

# Public Interest Law Center of Philadelphia

The Public Interest Law Center of Philadelphia (PILCOP) was founded in 1974 by leaders of the Philadelphia Bar Association as the successor to the Philadelphia Chapter of the Lawyers' Committee for Civil Rights Under Law. PILCOP's mission over the past 15 years has been to serve individuals and community groups who traditionally have been without access to legal assistance, to increase their economic and physical well-being through provision of a full range of legal services.

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## Handicapped Winning Access To Buses and Subways

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Capping 15 years of Law Center work to make public transportation usable for disabled persons, the Third Circuit Court of Appeals recently struck down Reagan Administration Department of Transportation (USDOT) regulations which severely limited access to public transit (*ADAPT v. Dole*).

As a result of the decision, all new buses purchased by public transit systems with federal funds must be accessible. Gradually as fleets are replaced, entire bus systems will become accessible to mobility-impaired persons.

Another part of the Third Circuit Court decision struck down USDOT regulations which permitted transit agencies to limit their services to disabled persons if they spent 3% of their operating expenses on para-transit. This part of the decision affirmed an earlier ruling of Federal District Court Judge Marvin Katz.

### Judge Katz Opinion

In his opinion Judge Katz stated: "Transit authorities may be permitted to take the least expensive or most cost-effective route toward providing services for their disabled patrons, *but those services must in fact be provided*. The cost limit at issue here permits the burden of cost to eviscerate the civil right."

Tim Cook, the Law Center attorney who filed the case, commented that "in many cities, the only way a handicapped person can get a ride on public transportation today is to call at least a week ahead and make a para-transit reservation." Para-transit has allowed older cities like Baltimore, Cleveland and Chicago to begin rebuilding their decaying transit systems without installing elevators or buying lift-equipped buses, in effect continuing the exclusion of handicapped persons from public transportation.

USDOT is seeking reconsideration of the Third Circuit decision by the entire Court of Appeals, and they may seek review in the U.S. Supreme Court.

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### Child Welfare Subject Of Public Issues Luncheon

On Tuesday, June 13, 1989, the Law Center will sponsor a public issues luncheon, on the subject of Philadelphia's child welfare program, which is directed by the Department of Human Services (DHS). This program has been the target of public criticism for failure to adequately serve children at risk.

The panelists will be Joan Reeves, Commissioner of the Department of Human Services, and Mary Lee Allen, Director of the Child Welfare and Mental Health Division, Children's Defense Fund, Washington, D.C.

Ms. Reeves will report on her efforts to strengthen DHS services to children, including preventative and family preservation services. Ms. Allen will give an overview of national trends in child welfare reform.

The luncheon will be at the Midtown Holiday Inn, 1311 Walnut Street from 12:00 to 1:45 p.m. The cost is \$10.00 per person. For reservations call Pete Stevens at the Law Center: (215) 627-7100.

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## Handicapped Winning Access . . .

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The need for adequate and accessible public transit services for the disabled is striking. Imagine that you are Mary Jenkins, an 18 year old Temple freshman. You are confined to a wheelchair by a childhood accident. On Temple's campus you have ramp and elevator access to classroom buildings. But getting to Temple on time for classes poses real problems for you, since you cannot drive a car.

### SEPTA Facilities Inaccessible

You discover that buses and trolleys are inaccessible, as are most stations on the Broad Street subway, the Frankford El, and the commuter rail lines. Para-transit services do not operate in many of the SEPTA service areas, are unavailable at night, and must be scheduled as much as a week in advance. You can get to Temple, but it requires determination to make that round trip five times a week.

Laws passed by Congress in the 1970's, specifically the Rehabilitation Act and the Urban Mass Transportation Act, to protect your right to accessible public transportation, began to be undermined ten years ago by USDOT regulations. Transit operators were permitted to postpone installation of elevators and the purchase of lift-equipped buses, if they provided alternative means of transportation, such as Para-transit.

### Advocacy To Increase Access

But fortunately for you and thousands of other mobility-impaired citizens, the 1970's and 1980s have seen the development of a strong citizen movement on behalf of disabled persons. In Philadelphia, Disabled in Action of Pennsylvania was founded in 1974 by Jay Neuman and other citizens frustrated by the lack of access to public buildings, restaurants, sidewalks and public transit.

The Law Center's involvement also began in 1974, when it helped to found the TRANSBUS group. Supported by a grant from the Levinson Foundation, the Law Center represented a consortium of a dozen national and regional advocacy organizations, and won several landmark court decisions, including an order from USDOT requiring accessible low-floor ramped buses. But by 1981, when bus manufacturers refused to manufacture the new buses, and when Reagan administration deregulation began, the TRANSBUS objectives were sidetracked.

