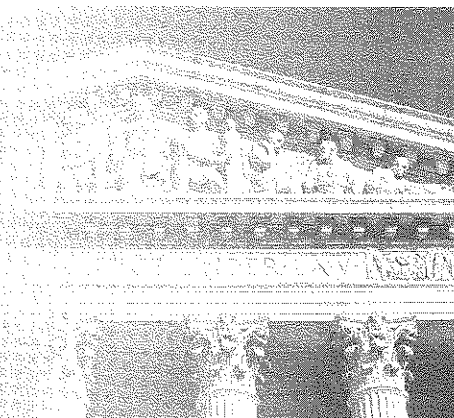


# PILCOP

PUBLIC INTEREST LAW  
CENTER OF PHILADELPHIA



August 1999

## Message from the Chief Counsel

**T**wenty-five years ago, the Philadelphia Bar Association established the Public Interest Law Center of Philadelphia. Our mission, then and now, is to achieve social justice through impact litigation.

I am proud of our many accomplishments. Our work on behalf of the residents of the Pennhurst state hospital led to a national disabilities rights movement. A victory in Pennsylvania led to federal law requiring the integration of children with disabilities in regular classrooms. We created a national model for "Right to Know" legislation, ensuring public access to information about toxic substances stored in communities. We initiated groundbreaking litigation that tripled the number of children receiving health care in Pennsylvania and established a national model.

On January 20, 2000 we will celebrate these achievements with a dinner and awards ceremony.

It will also be an occasion to look to the future. We have chosen "One America" as the theme, for we will dedicate our future work to transforming legal equality into *real* equality.

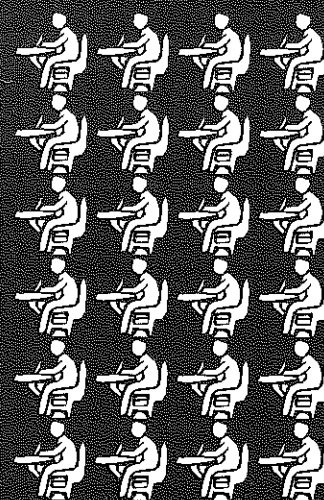
The brutal, hate-motivated attacks in Texas, Wyoming and Los Angeles are compelling reminders that there is much work to be done. Together with the other Lawyers' Committee for Civil Rights affiliates across the country, the Law Center has received a grant from the Ford Foundation for a new initiative to combat hate crimes. This grant will enable us to use the power of the law against those who would use hate to curtail freedom.

Our Board and staff continue to grow and diversify, bringing new strength to the organization. We are excited about this new era for the Law Center and look forward to the opportunities it will enable us to create for our clients.

## City Classroom



## Suburban Classroom



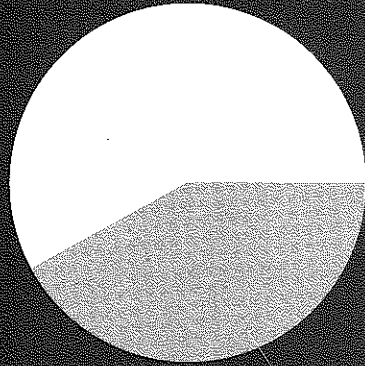
**Average class size in  
Philadelphia: 30  
students; Average  
suburban class: 24.**

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# Fair Funding for Public Schools Continues to Elude Philadelphia



**42%**

**of Philadelphia students live in deep poverty, compared to 18 percent statewide. As a result, the School District uses more of its budget to compensate with basic health and social services.**

School funding in Pennsylvania poses one of the greatest challenges to equality in our time. The legislature's current school funding scheme in Pennsylvania leaves Philadelphia, and other poor and predominantly minority school districts, with less than half of what is spent in more affluent districts. Only five states in the country have greater disparities in school funding between their rich and poor districts.

