

## Court Voids Ruling Ordering Carey To Finance Panel at Willowbrook

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ALBANY, June 4 — A Federal appeals court ruled today that Governor Carey could not be forced to find money to pay for the panel that monitors conditions at the Staten Island Developmental Center for the retarded if the Legislature did not want him to. The center was formerly known as Willowbrook.

The United States Court of Appeals for the Second Circuit in New York City reversed a lower-court order that Mr. Carey somehow find \$342,000 in state funds to keep the panel operating. The action leaves in doubt the future of the panel, which oversees state compliance with an agreement to improve conditions at the center.

The three-member court did not address the question of the usefulness of the panel, which was set up in 1975 to monitor the state's progress in improving conditions at the hospital.

"We conclude that Governor Carey has complied with the consent judgment," Judge J. Edward Lumbard wrote in the decision. "There is no justification for requiring action in violation of New York State laws. We conclude that the appellants could only obey the order of the district court by violating the Constitution or the laws of New York State."

### Lack of Authority Cited

Furthermore, he wrote, "Funds expressly disallowed by the State Legislature cannot be appropriated by a Federal court."

Governor Carey had appealed the original decision by Judge John R. Bartels of Federal District Court in Brooklyn, saying he did not have the constitutional authority to produce the funds. "The Governor has always been committed to the continued funding of the review panel," said Richard A. Brown, the Governor's counsel. "The Governor has been in the forefront of changes at Willowbrook."

The seven-member review panel had the backing of the New York Civil Liberties Union, which had represented a number of clients at Willowbrook in the suit

that led to the 1975 consent judgment to remedy the squalid conditions at the institution and to place residents elsewhere.

"I think it's a complete disaster for the retarded people in New York State," said Chris Hansen, a staff attorney for the civil liberties group, commenting on today's decision. "And I think there's a substantial probability that as a result of this decision Willowbrook will once again be the 'snakepit' that it was."

Mr. Hansen said the civil liberties group would pursue the welfare of the center's residents, including, perhaps, a suit to close the institution — as suggested by Judge Lumbard — if constitutional violations continue.

### Up to Legislature

"There is no doubt today there are constitutional violations at Willowbrook," said Mr. Hansen.

In the last sentence of the decision, Judge Lumbard suggested that the next move was up to the State Legislature. "The organizations and citizens concerned with the conditions at Willowbrook must convince their representatives in the New York State Senate and Assembly who control the purse strings and determine the priorities for the expenditure of state money that funds for the review panel should be provided."

The Legislature had cut off funds for the panel, composed of many out-of-state doctors, in a battle over who would set mental health policy in the state. Senator Frank Padavan, chairman of the Senate's Mental Hygiene Committee, said the panel had forced some expensive and unwise practices on the state including the placing of small groups of "profoundly retarded youngsters" together in their own apartments at a yearly cost of between \$30,000 and \$60,000 per patient.