 1971, she completed

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her master's in social work and returned to Willowbrook to complete a two year commitment she owed the state.

Armed with her social work degree, Diane was eager to bring about some improvement at Willowbrook. But she soon discovered that every attempt she made to help her clients was blocked by the doctors and the administrators. Diane came home after work moody, angry, even tearful. I didn't know what the problem was. This went on for a while, and finally I demanded to know what was eating at her. Diane slowly began to tell me about her frustrations working in the social services office, where she couldn't get anything done to help the residents, where the administration opposed her every effort to help the residents, where the general atmosphere was hopelessness and discouragement.

For example, Diane was working with the higher-functioning residents. One of her patients was deaf, but not severely retarded. He could have been eligible for community placement if he could have scored higher on a test given to patients with normal hearing, but because he didn't have a hearing aid—because the administration refused to get him a hearing aid, although state law required that he be provided one—he could not pass the test. Consequently, he could not get out of Willowbrook.

Some of the higher-functioning residents worked on the grounds or served in the homes of the doctors, who lived in comfortable homes on the grounds, provided by the state. Diane's attempts to get one teenage girl released into community placement was opposed by the chief physician who had the girl working in his home for several years and didn't want to let her go. Diane became infected with a feeling of cynicism and pessimism about doing anything to change the conditions in the place. The power of the director and the medical staff was so great that nothing could be done.

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After listening to her, I said I was, after all, in charge of the legal aid office that had the resources that could do something about the problems she was having with her patients. If state law said that a resident with a need for a hearing aid should be provided one at state expense, the court could enforce that right. I asked her to let me come and speak to the social services staff.

I was invited to come and speak to the staff at Willowbrook. The reaction to me was one of surprise and skepticism. They did not believe that the courts would get involved, or that the administration could be opposed. Many of the workers were afraid that if they fought the director, Dr. Hammond, they would be fired.

One of the social workers, Elizabeth Lee, and a doctor, Mike Wilkins, had been trying to organize the parents of the worst wards, and they asked me to meet with the parents. That was when I began to learn of the nightmare that was Willowbrook. I listened to the parents, and heard them tell me of the injuries they found on their children's bodies when they came to visit. I heard one ghastly story after another. Parents complained about bruises and bitemarks on their children's bodies, which they saw when they came to visit.

Then I began to spend some time with the two doctors at Willowbrook who were actually trying to do something positive about the terrible conditions, who were attempting to get the parents to meet and demonstrate against what was going on. From Doctor Wilkins and Doctor Bronston, I learned that what I had initially been concerned with was just scratching the surface. The real shame lay hidden in the back wards of the institution. Doctor Bronston, ignoring the rules which prohibited me from walking through the wards, took me on a tour through some of the worst

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buildings at Willowbrook. One of the worst things I witnessed when I first was taken into the back wards, was a young, woman patient, who was in isolation and was totally naked. She had been in isolation for several years, and she had had all of her teeth extracted because she was a “biter.” I was thoroughly shaken when I got home. I could not come up with any profound legal concept with which to address what I had seen, but I knew in my heart and soul that the patients had a right not to be treated like shit.

I went into Manhattan and spoke to Ed Carr, the head of the New York Legal Aid Society. I described for him what I had seen in the back wards at Willowbrook. After I was finished telling him about the conditions at Willowbrook, Ed Carr told me that I could go ahead and bring suit against Willowbrook. He assigned an attorney from the appeals branch of the Legal Aid Society to work with me. I understood that my first task was to gain the support of the parents, or relations, and find parents willing to serve as plaintiffs.

I had heard of Bruce Ennis—an attorney who had significant experience in mental health litigation—and we got in touch with each other, and agreed to cooperate in a legal assault on Willowbrook. Bruce was associated with the New York Civil Liberties Union at the time. We agreed that we would prepare a separate lawsuit and then join them together when we got ready to file the cases in federal court. Since Ennis had prepared the legal reasoning for the case—strike that—Since Ennis had recently been successful in attacking the conditions in two mental hospitals in Alabama, he prepared the legal reasoning for our case, and I developed the factual conditions.

The first battle in the Willowbrook war was not fought in the courts, it was fought instead in the media. One of the two doctors that was trying to

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organize the parents, Mike Wilkins, was fired by Doctor Hammond, the director. Wilkins contacted the young lawyer he had worked with in the past. They had helped a New York City clinic set up by a Puerto Rican gang to treat children who had contracted lead poisoning. Wilkins had provided medical help and his friend had provided legal assistance. The young lawyer had since become a TV reporter with ABC Network. His name was Geraldo Rivera, and he was contacted about doing a story about a doctor who was fired for trying to organize parents to protest against inhumane conditions.

Wilkins telephoned his friend Rivera and gave him some of the details—Wilkins told him that he had the keys to several buildings and that Rivera should bring a camera crew to film the conditions.

