



DECEMBER 2003

The Law Center Partners With N. Phila. Community To End Years Of Pollution

Cited by the City's Air Management Services (AMS) more than thirty times for odor violations over a nine year period, Purolite, a global manufacturer of ion exchange resins which operates in the west Kensington section of Philadelphia, has never paid a dime in penalties or been issued an order to halt its odor releases.

In April 2003 the Law Center was contacted by a frustrated yet determined William and Ruth Hill, age 92 and 86 respectively. Their home, located just a block and a half from the factory, has been inundated with odor emissions for years causing persistent irritation to their eyes and mucous membranes. The couples' complaints made to both AMS and the EPA yielded no results.

The couple, steadfast in their desire to secure relief, turned to the Law Center this past summer desperate for help. Brian Faerstein, a University of Pennsylvania law student interning at the Law Center, was dispatched to the Hill's home to stay through the night. He confirmed the odor complaints and the Law Center decided to aid the Hills and members of the community, the majority of whom had resigned themselves to nothing ever getting done.



SIDEBAR

by **Brian Faerstein**

*Candidate for a Juris
Doctorate Degree from the
University of Pennsylvania in 2005*

At the end of my first week working at PILCOP this past summer, I packed a bag and headed out to west Kensington, a community in northern Philadelphia. While I did not know what to expect with regard to the work I would be doing at PILCOP, I could never have predicted that I would don the hat of an investigative environmentalist.

Upon my arrival at the home of William and Ruth Hill of west Kensington, the elderly couple greeted me with an appreciative handshake, though I could sense frustration and skepticism lingered in the background. The Hills had been referred to Jerry Balter by a City attorney, who had told them in as many words

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In July the Law Center's Jerome Balter, Director of the Environmental Project, filed a required sixty day Notice before bringing a citizen lawsuit in federal court against Purolite. This Notice acted as a catalyst for AMS to push for monetary damages and for facility improvements to stop the Purolite odor releases.

In order to prevent duplication of efforts, the Law Center has concentrated on immediate short term relief. This relief, to be furnished by Purolite, will provide each of the fifteen households with in-house air purifiers containing actual carbon filters to remove odors and HEPA filters to remove dust. So that negotiations do not drag on forever, the Law Center has set January 31, 2004 for AMS and Purolite to reach agreement for facility improvement. If negotiations are not successful the Law Center will proceed with filing its federal suit.

The persistence of Bill and Ruth not only is bringing them relief, it is also bringing relief to their neighbors. ■

McDermott Case: PILCOP Takes On Bureacrats Again

Patrick and Ronan McDermott were born on November 10, 2000. Their parents celebrated their healthy births. By the time they were around one year old their parents knew, however, that all was not well. As time passed, it became apparent that they were not developing emotionally or cognitively as they should be. At sixteen months neither child said “mama” or “dada.” They did not respond to their names, could not point to communicate or even understand a simple command like “where is the ball?”

At twenty-seven months, Patrick became very disengaged, unaware when someone entered the room and unable to distinguish family and friends from strangers. While Ronan was more social and aware of his surroundings, neither child was able to communicate at this point in any way. The twins’ inability to communicate particularly impacted Patrick who began acting out—kicking, scratching and crying—when he became frustrated.

The boys’ educational team, appointed by Delaware County, recommended that they be introduced to PECS, a mode of communication that relies on pictorial representations of words and phrases to facilitate language from non-verbal individuals. The boys received several hours of training per week and progressed well with the program. In an effort to stimulate greater advances, their educational team recommended that they both enroll in a two-week intensive PECS summer program.

When the county refused to fund the camp on the basis that it was not an “essential service” the twins’ parents contacted the Law Center. Attorney Barbara Ransom of the Disabilities Project educated the family about their rights under law and the mandates set forth in the Individuals with Disabilities Education Act (IDEA) that entitle infants and toddlers to early intervention special education services to enhance their development and minimize their potential for further development delay.

Disturbingly, the request was denied by someone who was not even a member of the boys’ educational team and who had not attended any meetings around the boys’ case.

With only enough money to pay for one boy to attend the program, the parents were forced to choose which of their children would benefit most from the service. They chose Patrick.

When Patrick entered the program he had an eighteen month communication delay. At the end of, and as a direct result of the program, Patrick actually began to communicate verbally and intelligibly for the first time in his life. Clearly and spontaneously expressing his needs on an increasingly regular basis, Patrick has now advanced beyond Ronan in articulation skills and problems related to his behavioral disorder have diminished. The victory, however, is bittersweet for the McDermott’s, given that they must confront the fact that Ronan’s progress was stalled as a result of a very tough decision they were forced to make.

