

PILCOP

**PUBLIC INTEREST LAW
CENTER OF PHILADELPHIA**

May 2000

Message From the Chief Counsel Michael Churchill

After over a year of planning, we had high hopes for our 25th Anniversary celebration on Thursday, January 20. We weren't disappointed! Despite the snow piling up outside, over 325 friends, family, clients and supporters gathered at the Marriott Hotel in Center City to celebrate our successes.

If you were able to join us, I hope you shared our pleasure in honoring several individuals who have had a profound impact on civil rights in this country. This newsletter includes pictures and stories from the day's events. Thank you to the many Board members, staff members and volunteers who devoted their time to making the event a great success, and especially to our Development Director, Heather Bendit. Thank you also to the many organizations and individuals who supported the celebration with their generous contributions; their names are listed in the Commemorative Program Booklet available from the Law Center.

This issue features articles about some compelling cases. Our disabilities work has been particularly active. You will learn about our successful fight to have Christoff Abraham re-admitted to nursery school after he was kicked out because of his disabilities, in flagrant violation of federal law; you will also learn about our work to ensure that Lydia Gaskin, and thousands of other Pennsylvania schoolchildren with disabilities, are provided the supports they need to attend school in regular classes. Another article details progress in our lawsuit to end the segregation of children and adults with disabilities in institutions in Connecticut.



Honoree Charles Bowser, Esq.; Hon. William T. Coleman, Jr., recipient of the second annual Thaddeus Stevens Award; Chief Judge James T. Giles of the U.S. District Court and Judge Ricardo C. Jackson of the Common Pleas Court.

Our record before the U.S. Supreme Court this term is impressive. We preserved important appellate court victories, and persuaded the Court to review a lower court decision that would give states immunity against the Americans with Disabilities Act.

Yet, in the midst of this success we have difficulty paying our bills. Impact litigation demands thousands of hours of work and takes several years to produce any fee income. Other critical work, such as our environmental justice project and our effort to equalize funding for public education in Pennsylvania, is funded solely by private contributions. *We must increase our contributions, and invite you to help us raise the money we need to provide equal access to justice by encouraging others to contribute, and by continuing your own generous support.*

We were recharged by the anniversary celebration and the enormous emotional and financial support it generated from so many people who share our commitment to equal access to justice. I hope you will see in this newsletter the continuing fruits of the tree you have nourished and supported.

What's Inside

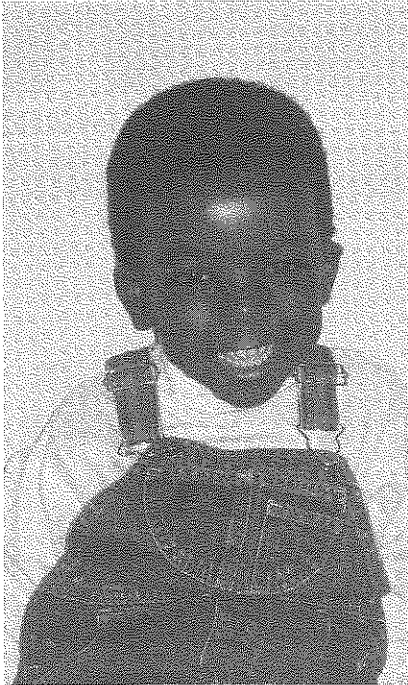
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Insert

PILCOP 25th
Anniversary Celebration

PROGRAM REPORT:

Abraham vs. Aardvark: Day Care Centers Can't Ignore the ADA



It took a federal court order, but 3 year old Christoff Abraham finally returned to the Aardvark Day Care Center on March 13, two months after he was kicked out by the director who didn't want to let him eat breakfast.

Christoff was born with developmental disabilities and a chronic physical condition that require him to have a flexible meal schedule, especially in the mornings. Although Aardvark provides lunch and snacks to its students, it refused to accommodate Christoff's condition by permitting him to bring his breakfast to school with him.