“Film the conditions. What conditions?,” asked Rivera. “In my building,” Wilkins said, “there are 60 retarded kids with only one attendant to take care of them. Most are naked and they lie in their own shit.”

That image galvanized Rivera who put together a crew in a hurry and immediately drove to Staten Island to meet with Wilkins. They got through a main gate and without challenge made their way to Building Six.

With cameras rolling, Wilkins unlocked an outer door and then a heavy metal inner door. Several—Rivera entered, breathing the foul air, hearing wailing noises, and seeing distorted forms, momentarily lost his bearings. “My god, they’re children!” he said. To which Wilkins responded, “Welcome to Willowbrook.”

This is taken from the *Willowbrook Wars*, by David Rothman and Sheila M. Rothman.

Within 24 hours of Rivera’s telecast, ABC received 700 telephone calls expressing outrage at Willowbrook. Newspapers followed with editorials attacking this tragedy and disgrace. Although the media attention

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focused awareness briefly on the horrible conditions at Willowbrook, nothing essentially changed.

For me, the most difficult problem was persuading the parent organizations to support the lawsuit. We were going to bring a class action lawsuit against the State Department of Mental Hygiene and the Governor of the State of New York—and that's a Rockefeller [Nelson D. Rockefeller]. Individual parents were willing to give affidavits regarding the harm suffered by their children in the institution, but the parents as a group were fearful of attacking the Willowbrook administration. They had little confidence in the legal system, and they didn't believe that a judge could change the terrible conditions.

In addition to preparing affidavits, for the parents who had children at Willowbrook, I attended a number of meetings of the parents' organization, The Benevolent Society. The Benevolent Society was the official parent organization, however, it was—before this thing formed an advocacy group, what it did was put on social functions. It sponsored picnics at which the director of Willowbrook, Doctor Hammond, was the featured speaker. It also raised money to pay for more parties and outings. It saw its role as defending the status quo—or as some have said, following the policy of the director and the medical staff.

One of the biggest problems I ran into was that parents were terrified that their retarded children would be sent home if they opposed the administration. The administration had sent a letter to the parents, telling them that they had the right to take their children home with them if they were unhappy with the conditions at Willowbrook. Parents were told by doctors who saw their retarded children that they should not concern

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themselves with the conditions at Willowbrook and should forget about them. They were told to be thankful that Willowbrook was willing to take care of their children—take them off their hands—and should concentrate on their children at home. For all these reasons, the parent organization turned out to be an obstacle to change and initially an opponent to legal action.

One thing that needs to be kept in mind in this story is that the children and adults who were in Willowbrook were voluntary placements. So, their legal status was different from that of an involuntary commitment to the institution. And I have already said, Bruce Ennis had considerable experience working with patients' rights. Bruce knew much more about mental retardation than I did, and he was familiar with a number of experts in the field of mental retardation. He and his staff developed a theory that the residents at Willowbrook State School were entitled to rehabilitative services in order to allow the residents to develop their potential to the fullest. I did not disagree with Ennis's theory, however my staff and I focused primarily on the brutal and horrible conditions that the residents lived under, and argued that the state had an obligation to protect the residents from harm. That involved—that would involve hiring more staff and more nurses.

On March 17, 1972, we were ready to file our lawsuit. The New York Civil Liberties Union case was also ready and we filed both at the same time in federal district court with the Eastern District of New York. Both cases were consolidated and the cases went forward as a class action lawsuit on behalf of all of the residents of Willowbrook. The judge assigned to the case was Orrin Judd. One would expect that this case would have smooth sailing and result in a swift decision, but it wasn't that way at all. Between the filing of the complaint in March of 1972 and Judge Judd's decision on

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preliminary relief, more than a year elapsed. Another 14 months went by before the trial on permanent relief was held December 19, 1974, It took another four months to negotiate a final settlement. All together it took three years from the initial filing of the case to the final consent judgement, April 30, 1975. The attorney general of New York State opposed us every step of the way. Their strategy was to delay the case as much as possible and dissuade the judge from attempting to exercise any oversight on Willowbrook.

Judge Judd was a very decent human being, but he was also a very cautious and conservative judge. Judge Judd conducted several conferences in his chambers and on more than one occasion he expressed a strong reluctance to take over the operation of an institution as large as Willowbrook. This was, after all, a time when some federal judges were taking over school districts because of problems of segregation, and Judge Judd clearly had no desire to run a state institution for the mentally retarded.

A number of experts, doctors, and teachers from around the country were brought to Staten Island. I took them through the grounds and wards, and prepared affidavits from the notes that they prepared. A five-day hearing was held in federal district court. Parents, doctors, and experts testified on the horrors in Willowbrook, and the missed opportunities for treatment of the residents.

