



Public Interest Law Center Of Philadelphia

EQUAL JUSTICE UNDER LAW

End of Waiting List and Closure of Institution Sought by New Suit Brought in Delaware

Julie Desmond is 26 years old and is diagnosed with mental retardation with autistic features. Her mother is 58 and suffers from Multiple Sclerosis. Julie has been on a waiting list for community-based services, to which she is entitled under federal law, for over five years. Her parents are desperate to secure a group home placement for their daughter because of their concern over what will happen to Julie when they are no longer able to care for her.

Over 1,100 Delawareans with disabilities like Julie's remain on waiting lists for community-based services, hundreds of whom have been on the lists for years. And like Julie, their caregivers oftentimes are elderly family members with failing health who struggle to provide quality care. In addition to those waiting, there remain another 200 persons with disabilities who remain unnecessarily confined to the restrictive state-run institution known as Stockley Center.

Disturbingly, there currently exist in Delaware several community-based homes for people with disabilities which have been available for some time, but remain unoccupied because the state has not provided the operating funds for the homes. Such a fact flies in the face of reason, advocates point out, especially given that the provision of community-based services remains less expensive than operating res-

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Julie Desmod, second from the left, has been on a waiting list for community-based services for over five years.

Realizing Community Services for Persons with Disabilities in California...

The Law Center Fights to End the State's Wage Disparity for Community Versus Institutional Workers

Although California was once the leader in getting people with disabilities out of institutions and into the community, that process stalled in the late 1990s. One of the most important reasons was the caps the state imposed on payments to community providers, forcing them to keep their wages for direct care workers low. Wages are so low that workers leave for better wages at McDonalds.

The resulting high vacancy rates and high turnover in staff have been devastating for the quality of care in community facilities, and have deterred the expansion of community services, leaving many persons trapped in the

state's large institutions.

Most of the workers involved are minorities and many are immigrants. By this year the wages paid to workers in community facilities were half the wages paid to workers doing the same jobs at state institutions. Although California has the greatest gap between the wage rates in institutions and the wage rates in the community, many other states also have a substantial difference.

The lawsuit drafted by Thomas K. Gilhool and filed by the Law Center last year, *Sanchez v. Johnson*, which targets this gap and seeks to close it, is the first such suit in the country.

States and advocates from around the country are watching it closely.

California officials have themselves recognized the adverse effects that the high vacancy and turnover rates have on the care provided to persons with developmental disabilities who need stability in their relationships and high skill levels in their caretakers.

The Law Center has pending a motion for summary judgement which will be argued June 8th before Judge Wilken in San Francisco. The motion argues that the failure to provide community services for the persons institutional-

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Jerome Balter Honored by Rutgers School of Law-Camden

On January 23, 2002 Jerome Balter, Director of the Law Center's Environmental Justice Project, was honored by the Black Law Students' Association of Rutgers University School of Law-Camden for his steadfast dedication and contribution to the legal profession, and advancement of civil rights. Mr. Balter has practiced at the Law Center since 1979. Though his practice is concentrated on environmental law issues, it has recently expanded into the field of civil rights law as it relates to environmental law issues. Mr. Balter has represented minority, low-income groups in Chester, PA, and presently represents citizens in Camden, NJ, in an effort to enforce civil rights legislation affecting the disproportionate siting of polluting facilities in poor communities.

Excerpts from Mr. Balter's Remarks On the Fight for Environmental Justice:

I want to dedicate my remarks this evening to Martin Luther King, Jr. and to Homer Plessy and Rosa Parks and Bonnie Sanders, Phyllis Holmes and Barbara Pfeiffer of Camden, NJ and to Zulene Mayfield and Rev. Horace Strand of Chester, PA who today struggle to prevent industry and government from using their communities as the chosen dumping grounds for waste facilities, sewage treatment facilities, incinerators and chemical manufacturing facilities...facilities that no community wants. They are the leaders of today's struggles for environmental justice and civil rights.

Over 70% of the residents of Chester and Camden are either African American or Hispanic; Both have the lowest per capita incomes; both have the oldest housing stock; both have the highest percentage of children with lead poisoning; the public health in both cities is the poorest; infant mortality rates and low birth weights are 100% higher.