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## Law Center Suit Will Cut the Smog

The Law Center's Environmental Project has instituted a citizen lawsuit against the state's Department of Environmental Resources (DER) and the EPA, on behalf of a group of environmental organizations, neighborhood associations and individuals who personally suffer the effects of high ozone concentrations.

The suit will seek injunctions requiring that Pennsylvania control auto emissions in 20 additional counties, require filling stations to use fill pumps that prevent volatile organic compound (VOC) emissions, and reduce the volatility of gasoline. The suit will also seek to join the U. S. Department of Transportation from granting Pennsylvania any funds for federal aid to highway construction until Pennsylvania promulgates and enforces the required VOC emission reduction controls.

Pennsylvania's ozone (smog) problem is now the worst in the country, with the exception of the metropolitan areas of California. The Clean Air Act amendments of 1977 required the state to attain compliance with the ozone standard by December 31, 1987. Instead our ozone problem has worsened, and today more than 8 million Pennsylvanians, more than 75% of the state populations, live in areas where the ozone standard is violated.

Our failure to attain the ozone standard is due to a lack of political commitment. In 1983, six years after passage of the Clean Air Act amendments, the DER pledged that it would promulgate regulations to reduce VOC emissions. By 1985, when the EPA approved the DER proposal, DER had already rescinded its earlier pledge, believing that Pennsylvania could attain the ozone standard by the end of 1987 without additional emission controls. DER never has enacted the VOC controls, and Pennsylvania has failed to meet the ozone standards.

If history is a guide, the State will vigorously oppose the lawsuit, as they opposed a previous suit to implement motor vehicle inspection and maintenance. That suit was successful after the federal district court ordered \$400 million withheld in federal-aid to highway funds.

The work of the Law Center is made possible through the generous contributions of its many friends. PILCOP receives no government subsidies. If you agree that our work is important, please contribute to our support, by completing and mailing in the form on the back of the Newsletter and enclosing your check.

## Lawsuits Seek Unsegregated Education For Handicapped Children In Virginia and Missouri Public Schools

In the early 1970s the Law Center played a key role in the development of the right to education cases (PARC v. Commonwealth) and the national codification of those education entitlements in the Education for All Handicapped Children Act (P.L. 94-142). In the past year the Law Center and our clients have focused on enforcement of the two substantive requirements of that law:

1. The integration requirements . . . the obligation of local school districts to educate handicapped children in schools with non-handicapped children; and

2. The state of the art requirements . . . the obligation of education officials to use educational technologies and practices that have proven effective for students identified as handicapped.

The Law Center is currently active in cases in Missouri and Virginia.

The 23 local school districts of St. Louis County assume no responsibility for special education of handicapped children. Instead these children are segregated in a county-wide special school district serving only handicapped children. The Law Center's suit challenges this practice in a class action on behalf of the Missouri Protection and Advocacy Services, two other clients, and a class of students in the Parkway School District who are handicapped.

The suit alleges that these children are denied access to non-academic services such as counseling, library and inter-scholastic athletic programs, and that they are taught in self-contained classrooms, segregated from non-handicapped students.

In the Virginia case, the Law Center represents Michael DeVries, a student with autism who has been excluded from his neighborhood high school. The suit tests the enforceability of the federal law requiring that absent compelling circumstances, a handicapped child should be educated in the school he or she would attend if not handicapped. At the trial in September 1988 the Law Center brought educators from Wisconsin, Maine, New York and Illinois to present testimony as to the design and development of an individual education plan for Michael, employing existing high school resources and curriculum. In addition, the Law Center presented testimony that Michael worked during the summer of 1988 at a Burger King restaurant, and a report from his manager revealed that he was a reliable worker who interacted well with his co-employees.

The District Court judge ruled that Michael was not entitled to an education with non-handicapped students in his home school. The Law Center has appealed the ruling to the Circuit Court of Appeals. This will be the first appellate consideration of the standard for exclusion of children from their home neighborhood schools.

## Law Center Seeks Changes In DHS Services

The Philadelphia Department of Human Services (DHS) has been criticized in a series of newspaper reports for mismanagement and neglect of its clients. Three situations directly affected our clients:



*The Law Center helps parents of disabled children obtain day care services in setting with nonhandicapped children.*

In March 1988 the DHS threatened to discontinue services to approximately 400 children on the grounds that they should be funded through the MH/MR services of the Department of Health. This inter-agency dispute threatened the continuity of services for these children, since the Department of Health had no personnel familiar with their needs. The Law Center worked with other advocacy groups to halt the DHS plan without resorting to litigation.

