

Legal services

Lawyers for Willowbrook

by Anne Fanciullo

Can Willowbrook residents have their own bank accounts? Can a resident in "community status" enter into a legal contract? Can a patient refuse certain types of treatment such as experimental drugs, or therapy ordered by someone other than a physician or a psychiatrist?

What are the rights of a female resident when she gives birth to a child while still in the legal custody of the institution? Can a resident vote? Marry? Act as witness in a theft or brutality case?

These and other questions have plagued staff and patients at Willowbrook for years, and have undoubtedly contributed to problems already created by an understaffed, overcrowded, and sometimes seemingly uncaring institution.

As a result, cases like that of Adrienne Renelli, the 22-year-old Willowbrook resident, came into being when it was found that she was receiving no more than just basic custodial care. She had been fed, clothed and toiletted, but she had also been beaten and physically abused and had steadily regressed during her 10 year stay at Willowbrook due to a lack of programs for the severely retarded.

In other, less publicized cases, money and personal property have been stolen from patients, and children have been prevented from attending school because of disruptive tendencies caused by their retardation.

In many instances, children with borderline intelligence have been admitted to institutions when actually they should have been placed in "slow learner" classes in local schools -- while still others were sent to Willowbrook with delinquency problems by the courts.

The rights of the mentally retarded have been ignored for years. In an effort to correct this condition, the recently recodified Mental Hygiene Laws of the state stipulate that the legal help afforded those patients in hospitals and clinics for the disturbed must now be extended to those in residence at state schools.

There are now only about 4,000 patients at Willowbrook, a result of a continuing program aimed at phasing down the institution's operations to the point where only about 200 severely and profoundly retarded individuals will be provided care there. The state has appropriated funds so that two lawyers will be stationed at the school to answer questions and direct patients to the proper legal channels so that their rights, in theory, will be upheld.

"Having two lawyers is better than having none at all," said Alfred Besunder, director of the Mental Health Information Service in the Second Judicial District. "We have always had budgetary problems -- it's been that way since we started in 1965."

MHIS is an agency under the jurisdiction of the Supreme Court. Through the years it has had staff attorneys on hand, either on a visiting basis or on permanent assignment to various hospitals for the mentally ill throughout the state. The operations of the agency are divided into four districts, each under the direction of the presiding justice of the district.

While this set-up may look fine on paper, MHIS has shown itself to be ineffectual, and should in no way be viewed as a total solution to the legal problems which arise among patients and residents in public and private institutions.

The need for a complete overhaul of MHIS operations was cited by a member of the Judiciary Ways and Means Committee in Albany, which is currently in the process of compiling a report in an effort to rectify structural and policy-making problems within the agency.

For one thing, the districts are divided so unevenly that the Second Judicial District, which includes both Staten Island, Brooklyn, and eight other counties, handles about 70% of the total number of disturbed and retarded patients in the entire state.

The first district, which oversees Manhattan and the Bronx only, has about 6% of the state's patients in its jurisdiction in only three institutions. The third and fourth upstate districts together take on about 25% of the total patient load.

Despite the fact that the greatest concentrations of disturbed and retarded individuals are found in the second district, last year's budget allowed only 26 lawyers to be hired to service some 45,000 patients in this area, or about 1700 individuals per lawyer.

Along with the recodifying of the mental health statutes this January, however, the 1973-74 budget gives the Second Judicial District about \$1 million to work with and provides positions for an additional 19 lawyers and 31 stenographers.

The patient-lawyer ratio will then be brought to approximately 1000 to 1, still a far cry from what one would deem an efficient system.

Keeping in mind that some patients may have been seen more than once, it is interesting to note that MHIS lawyers in the second district reviewed more than 35,000 applications in which no hearing took place. For the same period, July 1971 to June 1972, some 100,000 patient contacts were reported, yet only 2,000 hearings were set.

Some 5,000 mentally ill patients, however -- those who charged their retention in the institution was illegal for various reasons -- were released without a hearing.

The iniquities of the budgetary distribution in the second district, relative to the other three districts, severely limits the number of cases MHIS lawyers in the district can handle in the 51 mental hospitals and five state schools they must service.

David Kane of the Mental Patient's Liberation Project, a group composed of ex-mental patients no longer confined to institutions, reports numerous instances brought to his attention involving patients in the second district who have had their right to legal counsel compromised because of the lack of available lawyers, and also because of overcrowded court calendars and infrequent lawyer-patient conferences.

"At the Harlem Valley Hospital for example, it takes two or three months to get a case to court, and the lawyers make compromises along the way," Kane comments. "In the first place, MHIS lawyers are not there to represent the patient. They are an arm of the court and act that way when a case is litigated."

"The end result being that a few minutes before the case is heard, a lawyer is appointed by the court to represent the patient. This is a person whom the lawyer knows nothing about. He is just momentarily briefed before the start of litigation. How strong a case in favor of the patient can he plead?"