In the labor market in which Philadelphia students will compete, suburban school districts have almost twice the amount of money to spend on each student than Philadelphia. Students who need more are left with less: fewer teachers, computers, books and science labs, no music lessons or extracurricular activities. How can they compete fairly in the college and job market?

In the spring the Commonwealth Court dismissed the Law Center's case charging the state with failing its constitutional obligation to provide a thorough and efficient system of public education. Incredibly, the court determined that it did not have the authority to rule on the constitutionality of the school funding system. This makes Pennsylvania courts unique among other courts across the country, including New Jersey, Ohio, Vermont, New Hampshire, West Virginia, Kentucky and Texas, that have considered and ruled on constitutional challenges to inadequate school funding.

Moreover, this summer the state Supreme Court let the city and state off the hook for the millions of dollars needed for substantial reforms. As a result, the Philadelphia School District

is left holding the bag. It is the only school district in the state that cannot levy taxes to fund its budget. With no additional revenues from the city or state, it must find a way to pay for Court-ordered reforms which include all-day kindergarten, teacher training and reduced class sizes, or face sanctions.

Fearing the state courts would take this position, the Law Center joined the School District and City of Philadelphia in filing a lawsuit in federal court claiming that unequal funding for minority school districts violates the students' civil rights. This is the first case in the nation to use civil rights laws to challenge the way a state funds public education. In June, prominent attorney William T. Coleman, Jr. argued the case before the Third Circuit Court, and we are awaiting a decision about whether federal civil rights law applies to school funding.

Clearly, the courts cannot be counted on to make sure Philadelphia's schoolchildren are treated fairly. Legislative reform is what is needed. Together with our clients the Black Clergy of Philadelphia, the NAACP, Parents Union, Parents United, Home and School Council, Philadelphia Committee for Children and Youth and the Pennsylvania Campaign for Public Education, the Law Center helped form a powerful coalition of educators, childrens' advocates, labor unions and representatives from 350 other under-funded school districts to undertake an aggressive public education campaign and to organize support for a legislative initiative to equalize public school funding. In the meantime, another generation of students is entering a school system struggling with inadequate resources.

## **A Simple Solution for Environmental Racism**

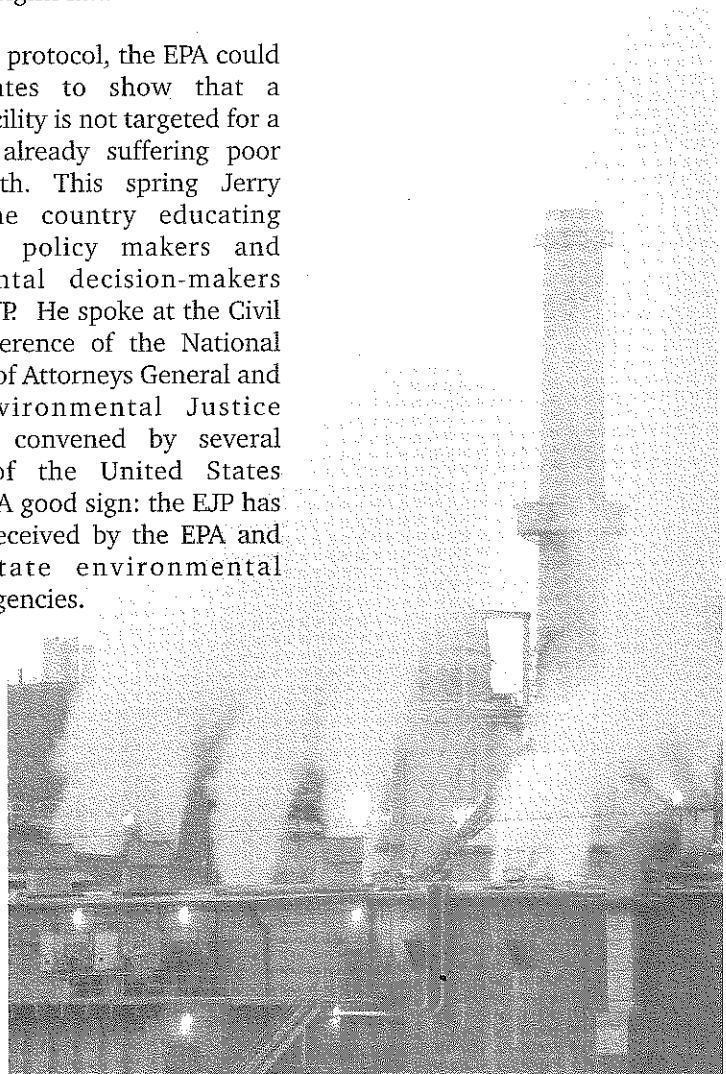
**T**he Environmental Justice movement arises from a growing concern that communities of color are exposed to more environmental hazards because they lack the political and economic power to ward them off. Across the country, state and federal environmental agencies have been lax in enforcing environmental protection laws in poor, urban communities of color. What makes this so unconscionable is that these communities are already coping with high poverty and unemployment, deteriorating housing and infrastructure, inadequate schools, economic disinvestment and poor public health.

