

## 2 Suits Call for Eventual Phase-Out of Willowbrook

By LESLEY OELSNER

A broad legal attack on the Willowbrook State School for the mentally retarded — calling for the eventual phasing out of Willowbrook and the establishment of a constitutional right to treatment for the retarded — was started in Federal Court in Brooklyn yesterday.

In two separate class actions on behalf of the school's 5,000 patients, one brought by the New York Civil Liberties Union and the other by the Legal Aid Society, the Staten Island school was described as a "human warehouse" marked by monumental filth and totally in adequate staffing.

The suits charged an "inhumane and psychologically destructive" environment, where two to three patients died each week, often from choking on food; where patients were put in solitary confinement, often for more than a year and sometimes for five years; where children wore clothes soaked in urine, or no clothes at all.

### 11 Defendants Named

These and other conditions, the suits said, violated a host of civil rights, including the constitutional rights to due process, privacy and equal protection of the law. They constitute cruel and unusual punishment as well, the suits said, and for some patients—those who are forced to work there—they also constitute involuntary servitude, or slavery.

The suits named 11 state officials as defendants, ranging from Governor Rockefeller to Dr. Allan D. Miller, Commissioner of the state's Department of Mental Hygiene, and Dr. Jack Hammond, director of Willowbrook.

The complaints charged them with being aware of the conditions at Willowbrook and allowing them to continue, saying, as the Legal Aid papers, put it, "at all times relevant herein, defendants, and each of them, knew of and had the

power and authority to prevent or aid in preventing the wrongs conspired to be done and alleged herein, but neglected or refused to do so."

Both suits asked the court to declare the conditions complained of as unconstitutional and to enjoin the defendants from allowing the conditions to continue.

### Hearings Requested

They also asked the court to hold hearings to determine the "constitutionally minimum standards" for what they called "habilitation," the psychological, medical and educational treatment needed to help retarded people develop to their potential. They asked the court to announce these standards and to require the state to meet them at Willowbrook.

Beyond that they asked the court to enjoin the defendants from spending any more money on the construction of schools such as Willowbrook until there were sufficient small, community-based facilities.

The Legal Aid Society also asked the court to approve a plan for the development of such community facilities, and for the "eventual phasing out altogether" of Willowbrook.

While the New York Civil Liberties Union did not go so far in its papers, one of its lawyers in the case, Bruce J. Ennis, said that the union's suit, in effect, asked the same thing. Willowbrook could not possibly meet the standards, he said, and thus would have to be shut down.

### Study Is Ordered

Yesterday afternoon, Dr. Hammond said that the State Attorney General's office had advised him not to comment on the suit. The Governor, for his part, ordered the Development Disabilities Advisory Council—appointed last November—to give "top priority" to an examination of conditions at Willowbrook.

The two suits offered a number of different legal theories on which the court could base a decision ordering an end to the present conditions at Willowbrook.

They suggested, for example,

that the solitary confinement of some patients was cruel and unusual punishment, that the lack of adequate education facilities for the children at Willowbrook was a denial of equal protection, in that children elsewhere who are not retarded do get proper education, and that the placement of retarded people in Willowbrook, with the resultant deprivation of liberty and even safety, was a violation of due process.

At the heart of the suits was the contention that the Constitution provided a "right to habilitation," or adequate treatment, for the mentally retarded.

There is, as the lawyers involved concede, little precedent for such an argument. The courts only now are beginning

to recognize the right to treatment for the mentally ill—an easier question, because the mentally ill are generally confined involuntarily, while only some of the confinements of retarded people are technically involuntary. And so far, no court has officially held that the retarded have such a right.

But the lawyers in the case say that there is some indication that the right in question will be recognized. A Federal district judge in Alabama, in a case in which the Civil Liberties Union was involved, recently set forth a list of "minimum standards" for a state school for the retarded and required the state to comply with them. In so doing, Mr. Ennis said, the judge indicated he was relying on constitutional grounds.