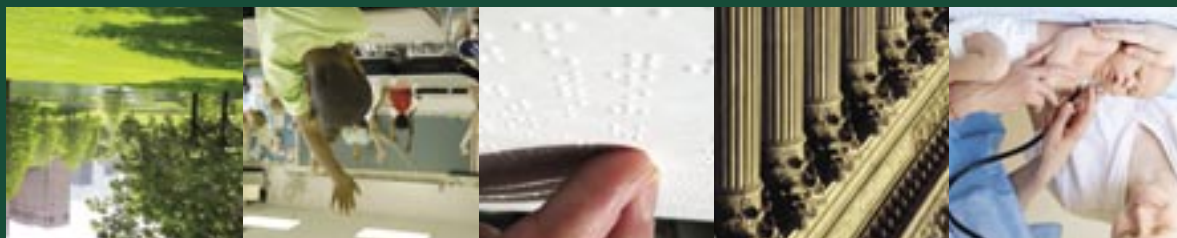


Jennifer R. Clarke

As I assume the mantle of responsibility at the Public Interest Law Center of Philadelphia, I am humbled by the inspired and passionate legacy of the many Philadelphia lawyers who contributed to the Law Center's first forty years. It is not good enough to *try* to make change we have made. As Supreme Court Justice Brennan remarked on the occasion of our 1989 anniversary celebration: "your years as a leading public interest law firm have brought effective assistance to so many hundreds of disadvantaged citizens, particularly citizens with developmental disabilities, minority workers facing discriminatory treatment at work or as applicants for work, and children at risk." Our work continues to drive forward, with meaningful, positive results: the 400,000 children in Oklahoma whose access to health care under Medicaid was improved when we won our lawsuit there; or the 1000 people with disabilities in Tennessee who no longer live in institutions but instead, as a result of our litigation there, have the chance to live independently in community-based settings. But the true measure of success is that which we accomplish tomorrow and next year — not yesterday. Civil rights are endangered today as they were in 1984 when Senator Lowell Weicker, celebrating another Law Center anniversary, warned, in language that has equal power today: "in today's climate, when not even the Constitution can be taken for granted, everything must be made plain." Senator Weicker continued: "The Constitution is not a self-enforcing document. Every generation must breathe new life into it and make its true meaning clear in the lives that we lead. If we don't, and instead choose the path of least resistance, our children will be the ones to suffer."

Senator Weicker's words are a warning and a challenge as we take this organization deep into the 21st Century. With your support, we will heed that warning and accept that challenge.

L E T T E R F R O M T H E E X E C U T I V E D I R E C T O R



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PILCOP



INSIDE: The Law Center welcomes Jennifer Clarke as Executive Director

AN UPDATE FROM THE PUBLIC INTEREST LAW CENTER OF PHILADELPHIA • JULY 2006 • WWW.PILCOP.ORG

Who Decides?

In 1999, the Supreme Court declared that "unjustified institutional isolation of persons with disabilities is a form of discrimination....institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life."

The Law Center took aim at this form of discrimination when it moved to intervene on behalf of adults with disabilities who were institutionalized in Altoona, Pennsylvania. When the Commonwealth of Pennsylvania decided to close the institution, a group of parents and guardians opposed the move in court asking, instead, that their adult children continue to be housed in the institution. Rather than fight the lawsuit, the Commonwealth agreed that, if the parents or guardians so chose, the individuals within the institutions could be transferred to a different institution.

But the individuals who actually *lived* in the institutions were left out. Their choices — whether to remain in an institution or whether to move to community based housing — were ignored. According to the motion filed by the Law Center, this violated the settled law that "neither guardians nor parents have, nor can they be accorded, veto power over the provision of community-based services to a person with disabilities who qualified for community services and who can handle and would benefit from them."

The Law Center's clients in this case include seven individuals as well as eight nationally-recognized organizations of professionals and advocates in the area of mental retardation including the American Association on Mental Retardation, Pennsylvania Chapter, PA TASH, Pennsylvania Protection and Advocacy, Inc., the ARC of Pennsylvania, Autism National Committee, Pennsylvania Chapter, National Coalition on Self-determination, Speaking for Ourselves and Vision for Equality, Inc.



