

Willowbrook reform heading for a showdown

By ROBERT MIRALDI

The year-long battle between the state Department of Mental Hygiene and the Willowbrook Review Panel will likely spill over into federal court again on May 7 and contempt of court citations against top state officials, including Gov. Carey, could result after the court confrontation.

The hearing in Brooklyn has been called by U.S. District Court Judge Orrin G. Judd to measure progress at Willowbrook Developmental Center in implementing a precedent-setting consent decree.

The decree outlines radical, humanizing changes at the 2,650-bed center for the retarded, and many of the decree-ordered changes must be implemented by April 30, others by May 31.

Interviews with state and Willowbrook officials and others familiar with the center's operations indicate it is highly unlikely that the Department of Mental Hygiene will meet the court-sanctioned deadlines.

"No, we will not be completely out of compliance," says Dr. Samuel Ornstein, deputy commissioner of the Department of Mental Hygiene and boss of the Willowbrook Task Force. "As for implementing the whole document, it is unlikely because it is such a complicated document.

"There are literally hundreds of subsections," Dr. Ornstein says, adding about the decree which was signed April 21, 1975, that, "Whether the parts add up to a good whole, I'm not sure."

Like the decree or not, however, the department is under a federal court order to implement it. A lack of "substantial compliance" would surely lead to contempt of court proceedings, say attorneys in the



Commissioner Lawrence Kolb, who may be a target of contempt proceedings, is shown here on a Feb. 3, 1975, visit to Willowbrook. The Willowbrook resident was helmeted to protect him from self-inflicted abuse.

S.I. Advance Photo by Robert Parsons



These Willowbrook residents, shown here in 1972, have had to wait three years for wheelchairs to replace their wooden carts, a fact which emerged in the last court confrontation between the Willowbrook Review Panel and the state, who will square off again on May 7.

S.I. Advance Photos by Eric Aaris

case which began March, 1972.

"We're trying in good faith, desperately trying," says Dr. Ornstein. "We're doing everything we can, spending a great deal of money. The governor's committed to this decree.

"But if some things are just not doable," says Dr. Ornstein, coining a word, "that's up to the judge to decide." The state has not yet filed papers—as the decree allows—telling Judge Judd that parts of the 29-page decree are not "doable."

"It is physically impossible for the department by May 31 to implement the decree from A to Z," says Anthony Pinto, president of the Willowbrook Benevolent Society, a plaintiff in the case. "The credibility of the state is certainly questionable at this point."

For about two weeks Executive Director Dr. Jennifer Howse and five staff members of the independent, court-appointed Review Panel have been conducting audit samples at Willowbrook in preparation for the May hearing, the fourth court encounter between the panel and the state.

At the same time, 12 members of the Willowbrook Task Force have moved onto the grounds of the 384-acre

Willowbrook campus in an apparent last-minute attempt to put the decree into effect. Many observers feel it is too little, too late.

"Is it good faith that in the last four months the state has tried hard to implement the decree?" asks Murray Schneps, an attorney, an original plaintiff and a member of the Review Panel.

"They're gambling on the judge saying they've shown good faith," says Schneps. "But not even God can implement the decree now. The department has to be shown a tough hand."

"There are people in the department who just don't want to make the decree work. They have been bad-mouthing the decree. They want to see the panel and the decree fail."

"We won't permit this to happen," Schneps says.

Neither Schneps nor anyone interviewed by the Advance would name Department of Mental Hygiene officials who, they feel, have attempted to block the decree.

Asked if he believed there had been attempts to block or slow the decree's implementation, Schneps said: "Damn right I do."

Clearly, however, the plaintiffs in the case, attorneys for the plaintiffs and Review Panel members would seek criminal contempt citations against anyone who has attempted to block the decree.

Among the defendants in the case are Gov. Carey, Lawrence C. Kolb, commissioner of the Department of Mental Hygiene, Thomas A. Coughlin 3rd, deputy commissioner and acting director of Willowbrook, and Dr. Alvin Mesnikoff, the department's regional director.

Plaintiff Attorney Bruce Ennis of the New York Civil Liberties Union emphasizes that he has seen "no evidence" whatsoever that there has been a willful attempt to block the decree.

Joseph T. Weingold, director of the State Association for Retarded Children, a plaintiff in the case, feels the state has acted in "good faith," but is "just incapable" of doing what has to be done.

"No one wants to be vindictive," says Weingold, "but the department is so varied, so diffuse, it is just incapable of carrying out the decree." Weingold is lobbying for a breakup of the Department of Mental Hygiene into separate mental retardation and mental health bureaucracies.

According to Ennis, if the plaintiffs decide to seek contempt citations against state officials—a decision to be made after May 7—their only burden would be to show that the state has not complied

with the decree.

The burden would then be on the state to prove it is not in contempt because, Ennis says, it either had "no knowledge" what it was supposed to do (not a possibility) or because it "made all reasonable steps" to implement the decree (a debatable matter).

"In effect," says Ennis, the major architect of the decree, "the state would have to show it has been impossible to implement the decree."

In Ennis' view there are three reasons why the decree would have been impossible to implement:

¶ Willowbrook did not have enough money. Members of the Willowbrook class (5,342 1972 residents) receive twice as much money as do residents or other developmental centers. Money is not the problem, observers agree.

¶ The Department of Mental

Hygiene bureaucracy is "incompetent." Numerous observers will buy the bureaucratic-problem approach, citing changing personnel, lack of accountability, burdensome paperwork and red tape galore.

