

# Public Interest Law Center of Philadelphia

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## CITY COUNCIL PREPARING ORDINANCE TO INSURE FAIR HIRING PRACTICES IN CONSTRUCTION PROJECTS

### 8 Radio Modules Spotlight Tenth Anniversary Symposium Issues

More than 400 public, community and university radio stations in the country have received (via satellite and tape) a new radio series based on recordings made at PILCOP's Tenth Anniversary Symposium on Equality and on interviews with some of the participants in the event.

"On Equality", the eight-part modular radio series, was produced by journalist and independent producer Elisabeth Perez Luna, who produces regularly for National Public Radio.

"On Equality" is based on issues which concern the Law Center's clients: the environment, the elderly, affirmative action, education, the city, rights of the handicapped, the present state of equality and other subjects. Each module features several speakers eminent in their fields, including:

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On October 7, 1985, Michael Churchill, Chief Counsel of the Law Center, was the lead-off witness in hearings before the City Council Rules Committee, which is considering Bill 649, entitled "Minority, Female and Resident Employment Participation on City Construction Projects." Supported by a broad-based coalition of community groups, the affirmative action bill illustrates how PILCOP draws on its experience to provide effective legal counsel to clients.

Fairer hiring practices for minorities has been a priority of the Law Center from the time it was founded. We have investigated hundreds of complaints of discrimination against public and private employers, referring many to private attorneys and handling a smaller number of major cases ourselves.

In the case entitled *Taylor v. U.S. Department of Labor*, the Law Center addressed the need for en-

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### Public Issues Luncheon Series

The Law Center is initiating a series of luncheons on issues of public interest, inviting experts involved in these matters to speak, and welcoming to the luncheon citizens who would like to participate in a discussion of the issue.

The first luncheon will focus on our public schools, examining successful educational programs which show beyond doubt that *every* child, whatever his or her situation, *can* be taught effectively to read, to write, to calculate and to feel confident about his and her capability to learn much more. The legal implications of failure to do so will also be discussed.

The speakers will be Robert E. Slavin, Research Scientist, Center for Social Organization of Schools, Johns Hopkins University, a nationally recognized expert on effective education; and Earline Sloan, Director of Instructional Projects at the Philadelphia School District, who has done it here.

The luncheon is scheduled for Wednesday, February 5, at 12:00 P.M., at the Board Room of the Fidelity Bank, Broad and Walnut Streets, Philadelphia. There will be a charge of \$7.00 per person. Brief talks by the speakers will be followed by questions and open discussion. Seating is limited. To reserve a place, please call Peter Stevens at PILCOP: (215) 735-7200.

## Fair Hiring Practices

(continued from page 1)

forcement of goals and timetables in the construction trades. Despite the federal program setting goals for hiring minority workers in federally supported projects, minority workers were still being excluded from skilled positions in the construction trades because of union-based discrimination.

As the Reagan administration abandoned the long-standing federal commitment to civil rights enforcement, the Law Center addressed itself to what could be done at the local level. Working with other affirmative action advocates, we helped secure passage in 1982 of the Philadelphia Set-Aside Ordinance, a significant victory which insured that minority- and female-owned businesses would receive a fair proportion of the City's procurement business. That ordinance addressed a situation in which less than 2% of the city's contracts had in previous years been awarded to minority- and female-owned enterprises. The ordinance did not however directly address employment of minorities and women. In fact, the gap between minority and white

## Radio Modules

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Julius Chambers, Director-Counsel, NAACP Legal Defense Fund, Inc.; Gunnar Dybwad, Professor Emeritus, Florence Heller Graduate School, Brandeis University; Steven L. Elkin, Professor of Government and Politics, University of Maryland; Rick Engler, Co-director, Philadelphia Area Project on Occupational Safety and Health; Michelle Fine, Professor of Education, University of Pennsylvania; Linda S. Greene, Visiting Professor of Law, Harvard Law School; Carole Haber, Professor of History, University of North Carolina; Robert J. Reinstein, former Chief of Litigation, Civil Rights Division, U.S. Department of Justice; Edward Schwartz, member of Philadelphia City Council; Robert E. Slavin, Principal Research Scientist, Center for Social Organization of Schools, Johns Hopkins University; Herbert J. Walberg, Professor of Education, University of Illinois at Chicago; Sam Bass Warner, Jr., William Edwards Huntington Professor of History, Boston University and author of *The Private City: Philadelphia in Three Periods of its Growth*.

