

Willowbrook trial judge won't let senator testify

By ANEMONA HARTOCOLLIS

A federal judge refused yesterday to allow state Sen. Frank Padavan to testify, while claiming to speak for a legislative committee, against the concept of 3- to 10-bed community-based apartments for the mentally retarded.

Padavan, a Queens Republican who chairs the Senate Mental Hygiene Committee, appeared as a defense witness for New York State in a hearing on conditions at the Staten Island Developmental Center, Willowbrook.

The senator attempted to testify that, in his committee's opinion, the 10-bed limit on state-operated group homes, imposed by a 1975 court consent decree, "makes no clinical sense."

Judge John R. Bartels immediately ordered the court stenographer to strike Padavan's remarks from the record. "That, as far as I'm concerned, is not within the purview of your expertise," Bartels said. "I am not bound to follow the conclusions or the provisions of any committee of the Legislature."

The protracted hearing in Brooklyn District Court stems from a 10-year-old suit brought against state officials by the New York Civil Liberties Union and parents of Willowbrook patients.

In cross-examination yesterday, attorneys for the plaintiffs questioned Dr. Ella Curry, the institution's director for the past 14 months. She confirmed that reports prepared by her own staff had found missing or inadequate furniture on the wards, dietary hazards and a shortage of psychologists.

In his opening statement four weeks ago, Chris Hansen, a Civil Liberties lawyer, called the institution "unfit for human habitation" and asked the court to appoint a master to administer it. The plaintiffs charge the state with violating court guidelines on the staffing, clothing, education and housing of Willowbrook's 1,300 retarded patients.

The state, meanwhile, repre-

sented by the law firm LeBoeuf, Lamb, Leiby & McRae, seeks relief from a court order to transfer the institution's residents into 3-to 10-bed apartments, arguing that the order is expensive and impractical given available real estate. The state wants permission to establish 10- to 50-bed facilities, opposed by the plaintiffs as "mini-institutions."

In the spring of 1980, Padavan was instrumental in persuading the Legislature to dismantle the Willowbrook Review Panel, a group of court-appointed monitors of the institution, by denying a \$340,000 state grant to the group.

In a subsequent hearing, Bartels ordered Gov. Carey to fund

The first director of the former Willowbrook State School, Dr. Harold Berman, has died in California. See page A 13.

the panel, but his decision was overturned by a three-judge panel in the Circuit Court of Appeals, Manhattan, who ruled the governor could not appropriate money without legislative consent.

During the dispute over the review panel, Padavan, quoted in a newspaper, called Bartels "senile." Yesterday, leaving the courtroom after meeting the judge for the first time, the senator commented, "Suppose I change the word from 'senile' to 'myopic.'" Bartels was born Nov. 8, 1897.

Dr. Curry verified several memoranda, prepared by state employees, under questioning from Jonathan Siegfried, an attorney with the firm Paul, Weiss, Rifkind, Wharton & Garrison, which is assisting the Civil Liberties Union.

One report, dated May 1981, dealing with Building 5, found: "Newly designated individual closets not used; no individual bed assignments; artificial plants, pictures and tapestries gone; furniture dirty or other-

wise in poor condition, and recreation equipment no longer in the dayroom."

Last September, state auditors found that in 13 out of 16 buildings inspected, kitchens and living areas lacked up-to-date records of medically prescribed dietary orders for the retarded patients.

Siegfried asked Dr. Curry whether patients might come to "harm" because they failed to receive a puree diet and choked, or ate foods to which they were allergic.

"I would not like to make a sweeping statement," Dr. Curry responded. When pressed, however, she answered: "It is possible."

In another memorandum, dated February 1981, Dr. Edward Kaminetsky, the institution's chief psychologist, complained that only one staff psychologist was available for every 109 patients. He said 765 patients were severely disturbed, and he asked Dr. Curry to hire one psychologist per 38 patients.

Dr. Curry conceded, under questioning, that she had not been aware of the memo's existence until it was brought to her attention last November by the plaintiffs' lawyers, as they interviewed her for a pre-trial deposition.