In September 1988 the Law Center brought a class action in federal court, with co-counsel, to prevent the DHS from halting financial assistance to foster children for post high school education. DHS policy was contrary to state regulations. The program was restored.

An audit by the Commonwealth in 1987 resulted in a series of recommendations for changes in DHS, and a new Director, Joan Reeves, has now begun to make those changes. The Law Center, a member of an Adoption and Foster Care Task Force, has been meeting with other advocacy groups to prompt more effective delivery of services.

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## A Report on Current Law Center Cases and Programs

The criterion for each case is that it must secure for clients real and effective services vital to the quality of their lives, not mere symbolic or procedural changes, and that the changes brought about must benefit significant numbers of people.

The Law Center's legal services include training in advocacy, technical assistance, negotiation with governmental bodies, and when necessary, litigation. Many of the matters undertaken with clients take years to bring to accomplishment. The Law Center's staying power has permitted it to bring cases which have lasted over 8 years.

**The Environmental Project** seeks to improve public health by reducing human exposure to carcinogenic and other toxic substances. We educate citizens about the dangers of toxic air pollution, assist them in negotiations with polluters, and represent them in legal actions. Some current cases:

- Representing TRASH Ltd., a Montgomery County citizens group, the Law Center is challenging the validity of a DER permit to build a 1,200 ton per day incinerator in Plymouth Meeting.
- Operation of a hospital infectious waste incinerator in New Hanover Township is the subject of legal action, currently pending before the U. S. Court of Appeals. The Law Center represents Paradise Watch Dogs in this citizen lawsuit.

- The sludge processing plant located near the Airport is the object of negotiations between the Philadelphia Coalition against Sludge Odors, the Law Center's client, and the City Water Department, over noxious odors.

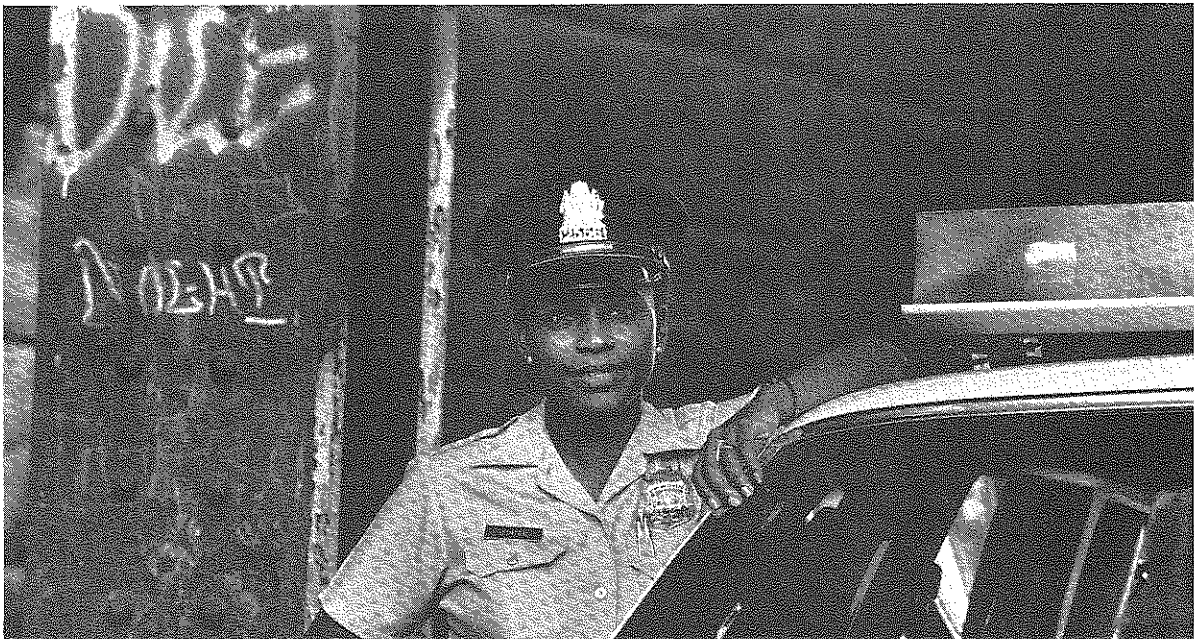
- Franklin Smelting Company and the Law Center's client, Concerned Citizens of Bridesburg, have concluded a new consent decree, replacing an earlier decree which expired in 1988.

- Mayor Goode has established a Solid Waste Advisory Committee, to develop a long range 25-year solution to disposal of the City's solid waste. Jerry Balter, the Environmental Project director, is a member of the committee.

