

Michael Chusick
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Very Truly Yours,

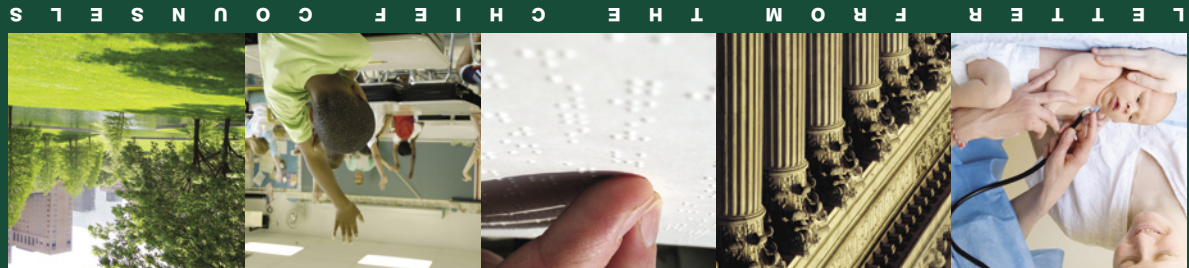
The debate over the nomination of John Roberts to the Supreme Court has profound consequences for the Law Center and its clients seeking children's health care and quality community services as required by federal statutes. Recently we withdrew our federal challenge to Pennsylvania's school funding because Justice Scalia ruled that Congress had failed to make the Civil Rights Act of 1964 implementing regulations enforceable by the public.

The conservative majority on the Supreme Court has struck down more congressional statutes in the last ten years than any other court. Deference to elected representatives has not been the trademark of the Rehnquist-Scalia-Thomas-O'Connor-Kennedy court. Instead they have struck down federal laws protecting women from abusive spouses, children from criminals with guns near schools, persons with disabilities and senior citizens from employment discrimination by states, state workers from overtime without adequate pay, etc.

When challenged during his confirmation hearings Roberts deflected criticism by faulting the Congress for not making its intentions clear enough. No Senator reminded him that his position reverses the presumption set in *Marbury v. Madison* and denigrates the rights of beneficiaries solely for the benefit of officials who do not comply with congressional directives.

The Law Center's clients will be greatly affected by justices intent upon reducing official accountability. Laws without remedies induce cynicism and despair, convince the population that justice is merely an imaginary fiction, and confirm that the powerless are powerless. Chief Justice John Marshall understood the connection between courts which supply real remedies for real wrongs and our claim that we are a nation under the rule of law. It is too important not to be fought for again.

"The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right."
— CHIEF JUSTICE MARSHALL IN *MARLBURY V. MADISON* (1803)



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A QUARTERLY UPDATE FROM THE PUBLIC INTEREST LAW CENTER OF PHILADELPHIA • DECEMBER 2005 • WWW.PILCOP.ORG

Environmental Justice for Harrisburg and Camden Communities

Ten years ago, The Law Center under the leadership of Jerry Balter began the search for new ways to protect poor and minority communities from being targeted by undesirable polluting facilities. The need for this representation is only becoming starker as traditional civil rights actions fail to offer protection. Here are updates on two communities in which we are working:

Harrisburg, Pennsylvania

The Harrisburg incinerator presents a typical problem of environmental injustice. For years the 80 percent minority community lived with an outmoded incinerator which emitted toxic dioxins at a rate 10 times greater than any other incinerator in Pennsylvania. It was finally closed in 2002. Having taken the trash for all of Dauphin County and parts of Cumberland County (which are 80 percent white) for so many years, the citizens of Harrisburg thought

it was someone else's turn to live amongst the trash trucks and incinerator emissions. But once again they were targeted.

When the community complained that Harrisburg was in non-attainment of new federal levels for very fine particulate, known as PM-2.5, the State EPA refused to investigate, despite the fact that this noxious particulate causes reduced lung function, chronic bronchitis and even premature death. DEP said it could not act without federal regulations. But when the community asked for an investigation based on a 30-year-old federal regulation prohibiting disproportionately placing polluting facilities in minority communities, DEP said the regulation wasn't enforceable. As with many clients who come to PILCOP, they had been worn down by bureaucracy and red tape and were close to giving up. In April 2004, the Law Center agreed to represent the community.

Discovery was taken; briefs were filed. This fall the Hearing Board refused to decide the case on the merits of whether the permit for the incinerator was properly
Continued inside...

Update on the Fight for Children's Health Care



Medicaid's children's health care program requires states to provide preventative vision, dental and hearing services as well as periodic screenings, examinations

and immunizations. These programs are crucial to children's health and development. A 2001 GAO report revealed that the lack of federal accountability in these programs is putting children at risk.

To remedy the widespread and harmful shortcomings in access to promised medical care for children, the Law Center is mobilizing the private bar and challenging the blatant failures of three states in federal court. As we reported in our June 2005 newsletter, our Center with the Bullock law firm from Tulsa, Oklahoma prevailed at trial in district court and now are on appeal in the Tenth Circuit. In Florida the Law Center has obtained the services of David Boies' firm to challenge that state's failures, which include giving diagnostic screenings to less than half the eligible children. In Michigan, with the leadership of Jennifer Clarke and the Dechert firm, we are now in the second round of a class action lawsuit to obtain state compliance.

Recent Congressional proposals to permit states to place spending caps on programs or to make them optional threaten services needed by our clients and our ability to go to court on their behalf.

The Struggle for Fair School Funding

Pennsylvania continues to have greater disparities and unfairness in its school funding than other states. The state continues to distribute its funds to districts in a highly racially discriminatory manner. The special session on school district tax reform will do nothing to fix these situations and may make it politically even harder to fix.