Race and Adoption: The Law Center Fights to Protect Foster Child from Agency Abuse

Kevin Francis, Jr. is a four year old child who for two years lived with Susan and Randy Borelly, her son and daughter, and her niece near West Chester. Kevin was placed there as a foster child and had grown to love, accept, and rely on the Borellys as his family.

Despite this relationship, the Chester County Children Youth and Families moved Kevin from the only home he remembers and placed him with another family for adoption. Not only did they move Kevin, but they moved him without warning. Before they arrived at the Borelly's house, the agency had only said that Kevin was going for a visit. So, when agency officials arrived, Kevin had not been prepared for the fact that he would never return.

Why did Chester County CYF act this way? The Borellys believed the reason was race: Kevin is African-American and the Borellys are white. The family to whom Kevin was sent was African-American. If this were the reason, it would violate federal law which prohibits an agency from taking account of race in an adoption decision.

The agency denied that its decision was racially-based and claimed it was simply enforcing a policy which prohibited adopting more than one child a year. The Borellys had just completed adopting their niece and therefore, according to the agency, the Borellys could *continued inside...*



JENNIFER R. CLARKE

New Executive Director Brings Fresh, Energetic Leadership to Law Center

Jennifer R. Clarke, a former partner at Dechert LLP and a highly-acclaimed trial lawyer, joined the Law Center as Executive Director on February 1, 2006. Jenny brings fresh passion and energy to the Law Center and is determined to continue its magnificent work through the 21st Century. She is the first executive director since Edwin D. Wolf, who held the job from 1974 until his death in 1976.

As executive director, Ms. Clarke is responsible for all aspects of the Law Center's operations. Her responsibilities include working with the board of directors; establishing, with the board, the Law Center's strategic direction; reviewing and evaluating the work undertaken by the Law Center; addressing staffing needs; financial management; fundraising; and serving as the Law Center's public spokesperson.

Ms. Clarke was a partner in the litigation department at Dechert LLP from 1991 until her arrival at the Law Center this year. While at Dechert, Jenny spent eight years as lead counsel in the Law Center's children's healthcare case in Michigan, now before the Sixth Circuit Court of Appeals for the second time. She also represented the City of Philadelphia in its suit against the Commonwealth of Pennsylvania and legislative leaders challenging the constitutionality of the so-called Convention Center bill that, like the recently-revoked pay raise statute, was added at the 11th hour to a much smaller and different bill. In a unanimous decision, the Supreme Court declared that law unconstitutional because it pertained to more than one subject; a decision which surprised many court watchers given the Supreme Court's frequent decisions upholding such laws.

Before she was a partner, Jenny was an associate at Dechert; and from 1983 until 1987 she was an associate at White & Case in New York and then Washington, DC. Before going to law school, Jenny was a reporter and then bureau chief of the Middletown, NY *Times Herald Record*. Jenny graduated from Columbia University School of Law in 1982 where she was a Stone Scholar and an editor on the Law Review. She was a *magna cum laude* graduate of Dartmouth College in 1977, a member of the second class of women to matriculate at Dartmouth.

Jenny's work as a trial lawyer has been recognized in Philadelphia and nationally. She is listed in *Best Lawyers in America*, 2005 and 2006. In 2005 she was listed in *Chambers USA*, a reference guide for clients. *Philadelphia Magazine* listed her as a "Superlawyer" in 2004 and 2006. She is a Fellow of the American Bar Foundation.

At home, Jenny is an avid student of history and literature, now working her way through the 19th century. She clears her mind with gardening, tennis, bicycling and backpacking. The loves and pride of her life are her husband, Dr. Alan M. Barstow, a PhD in anthropology from Columbia University; her son, John Thomas Clarke Barstow, a midshipman at the United States Naval Academy and her daughter, Mariah Marilyn Clarke Barstow, a sophomore at Germantown Friends School in Philadelphia. Jenny was born on the United States Naval Base in Guantanamo Bay, Cuba.