In fact, Aardvark not only objected to varying its meal schedule, it kicked Christoff out of school simply because his morning mealtime schedule varied from other children in his class. Christoff ended up at home, isolated from his friends at school.

PILCOP attorney Barbara Ransom tried to persuade Aardvark to make a simple modification to its daily routine in order to accommodate Christoff's condition, so that he could return to school. When the school refused, she sued under the Americans with Disabilities Act, which requires public facilities, including day care centers, to make reasonable accommodations to their services so that people with disabilities can fully participate.

On March 10, the federal court ordered Aardvark to re-admit Christoff and to make minor changes in its routine, such as permitting Christoff to eat a breakfast brought from home while other students eat their snack, so that he can participate in the program.

Unfortunately, Christoff's situation is not unique. Many day care providers, and many parents of children with disabilities, don't know that the Americans with Disabilities Act covers day care centers. This deprives the children of early social interaction and early academic instruction vital to learning and development. Often, as this case demonstrates, the special needs of the child can be accommodated by simple, non-disruptive changes to the center's routine.

Fair Housing Summit A Big Success

The Law Center, in conjunction with the Delaware Valley Fair Housing Partnership, hosted a fair housing breakfast on April 12. The event was held at the offices of Dechert Price & Rhoads, which generously provided breakfast for all participants. The summit provided a forum for nearly 50 fair housing and community advocates to share ideas and expertise and strengthen important partnerships.

The diverse array of groups included Congreso de Latinos Unidos, Intercultural Family Services, Liberty Resources, Anti-Defamation League, American Arab Anti-Discrimination Committee, and HUD. The participants enjoyed a lively discussion led by Marinda van Dalen of the Law Center and Ronaldlyn Latham of the Tenants' Action Group. The discussion centered around challenges that face advocates in their work to combat the barriers of housing discrimination in greater Philadelphia, touching upon topics such as the need to better serve non-English-speaking populations.

The Law Center and the Partnership look forward to building upon the success of the summit, and plan to work with interested groups to provide fair housing training for staff and constituents.

Messier v. Connecticut: Challenging a State's Segregation of People with Disabilities

Ray, who has developmental disabilities, hated living at Southbury Training School. He ran away several times, only to be brought back *in handcuffs!* Then Ray met Frank, a volunteer with the Western Connecticut Association for Human Rights (WeCAHR). With Frank's help, Ray was able to move out of Southbury and into the community and a better life.

Ray is one of dozens of Southbury residents who, along with their families and friends, testified in the federal lawsuit brought by Hartford legal services lawyer David Shaw and the Public Interest Law Center on behalf of the Arc of Connecticut (formerly the Association of Retarded Citizens), WeCAHR, and Southbury residents. The trial lasted an astounding 123 days between January 25 and October 21, 1999, longer than any case ever tried by Law Center attorneys.

This case is rooted in a decades-long struggle to stop Connecticut from segregating people with disabilities. In the early 1980's David Shaw sued the Mansfield Training School, the state institution serving eastern Connecticut. The Arc of Connecticut joined in the suit after securing the representation of the Law Center. In 1983 the state finally agreed to permit residents recommended for community placement by their interdisciplinary teams to leave the institution. The residents were monitored to ensure that they were receiving appropriate supports and services. A study conducted by social scientists James Conroy and Celia Feinstein found that their lives improved along all measures.

In 1986, the Justice Department sued Southbury on the grounds that the deplorable conditions violated the residents' constitutional right to safety and adequate care. However, the lawsuit sought improvements to the institution rather than

community placement for the residents. Consequently, when Mansfield closed in 1993, the advocacy community turned its attention to Southbury as the sole remaining state institution. In 1994, David Shaw and the Law Center filed *Messier v. Southbury Training School*, seeking community placement for all residents recommended for such by their interdisciplinary teams.