The Camdens and Chesters of the world have a disproportionately great attraction for pollution emitting industries. When a white community shouts NIMBY! (not in my back yard) it works wonders and permit applicants soon learn to look for other pastures like Camden and Chester. But when the Camdens and Chesters shout NIMBY! The response of industry and government is "put it there!"

Every state receives financial assistance from the EPA, which under Title VI obligates each state to assure that its programs will not have the effect of discriminating on account of race. But not one state has complied with this obligation.

If we are to achieve an environmental justice for the Camdens and Chesters and if we are to protect our nation's civil rights we need to build a new civil rights society that once again engages the conscience of American Society.



Eco-warrior Jerome Balter continues to fight to protect vulnerable communities from becoming saturated with polluting facilities.

Supreme Court Asked to Review Environmental Issue

Attorneys for the Law Center filed a petition with the U.S. Supreme Court asking it to review the Third Circuit Court of Appeals decision stating that plaintiffs cannot enforce the EPA regulations prohibiting disparate impact in programs funded with federal dollars.

The decision by the Court of Appeals in the Camden environmental case eviscerated enforcement of the anti-discrimination provisions of Title VI of the Civil Rights Act of 1964 because it is nearly impossible to prove intentional discrimination by governmental bodies.

In *South Camden Citizens in Action v. New Jersey Department of Environmental Protection* the Law Center, along with attorneys Olga Pomar of the Camden Regional Legal Services and Luke Cole of the Center on Race, Poverty & the Environment, complained that the issuance of a permit to St. Lawrence Cement Co. to put a slag grinding cement plant in the middle of a minority community had an unjustified adverse impact on that community. Federal District Court Judge Stephen Orlofsky agreed. The Court of Appeals did not address the merits, instead holding that no suit could be brought to enforce the regulations on the grounds that the regulations did not create any federal right. Judge Greenberg wrote the decision on behalf of himself and Judge Ambro. Judge Theodore McKee dissented.

No Agency Enforcement

The viability of the disparate impact regulations, enacted by the Justice Department under Robert Kennedy and approved by every President from Johnson to Reagan, are at stake in the petition for certiorari. Without judicial enforcement there is no enforcement. In more than 85 complaints filed with the Environmental Protection Administration, the agency has rendered only one decision on the merits, and that was against the community complainants.

Senator Edward Kennedy asked the Director of the Law Center's Environmental Project, Jerome Balter, to have several Camden clients attend a hearing he conducted in Washington to publicize the impact that judicial selection can have on persons with environmental problems and the clients were on national media. Senator Kennedy's staff reported he was very interested in pursuing legislation which would restore the enforceability of the Title VI regulations.

Message from the Law Center's Chief Counsel

Michael Churchill

Locally and nationally, the Law Center continues to make an impact, advancing the cause of equal citizenship promised by our Constitution. Because the stakes are so important, our opponents do not stop battling. In order to enforce the Congressionally created right of poor and working class children to effective delivery of quality health care we have had to take on Michigan and the misnamed Federalist Society in a procedural fight over the very issue of whether courts have the right to require states to comply with federal laws based on Congressional power to condition how federal funds are used. Now we have the right to go back into court to force Michigan to start performing and delivering the medical services for which it has received literally billions from federal taxpayers.

Locally our fight to provide justice for women seeking jobs as SEPTA transit officers and for Black and Latino residents of Camden seeking to safeguard their community from becoming an environmental dumping ground has placed us on the cutting edge. These cases have received attention in the New York Times, Boston Globe, Washington Post, Business Week and NPR.

At stake is what kind of proof is necessary to stop discrimination. One side says it is not discrimination unless you catch them yelling the N word or saying they don't want any women on the premises. Smoking guns showing intentional discrimination are needed! But that view ignores the Civil Rights Act of 1964 and promulgation of regulations by the Justice Department that year in which our government set out a higher and more realistic standard, that actions which have a strong disparate impact on minorities are discriminatory unless they can be adequately justified as necessary for some separate and legitimate purpose which cannot be accomplished in a less discriminatory manner.

