

# Judge to Appoint Master For Care of the Retarded

By PETER KIHSS

A Federal judge ruled yesterday that New York State was failing to comply with reforms pledged in 1975 in care for the mentally retarded. He said he would name a special master at state expense to supervise the reform program.

The judge, John R. Bartels of District Court in Brooklyn, charged that sanitation at the Staten Island Developmental Center in Willowbrook "presents a serious health hazard" to about 800 residents remaining under state care there.

Life for them, he said, is "sterile, dreary and one of enforced idleness."

At least one patient, the judge said, "choked to death as a result of being served an improper diet." Overall conditions, he said, had "materially deteriorated" since the State Legislature removed funds from a review panel in 1979.

## 'Infested With Insects'

"Residents, many of whom are non-ambulatory," he said, "must eat in dining rooms infested with insects and rodents, sit and lie on floors that are dirty, not uncommonly with human excrement, and sleep in bedrooms reeking of urine."

Assailing some other facilities to which some of the original 5,343 Willowbrook patients had been transferred, Judge Bartels declared: "The fact that

a job is difficult does not excuse its non-performance."

Taylor R. Briggs of the firm of Le-Boeuf, Lamb, Leiby & MacRae had led the defense for the State Office of Mental Retardation, but he could not be reached yesterday to give the state agency's reaction to the judge's charges.

The counsel for the plaintiff patients, Robert M. Levy of the New York Civil Liberties Union, and Jonathan D. Siegfried, of Paul, Weiss, Rifkind, Wharton & Garrison, representing the Legal Aid Society, called the decision "a total victory." Christopher A. Hansen of the Civil Liberties Union was their lead counsel.

Recalling that Governor Carey had shown "a strong commitment to the mentally retarded," Mr. Levy voiced hope that the state would make changes rather than appeal the ruling. The decision followed 25 days of testimony last December and January.

Judge Bartels granted one change from a 1975 consent decree. He extended from April 1, 1981, to April 1, 1985, the deadline for bringing Willowbrook's own caseload down to 250 patients.

He said 1,108 patients had been placed in community residences as mandated,

580 had been put in family care, 557 had died, 730 had been discharged from state supervision and 999 had been transferred to other state or private institutions.

Of 1,369 patients still at Willowbrook, one group is under United Cerebral Palsy management.

The judge said that he had "no doubt about the good faith" of the state in attempting compliance but that he did not find "substantial performance."

"In almost every building," he said, "there are numerous examples of torn and broken furniture, ripped and broken screens, missing bathroom tiles, nonworking toilets, and walls with gaping holes. In many residential areas, furniture is sparse and the noise level piercing."

"Some residents at Willowbrook," he continued, "are partially clothed, others go nude and many wear clothes that are ill-fitting, badly torn and stained."

"Mentally retarded individuals, even those severely and profoundly retarded, are capable of growth," Judge Bartels said. But he added that "programming compliant with the consent judgment is the exception rather than the rule."

The total number of Willowbrook employees, he said, is sufficient to meet the consent decree on a weekly and institutionwide basis. But he said that out of 665 shifts, on a building basis, one report showed only 26 shifts with all buildings in compliance.

"Part of the problem," Judge Bartels asserted, "is lack of staff training, lack of staff dedication, and staff negligence. Even when enough employees are on duty, residents are frequently left unattended or attended by fewer than the mandated number of employees."

The state, Judge Bartels held, has an obligation to search for sites or to build facilities for community residences, but in the last three years it has opened only 131 of 262 community homes planned for New York City.