Although Governor Weicker appeared to support community placement for Southbury residents, the state abruptly reversed course after John Rowland was elected Governor in 1996.

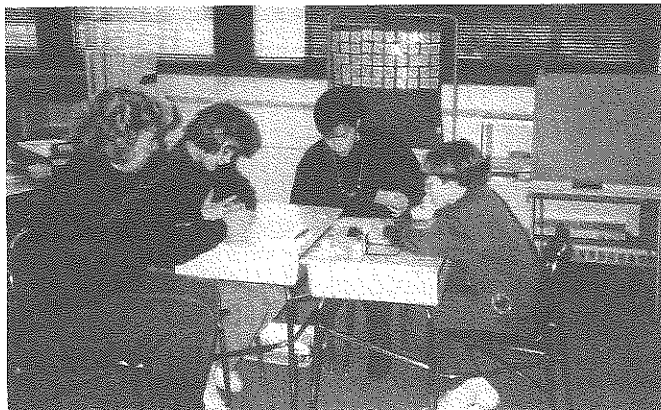
Most parents of institutional residents oppose community placement for their sons and daughters. However, research has consistently shown that parents reverse their position when they witness the results. At Southbury, approximately 720 residents do not have active family involvement, but are represented by a corporate guardian, the STS Foundation. Many of these residents have actively and vocally demanded to leave. Despite this, and despite the recommendations of their interdisciplinary teams, the state continues to hold them against their will.

The state's entrenched commitment to keeping these people institutionalized significantly contributed to the enormous length of the trial. Although the plaintiffs rested their case in April, the state's case lasted for another six months, offering in its defense the testimony of eleven expert witnesses and dozens of people working at Southbury. The trial painted a compelling picture of Southbury's de-humanizing and isolated conditions against the backdrop of the improved quality of life that community placement offers. The decision is now in the hands of the judge, and we expect her decision later this year.

PROGRAM UPDATES:

Gaskin v. Pennsylvania: Transforming Special Education in Pennsylvania

Lydia Gaskin is a high school student in Carlisle, Pennsylvania. She has interests and activities typical of any girl her age; she excels in some subjects and struggles with others. She tries hard to make friends and fit into the rigid cliques of the typical American high school. Recently, Lydia attended a school dance with some friends and saw a boy on whom she had a crush. When the boy chose to dance with another girl, Lydia was heartbroken. Luckily, Lydia was surrounded by caring and supportive friends, most of whom had had similar experiences.



Lydia (above, second from left) is like most girls her age, but for one fact: she has retardation. This label was considered so crucial to her education that it determined every aspect of her schooling, including where she would attend class, which students she would meet, and in which activities she would be allowed to participate. Unfortunately, being labeled "retarded" at Lydia's school meant segregated classes, where she did not learn and where she had no opportunity to make friends, participate in clubs, or go to a dance -- in effect, to experience high school as we know it.

Lydia's parents courageously fought to ensure that Lydia attends school in regular classes. They succeeded, and Lydia has been attending class with her friends, helped by supports and modifications, and her high school experience is more fulfilling.

As recently as the early 1970's, students like Lydia were not permitted to attend school in regular classes. They were confined to segregated facilities, provided little or no

academic instruction and shared few common experiences with other children their age. However, Tom Gillhool's successful lawsuit on behalf of the Pennsylvania Association for Retarded Children changed all that. The lawsuit opened Pennsylvania public schools to thousands of children with disabilities. Even more important, it led to federal legislation making integration the law of the land.

Since then, the Law Center has tirelessly advocated for the integration of children with disabilities as both a civil right and sound educational policy. Children with disabilities who attend regular classes develop greater self-esteem, are more likely to take part in school activities, and are more likely to develop healthy relationships with nondisabled students. They are less likely to be institutionalized and more likely to attend college or find jobs when they have participated in regular classes. Moreover, parents and teachers report the presence of children with disabilities in regular classes and schools has led to greater tolerance and maturity on the part of nondisabled students. Indeed, we are less likely to stigmatize people with disabilities in adulthood when we have grown up interacting with children with disabilities in school.