Part of the problem is that EPA regulations that could be used to protect these communities require a sophisticated risk analysis to defeat any proposed facility. For instance, the EPA's investigation into a facility targeted for a community of color in Louisiana lasted for more than a year; the report included more than seventy-five pages of text and charts and yet did not reach a final conclusion.

With no clear means to defend themselves, communities of color are targeted for a disproportionate number of polluting facilities.

The Law Center has devised a simple solution. With a grant from the William Penn Foundation, Jerry Balter developed an Environmental Justice Protocol ("EJP") that bases any environmental justice review on a comparative public health analysis. The EJP assumes that communities with substandard public health need protection from local sources of environmental pollution regardless of the cause of the poor health. Because most substandard health communities are communities of color, the EJP would meet the goals of the environmental protection laws and the civil rights law.

By using the protocol, the EPA could require States to show that a proposed facility is not targeted for a community already suffering poor public health. This spring Jerry traveled the country educating lawmakers, policy makers and environmental decision-makers about the EJP. He spoke at the Civil Rights Conference of the National Association of Attorneys General and at an Environmental Justice Symposium convened by several members of the United States Congress. A good sign: the EJP has been well received by the EPA and various state environmental protection agencies.



## **Pursuing a National Agenda for Children's Health Care**



**C**omprehensive health care is essential to healthy child development. Ten years ago, Congress significantly expanded the eligibility for subsidized comprehensive health care to ensure that children from poor and working poor families have equal access. Despite this, a Law Center survey revealed that few states meet even the most basic requirements of the law. As result, millions of children are not enrolled or are not receiving the health care they need.

Here in Pennsylvania, the Law Center joined several other legal services organizations in bringing the first lawsuit in the nation to force a state to deliver the services required by federal law. This caused Pennsylvania to triple the number of children enrolled and established a national model for delivery.

We plan to replicate this effort in key states through partnerships with private law firms. In August, the first of these lawsuits was filed in Michigan by prominent Philadelphia law firm Dechert, Price & Rhoads on

behalf of the Michigan Welfare Rights Organization. The lawsuit charges Michigan with depriving thousands of eligible children of medical care and ultimately undermining their learning, development and growth.

We also continue to monitor the delivery of health care services in Pennsylvania pursuant to an agreement reached with the state. This summer we conducted a comprehensive survey assessing the state's delivery of services. While the health screening rate has risen from 40 percent of eligible children in 1995 to 53 percent in 1998, it is still far below the federal requirement of 80 percent. For the past 18 months Tom Gilhool has been negotiating with the Department of Public Welfare on behalf of our client organizations, which include the Pennsylvania chapter of the American Academy of Pediatrics, to develop a system that will actually deliver the services.