During 1986 the stations will use the modules in newsmagazine and public debate programs. High speed dubs of a cassette with the eight modules can be purchased by writing to the Law Center, attention Peter Stevens, and enclosing a check for \$5.00.

employment is increasing in Philadelphia as well as nationally.

The Philadelphia Affirmative Action Coalition, led by John Dent and Joyce Rush, asked the Law Center in 1984 to help draft an ordinance dealing with employment on City-supported construction projects. Pat Smith of the City Council Technical Staff, Karl Baker of the ACLU, Harold Goodman of Community Legal Services and Michael Churchill worked together to produce a draft which was introduced by Councilperson David Cohen in March, 1985.

The new bill has two parts. In the first, it calls for goals and timetables for hiring minorities, women and residents on City-funded construction projects. In the second part, it requires enforcement of the City's current Fair Practices Act, which prohibits discrimination on the basis of race, sex, religion, national origin, handicap, age and sexual orientation to all employers doing business with the City, removing previous exemptions.

In order to make the construction goals and timetables feasible, the bill applies only to City contracts which exceed \$1 million and subcontracts which exceed \$25,000. Last year this would have covered 29 contracts valued at \$78 million. (By contrast, the federal program applies to any federal contract over \$10,000.)

The bill has modest goals, which can be met by conscientious contractors. Studies show that there are both minority and female workers available to be hired by contractors' unions.

Recognizing that the success of the bill depends on effective enforcement, evenly applied, the bill has simple and objective criteria for triggering enforcement.

Testifying on behalf of the bill were Julius Chambers, head of the NAACP Legal Defense and Education Fund and Board member Patrick Swygert, Vice President of Temple University.

Principal opposition has come from the building trades council and the contractors' association, both of which claimed that the bill was anti-union. Final consideration by the Council is expected in early 1986.

If the ordinance is passed, the results will be a healthier City. Minorities and women will be employed in the construction trades in the numbers in which they are available, and they will enjoy the income and stability of well-paying jobs. There will be a marked impact on the City's unemployment problems. We will all benefit from the sense of justice which flows from the realization that taxpayer money is no longer subsidizing the denial of opportunities to work and prosper.

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## Legal Update

**DISABILITIES** In a case modeled on Pennhurst, the Law Center filed a class action suit in Tulsa, Oklahoma in May, 1985 (*Homeward Bound, Inc. et al v. Hissom Memorial Center, et al*) representing eight retarded children living in one of Oklahoma's retardation institutions, and their parents. The suit seeks to close the large segregated institution and to force the development of community services for the Hissom residents. The State of Oklahoma is ranked 50th among the states in per capita community-based retardation services provided to its citizens.

Oklahoma case follows Pennhurst precedent

A lawsuit was filed in July 1985 against the U.S. Department of Labor (*Thompson v. Brock*) concerning the refusal of the Department to take any action since 1981 against a government contractor who was found to discriminate against a disabled person. The complaint alleges that from 1978 to 1983, DOL processed more than 1,000 complaints by handicapped persons in Region III, and that in not a single case was any enforcement action taken.

Suit reveals discrimination against handicapped workers

An amicus brief was filed with the Supreme Court in the Baby Doe case in August, on behalf of 25 organizations, including the largest disabilities association in the nation, and organizations from 18 states comprised of persons with life-long disabilities. We supported the Secretary of Health and Human Services, whose regulations enforcing Section 504 of the Rehabilitation Act require that the same medical services that would be provided to non-disabled children be provided as well to disabled children. The brief faced the history of denial of medical care to retarded persons, and identified the congressional awareness of the history as one of the motivating factors behind the federal legislation prohibiting discrimination against persons on account of their disability.

Law Center files amicus brief in Baby Doe case

A complaint was filed in November on behalf of Disabled in Action of Pennsylvania and two other disabilities groups, alleging that the non-accessibility of SEPTA bus, subway, rail and paratransit services violates federal law. (*Eastern Paralyzed Veterans Association of Pennsylvania, Inc., et al, v. SEPTA*).

Non-accessibility of SEPTA services basis of law suit

Carolyn Clark has been institutionalized at Laurelton for 29 years, despite her request for release, and despite staff recommendations that she be placed in a community living arrangement. On behalf of the Pennsylvania Association for Retarded Citizens, the Law Center filed an amicus brief in the Third Circuit Court of Appeals in support of Judge Huyett's order directing the state to remove Ms. Clark from the Laurelton Institution. The brief stressed the Congressional desire to end segregated institutions for retarded persons in enacting Section 504.