In 1997, Congress affirmed and strengthened the law, adding new provisions requiring the participation of regular education teachers in a child's education program, and confirmed the underlying principle that special education is a *service* and not a *place*. Despite this, Pennsylvania lags behind in integrating children with disabilities. Only a small percentage is included in regular classes, and many of those included fail to receive the support they need to learn and succeed.

The Law Center seeks to transform Pennsylvania into a national trailblazer in the education of children with disabilities. Toward that end, we have filed a class action suit on behalf of Lydia Gaskin and other students with disabilities to ensure that they receive a meaningful and un-segregated education. As part of this litigation we are working with education specialists from Duquesne University to conduct a groundbreaking assessment of what is actually happening in Pennsylvania's special education programs. The assessment includes parent and teacher interviews, student observations and an analysis of the Individual Education Programs. The information will be used to pinpoint systemic problems and will be compiled in a report recommending remedial measures based on successful education strategies used in other states.

A Celebration a Quarter of a Century in the Making

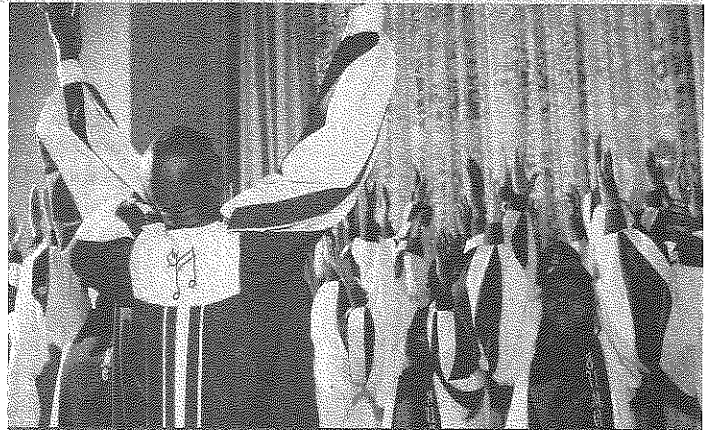
The annual calendar is chock full of gala fundraising dinners. Nevertheless, we were pretty sure that we were likely to be alone in January, especially after the many millenium parties. On the other hand, one of the drawbacks of a mid-winter dinner is the threat of foul weather. Thursday, January 20, the long-awaited day of the Law Center's 25th Anniversary celebration, dawned cold and snowy! In fact, the snow piled up all day, the biggest storm in two years.

Despite this, we had an incredible turnout of steadfast supporters. The day began with conferences about equalizing public school funding, environmental justice, fair housing and integrating children with disabilities in schools. The panels included PILCOP lawyers, other prominent individuals, such as Anne Goode from the EPA's Office of Civil Rights, Margery Austin Turner from The Urban Institute, Dr. Jane Coover, an education specialist, and Trenton Schools Superintendent Torch Lytle.

At the gala we celebrated our rich partnerships that have been central to our success by recognizing those individuals who have had a significant impact on our work. We also presented awards to three individuals who have dedicated their lives to advancing civil rights. We had many distinguished guests, including former Philadelphia Mayor Edward Rendell, who delivered the welcome; several judges, including federal court Chief Judge Giles, federal Judges Pollak and Ludwig, Common Pleas Court Judges Barth Wolf and Jackson, and retired Judges Gafni and Kranzel. State Representative Curry and Superintendent of Schools Hornbeck also were present, along with the new School Board President Ramos.

The awards ceremony was marked by warm, personal messages and remarks that inspired us all to continue the fight for equality. One of the high points of the evening was the spirited performance by the Joy Unlimited Youth Mass Choir (see photo top left), which delivered a series of rousing gospel songs that got the whole room on its feet.