Under the guise of technicalities the courts have been trying to minimize the power of the Congressional directives to prohibit unjustified disparate impact. The Justice Department is now retreating from attempting to end even gross examples of disparate impact, as in the SEPTA case, where only four women have been hired as transit police out of more than one hundred new hires. The Law Center remains one of the few places victims can go.

Our work has impact because of the quality of the persons who have devoted their lives to PILCOP's clients. Lawyers like Tom Gilhool, Jerry Balter, Judy Gran and Barbara Ransom have devised enormously thoughtful and innovative responses to combating the inequity of the California wage differentials crippling community based services for our clients, for polluting enterprises threatening the susceptible health of our poorest and frailest citizens, for state agencies which don't take their responsibilities seriously to educate

children with developmental disabilities in the most integrated manner possible, and for large unaccountable institutions like the NCAA trying to pacify their critics by sacrificing the hopes of students with learning disabilities for athletic scholarships.

The quality of this work has been recognized by grants from major foundations, including a grant of \$50,000 from the Public Welfare Foundation to support our environmental work, and grants from the William Penn Foundation, Independence Foundation, the Samuel S. Fels Foundation and the Philadelphia Foundation.

Although we have balanced our budget in the last two years by reducing our expenses, the cost of our cases has been rising and law firm support has been stagnant. As a consequence, we must look for increased support from the individuals who so clearly understand that a society with growing inequality is in jeopardy, and one which does not provide redress for victims of injustice corrodes its own future. For literally thousands of clients who have benefited from the impact of the Law Center's work, I say thank you.



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Law Center's International Exchange Project Seeks to Advance the Rights of Disabled Persons

Currently in Japan there are no laws that bar discrimination against persons with disabilities. In addition, a significant number of Japanese citizens with disabilities remain segregated from mainstream society in institutions where, reportedly, the majority of human rights abuses against persons with disabilities occur. Sadly, Japan has been slow to embrace the philosophy of independent living for this population and continues to promote the construction of large institutions and mental hospitals. And for children with disabilities, segregated public education remains the norm.

Efforts to improve the quality of life for persons with disabilities through legal and social advocacy, as well as through public education campaigns, are increasingly gaining momentum in Japan. Just last year the Committee on Economic, Social and Cultural Rights of the United Nations issued recommendations to the Japanese government to adopt anti-discriminatory legislation against persons with disabilities. Advocates everywhere applauded the move and have been working aggressively to educate the general public about the plight of persons with disabilities and the need for and critical importance of such laws.

The Law Center, as part of an intellectual exchange project sponsored by the Human Protection Committee of the Japanese Federation of Bar Associations, will lend its experience and expertise to a wide array of advocates throughout Japan, educating them about the historical and

current use of the law to establish protections and secure rights for this population in the United States. In turn, the Law Center hopes to gain a thorough understanding of Japan's approaches to tackling discrimination against and the historical exclusion of disabled persons from mainstream Japanese society. Each group of participants will use the knowledge gained to enlighten, inform and strengthen the disabilities rights movements in their respective nations.

A total of five exchanges will take place, with three Law Center attorneys making individual trips to Japan and two Japanese delegations visiting the United States.

Thomas K. Gilhool and Judith A. Gran of the Law Center already traveled to Japan this past December and March, respectively. Both lawyers were invited to speak before several members of the Diet, Japan's lawmaking body, who are part of a disability caucus working to develop anti-discrimination legislation in Japan. Mr. Gilhool, during his trip, was invited to attend a meeting of the executive committee of the national policy board that makes recommendations to the federal government regarding disabili-

ties related policy. In addition, Mr. Gilhool and Ms. Gran met with and presented to numerous persons with disabilities and their families, lawyers and educators, as well as the leaders and staff of numerous well established organizations including Disabled Peoples International, People First Tokyo and Legal Advocacy for the Defense of People with Disabilities.