Judge Judd, however, remained unconvinced that the Constitution required that a federal judge step in and take over. It was not that he didn't sympathize with the plaintiffs, he just didn't know what he could do about such an entrenched situation—a situation that would require a great deal of money to correct. The outlook did not look good for the plaintiffs.

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Finally, acting at our suggestion, that he make a personal inspection of the place, Judge Judd decided that he would personally visit Willowbrook State School. Only one attorney per side was allowed to accompany the Judge on the inspection tour. I and NYS Assistant Attorney General Brenda Soloff, were chosen and we met the Judge at the director's office. Since the staff of Willowbrook had been forewarned about the Judge's visit, they made sure the buildings looked as good as possible.

Nevertheless, they couldn't hide the plain inadequacies of staff shortages, toilets that didn't flush, and residents that lacked supervision in several buildings. The smell of urine was much improved. In one ward the Judge counted the chairs, counted the residents, and asked why there were fewer chairs than residents. He was told that one of the residents, Carmen, destroyed beds and chairs, and was strong enough to pull nails out of the wall, barehanded. One woman resident suddenly assaulted the Judge by spitting on him and grabbing and shaking him.

We were almost at the end of the tour, it was afternoon—it was late afternoon and I was getting discouraged. Even though the Judge had seen many of the deficiencies we talked about in the courtroom, he still had not seen the real horror that was Willowbrook. The tour guided by Assistant Attorney General Brenda Soloff and Willowbrook administrators were keeping him away from the worst wards. It was late and I suggested to the Judge that he ought to visit Building Seven—which I knew to be a hell hole, but was not on the Judge's itinerary. The Judge said that he would not visit that building because there had been no testimony about it at the preliminary hearing. We went on to visit the children's ward. And, when we were finished with that visit, the Judge had announced that he would visit Building Seven after all. My heart jumped with joy.

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I led Judge Judd to Building Seven, where—it is difficult to convey with words the horror we saw upon entering the building. First, the smell. It was so overpowering that one had to put a handkerchief up to one's nose to keep from feeling sick. Patients were roaming around either naked or half-naked. There was literally shit hanging from the ceiling, and there was shit on the floor. Residents were roaming around aimlessly, making awful moaning sounds. There were very few staff members on hand. They appeared surprised at our unannounced visit. Entering Building Seven was like descending into one of the pits of hell.

Judge Judd was visibly shaken by what he saw. I was told that when we left, Judge Judd told some of the staff that he was going to do something about the conditions at Willowbrook. I believe that getting Judge Judd to visit Building Seven at the end of our tour was the decisive factor that persuaded the Judge that he could not ignore the inhumane conditions at the institution, and was determined to bring about change in the situation.

The preliminary injunction Judge Judd issued addressed the most urgent needs of the residents. He ordered the hiring of more nurses, of more staff, and in general, directed that conditions be improved so that the residents would no longer be injured and harmed. Judge Judd did not adopt the legal theory of Bruce Ennis and the New York Civil Liberties Union. Did not go so far as to order rehabilitative—or, abilitative programs for the residents. I have always thought that my theory about the case—namely that the residents had a right not to be treated like animals or shit—was ultimately the theory that was advanced by the federal district judge.

One very surprising development that took place after the preliminary injunction was that the federal government joined the lawsuit and the assistant attorney general from Washington participated to some extent.

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After the preliminary injunction was issued by the court, I was assigned the task to monitor the compliance by the State, and I regularly visited the many resident buildings—to count the residents and staff, and to check how many toilets flushed. It was a big relief when the FBI took over that chore.

During all that time I ran the Legal Aid Office on Staten Island I developed a wonderful relationship with the *Staten Island Advance*. I never had any trouble getting a story in the paper about the services we were providing to the residents of the island. And, when we got involved within Willowbrook, the newspaper played an important role in exposing the horrible conditions there. The attack on Willowbrook was not at all popular. Willowbrook was one of the largest employers on the island. Many people worked there and they did not like having their jobs threatened. I think the *Staten Island Advance* was courageous in following the story, and helped to make the community aware of the need for change.

Toward the end, 1973, my family and I left Staten Island and moved out west to a little town called Great Bend, Kansas—called Great Bend in Kansas—where I began to practice law. The Willowbrook never left me completely because in my law practice in Kansas, my involvement with the rights of the developmentally disabled followed me. And, for a number of years I represented the parents of developmentally disabled children under the federal law that provided that children were entitled to an appropriate educational program in the least restrictive setting.

When I returned to what was Willowbrook in the year 2000, I was overjoyed to see that the institution had disappeared and was replaced with a beautiful college. My goal in attacking the conditions at Willowbrook from the very beginning was to close down the institution, to close down the state school. I feel great satisfaction and joy that I contributed with my efforts to

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bring about the closing of Willowbrook State School, and—and make it possible for the college to take its place. [End of Recording]