We would like to express our sincere appreciation to the many individuals and businesses who supported the anniversary celebration with their time and generous donations. A complete list of supporters who made a special anniversary contribution appears in the Commemorative Program Booklet. However, we would like to recognize several of our sponsors who were particularly generous. Their names appear on the back of this insert page.



The **Edwin D. Wolf Award**, which is named in honor of PILCOP's first Executive Director, was presented by Common Pleas Court **Judge Flora Barth Wolf** to **William H. Ewing** for his long years of work with the Law Center to protect the fundamental civil rights of those vulnerable to discrimination.



Honoring our Partners: **Shelly Yanoff**, Philadelphia Citizens for Children and Youth, pictured above with PILCOP attorney **Barbara Ransom**.

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We would like to thank our generous sponsors for making PILCOP's 25th Anniversary Celebration a success!

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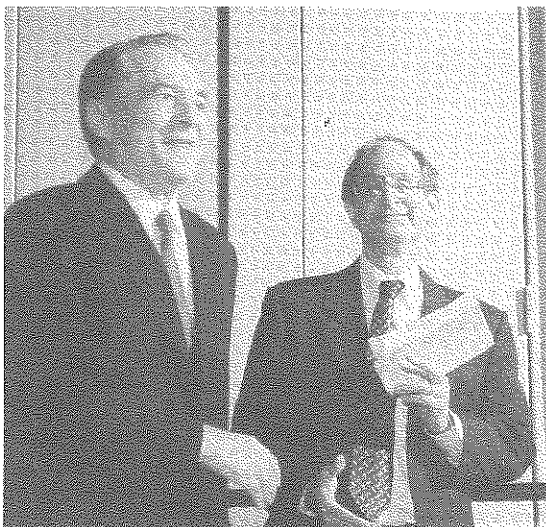
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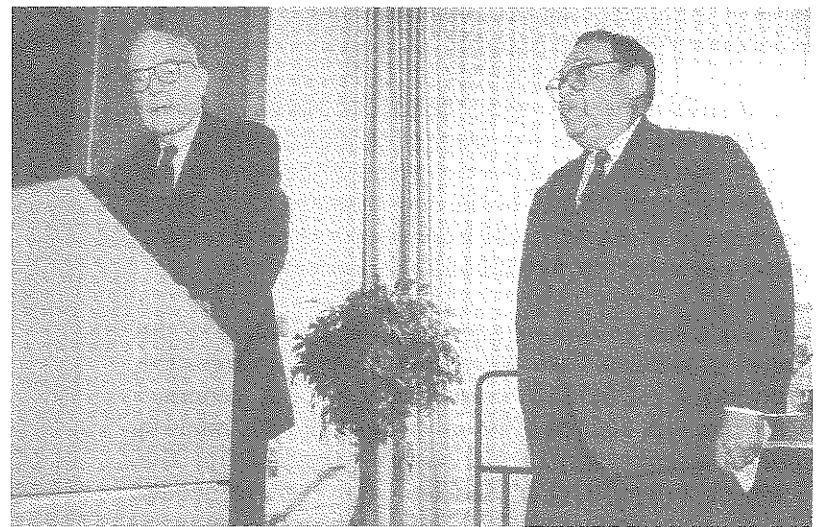
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The **Founders Award** was created in honor of **Jerome J. Shestack**, who was instrumental in establishing the Lawyers' Committee for Civil Rights Under Law and its local affiliate, the Public Interest Law Center of Philadelphia. The award was presented by Chair of the Board **David Smith**.



The second annual **Thaddeus Stevens Award** was presented by federal court Judge **Louis Pollak** to **William T. Coleman, Jr.** in recognition of a lifetime commitment to advancing civil rights in America.