Race and Adoption: The Law Center Fights to Protect Foster Child from Agency Abuse continued...

not adopt Kevin. The agency never actually looked at whether this policy was necessary to protect the niece; and it refused to allow Kevin to stay with the Borellys until the next year on the grounds that he "needs permanency."

Both the Guardian *ad litem*, Jean Speiser, and the attorney for the Borellys, Sam Stretton, sought the assistance of the Law Center. The Law Center consulted several child development experts, all of whom stated permanency for Kevin meant staying with the Borellys. Representing the Guardian, the Law Center petitioned the Chester County Court to re-open the issue of whether Kevin should be moved, and also to examine why the agency had moved Kevin so abruptly. At the same time, the Borellys, through their attorney and the Guardian through the Law Center went to federal court, seeking Kevin's return through a federal court injunction.

Neither judge agreed to return Kevin. The Chester County judge declined to review the reasons for the agency's decisions. That hearing was behind closed doors; even the Borellys were not permitted to attend, and the participants are not permitted to discuss the testimony. The federal judge, who was only permitted to decide the narrow question of whether the agency's decision was based on race, held that there was insufficient evidence to show that the single adoption policy was "generated or applied" because of race. On all other matters of the child's best interest he had to defer to the state court.

The Law Center has for 20 years been representing foster families seeking to preserve stability and continuity for foster children, sometimes in inter-racial cases and sometimes in cases where all parties are of the same race. The lack of an official role for the foster parents in court is one key part of the problem. The closed courtroom when important decisions about children's futures is another. The biggest problem, as Edmund Cahn long ago wrote, is the failure to look at the system from the perspective of the intended beneficiary or consumer, in this case the child, and the lack of any real knowledge about children's developmental needs. Our goal is to hold child custody agencies accountable, or to open up the proceedings of agencies sufficiently for the public to see what actually transpires. Only then will children's needs begin to be met and Kevin's tragedy avoided.

Law Center Focuses Public Attention on Pennsylvania's Unequal System of Public School Funding

The Law Center continued to focus public attention on the wide and unfair gaps in spending for public education in Pennsylvania by publishing its analysis of newly available data for school year 2004-05. The result: the Commonwealth continues to allow extraordinary gaps between the richest and poorest public school districts in the educational opportunities available to their students. The 400 school districts who are on the lower end of Pennsylvania's grossly unequal funding spend an average \$3,109 per pupil less than the average spending by the top-spending 100 school districts. For 54 percent of Pennsylvania's school districts, there is a gap between their spending and the highest-spending districts of \$3,000 or more per student. The gap between 26 percent of Pennsylvania's districts and the high-spending districts range from \$4,000 to \$5,721.

In January, the Law Center took its tools of advocacy and persuasion to the Philadelphia Bar Association. Under the leadership of the Law Center and the Education Law Center, a subcommittee persuaded the Bar Association's Board of Governors to adopt a resolution detailing the gaps in the state's educational funding and the severe consequences of those gaps on the Commonwealth's public school children. The resolution calls for the state legislature to enact a system of educational funding that meets the legislature's obligations under the state Constitution by ending the gross disparities which currently exist in educational opportunities depending on where in Pennsylvania a student lives.

IN BRIEF

The Law Center lost a founder, long-time friend and champion in March with the death of **Robert W. Sayre**. He was 90 years old. Bob was one of the original group of lawyers who formed the Lawyers' Committee for Civil Rights. He was vice-chairman of the committee in 1970, when it defended individuals taken from the streets to stand in police lineups against their will. These dedicated leaders of the Philadelphia bar later incorporated the committee and renamed it as the Law Center.

Bob was a board member during the very first Law Center meeting in 1974, became chairman in 1975, and remained on the board until his death. Chief Counsel Thomas K. Gilhool recalled Bob's wise counsel and preparation prior to each of Gilhool's three arguments before the U.S. Supreme Court in *Pennhurst*. His son remembered his work, saying, "Equal justice under the law was not a cliché to him."

Bob was associated with the law firm of Saul, Ewing, Remick & Saul, now Saul Ewing, for almost 50 years until retiring in the mid 1990s. From 1977 to 1981, he was managing partner of the firm and served on the executive committee.

We will miss him.

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