## Another Victory for Integration

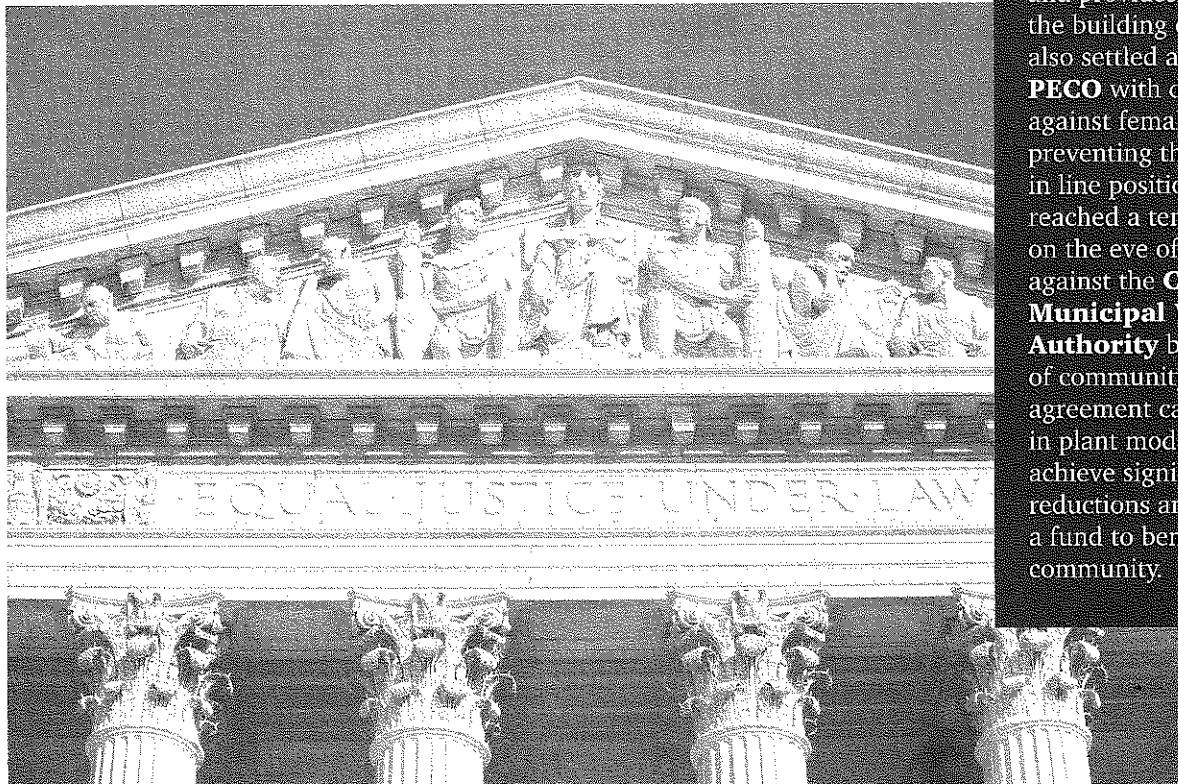
Shortly before summer recess the United States Supreme Court decided the most important case ever to come before the Court affecting people with disabilities living in state institutions. In the much-publicized *Olmstead* case, the Supreme Court reaffirmed that integration is a civil right and that the purpose of the Americans with Disabilities Act ("ADA") is to ensure that people with disabilities are integrated in society.

The Law Center filed an *amicus curiae* brief in the case, drawing upon our many successes across the country in replacing custodial institutions with community-based residences for people with developmental disabilities.

Writing for the majority, Justice Ginsburg declared that segregation of people with disabilities in state institutions is a form of discrimination prohibited by the ADA. Unfortunately, this decision does not lay to rest all challenges. Now the focus shifts to a battle being waged in the lower courts over whether states are immune from prosecution under the ADA. The Law Center has been litigating a related issue in the Eighth Circuit, whether the states are required to comply with the federal law requiring the integration of children with disabilities in schools. At stake is Congress' fundamental power to prohibit states from discriminatory segregation of people with disabilities.