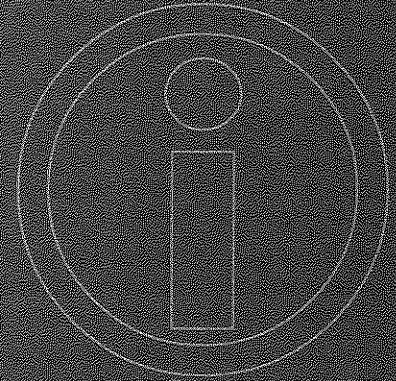
In *Herman v. Gov. Mifflin School District*, PILCOP sued to permit a student with Down syndrome (see photo below) to participate on the junior varsity basketball team after the school excluded him because of his disability. In a compromise agreement, the school agreed to allow the student to be the team manager and travel with the team.

Our work to equalize public school funding took a big step forward recently when bipartisan sponsors introduced, in both houses of the Pennsylvania legislature, bills increasing school funding by more than \$2 billion. **This would give Philadelphia schools an additional \$500 million annually.**

In a precedent-setting decision, a federal judge will allow the black guests of a white tenant to sue the landlord for violating federal fair housing law. In *Lane v. Cole*, PILCOP sued a landlord for making physical threats and evicting a white

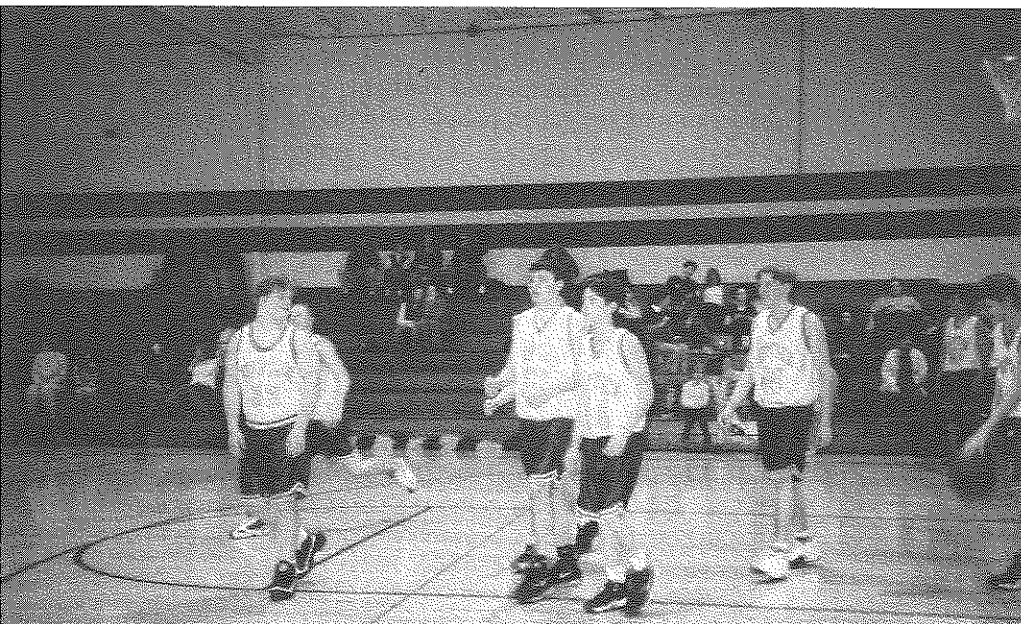
tenant who was visited by a black family. If proven, the judge also will permit the white tenant to seek compensation for the distress she suffered as a result of conduct the judge characterized as "outrageous and extreme."

In *Gattlieb v. Kanawha County School District*, Aliza Karetnick, who is working with the Law Center through the Shestack Public Interest Fellowship, obtained an agreement requiring David Gattlieb's school district to provide the supportive services he needs to attend regular high school with his peers, instead of at home or in a segregated facility.