"This is somewhat true," says assistant director Delaney of the Second Judicial District. "We have not received permission to act as advocates, but only as representatives of the court." But it is not true that the patients are not represented," he states. "Every person who has a hearing is represented by counsel."

Delaney does admit, however, that in many instances a patient may become friendly with one of the usually young MHIS lawyers and trust that this same lawyer will also handle his or her case in court.

"They are distressed to learn that the lawyer they thought would represent them is actually acting on behalf of the court," says Delaney. "When given another lawyer, a stranger, the patient often becomes confused, and, in some cases, very upset.

But, as Delaney states, "We can't stretch ourselves to handle every case individually," given the inherent conflict of interest built into the second judiciary's operation.

The policy of each district is set by the presiding justice, and, according to Delaney, the second district's judge mandates that no MHIS lawyer can act as advocate for the patient. They can only serve to inform him of his rights, write detailed reports concerning the patient's background, psychiatric and family history, and suggest alternatives to present treatment.

"When a case comes before the judge," says Delaney, "our lawyers are there to inform the court of the issues before it, much in the way a probation officer functions. Because of this policy, we cannot represent the patient, too."

As mentioned earlier, the second district has about fourteen times the workload of the first, yet the number of lawyers assigned last year in both districts was virtually the same.

"In the first district, the presiding judge thought that because there are only two institutions in that area, it would be feasible to have one lawyer representing the patient, and the other functioning in the interest of the court," Delaney notes.

In the second district, this is an impossibility, in view of the fact that the 26 lawyers currently on the payroll have to make scheduled visits to various institutions within their area. This means that many of the fifty-one institutions for the disturbed covered by the second district have no lawyer stationed there on a full-time basis.

This visiting practice could very well remain in effect even after the three new lawyers are formally assigned -- two to Willowbrook, and one to the South Beach Psychiatric Center when it begins admitting in-patients.

Under laws revised in January, every clinic, hospital or school which provides in-patient care, both private and public, must make legal services available to its patients. In addition to Willowbrook and South Beach, North Richmond Mental Health, which has 30 in-patient beds temporarily housed at the Clove Lakes Nursing Home, will also be affected by this law.

Complete plans for the MHIS force on the Island have yet to be worked out, since funds for the additional lawyers were only appropriated three weeks ago from the state's "deficiency" budget. Undoubtedly the three-man team will have to spread itself thin to cover almost 5,000 patients here who could be in need of legal advice and potential litigation.

As dismal as things may seem in the second district, the situation is relatively worse in the two upstate districts.

"In the third and fourth districts," said Delaney, "they don't even have lawyers. Social workers do the counseling involving patient's legal rights. In these areas, if a person becomes a lawyer, he's not going to stay there. He'll probably gravitate toward the big cities where there are greater opportunities and better salaries."

Both Delaney and Besunder agree that there is indeed a problem in recruiting lawyers to work with the mentally disturbed and retarded. Even though an additional 19 slots have been appropriated for this year's budget, the qualifications needed by potential candidates will greatly hamper recruiting efforts.

"We'd like to have young men and women who have been admitted to the New York Bar for at least two years and who have some background in social work, medicine, or psychology," Besunder notes. "It takes a special kind of lawyer to be willing to settle for a less competitive salary, and to

deal with the special problems that come up in an institution. It's not an easy job."

It will be doubly difficult when the lawyers begin handling cases involving retarded children and adults. There's always the question of the client's "competency" -- whether the individual in question is mentally ill or retarded.

Due to the great number of severely and profoundly retarded individuals at Willowbrook, lawyers will have to rely upon concerned staff members, parents, administrators, and their own observations so that those with legitimate complaints and grievances can be taken care of.

"They really haven't had any experience in dealing with the retarded," says Kane of MPLP. "The lawyers in the second district are into maintaining the status quo. What Willowbrook and the other institutions need are more radical lawyers. MHIS lawyers tend to fraternize with the administration, and that's bad, because there really is no one to take the part of the resident."

Albert Robedoux, Chief of the Community Services Division at Willowbrook relates that the institution's administrators are "overjoyed" that lawyers will finally be assigned to Willowbrook. Some of the probable cases to be handled might concern people who have been judged not competent enough to take care of their personal property, or the legal ramifications of a resident who has inherited money.

"The staff here is great and I know that if they knew of a resident with a problem that could be taken care of by a lawyer, they would bring it to the lawyers' attention," said Robedoux.

The first order of business for the two new Willowbrook lawyers will be to review each of the more than 4,000 patient files in order to compile background information and to investigate the accuracy of the clinical data they contain.

The local directors of MHIS should not be blamed for the fact that some 26 lawyers in the second district must tend to the needs of a 45,000 per month patient population. Nor can they be criticized for

the narrow limits of their powers.

It is basically the system itself which fosters the iniquities of MHIS: the uneven distribution of patient load; a low priority budget which forces the agency to beg for the leftovers from emergency deficit money; and the total lack of a centralized board in which a non-uniformity of policy creates roadblocks to equal justice from county to county within the state.