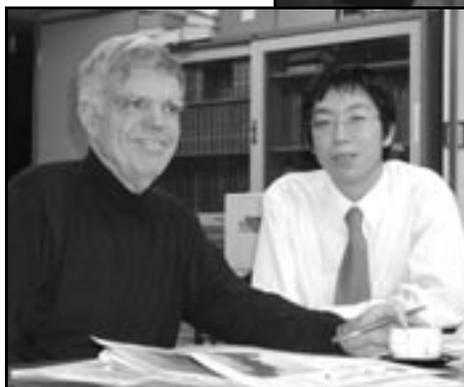
The first delegation of persons from Japan will arrive in Washington, D.C. in late June to attend and participate in the 25th Annual NAPAS Conference. The mission of NAPAS is to create a society where people with

disabilities exercise self-determination and have equality of opportunity and full participation in day to day life activities. The participants will serve on a panel that focuses on international disability rights and cross-cultural issues. The delegation will then travel to New Hampshire to take part in a series of activities and programs that trace the de-institutionalization movement in that state. New Hampshire was the first state to close its institutions and stands as a model for the delivery of high quality community based services to its residents with disabilities.

The exchange will conclude with Law Center attorney Barbara E. Ransom traveling to Japan this fall. Ms. Ransom will

share her expertise on the criminal justice system and disabilities rights. Her practice focuses primarily on ensuring that the criminal justice system, including law enforcement and the courts, trains its employees and modifies its policies to ensure that persons with disabilities, whether they are accused, suspects, victims, or witnesses, receive equal protection and due process of law. The final Japanese delegation will arrive in the United States in December to attend the annual TASH conference scheduled to be held in Boston, Massachusetts. TASH is an international organization comprised of people with disabilities, their family members, other advocates and professionals fighting for a society in which inclusion of all people in all aspects of society is the norm. TASH has over thirty chapters from thirty-four different territories and countries.

The project was made possible in large part by a generous grant from the Japan Foundation Center for Global Partnership. The foundation was established in 1991 to help achieve closer relations between Japan and the United States and to contribute to a better world through the cooperative efforts of both countries.



The Law Center's Judith Gran (above center) with Eiko Ishige, member of Japan's lawmaking body the Diet (left), discussing anti-discrimination legislation. Thomas K. Gilhool (bottom left) pictured with disabilities rights advocate during his December visit to Japan.

State's Wage Disparity

Continued from page 1

ized and the failure to provide quality care for the persons in community facilities, as the result of the low wages, violates provisions of Title XIX of the Social Security Act. That act, based on the well established power of the Congress to control how federal dollars are used (see the *Westside Mothers* article on the back page), requires states which decide to participate in the program to provide community services promptly and in a manner consistent with efficiency, safety and quality.

Judge Wilken has already rejected the state's motions to dismiss the case, based on its claim that federal law could not be enforced against the state and its claim that the federal law did not impose any real duty on the states.

Although California has a very large budget deficit this year, on the order of \$23 billion, it would not preclude a court victory. At the moment, California can draw down in excess of \$750 million additional dollars from the federal government to match its current contribution to the cost of running its community services. Those additional federal dollars could be used to increase wages of community workers and close the gap by almost half the amount necessary.

The Sanchez case is unique for the Law Center because of the extraordinary commitment of our clients who have agreed to pay our expenses, including the cost of salaries for the time spent on the case.

Law Center Represents Three Women in Fair Housing Bias Suit

The Law Center represents three single women who each allege that a Norristown landlord harassed them by sexual and racial remarks. The suit seeks unspecified damages against one of the area's local landlords, Gary Greco. The women assert that Mr. Greco repeatedly made derogatory and lewd remarks to them. In one case he sought to use his position as landlord to seek dates, according to the complaint, which also alleges that on numerous occasions he entered the apartment of one of the women unannounced, sometimes when she was showering. Mr. Greco, the suit states, went so far as to evict one tenant following several visits by her brother, saying that young black males deal drugs.

The Law Center is working with the Fair Housing Council of Montgomery County on this matter. The Council, along with the Fair Housing Center of the Tenants' Action Group (TAG) and the Housing Consortium for Disabled Individuals (HCDI) comprise the Delaware Valley Fair Housing Partnership with which the Law Center works collaboratively to enforce the Fair Housing Act. Together the partnership works aggressively to tackle discrimination in all phases of housing, from rentals to sales to lending to insuring, through education and outreach, complaint intake and investigation, testing, negotiation, and, when necessary legal action.

The rights of single women seeking housing to be free from harassment and to know that they do not need to deal with landlords seeking to collect more than rent is an important part of the protection of the Fair Housing Act, according to Michael Churchill who filed the case for the Law Center.