The County’s refusal to pay for services deemed necessary by educators working with special needs children is similar to the rejection by many insurance companies of the services ordered by treating physicians. A bureaucrat with no familiarity with these two boys’ disabilities and no training in assisting children with communication difficulties decided

what was “too much.”

The Law Center has taken this case in order to help establish the proper process and standard for making these decisions so that they reflect the actual needs of the children by trained persons and are not made on arbitrary grounds by distant bureaucrats with no accountability for the decisions they make.

Consequently, the Law Center, after failing to get any relief at the administrative level, has taken this case to federal district court seeking reimbursement from the County for the \$3,000 the McDermott’s paid for Patrick’s program and seeking compensatory education for Ronan that will enable him to make the same progress achieved by his brother. ■

SIDEBAR

– written by –

Deirdre McDermott

On November 10, 2000 I gave birth to twin boys, Patrick and Ronan. They were so adorable. Nine months earlier when my husband and I first learned we were having twins we were shocked but delighted. My most immediate concern was how I was going to feed and burp two babies at the same time! As it turned out that would be the least of my worries compared to the problems that surfaced later on for which few parents are prepared.



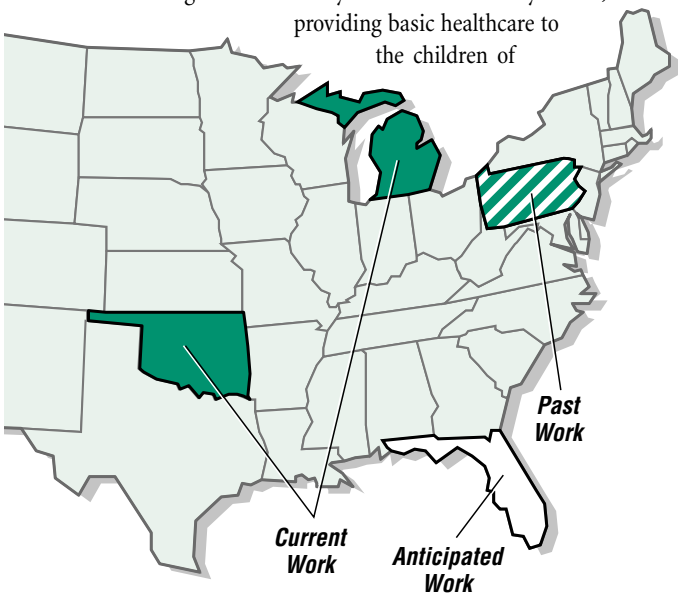
There were early warning signs: the twins showed little indication that they recognized us; increasingly they made less and less eye contact; at twelve months they had no verbalizations; and their social skills at eighteen months more closely resembled those of a six month old.

I reflected on an article I had read in Time magazine when I was pregnant about twin autistic children and what I recalled was strik-

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Law Center Seeks To Expand Efforts To Deliver Health Care Services To Children In Florida

Millions of children throughout the nation from poor and working poor families are eligible under Medicaid's Early Periodic Screening Diagnoses and Treatment (EPSDT) Program and related programs to receive medical services but sadly many do not receive any. For these children, development may be dramatically impaired due to lack of periodic physical examinations, immunizations, health education, vision and hearing examinations, eye glasses, dental care and treatment of hearing disorders--things each of us takes for granted on a daily basis. In this wealthy nation,



families who cannot afford it is a matter of simple social justice. It is also a Congressional mandate.

The Medicaid program created in 1965 and expanded in the late 1980s provides federal funding to states to finance medical services for poor families. Allocation of these funds to participating states is conditional upon their compliance with requirements that govern the Act, including the prompt provision of all required children's health care services.

States, however, continue to shirk their responsibility to their youngest citizens by failing to provide funds and take the proactive and aggressive measures to furnish children with the healthcare services mandated by the Medicaid Act.

For over a decade the Law Center has devoted substantial financial and human resources to ensure that Congress' mandate is implemented in states throughout the nation, including Pennsylvania, Michigan and Oklahoma. In the 1990s, the Law Center, led a coalition of twenty legal service providers representing a class of children and a group of children's organizations to triple the number of children served in Pennsylvania from 300,000 to 900,000. More recently, in Michigan, working with Jennifer Clarke of Dechert LLP, and in Oklahoma working with Louis and Patricia Bullock, the Law Center has pursued actions which have upheld the enforceability in federal court of Medicaid's EPSDT programs in the face of state officials' efforts to obtain judicial determinations that the require-

ments of the Medicaid Act are not enforceable against them by the affected children.