## Recent Victories:

We recently settled several cases this spring and summer that will have a significant impact on our clients and their communities. In June, we partnered with leading disabilities rights attorney Steve Gold in settling a fair housing dispute on behalf of **Project Home**, an organization that provides support and counseling to people who are formerly homeless. This lawsuit was brought after the new owner of a major apartment building in Center City tried to evict 37 program participants living there. The agreement allows them to remain in the building and provides for training for the building employees. We also settled a lawsuit charging **PECO** with discriminating against female employees by preventing them from working in line positions. In July, we reached a tentative agreement on the eve of trial in a lawsuit against the **Camden County Municipal Waste Authority** brought on behalf of community residents. The agreement calls for \$4 million in plant modifications that will achieve significant emission reductions and also establishes a fund to benefit the community.



## THE IMPACT DOCKET:

*We thought you'd like to know about some of the other exciting cases we have been working on this year.*

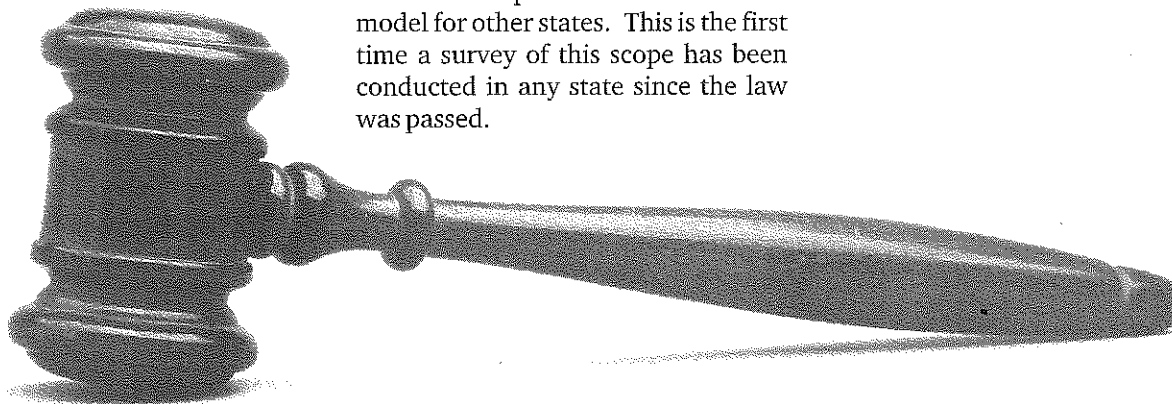
**Parks v. Darby Borough:** The Law Center has filed suit against the Darby Borough police, who responded to an emergency call by assaulting a man who was suffering an epileptic seizure in his own home. The lawsuit was filed in partnership with the Epilepsy Foundation, and calls for training programs to teach the police how to identify and respond appropriately to various disabilities.

**Bowers v. NCAA:** This lawsuit charges that the NCAA's scholarship eligibility requirements discriminate against students who take special education courses as part of their curriculum. Our client, Michael Bowers, lost his chance for a football scholarship when the NCAA determined that his special education courses did not meet its core curriculum requirements. We are currently in the process of gathering the evidence and expect the case to go to trial some time in the late fall.

**Gaskin v. Dept. Of Education:** This statewide, class action lawsuit charges the state with violating federal law requiring support services and teacher training to facilitate integration of students with developmental disabilities in regular classrooms. As part of the evidence gathering process we are conducting a statewide survey of special education services. The survey was developed by a team of nationally recognized education experts and serves as a model for other states. This is the first time a survey of this scope has been conducted in any state since the law was passed.

**Messier v. Southbury Training School:** The Law Center was called in to lend its expertise and national reputation to a lawsuit filed on behalf of the residents of a state institution for people with developmental disabilities in Connecticut. The suit charges the state with unlawfully segregating these individuals because it refuses to provide community-based services mandated by federal law. The case is being tried this summer.