The Law Center has adopted a non-litigation advocacy strategy at this stage because the U.S. Supreme Court has said that discriminatory actions which are not intentionally based on race cannot be redressed in federal courts. Pennsylvania's Supreme Court decided that requirements of the State Constitution on school funding are not enforceable by courts. Consequently, suits which have been successfully brought in New Jersey, New York, and Ohio among other states seeking to enforce adequate and fair school funding are not available to Pennsylvania citizens.

The inequalities in Pennsylvania remain stark and even greater than in these other states. Philadelphia spends \$2,054 less per student than the average district in the five county region. Over 12 years this means the average suburban student has the equivalent to an additional 2 and ½ years of schooling than city students competing in the same labor market.

Around the state, the gaps between what good school districts spend and what most are able to afford is gross. Using the New Jersey court's standard of adequacy—the average amount

spent by the top 20 percent of the state's districts—there are 284 districts with gaps greater than \$2,000 per student and they range to \$4,450 per student. In the Philadelphia region the City and 13 other districts have gaps greater than \$2,000.

The principle cause is the low state contribution to school funding and the inequitable way it is distributed. The state

pushes a greater share of education funding on the districts than all but two other states. The goal should be in the range of 65 percent state funding, instead of the 36 percent it was in 2004. But it must also be distributed fairly to end the discrimination shown by Wharton Professor Anita Summer's study which concluded that 16 school districts with predominantly minority students receive less state aid than their majority white counterparts when the poverty variable is controlled.

Unfortunately, Pennsylvania's Act 72, which proposes using an estimated \$700 million in gaming revenues to reduce local taxes, will not redress these problems but merely lock them in because the dollars will go to rich and poor districts on a dollar for dollar basis. Furthermore, by ending one of the incentives to fix the educational funding system it may make it even more difficult to get the legislature to end the funding disparities between rich and poor communities which double as the haves and have nots in school funding.

A complete list of the district gaps are on our website, www.pilcop.org/education.

Inequality in Pennsylvania's school funding system is caused by both low state contributions and the discriminatory state allocation system. The Law Center advocates for increasing and reallocating the state's contribution.

*2004 Funding: 36% state contribution
Goal: 65% state contribution*

Environmental Justice for Harrisburg and Camden Communities continued...

issued and decided to duck the issue based on a technicality. In doing so, it was consistent with the unwillingness of any environmental body, including the DEP and the federal EPA, to even examine whether minority communities are being adequately protected.

Camden, New Jersey

In a parallel situation, the New Jersey Department of Environmental Protection granted the St. Lawrence Cement Company a permit to build a slag grinding plant in the Waterfront South area of Camden, a 90 percent minority community. The area already hosted a regional incinerator, a regional sewage treatment plant and two Superfund sites. Once again, the New Jersey DEP failed to investigate the impact of this plant in accordance with the EPA regulations, despite the potential adverse effects on the civil rights and health of residents near the site. And again PILCOP, this time along with the South Jersey Legal Services and the Center on Race, Poverty and the Environment, is seeking a court order that a state cannot issue a permit without making an adequate investigation which would justify the permit. In addition, this summer briefs were filed that the evidence supports a claim that the state engaged in intentional discrimination in issuing the permit. Plaintiffs are waiting for a ruling by the federal court on that matter.

These cases reflect a systematic failure on the part of state departments of environmental protection to prevent disproportionate location of polluting facilities in minority communities despite the long-standing federal prohibition. A PILCOP survey revealed that only three out of 31 responding states made any investigation of environmental justice impacts. Though all the states assure the EPA that their practices are not discriminatory, these are empty assurances if there is no monitoring or investigation to determine the results.

Drugs and Discrimination in Reading, PA

Drug addiction is the scourge of far too many communities, and heroin addiction in particular destroys minority communities at a disproportionate rate. One such community in Pennsylvania, the city of Reading, suffers from such an alarming rate of addiction that it has been targeted by the U.S. Attorney's office for federal drug enforcement assistance. An important part of assistance is treatment, and the use of methadone, which substitutes daily doses of methadone for heroin, has a strong record of success. Yet methadone is not without its share of controversy, since the client remains addicted.

Despite the evidence that methadone clinics lead patients to rejoin their families, become employed, and contribute to their communities, one West Reading clinic has been unable to serve the population that desperately needs such services. The clinic's efforts to relocate to a strip mall in central Reading were vehemently opposed by its would-be neighbors, and reinforced by the City Council's unanimous denial of permits, despite the fact that the site's previous occupant was a drug treatment center, albeit unbeknownst to those complaining about its prospective use. The opposition took advantage of a 1999 statute singling out methadone treatment centers for an especially onerous land use permitting process.

PILCOP agreed to represent New Directions Treatment Services, six methadone users, and a class of current and future users affected by the clinic's inability to operate.

The federal district court granted summary judgment to the defendant City Council, finding that concerns about traffic cited by the Council were not a pretext for discrimination. Additionally, he held that any plaintiffs that had relapsed after the denial of the permit no longer had standing to sue.

The Law Center is appealing this case to the Third Circuit Court of Appeals. Professor Rachel Godsil at Seton Hall Law School will lend her expertise to the matter.

IN BRIEF

The Law Center's Board has been invigorated with the addition of four new members this year: **Anna Bryan** is a partner at White & Williams where she represents nurses, physicians and hospitals; **Robert Fiebach**, a member of Cozen O'Connor, is a former president of the Pennsylvania Bar Association; **Scott Freeman**, a member of the Freeman Law Office, has served for five years on Judge Ludwig's Plaintiffs' Employment Panel; and **H. Laddie Montague, Jr.** is a founding member of Berger & Montague. This summer, Temple Law Professor **Phoebe Haddon** resigned after 15 years on the Board. We thank her for those many years of service and her promise to keep on helping.

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