The next stage in both states will be to demonstrate the failure of these states to comply with the federal act. In Oklahoma discovery is proceeding and trial is scheduled for April.

The Law Center now is turning its attention to Florida, one of five large states which is home to over forty percent of the U.S. Medicaid eligible population. About half the children born in Florida are Medicaid eligible at birth. As of the year ending September 30, 2001 (the most recent for which we have statistics), only about 47 percent of Medicaid eligible children in Florida received even one of the EPSDT screens which the Medicaid law mandates.

Multiple deficits plague Florida's Medicaid program. Over the last few years, Florida's Medicaid children and their pediatricians have increasingly dealt with systemic problems regarding the processes of determining eligibility of children for Medicaid and assigning children to authorized primary care physicians. Additionally, some recent studies have shown that the most frequently used basic service provided by a primary care pediatrician is reimbursed at a rate which is only 70 percent of the pediatrician's overhead cost (without regard to any compensation to the pediatrician). During the entire decade, Florida has increased by only 4 percent the rates it pays for Medicaid pediatricians' services and at a rate which is less than two-thirds of what the federal Medicare program pays a physician for the comparable service.

The leadership of the American Academy of Pediatrics' Florida Chapter, the Florida Pediatric Society (FPS), reports that for years it has attempted, without significant success, to obtain solutions to these problems through administrative and legislative means and now has concluded litigation must be initiated to improve the situation.

In September, Jim Eiseman, a long time partner with Drinker Biddle & Reath, LLP joined the Law Center to direct this effort (*see updates*).

The Law Center has successfully enlisted the efforts of Piper Rudnick, LLP which has both a Philadelphia and Tampa, Florida office. Efforts are well underway to assemble and review the legal and factual information needed to draft a complaint and identify individual and organizational plaintiffs for the proposed class action.

The essence of the Law Center's work remains systemic reform. Eighty-five percent of our cases are brought against governmental bodies for failing to fulfill statutory duties to provide disadvantaged and vulnerable persons with critically needed services. It is easy for government to make promises and for legislators to say they have fixed a problem. It is much harder actually to get the programs to serve the people who are in desperate need. That is the job the Law Center and its Co-Counsel are committed to and, with sufficient resources, will accomplish. ■



Jim Eiseman

Brian Faerstein

Continued from page 1...

that the City could do nothing more to help them stop the Purolite factory, located a block from their home, from releasing malodorous fumes and making noise at night. In addition to their many pleas to the City for help, the Hills had contacted the EPA on several occasions to investigate the nuisance, efforts that were to no avail. I walked around the neighborhood, talked to their neighbors, who corroborated the odors, and visited the premises of the factory, where a chemical scent was detected. I left the neighborhood with a sense that the odors, which the neighbors described in very similar terms, and which my investigation confirmed are especially strong at night, constituted an actionable problem.

After a careful consideration of the law surrounding public and private nuisance in Pennsylvania, Mr. Balter and I began looking into the City's dealings with and oversight of Purolite. While we knew Purolite had violated environmental regulations in the past and had a reputation for not being cooperative, Mr. Balter and I were nonetheless surprised to learn that Purolite had been cited by AMS thirty-one times for violations of the City's odor regulations (none of which had been accounted for). Armed with this information, a new legal avenue opened up: we could initiate a federal lawsuit under the citizens' suit provision of the Clean Air Act, a provision which provides citizens an opportunity to enforce violations the government has let sit. I researched this possibility and found this to be a particularly promising option. AMS had not followed up on any of the violations for which it had cited Purolite, and thus Mr. and Mrs. Hill (and other neighbors in the community) could bring a lawsuit against Purolite on that basis. Curiously, once AMS and the City had seen the report I prepared for Mr. Balter about my visit to the neighborhood and Purolite several weeks prior, they had sent the factory a notice proposing a settlement and outlining further action they would take regarding the violations. This did not preclude our efforts, though, to send a notice letter on behalf of the Hills and their neighbors informing the factory of our potential lawsuit. I returned to the neighborhood to identify other potential plaintiffs, explain to them what Mr. Balter and I were planning, and to solicit their aid in monitoring the time and frequency of the odors Purolite emits.

The residents expressed their sincere gratitude regarding the Law Center's willingness to help them end years of bothersome odors that diminished their quality of life. They stated that their inability to secure relief for so long compounded their feelings of helplessness and spoke more broadly to the added struggles faced by low-income persons whose pleas for assistance are all too often ignored.

