

Willowbrook: Court drops out

By DAN DOLGIN

In a decision released today, Family Court Judge Ralph E. Cory has ruled "regretfully" that the Family Court "has no jurisdiction over the Willowbrook State School in any way, manner or form," although the judge stressed the need for immediate relief from the "sub-human conditions at Willowbrook."

The decision came as the result of class action filed by the Richmond County Society for the Prevention of Cruelty to Children and the Legal Aid Society against the State of New York, the Department of Mental Hygiene and the Board of Visitors of Willowbrook State School.

The Family Court decision comes only a few weeks after Federal Court Judge Orrin Judd set down guidelines to force the state to take measures to improve living conditions at the 5,200-person home for the mentally retarded.

In its final, amended form, the plaintiffs' petition urged the Family Court to assume jurisdiction over the residents at Willowbrook under the age of 21 and demanded action to rectify the conditions in which those children live.

Ira J. Raab, counsel for the society, said after the final arguments were presented to the court July 27 that his organization would appeal the court decision if it lost the case.

After reviewing the legal arguments raised in the petitions by the plaintiffs and the

responding briefs by the state attorney general's office, Judge Cory answered the pleas of the society point by point, denying that his court had the authority to take action against the school.

"Not even by the most strained or liberal rules of construction could the present Family Court Act be interpreted to include state institutions such as Willowbrook within its purview," the judge said in his decision.

Judge Cory also ruled that the concept of a "class action" is not acceptable to the Family Court. Claiming that "each case is different and must be determined on its own merits," he refused to accept the possibility that an entire group of unnamed plaintiffs could make a single motion before the Family Court.

Judge Cory delineated six "manifold issues for determination by this court" in his 12-page document:

● Can a state institution such as Willowbrook be considered a "person" acting in loco parentis and legally responsible for the health and welfare of its young residents under the Family Court Act?

● Does the Family Court Act, which gives the court "exclusive original jurisdiction over the abuse and neglect of children, apply to institutionalized children ... presently under the care, custody and control of the Department of Mental Hygiene of the State of New York?"

● Does the Family Court have jurisdiction over children in state institutions such as Willowbrook, which are themselves established under the Mental Hygiene Law and the Willowbrook Board of Visitors?

● Does the fact that a Family Court judge has judicial authority to "officially visit any school or institution," where a person under the jurisdiction of the court is sent, give the court authority over and above the Department of Mental Hygiene?

● If there is a finding of neglect on the part of a state institution such as Willowbrook, can the Family Court order the City of New York to assist in the support, care and maintenance of the children ...?

● Can the Family Court find the State Department of Education responsible for the inadequate or improper education of children at a school such as Willowbrook?

Referring extensively to case histories and legislative intent Judge Cory argued that the Family Court cannot claim jurisdiction in any of the six areas specified.

"Neither in the present neglect statutes ... nor predecessor statutes ... nor predecessor courts to the Family Court is there to be found any separate or intrinsic intent to create such additional powers in the Family Court," Judge Cory said in refusing court responsibility over most of the issues raised by the plaintiffs.

In addition, the judge ruled that the Family Court statutes and case histories do not allow for state institutions such as Willowbrook to be judged as parents in neglect cases.

Judge Cory wrote the law "states that the court can act only in cases of natural persons, such as parents, guardians or relatives, etc. The word 'home' in the cases refers to individual homes of parents, not institutions such as Willowbrook."

Despite his refusal to take legal action from the bench, Judge Cory used his decision to criticize the state for its inadequate response to the "horrible," "appalling" and "frightful" conditions at Willowbrook.

"As Winston Churchill so eloquently and truthfully said," Judge Cory remarked, "The mills of the Gods grind, but they grind exceedingly slowly," referring to the sluggish reactions of the Legislature and executive branch of government.

"The time for rhetoric, excuses and regret has long since past," the judge stated, as he urged the Legislature to act on the situation.

The judge argued that the Board of Visitors at Willowbrook "cannot do an effective job" of managing the institution. He further complained that "Under the present law, the Department of Mental Hygiene sets down its own policy, conducts its own investigation and, in effect, is prosecutor, judge and jury within its own domain."