UpDates...

- Thomas K. Gilhool recently presented oral arguments before the 8th Circuit Court of Appeals on issues of qualified immunity and enforcement of IDEA and Section 504 in *Bradley v. Arkansas*.
- The Law Center would like to welcome its summer legal interns: Kimberly Larson, Robert Wilkey, Yasmin Blackburn, Tieffa Harper and undergraduate intern, Melissa Min.
- Michael Churchill spoke at the annual conference of the National Center for Women and Policing's seventh annual leadership conference in Washington, D.C. where he addressed the subject "Tearing Down the Wall: The Myth of Physical Prowess." The conference is the premier national event for women leaders in law enforcement.
- Jerome Balter has been appointed to the Pennsylvania Advisory Council for Environmental Justice.
- Because of the recent death of Judge Carol Los Mansmann the Law Center's *SEPTA v. Lanning* women's running case will be reargued.

End of Waiting List

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idential institutions. Currently, it costs about \$135,000 per year for each person institutionalized at Stockley while community-based services, on average, total about half that cost.

In April the Law Center filed a lawsuit against the state of Delaware seeking an end to the institutionalization of persons with disabilities and the provision of community-based services and supports in accordance with federal law. The Americans with Disabilities Act (ADA) and other federal laws require states to provide services with "reasonable promptness for people eligible and in need of them." Further, in June 1999, the U.S. Supreme Court ruled that unnecessary segregation of individuals with disabilities in institutions is discrimination prohibited by the ADA.

In recent years the Law Center has successfully litigated similar suits in Connecticut, Oklahoma, New Mexico, Illinois, and Tennessee. Our landmark Pennsylvania suit, *Halderman v. Pennhurst*, initiated in 1975, and argued before the U.S. Supreme Court three times, served as the driving force underlying the nationwide movement for the desegregation of persons with disabilities through the creation of strong community based services. The Delaware suit addresses the needs of persons affected by the delays in the state created services who have not been institutionalized as well as the needs of the persons already in the institution.



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Victory Against the Federalist Society

The glue that holds the national Union together is the Supremacy Clause of the United States Constitution, making federal law supreme over state law. Under attack in recent years by the mis-named Federalist Society (more aptly the pre-bellum Calhoun Society) and a thin majority of the Supreme Court, the power of Congress to set rules for programs financed with federal dollars was sharply curtailed last year by a Michigan District Court in the Law Center's case to force Michigan to deliver children's health care in accordance with the Medicaid Act.

If that decision prevailed, individuals could not enforce any federal provision of the welfare laws, Medicaid or Medicare, social security, special education or other important congressional legislation based on federal spending and the voluntary participation of the states.

In May the Sixth Circuit Court of Appeals gave the Law Center a resounding victory in the case, called *Westside Mothers v. Haven*, reversing the district court on all issues presented.

The case was brought by the Law Center with the Dechert office to cure the large number of Michigan children eligible for health care who are not receiving any medical services or only a small part of the comprehensive screening and treatment services required by federal law. Instead of moving to trial on whether the state was complying with fed-

eral law, Judge Robert H. Cleland invited Jeffery Sutton, a Federalist Society lawyer, to file an amicus brief and argue that the federal law was not enforceable against state officers.

Judge Cleland, defying a long history of enforcing the Medicaid Act, declared that the Act was not a law but was merely a contract between two sovereigns. Consequently, the district court said it could not be enforced under the Supremacy Clause against the sovereign state or its officers.

Tom Gilhool of the Law Center and Jennifer R. Clarke of Dechert argued the appeal last February before the Sixth Circuit Court of Appeals sitting in Cincinnati. The decision on May 15th was unanimous by three judges covering the political spectrum, including Judge Boggs who had written the dissent in the Michigan University affirmative action case.

The case attracted unusual attention, with more than 12 amicus briefs submitted on behalf of the plaintiffs. Jeffery Sutton has been nominated by President Bush for one of the vacancies on the Sixth Circuit.

The Law Center has a similar case to enforce children's health care under Medicaid pending in Oklahoma and is considering other states where it would be appropriate.