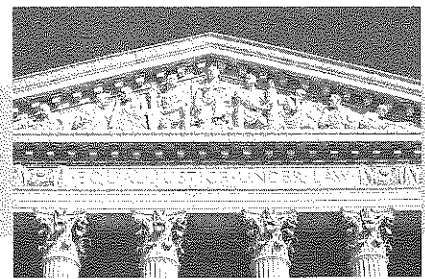
Law Center Update

Max Lapertosa will be a panelist at an international meeting of doctors to be held this spring in Slovenia, where he will present a paper on suicide and mental health legislation. **Margaret Colon** recently joined PILCOP as a Development Assistant. Many thanks to **Aramark Corporation**, which gave an \$11,000 grant in honor of **Lee Driscoll**, former general counsel of Aramark and long-time member of the PILCOP Board of Advisors, in honor of Lee's retirement from Aramark's Board of Directors. Thanks also to the **Samuel S. Fels Fund**, which awarded a \$12,000 grant to support a strategic planning process.



PROGRAM REPORT:

Taking on the U.S. Supreme Court



The Law Center has gone to bat three times before the U.S. Supreme Court this term, with some outstanding results:

In *Powell v. Ridge*, the Law Center, the City of Philadelphia and the School District are challenging the state's public school funding scheme as racially discriminatory. The state argued that the case should be dismissed on the grounds that only the federal government can enforce civil rights regulations. This interpretation of the law precludes private parties from enforcing the law. The appeals court rejected this position, and the state turned to the Supreme Court. Fortunately, in December the Supreme Court decided not to disturb the appeals court decision. The case will go to trial in October, giving us the opportunity to prove that Pennsylvania allocates its school funding in a way that gives less money to predominately minority districts than it does to predominately white districts with the same poverty levels.

This was a welcome decision! Only two years ago, the Court decided to review a similar decision in the Law Center's Chester environmental justice case. Fortunately, the Chester case became moot before the Court issued an opinion, and we are encouraged by a seeming shift in the Court's position on enforcement by private citizens.

In *Lanning v. Septa*, a group of female transit police applicants is challenging the transit authority's physical fitness requirements as discriminatory. Septa's running requirement of 1 ½ miles in 12 minutes -- is more rigorous than that imposed by the state police, the FBI, the DEA and the Secret Service. Moreover, this standard has eliminated over 85 percent of all female applicants since 1991. In January, the Supreme Court refused to disturb appeals court Judge Sloviter's decision that the employment test must measure the minimum qualifications necessary to perform the job. Plaintiffs now have the opportunity to show at trial that Septa's running standard is more rigorous than the law permits.

Judge Sloviter's decision is the first to interpret the Civil Rights Restoration Act passed in 1991, and to state definitively that an employer cannot use a test that exceeds the minimum qualifications of the job. Lisa Rau, a former PILCOP lawyer now in private practice, handled the trial and appeal for the Law Center. The Justice Department is also challenging Septa's test.

In an effort to preserve the right of private citizens to enforce the Americans with Disabilities Act (ADA) against

the states, in *Alsbrook v. Arkansas*, the Law Center, acting as a friend of the court, persuaded the Supreme Court to review a decision by the Eighth Circuit Court of Appeals immunizing states from private citizens' suits alleging discrimination in the provision of state services.

This effort was undertaken in the face of an alarming trend in the Supreme Court to exempt states from lawsuits brought by private citizens.

At stake is all of the litigation, like *Pennhurst* and *Messier*, requiring states to end the historical and shameful segregation of people with disabilities by providing services in the most integrated settings. Although last spring the Supreme Court, in *Olmstead*, upheld the validity of ADA regulations requiring community based services for people with disabilities, the case did not raise the issue of state's immunity.

This was a calculated risk. We sought this review of a terrible decision, one that essentially precludes private citizens from holding the states accountable to federal law in the courts, by a Supreme Court that increasingly has immunized the states from citizens' suits, as it already has done with respect to the Age Discrimination in Employment Act and the Fair Labor Standards Act. In *Alsbrook*, we sought to convince the Court that the states' egregious historical and unconstitutional discrimination against people with disabilities justifies holding them accountable to a law intended to reverse this history.