Efforts continue to release Carolyn Clark from Laurelton

The issue in *Ward v. Department of Public Welfare*, in which the Law Center represents a quadriplegic child in Bucks County who needs a residential program, is whether there is a right to services under the state MH/MR Act, and how the court can determine if there are appropriated funds available.

Suit seeks residential services for quadriplegic child

Representing 44 disabilities organizations nationwide, the Law Center filed suit in 1984 against United States Attorney General William French Smith, to set aside the regulations setting forth a recently revised standard for enforcing non-discrimination against handicapped persons by federal agencies. This revised standard, filled with loopholes and waiver provisions, is significantly weaker than that previously established as applicable to states and private recipients of governmental assistance. The weaker standards are part of the curtailment of civil rights enforcement by the Justice Department. Each side has filed a motion for summary judgement and has extensively briefed the legal issue, based on the scope of Section 504.

Curtailment of civil rights enforcement by Department of Justice challenged.

The Law Center and Speaking for Ourselves, a self-advocacy organization run by handicapped persons, have joined forces to design a conference at which mentally handicapped persons will be able to learn how to find real work. Attending the conference will be parents, advocates, vocational professionals, as well as the consumers themselves. The Conference will take place in May, 1986 at the Adams Mark Hotel on City Line Avenue.

Spring Conference focusses on real work for mentally handicapped

## Legal Update Continued *(continued)*

**NEIGHBORHOODS** Because of increasingly frequent reports of abusive police behavior, the ineffective and illegal procedures used in Operation Cold Turkey and the Hispanic round-ups following the killing of Officer Trench, and the revelations of the Move hearings, the Law Center is again working with community organizations to examine new structures and policies for the police department. We have been in close consultation with our client, the Guardian Civic League, on these matters.

Police Department reforms are focus of study

**ENVIRONMENT** The Northeast Sewage Plant, in the Bridesburg/Richmond section of Philadelphia has received more than 150 notices of air pollution violations in the past two years. It is also the City's single largest discharger of cancer-causing chemicals into the air environment.

To abate these public health violations, in January of 1985 the Law Center initiated a citizen lawsuit on behalf of 175 Bridesburg/Richmond residents. The lawsuit, under the federal Clean Air Act, seeks to compel the Water Department to operate the sewage treatment plant in accordance with all applicable air pollution control regulations. Allied Corporation and Rohm and Haas Company, two of the largest chemical manufacturing companies in the City that discharge industrial wastes into the sewers, have been granted court permission to intervene as defendants. Trial is expected in early 1986.

Lawsuit against Northeast Sewage Plant emitting cancer-causing chemicals

Approximately 25% of Philadelphia's municipal solid waste is incinerated at the Northwest Incinerator facility in Roxborough. Since its start-up in 1960, it has been the cause of innumerable odor, flyash, dirt and smoke complaints from the community.

Results of dioxin study at Northwest Incinerator due in January, 1986

In early 1983, six community organizations requested the Law Center's assistance and in October a citizen lawsuit was filed to compel the incinerator facility to operate in conformance with air pollution control regulations. While this litigation was in progress, the Environmental Protection Agency (EPA) revealed that dioxin had been found in the incinerator's precipitator ash. Thereafter, at the urging of the Law Center, the EPA conducted further tests which revealed that dioxin was also being emitted into the environment through the incinerator stacks. The extent of these dioxin emissions and the health risk they represent are presently being investigated and a report of the findings is expected in January 1986.

Negotiations on a consent decree to settle the lawsuit have been suspended pending EPA's health risks analysis.

## Law Center Brings Together Disabilities Advocates, Women and Minorities in Support of Civil Rights Issues

When the U.S. House of Representatives Subcommittee on the Judiciary needed assistance in March 1985 in coordinating witnesses for the first Regional hearing on the proposed Civil Rights Restoration Act, it called on the Law Center for help. PILCOP recruited several witnesses, including Charisse Lillie of the National Conference of Black Lawyers, Sieglinde Shapiro of the Pennsylvania Coalition of Citizens with Disabilities, and Frank Laski of the Law Center's staff.

The Civil Rights Restoration Act would insure that organizations which receive federal assistance do not discriminate in any of their programs, and would override the Supreme Court's Grove City College decision, which held that federal prohibitions on discrimination extend only to the program receiving the federal dollars, and not to all of the organization's programs.