**The Employment and Civil Rights Project** addresses discriminatory practices in minority employment, housing and City management practices and policies. Current cases and actions:

- PILCOP is representing SEPTA minority and female employees who claim employment discrimination and sexual harassment. A trial will take place in 1989.
- Marilyn Streeter and Karen Collier, black policewomen dismissed by the Police Department for reasons unrelated to their ability to perform, have been offered reinstatements after settlement negotiations.

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*The Law Center represents minority police officers, as well as minority applicants to the Police Department, seeking to end discriminatory employment practices.*

## Handicapped Winning Access . . .

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In 1985, with a renewed interest on the part of DIA, the Law Center brought four transit access cases. First was the Columbia Avenue Station case, requiring that SEPTA install elevators in that newly-renovated station on the Broad Street subway. The case was initially lost in the Third District Court but was won on appeal. In the second case, the Law Center and DIA filed suit against SEPTA to protest its refusal to let persons in wheelchairs and without attendants use the commuter rail system. SEPTA agreed to modify its cars to provide space for wheelchairs.

With Law Center help DIA also filed a complaint with the federal Architectural and Transportation Barriers Compliance Board (ATBCB), contending that SEPTA station improvements had failed to take accessibility into account in violation of the Architectural Barriers Act of 1968. ATBCB found violations of its accessibility standards at 19 different SEPTA stations, and ordered SEPTA to fix those violations. The fourth and most significant case and the one with national impact is the ADAPT case.

## SEPTA Ends Opposition

When Louis Gambaccini took over SEPTA last Fall, one of his first decisions was to end SEPTA's opposition to accessible transportation, and the Law Center is close to an agreement on a plan to make key subway and rail stations accessible.

Transportation investment and service is a key component in our economy, and in our society. No one is truly free without the mobility to go to work and to visit friends and relatives. For years transportation investment and services deliberately excluded handicapped persons, partially because of the cost but principally because of fears that serving disabled persons would frighten away other users. Congress clearly intended that such exclusion end. The Law Center is playing a singular role in moving that goal forward.

## Children's Funding Cutoff By DHS

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When Raymond Bullard, a black foster child, had lived for two years with John and Marilyn McLaughlin, a white couple, he was suddenly taken from them and placed with Willie and Elaine Williams, a black family, at the insistence of Catholic Social Services.

The McLaughlins filed suit, and with the assistance of the Law Center, won a court ruling that Raymond should be returned to the McLaughlins. Judge John Hannum emphasized that Raymond had received

## A Report on Current Law Center Cases and Programs

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**The Disabilities Project mission:** to move residents of remote institutions for the mentally disabled to small-scale community living arrangements; to improve the quality of education programs for mentally disabled children and improve the quality of vocational rehabilitation services and public transportation for all disabled persons; and to challenge efforts to weaken federal laws protecting handicapped persons' rights. Some current cases:

- The Hiram G. Andrews Rehabilitation Center in Johnstown, PA has agreed to recast its operations, using a plan developed by independent consultants. The Law Center represents a class of 500 disabled students and trainees.
- The Law Center seeks enforcement of federal mandates for vocational training for individuals with the most severe handicaps, in a suit against the Pennsylvania Office for Vocational Rehabilitation.
- The Law Center and its client, Philadelphia Advocates for Persons with Retardation, have negotiated an agreement with the City that the recommendations of an Expert Audit Team will be implemented, to provide quality community services for former Pennhurst residents now living in small-scale homes in Philadelphia.
- The Law Center and Homeward Bound, a coalition of parents of Hissom Memorial Center residents, are taking legal steps to counter efforts by the State of Oklahoma to delay the start of relocation of residents and to reverse the lower court's 1987 orders.
- In New Mexico, the Law Center represents 500 retarded persons, residents in two state-run institutions who seek small-scale community residences. The case will go to trial this year.

quality care from both foster parents, but the judge concluded that Raymond had become bonded to the McLaughlins, and would suffer harm if he was not returned to them.

Judge Hannum observed: "Making decision about persons according to their race is more likely to reflect racial prejudice than legitimate concerns." DHS discourages inter-racial placements, subscribing to a "same race" philosophy even when it is detrimental to the child.

**Become A Law Center Contributor**

We welcome your support of the Law Center's operations. Please complete this form and mail it in. Your gift, added to those of many other friends, helps us to expand our work as counsel to community and neighborhood organizations protecting the rights of Philadelphia citizens.

\_\_\_\_\_ If we wish to make a gift to the Law Center, and enclose my check payable to PILCOP in the amount of \$ \_\_\_\_\_

\_\_\_\_\_ Please continue to send me the newsletters.

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