

Judge delays on Willowbrook cruelty suit

By DAN DOLGIN

Family Court Judge Ralph Cory reserved decision yesterday on a suit by the Richmond County Society for the Prevention of Cruelty to Children against the New York State and the Mental Hygiene Department over conditions at Willowbrook State School.

Former Willowbrook director Dr. Jack Hammond returned to Staten Island to act as state witness. He was questioned by State Assistant Attorney General William Ryan.

Ryan, after the court appearance, said "We all agree something has to be done about the situation at Willowbrook. But we have to consider the source of finances."

Ryan said he objected to the society's argument calling for the Family Court to take responsibility for child neglect at Willowbrook.

"First, we feel the Family Court does not have jurisdiction over the state or the Department of Mental Hygiene," he said. "Second the parties named in this action are not the proper parties for the circumstance, and third we feel the complaint should have been made to the Department of Mental Health before it was brought to court."

Cory said last night that his written decision will not be available for at least two weeks.

Ira Raab, a society attorney, claimed the court argument was a very rare case, deep and heavy with legal principles." He said that state attorneys appealed to an old ruling of British common law which protects the state from being sued for anything in which it has involved immunity.

Raab maintained that the state had indeed waived immunity on the issue of protecting children, when it established the Family Court.

The debate follows by less than a week a decision by Brooklyn Federal Court judge enjoining the state to "prevent irreparable harm to patients and deterioration" at Willowbrook.

The decision by Justice Orrin Judd specified nine areas of child care the state would be required to review and perhaps correct at the 5,200-patient home for the mentally retarded.

The Federal Court acts over a separate jurisdiction from the Family Court, which is under the jurisdiction of New York.

Therefore, the Family Court decision need not be guided by the Federal Court ruling.

In writing his decision, Cory has the alternative to determine whether or not the Family Court does have jurisdiction over the welfare of institutionalized children.

If he decides his court does not have jurisdiction, as the state attorneys claim, the case will end there, unless the society appeals.

Raab indicated he would definitely appeal.

If Cory feels his court does have jurisdiction he can order a full investigation to determine whether the state has been negligent in caring for the residents.

The society has asked the court to rule that New York has been negligent and order the city Social Services Department to join the state in operating the institution.

Raab repeatedly has urged that the department be required to shoulder some of the financial and administrative burden at Willowbrook.

Claiming that about 75 per cent of social services money comes directly from the federal government, he has said that the agency's involvement would mean tapping previously untouched federal funds for Willowbrook's maintenance.