¶ Intentional blocking of the decree, including the apparent continuing ideological opposition in some quarters to hiring more staff, to community placement, to a definition of education and therapeutic programs. On some issues, the opposition is in nuances, but it is opposition stemming from differing interpretations about what is best for the retarded person.

Plaintiff Attorney Chris Hanson feels that "certain people want to rewrite the decree" and do not "realize the seriousness of the judgment." Is the state in contempt? "Depends what day you catch me

on," Hanson says.

If, as seems probable now, Willowbrook is not in "substantial compliance" with the decree, the court would be forced to offer additional remedies for the troubled center.

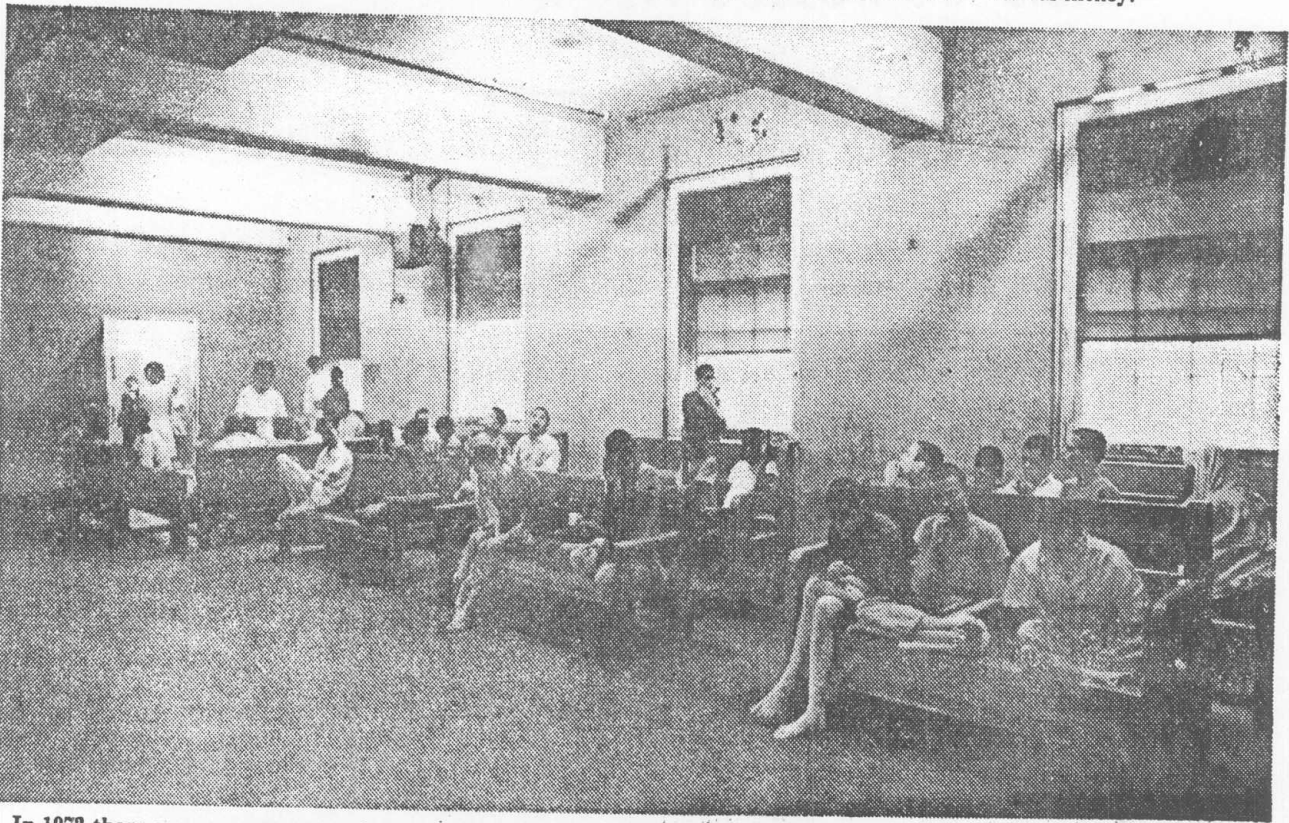
The possibilities open to Judge Judd include extending the time for state implementation (unlikely, observers say); intervention of a federal master to run the center and make the policy decisions (premature, but supported by some plaintiffs and already mentioned in court by Judge Judd); removing certain administrators from any connection with the Willowbrook class (under discussion) giving the Review Panel complete decision-making power (the department would fight that tooth and nail).

Ennis, the plaintiffs' top attorney, says no decision will

be made about what course to pursue until after May 7, probably not until after the expiration of the 13-month deadline. A discussion of options is "premature," he says.

Nevertheless, Wednesday will mark the one-year anniversary of the decree's signing. In some quarters it is called Decree (Cap D) and Judgment (Cap J). In other quarters it is called a document drawn up by people who aren't aware of the realities of the wards of Willowbrook.

"Any system," says Ornstein, about the system that perpetuates the inferior quality of life many see at Willowbrook, "that spends \$60 million and yet still produces ill-clothed, ill-fed people, something is wrong with that system. You have to start to question what we are getting for our money."



In 1972 there were no programs for these Willowbrook residents. The Willowbrook Review Panel is still questioning the adequacy of programs that have been developed and whether those programs meet court-mandated standards.