**Lanning v. SEPTA:** SEPTA's preliminary running test for transit police applicants has eliminated virtually every female applicant since 1990. Despite this, a federal judge determined that the test was not discriminatory because the job required physical fitness. Fortunately, the appeals court overturned this decision, concluding that where a test has such disparate results the employer must show that cut-off point for running time must be related to the needs of the job. The case will now go to trial to determine whether the cut-off score represents the minimum physical capacity needed to do the job.



### Board News

**Welcome new members:** **Patrick Canfield**, Vice President of Sovereign Bank; **Luci McClure** of the Securities Exchange Commission; **Joseph S. Mitchell, Jr., Esquire**; Mandana Shahvari of Aetna Insurance and Sheilah Vance Lewis of Villanova Law School.

**Strategic planning kickoff:** In order to lay a secure foundation for the future, this fall Board members Phoebe Haddon of Temple Law School and Mark Dichter of Morgan Lewis & Bockius will lead the development of a long-range plan for the Law Center.

#### Executive Committee

David Smith, *Chair*  
William H. Ewing, *Vice Chair*  
Roosevelt Hairston, Jr., *Vice Chair*  
Robert P. Vogel, *Vice Chair*

Amy B. Ginensky, *Secretary*  
Richard Kremnick, *Treasurer*  
Lane Taylor, Jr., *Treasurer*

#### Members of the Board

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Patrick M. Canfield  
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Marilyn Heffley  
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Marcienne S. Mattleman  
Luci J. McClure  
Rob McCord  
Roland Morris  
Joseph S. Mitchell, Jr.  
David Richman

Robert W. Sayre  
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Mandana Shahvari  
Hon. Edmund B. Spaeth, Jr.  
Larry H. Spector  
Patrick E.E. Temple-West  
Sheilah Vance Lewis  
Debra Weiner  
Shelly D. Yanoff

### Staff News

We are excited about the many new additions to our staff over the past year. **Lionel Dyson** joined the Law Center last fall to work with Jerry Balter on the Environmental Justice project. Lionel is a graduate of Georgetown Law School.

In January, we welcomed **Marinda van Dalen**. Marinda was brought in to replace Karen Black, who left the Law Center to join the Community Builders Fellowship program launched by a joint venture between Harvard University and HUD. Marinda is a graduate of City University Law School and worked as a legal services lawyer for migrant

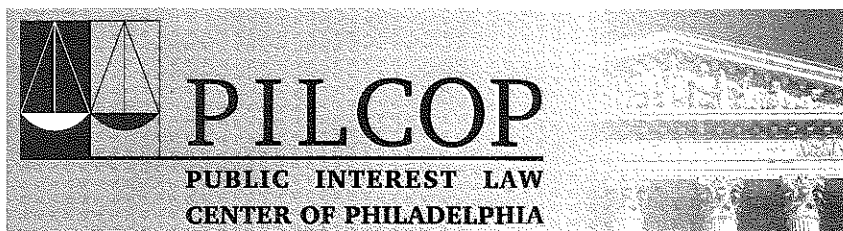
farmworkers in El Paso, Texas before joining the Law Center.

**Max Lapertosa** arrived in February from the Alliance for Children's Rights in Los Angeles, California. Max will work on disabilities rights cases in Pennsylvania and across the country. We also welcome **Jenny Chen**. Jenny is a recent graduate of Yale University and will work as a Project Coordinator on a fair housing enforcement project funded by HUD.

This summer we enjoyed the opportunity to work with some very talented law students. **Kynya Manning** and **Dan Sparaco** will

be second-year students at Penn Law School. Kynya and Dan were supported by **Edward Sparer Fellowships**, for which we thank Susan Feathers, Director of Penn's Public Interest Program. **Dmitri Pappas** will be a second year student at Harvard and worked with us on a Harvard Law Philadelphia Alumni Public Interest Fellowship. **Selene Faer Dalton-Kumins** will be a second-year student at Emory University. We'll miss them when they return to school and wish them much success in their undoubtedly bright futures.

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