The Law Center helped restore this community's belief in the power of the law to end illegal environmental activities. Without the intervention of an organization like PILCOP the concerns of these residents would likely have continued to fall on deaf ears. ■

Deirdre McDermott

Continued from page 2...

ingly familiar. I arranged for the boys to have a complete evaluation and upon receiving the results my husband and I were devastated to learn that our worst fears had been realized.

And so our journey began! At eighteen months the twins were very delayed. They understood very little so it was very hard to communicate with them. Patrick was descending into a world of his own more and more every day. He would stare into space for hours on end. He was unaffectionate and showed very little emotion.

Confronting all of these realities was difficult for our entire family. It was hard to be able to connect with the twins in the same way we had with our first child, Ros. It saddened us to see them so far removed from their environment and other children. It was painful to bear witness to the frustrations that accompanied their inability to communicate their needs and desires to us.

In the midst of all of these challenges, you must deal on a regular basis with a system, along with all of its bureaucracy, that has the potential to completely wear you down. As a parent of children with special needs, the sad thing is that for your children to get what they need and are entitled to under law, you have to devote so much time and energy working, and in many cases fighting, for appropriate services.

But without support, the stressors and challenges thrown your way can become overwhelming. The critical importance of having a place like the Law Center to turn to when you feel confused and exhausted by the system cannot be overstated. A woman once likened the Law Center's Tom Gilhool and his work on behalf of children with disabilities as tantamount to the achievements made by Dr. Martin Luther King, Jr. for African Americans. Where would we be as parents-as a society - if special needs children continued to be legally denied access to all of the opportunities you and I normally take for granted?

As a parent you become an advocate for your child but PILCOP lawyers are advocates for all of our children. They are to be admired because they are so totally devoted and dedicated and they want to end discrimination against all special needs children. I happened to mention to the lawyers working on my case that I was attending a meeting for parents of PDD/Autistic children in our area and was pleasantly surprised to see both attorneys in attendance. That is the level of commitment that the staff possesses.

My husband and I decided from the very start when the twins were diagnosed that we must provide them with everything they need to reach their greatest potential and hopefully become independent adults. Raising children with special needs is certainly challenging but is also very rewarding. We celebrate every developmental goal they reach with so much hope and excitement for their future, and we remain ever so grateful that in a time of crisis we had a place to go for assistance and support. ■

Ronald Parks Finally Has His Day in Court

In a two-week jury trial – October 21 through October 31, 2003 – Ronald Parks and his family finally had the opportunity to tell a jury about the ordeal of February 18, 1998 when untrained police officers from Darby Borough responded to a 911 medical call that 10-year-old Dante had made to get an ambulance for his dad. At approximately 7:00 a.m. Ronald Parks had an epileptic seizure. As his body convulsed uncontrollably, his wife, Jennifer, told Dante to call for an ambulance and go outside to make sure the paramedics came to the right house. Unfortunately, a just recently hired, part-time police officer arrived before the ambulance. Without training in the recognition and management of seizure patients, the officer turned a call for medical assistance into a police action that turned the family's world upside down.

Darby Borough – infamous for the number of excessive force claims filed against its police officers - had obtained a waiver that exempted this officer – from all of the training requirements of the Municipal Police Officers Education and Training Commission. The Commission, another defendant in this matter, had settled Mr. Parks' claims and modified its curriculum in 2001 to include training in the recognition and management of seizure patients. This training is now a part of the preparation every person completing a police training program in the Commonwealth receives. It is also one of the regular offerings of the Commission's continuing education curriculum for current police officers. In addition, the curriculum has been adopted by the F.B.I. for use in its training program.

In addition to the Commission, two other defendants who responded after Darby Borough and participated in forcibly restraining Mr. Parks settled, agreeing to appropriate training and paying, along with the Commission, a total of \$86,000.

Unfortunately and inexplicably, the jury of six white women and one Hispanic man refused to find that there was any violation of Mr. Parks' civil rights under the Americans with Disabilities Act (ADA), the Rehabilitation Act or the Pennsylvania Human Relations Act. Because the uncontroverted evidence in the record, including the Borough's own testimony, establishes that it failed to conduct a self-evaluation, to train or require training for police officers who respond to 911 medical assistance calls from, or on behalf of, persons with disabilities, the Law Center has filed a motion asking the Court to either grant Mr. Parks a new trial or to grant him injunctive relief to enjoin Darby Borough to ensure that all of the police officers that it employs receive training in the recognition and proper management of seizure patients.

