

# Judge gives officials 1 day to restore \$\$ to Willowbrook unit

By ANEMONA HARTOCOLLIS

Declaring that the state Legislature, by refusing to fund court-appointed monitors of the Staten Island Developmental Center, had acted "so irresponsibly it's shocking," a federal judge yesterday gave state officials one day to guarantee the monitors' financial security.

In a hearing in Brooklyn Federal Court, Judge John R. Bartels placed responsibility for the monitors' funding squarely on Gov. Carey, the commissioner of mental retardation and the state comptroller, without heed for constraints imposed on them by the Legislature.

But he declined to make good on a previous threat to hold the governor and Commissioner James E. Introne in contempt of court, expressing the belief that they did not condone the state Senate and Assembly's apparent attempt to abolish the monitors, called the Willowbrook Review Panel.

Referring to Introne, Judge Bartels joked, "Only someone who wasn't Phi Beta Kappa in his junior year would attempt that sort of thing."

Funds for the 5-year-old review panel were included in Gov. Carey's 1980-81 budget proposal, but the Senate and Assembly voted down the \$348,000 appropriation March 30. While the governor is authorized to veto portions of the budget approved by the Legislature, he cannot restore appropriations — a limitation raising sticky legal and procedural questions in the process.

The governor and mental retardation commissioner agreed to subsidize the panel as part of a 1975 federal court judgment, the Willowbrook Consent Decree, mandating humane care for mentally retarded residents of the Staten Island Developmental Center, in Willowbrook.

Appearing in the governor's behalf, Assistant Attorney General Robert Hammer yesterday told the court: "To say categorically the consent decree would not be enforced without the review panel, I'm not so sure any of us should be prepared to say."

When Bartels objected, Hammer continued: "The institution has its own board of visitors . . . With all due respect, the panel has pre-empted and supplanted the functions of the board of visitors."

"Aren't we wasting time?" Bartels responded.

Making no bones about his commitment to the review panel's existence, Bartels explained: "They (the Legislature) cut my right arm off . . . without

the panel the court cannot operate or enforce the consent judgment." Without the panel, he added, the court "becomes a nullity."

Expressing dismay that the Senate Finance Committee, and particularly State Sen. John J. Marchi of Ward Hill as its chairman, had allowed panel funds to be excised from the budget, the judge asked the state's lawyers to provide him a list of finance committee members.

State legal counsel insisted that the budget does not contain discretionary funding which could be diverted to the review panel.

Bartels ordered them to consult again with the Division of the Budget and report to him tomorrow. In addition, he suggested that the governor and the Office of Mental Retardation and Developmental Disabilities (OMRDD) should lobby legislators to reinstate the panel's appropriation in the supplementary budget, enacted in June or July.

Both houses of the Legislature will convene next on Monday. Meanwhile, the state is unable to meet the panel's payroll due Thursday.

As a last resort, Christopher A. Hansen, an attorney representing current and former developmental center residents proposed that the judge should declare unconstitutional as applied to this situation only any state law or provision of the state constitution impeding the governor from financing the review panel. Such action is within the judge's domain as a federal authority.

Hansen's proposal was employed in a 1977 Minnesota case, *Welsch vs Likins*. As in the Willowbrook case, a federal court had determined that care in a state-run institution was so derelict as to violate the residents' constitutional rights, and the Minnesota Legislature had refused to fund court-ordered remedies.

Judge Bartels greeted the extraordinary proposal warily, although he advised: "Let there be no misunderstanding . . . the obligation of the respondents (Carey and Introne) does not depend on what the Legislature does."