

# Willowbrook Review Panel loses suit and maybe life

By ANEMONA HARTOCOLLIS

After nearly five years of winning showdowns against the state, the Willowbrook Review Panel yesterday lost its day in court and may, as a result, have lost its life as a monitoring unit.

A judicial panel sitting in the U.S. Court of Appeals for the 2nd Circuit, after deliberating since April, ruled that no federal judge could force the state of New York to fund the continued activities of the review panel.

On April 10, Judge John R. Bartels of Brooklyn Federal Court sought to do just that, threatening to hold Gov. Carey and Comptroller Edward V. Regan in contempt of court if review panel bills were not honored within five days.

Bartels, in whose chambers the review panel had long found a sympathetic

ic ear, took a broad drubbing yesterday, as the appeals court questioned the propriety of his constant entanglement in the fates of mentally retarded persons associated with the Staten Island Developmental Center.

The seven-member review panel was formed in 1975 to monitor state care for 5,200 sometime residents of the Staten Island Developmental Center in Willowbrook. At the time, Gov. Carey pledged in federal court to use all "lawful authority" to subsidize the monitoring body.

In two separate but concurring opinions, the three-judge appeals court panel said yesterday that for the governor and the comptroller to obey Bartels would mean for them to flaunt the laws and Constitution of New York. The only legal way for the state's executives to

allocate public money, the appeals court ruled, is in coordination with the Legislature.

Gov. Carey had earmarked \$342,300 for the review panel in his proposed 1980-81 budget, but the Legislature subsequently deleted the appropriation from the state's spending plan.

Judge Bartels' contempt order, which the appeals court had stayed pending its decision, was thus reversed.

The court's main opinion, written by Judge J. Edward Lumbard and joined by Judge Ellsworth A. Van Graafeiland, also implied that Bartels had reached too far in ministering to the welfare of current and former residents of the state-run developmental center in Willowbrook.

"Nothing in this opinion," Lumbard (Continued on Page 2)

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wrote, "should be construed to agree with the view that the federal court properly exercises its function when it takes upon itself the supervision of an institution like the Willowbrook developmental center."

The opinion went on to suggest that Bartels had indeed become intimately involved in the institution's day-to-day operations, via his rapport with the review panel.

During hearings leading to his contempt citation against Carey and Regan, Bartels had asserted that by deleting review panel funds the Legislature "cut my right arm off."

The appeals court stressed that the will of the state's citizens, as impressed on their lawmakers, takes precedence over the convictions of a federal judge.

Said the Lumbard opinion: "Those organizations and citizens properly concerned with the supervision of conditions at Willowbrook must seek to convince their representatives in the New York 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."

In eliminating review panel funding, state lawmakers had accused the panel of squandering funds on clinically unwise decisions. Because of Bartels' support for panel policies, State Sen. Frank Padavan of Queens characterized the judge as "senile."

Christopher A. Hansen, a New York Civil Liberties Union (NYCLU) lawyer who represented the review panel, called the appeals court ruling "a major disaster."

"Substantial problems will arise as a consequence of this decision," he said. "Willowbrook could return to the snake-pit it was in 1975, and the decision could have the same effect on other retarded people in New York state."

The late Sen. Robert F. Kennedy referred to the institution, then known as the Willowbrook State School, as a "snake-pit" during a visit he made there.

In 1975, state officials agreed in

Brooklyn Federal Court to transfer all but 250 Willowbrook residents into community-based facilities by May 1981. The review panel was established to monitor compliance with this plan, known as the Willowbrook Consent Decree.

The NYCLU and its client "will not go away as a result of this decision," Hansen added. "We will do everything possible to prevent it from happening."

The review panel's legal recourse lies in appeal to the full complement of judges in the 2nd Circuit and to the U.S. Supreme Court.

State mental retardation Commissioner James E. Introne dismissed the charge that his office would backslide if freed from review panel influence.

The appeals court decision "really doesn't change anything as far as I and the (Carey) administration are concerned," Introne said. "It won't affect our actions in implementing the consent decree. We'll just go forward and do the best we can."

Richard A. Brown, counsel to the governor, said he had not had a chance to "study" the ruling and declined comment.

Assemblywoman Elizabeth A. Connelly, who has emerged as one of the review panel's sharpest critics in the Legislature, said yesterday that she was "of course, delighted by the decision."

Mrs. Connelly, who chairs the Assembly Mental Health Committee, added that the appeals court "put in the right perspective the separation of federal and state powers."

But the West Brighton assemblywoman suggested that other "legal issues" concerning the review panel remain to be addressed. She noted that the panel had received a grant from the Edna McConnell Clark Foundation to help tide it over during the past two months' litigation. Speculating that a private foundation might again step in to keep the panel viable, she asked: "Should we allow a foundation to fund an agency that will mandate costs upon the state?"

If the Legislature were to reconsider its opposition, review panel funding could be restored.

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