Within a month of the trial, the Law Center received yet another call about allegations of Darby Borough's police engaging in misconduct. This call came on behalf of a 55 year old man with diabetes who claims he was refused access to his medication after being taken into custody by Darby police officers. As with Mr. Parks' claim, the Law Center will contact the U.S. Department of Justice and request that it investigate the matter. ■

UpDates...

■ This summer, Michael Churchill participated in hearings held on the School District's compliance with the Desegregation Decree issued by Judge Doris Smith-Ribner based on the Law Center's litigation of the failure to provide students in racially isolated schools the same quality education offered in desegregated schools. The Law Center, Pa. Human Relations Commission and School District are negotiating a process to monitor the compliance of the District over the next three years and to settle any outstanding disputes. The Law Center is seeking to have the District provide public information to assess if the District is reducing the academic achievement gap between minority and white students and if it is fairly allocating resources to racially isolated schools.

■ In September, James Eiseman, Jr., a long time partner with Drinker Biddle & Reath LLP and Of Counsel for the last four years, joined the staff of the Law Center. He will be helping to conduct existing litigation, including cases to improve the delivery of health care services to children and to develop quality community services for the disabled, in the absence of Co-Chief Counsel Thomas Gilhool who presently is in Japan on a Fulbright Award.

■ In the Law Center's *Gaskin v. Commonwealth*, the Pennsylvania class action against the Department of Education for failing to provide adequate support for integrated schooling to the extent appropriate for children with disabilities, both sides filed motions for summary judgment – responses and replies. Although trial was scheduled for the end of November, it will be delayed for determination of the pending motions.

■ Disabilities Law Project Director Judith A. Gran's 477 page report reviewing each state's progress in implementing the Supreme Court's 1999 decision in *Olmstead v. L.C.* which held that unnecessary institutionalization is a form of discrimination under the Americans with Disabilities Act has been published. The study was transmitted by the National Council on Disabilities, which awarded a \$50,000 grant to the Law Center to conduct this national study, to the President of the U.S., President Pro Tempore of the U.S. Senate and the Speaker of the U.S. House of Representatives. The report is available on NCD's web site at www.ncd.gov.



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EPA Refuses to Enforce Civil Rights Law

The Director of the Law Center's Environmental Project, Jerome Balter, is calling for a Congressional Action to overcome the EPA's failure to enforce civil rights laws and regulations intended to advance environmental justice by preventing minority and low-income areas from being overburdened with waste and industrial facilities.

A survey of environmental justice activity, conducted by the Law Center, reveals that among the thirty-one states answering the survey there are only three that have developed criteria for investigating the civil rights impact of proposed environmental permits. Under federal civil rights laws, all states receive federal dollars for environmental protection on condition that their permits do not have a discriminatory impact. Each state annually assures the EPA that its permits do not have such a discriminatory impact, but the survey reveals that 90 percent of the states have no basis for their assurances.

Despite the gross failure of states receiving EPA funding to comply with civil rights law, the EPA has never investigated any state's compliance with civil rights law, nor has EPA ever attempted to impose penalties or cut off funding to recalcitrant states. In its entire history, the EPA has received more than 130 environmental justice complaints against state agencies but has never found merit to a single one of these complaints.

Enforcement of environmental justice laws and regulations was addi-

tionally impaired by the U.S. Supreme Court's decision in the Sandoval case in 2001 when the Supreme Court held that victims of racial discrimination could not enforce civil rights laws and regulations because Congress had not explicitly provided for such citizen lawsuit enforcement. Explicit provisions for citizen lawsuit enforcement were written into the Clean Air Act and other environmental legislation and Congress should now amend the Civil Rights Act, Title VI, by adding a citizen lawsuit provision. The need for Congressional action to advance environmental justice is made self-evident by EPA's deliberate indifference to civil rights laws and regulations. The EPA is still funding environmental injustice by grants of untold millions of dollars to states which perpetuate environmental discrimination.

Congress should act in 2004 to advance environmental justice. The Law Center has requested the Senate Committees on the "Judiciary" and on "Environmental and Public Works" and the House Committees on "Commerce" and on the "Judiciary" to investigate the EPA and to amend the civil rights law to provide for citizen lawsuit enforcement.

Persons willing to support the Law Center's call for Congressional action should contact Jerome Balter at 215-627-7100 or jbalter@pilcop.org to learn about specific ways you can help in the upcoming year.