This coalition of groups representing the interests of women, minorities and the disabled marks the first time these groups have banded together to support an issue of interest to them all.

A second cooperative effort occurred during the Senate confirmation hearings on the nomination of William Bradford Reynolds to head the Civil Rights Division of the Department of Justice. Again, the coalition banded together, this time to defeat the nomination. The Law Center worked with national leadership groups in the disabilities and civil rights areas.

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## YWCA of Philadelphia

Earlier this year, the Law Center was called upon to help save a Philadelphia institution—the YWCA—from losing several of its branches to a budget axe wielded by YWCA management. The YWCA operates five branches serving communities as diverse as the Northeast, Frankford, North Central Philadelphia, Mid-City and Southwest Belmont. Faced with financial and managerial problems, the management of the YWCA twice sought to resolve those difficulties by closing branches and thereby reducing services to 80% of its members.

The Law Center was asked by members of the Northeast, Frankford and Southwest Belmont branches for help in averting the closing of those branches. The Law Center helped to arrange short-term funding from the City. Four months later, management sought to sell off the main Mid-City facility and to close the largest branch, located in Northeast Philadelphia. This time, the vice-president and the boards of all of the branches asked the Law Center for help in stopping the closings, since they were convinced that the organization remained financially viable and could continue to serve its members without such draconian measures. The Law Center, against strong management opposition, obtained a court order permitting a meeting of the full YWCA membership. At the meeting, held in late August, 500 YWCA members voted to change management by removing 12 trustees and replacing them with five new board members.

The reorganized Board is now expanding the programs of the YWCA, and has undertaken management improvements to strengthen its financial base. As part of its reorganization, it has obtained new private counsel.

Maintaining the YWCA's five branches in full operation insures that its many programs will continue. Examples of vital services are the water exercise and swim programs which assist the physical rehabilitation of persons with serious injuries; the largest food cupboard in the Northeast, operating at the Frankford Branch and distributing 9-meal emergency food packages in 1984 to nearly 4,600 community residents; special programs to prepare teenage women for productive lives; and emergency housing for homeless and battered women.

## Law Center Victory in Court of Appeals Assures Effective Right to Know Regulation

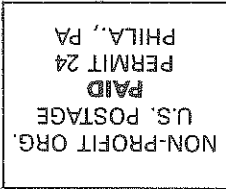
On October 10, 1985, the Court of Appeals for the Third Circuit, in *New Jersey State Chamber of Commerce v. Hughey*, ruled that the New Jersey Worker and Community Right To Know Act was a valid and enforceable act to provide workers, the public and state government agencies with comprehensive information about the hazardous chemical substances stored in or emitted from New Jersey industries. The Court rejected the Chamber of Commerce argument that the entire New Jersey law had been preempted by a narrow OSHA regulation which applied only to workers in manufacturing and did not apply to the public in any respect.

The Court accepted the Law Center's argument that federal preemption of the State law applies only to those issues that are explicitly covered by the federal regulation. Under this ruling, in effect, all the substantive elements of the New Jersey law remain in effect either through the New Jersey law or through the federal regulation.

The Court of Appeals' decision culminates a six year struggle of labor, environmental and community groups to attain a legal right to information about hazardous chemicals in the workplace or in the community environment. The coalition movement for Right to Know legislation and regulation was started in Philadelphia by the Philadelphia Area Project on Occupational Safety and Health (PHILAPOSH) and the Delaware Valley Toxics Coalition (DVTC). In 1980, the Coalition requested the Law Center's support to develop local Right to Know legislation and the Law Center has been deeply involved in the Right to Know movement ever since.

In 1981, Philadelphia adopted, over nationally supported opposition, the first public Right to Know law in the nation. Since then, 30 states and more than 40 municipalities have enacted some form of hazard communication legislation. The most comprehensive of these was the New Jersey Act adopted in August, 1983. Faced with an avalanche of right to know laws across the country, industry pleaded with OSHA for a national regulation which would be less severe and which would preempt all state and local laws.

In November, 1983, OSHA published its relatively weak regulation and industry soon after asked the federal court to declare the New Jersey law unconstitutional. The October 10 Court of Appeals ruling rejected this challenge and affirmed the right of states to develop and enforce their own legislation to protect the health and safety of workers and the public.



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### Become a Law Center Contributor

We welcome your gift in 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.

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