Twice before, in *City of Cleburne* in 1985 and in *Olmstead* last spring, the Law Center has provided the Supreme Court with the nation's shameful history of segregation and institutionalization by states. In the *Cleburne* opinion, Justice Marshall remarked that this country's history of discrimination against people with disabilities rivaled the discrimination against African Americans. Because *Alsbrook* was resolved privately by the parties before the Supreme Court issued its opinion, it remains to be seen whether Justice Marshall's opinion still is shared by a majority of the sitting Justices.

It is unusual for one law firm to be involved with three such critical cases in one term and it seems unparalleled here in Philadelphia. These cases demonstrate that the Law Center continues to be on the cutting edge of the law. We are driven there by the fact that seemingly arcane legal issues disputed in far removed court rooms have a real impact on the education, employment and very lives of our clients.

PROFILES IN COURAGE:

We would like to introduce you to two individuals with whom we have been privileged to work. Jim Conroy and Delores Combs have courageously pursued justice at enormous personal cost and in the face of seemingly insurmountable opposition.

Twelve year old James Combs has developmental disabilities and health problems. Although federal law requires schools to provide supports to children with disabilities so that they can attend regular classes, the Philadelphia School District succeeded in removing James from school for over a year.

However, the School District didn't count on Delores Combs, James' grandmother. Delores has cared for James throughout most of his life, and she is a tireless and loving caretaker. In fact, Delores has dedicated her life to helping others. As director of Project Guiding Light, Delores runs a shelter for homeless families in one of the city's most poverty-stricken neighborhoods.

Jim Conroy is the leading national expert on the impact of community placement for people with developmental disabilities. As a social scientist at Temple University and as director of Conroy Outcome Analysts, he built his career on assessing the tangible improvements in quality of life enjoyed by former residents of state institutions after they moved into the community. Jim's research and his testimony in our cases and numerous other forums have provided a powerful tool for our advocacy efforts.

In 1993, PILCOP filed a motion for contempt against the City and Commonwealth in the Pennhurst deinstitutionalization case for their failure to provide community services to former residents of that institution as required by court order. At the contempt hearing Jim testified that the data he collected showed that the former Pennhurst residents in Philadelphia received fewer services than those living in the surrounding counties, and that this was impacting their quality of life.

Delores' dedication served her well in the battle for her grandson's education. With PILCOP's help, Delores was able to have James attend regular classes in a Philadelphia magnet school, where he is assisted by skilled nursing care. Delores Combs exemplifies the values PILCOP has struggled to uphold for the past 25 years. Together, we believe that public education can and should serve all children, including those with the most severe disabilities. Delores' leadership, dedication and refusal to compromise her grandson's education inspire us all.

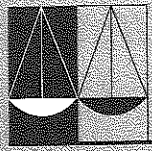


Jim was blacklisted as a result of this testimony. He was unable to obtain any work within the commonwealth or Philadelphia county. His partners in two firms were told that as long as they were associated

with him, they too would receive no further contracts. Jim resigned from both partnerships and ended a professional association of nearly 15 years.

To this day, Jim continues to work on disability matters. He has provided invaluable analysis and support in our work in Illinois, Tennessee and Connecticut. We are deeply inspired by Jim's professional and personal integrity and the sacrifices he has made for people with disabilities.

Email us at pubint@aol.com



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The Inaugural 5k Race for Liberty

The inaugural 5k Race for Liberty was held on Saturday, March 18, probably the coldest Saturday since January. We would like to thank Sovereign Bank and Esquire Reporting Services for their generous sponsorships. We would also like to thank the following businesses who donated prizes or otherwise supported the event. We encourage you to patronize them and thank them for their support.



Board Chair **David Smith** and former Board Chair **Don Joseph**.

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