

## Residents' testimony deemed valid

# Willowbrook Center worker firing upheld

Advance Albany Bureau

ALBANY — The state Court of Appeals yesterday upheld the dismissal of a ward attendant at the Willowbrook Developmental Center for allegedly striking a patient in 1973 and determined that the testimony of the injured resident was valid even though it was not given under oath.

In an unanimous decision written by Justice Domenick L. Gabrielli — the court reversed an earlier ruling by an Appellate Division justice who said the ward attendant, Joan Brown, a former Concord resident, was denied a fair hearing because neither the injured resident nor another retarded witness was capable of understanding the oath.

Referring to patients in mental institutions, Gabrielli stated: "To deny them the right to complain of their treatment because they lack the ability to conceptualize the nature of an oath would be blinding ourselves to reality."

The court emphasized, however, that its ruling was based on the fact that the evidence offered by the two residents was "substantial" and is not meant to alter existing standards for evidence.

Both the injured resident, Beverly Cash, and Louise Gruzo, another resident on the ward, testified against the Brown woman at an administrative disciplinary hearing ordered after the alleged assault occurred.

A Willowbrook psychologist testified at the hearing that the two witnesses had intelligence quotients of 43 and 50, respectively, and the hearing officer determined that it would be "senseless" to administer an oath, according to

the Court of Appeals. The Brown woman was dismissed after the hearing by Willowbrook's former director, Dr. Miodrąg Ristich, and later appealed the action. Last Feb. 5, Manhattan Supreme Court Justice Frank Gullota ruled in favor of the woman, who at the time lived in Concord.

In his ruling, Gullota determined that the testimony of the two Willowbrook residents was inadmissible, and said the Brown woman was denied a fair hearing because neither patient understood the oath and gave unsworn testimony. Ristich subsequently appealed that ruling, with the resulting opinion issued by the state's highest court yesterday.

Gabrielli, speaking for the court, observed that "it has long been realized that the absence of the oath need not necessarily mean that the unsworn witness could not be expected to speak the truth."

The judge continued: "We today hold that in an administrative proceeding such as this, where the administration of an oath would be unavailing for the purpose for which an oath is normally administered, unsworn testimony may

port the hearing officer's determination that the witness possesses rudimentary testimonial capacity."

While ruling that unsworn testimony may be admissible in administrative proceedings, the judge said, "we hasten to add that by doing so we intend no departure from the substantial evidence test."

Gabrielli said, however, that in the Willowbrook case "there...is no deficiency in the evidence," and he added that a psychologist from the institution testified that "both patient witnesses were capable of relating experiences happening to them."

"The right of petitioner (the Brown woman) to a fair hearing is undeniable," Gabrielli wrote. "However, we cannot overlook the rights of institutional residents, especially those incapable of eloquent expression and abstract thought. "These people also deserve a fair hearing," he stated.

The Brown woman, who was employed at Willowbrook for some 17 years, was charged with striking Miss Cash on the head with a broom handle. Miss Cash, who at the time of the incident was 22 years old, received 13 stitches to close

the wound, according to court papers.