

THE DEFENDER



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JANUARY 2007

40 YEARS OF PROTECTING LIBERTY

The American Civil Liberties Union of Vermont turns 40 this year. The milestone will be marked by special activities throughout 2007.

Looking back at the organization's founding, and assessing where we are now, offers an instructive glimpse at organizational development, shifting legal issues, and Vermont society.

The organization's first annual meeting took place March 25, 1967. By September there were 355 members. Rutland attorney Donald Hackel was the first president. The first paid staff member, a part-time executive director, was hired in 1969. The position was made full-time two years later.

Issues taken on in the early years reflect concerns both different and similar to those of today. Church-state issues dominated early ACLU work. Efforts were made by the city of Rutland to declare Christmas a national holiday in the city's public schools. Proctorsville proposed a

school prayer program. The ACLU fought both, on First Amendment grounds.

Other early issues involved loyalty oaths and academic freedom, hair length and dress codes. We helped Middlebury College students get on the local voter checklist. We fought private clubs whose rules barred women and racial minorities from membership.

Structurally, the early organization ran on energy and passion. Volunteers provided the backbone for most of the work. Criteria for taking legal cases weren't established

until the mid-1970s. A Legal Advisory Panel to screen and discuss cases didn't get going until 1980. Fundraising was a focus from the beginning, but a development staff member wasn't hired until the late-1980s. An associate director position was created in the 1980s. The first staff attorney was hired in 2005.

We played a major role in helping to eliminate the death penalty in Vermont, protecting a woman's right to choose, and ensuring prison inmates are treated humanely. In the 1990s we took on school finance, and won the right of equal access to educational opportunities for Vermont schoolchildren.

Through it all, the ACLU has been guided by a single mission – protecting the Bill of Rights. 2007 is a time to celebrate, and to rededicate ourselves to that mission.



Brigham turns 10; see story, page 2

Photo by Margaret Bartley



Lake Champlain ferry search challenge lost on appeal; see story, page 4

Annual Meeting 2006

- New members of the board of directors were elected; see story, page 3.
- Revisions to the bylaws governing nomination of board candidates were approved.
- Members are reminded that in addition to the slate of candidates developed by the board, someone can be nominated through a petition signed by 10 members.

FROM THE EXECUTIVE DIRECTOR

Allen Gilbert, Executive Director

This year marks the 10th anniversary of the Vermont Supreme Court's decision in the landmark ACLU *Brigham* school finance case.

It was this case, filed after nearly a decade of failed efforts by the Legislature to reform the state's education funding system, that led to the passage of Act 60 and later Act 68.

The Legislature will likely again review the current funding system this session. Any system that raises and distributes \$1 billion annually is sure to come in for close scrutiny at any time.

A movement called "Revolt and Repeal" has caught the imagination of some. Its advocates want the current system repealed, but they have offered no plan to take its place.

On the 10th anniversary of the *Brigham* decision, we should remember the circumstances that led to the ACLU lawsuit.

Our lawsuit was based on a core constitutional principle that underlies much of our work — equal treatment under the law.

The court ruled that we had a collective responsibility as a state to guarantee equal access to children's fundamental right of public education, regardless of what town a child lived in.

An important lesson learned during the last 10 years is the huge gulf that can exist between knowing what is right and doing what is right. No one disagrees with the Supreme Court's determination that Vermont schoolchildren should be treated equitably. The chal-

lenge has been in how to make that happen.

It's been the revenue-raising side, rather than the funds-distribution side, of the education finance system that has sparked criticism. The court didn't direct how to raise education dollars. That was left to the Legislature to decide.

The court spoke with laser clarity on the issue of fairness to kids, though. And that principle must be protected as the Legislature looks at school finance reform this session.

What must be found is clarity on the issue of fairness to taxpayers. The current system of "prebates" and "rebates" may create a school tax system that is arguably the fairest in the country, but a perception of unequal treatment of taxpayers remains.

STAFF ATTORNEY CAMPAIGN

In 2004, we received a grant from the national ACLU to fund a new position — staff attorney. This is the first time in our 40-year history that we've hired someone whose sole function is to broaden and deepen our legal program, the core of our activities.

Working with a long list of cooperating attorneys and our Legal Advisory Panel, staff attorney Laura Philipps manages ongoing legal program operations: answering complaints, reviewing potential cases, and bringing litigation. Thanks to this

work, we have been able to increase the number of cases we take, as well as to offer informed explanations and helpful referrals for those we don't.

Our office is small, so adding a staff attorney has been a financial stretch. Initial costs of the position have been covered by the grant, but we need to raise the funds to maintain the position. Two past board presidents, Jennifer Ciarlo Pacholek and John Shullenberger, current board president John S. Freidin, and cooperating attorneys Beth

Danon and Mitch Pearl are working closely with Executive Director Allen Gilbert to contact individuals, other attorneys, and businesses throughout the state to solicit sustainable support for the position.

We're deeply appreciative of the dedicated work of the solicitation team, and of the positive response by all who've contributed so far.

Would you like to help out? E-mail us at info@aclvt.org, or call Development Director Sandra Nall at the office, (802) 223-6304.

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LEGISLATIVE PREVIEW

Since this is the start of a new legislative biennium, legislators face a “clean plate” when they gather at the Statehouse in January.

A speaker must be elected and committees formed before any business can be done. Then, only new bills introduced this year will be considered. Some bills will be resubmissions or adaptations of bills introduced in the last session, while others will be completely new.

Every session always has its wild cards, too – bills or resolutions spawned by an issue of the moment that demands attention or is politically appealing.

Here are several areas where we anticipate legislation with civil liberties implications:

Education finance. This is

an important area for us because it is how the equity mandate of the *Brigham* decision is delivered. While there have been no calls for a return to unequal town-based distribution of school resources, there have been calls for systems that could result in that. We are committed to protecting the gains for schoolchildren made through our successful litigation.

Civil commitment. The governor has promised to put this issue back on the table, despite its defeat two times in the last two years. The “safe communities” anti-crime bill of last year took tough stances on many criminal justice issues. But civil commitment (or as the governor calls it, “civil confinement”) simply goes too far in cutting into core due process rights, is expensive, and is not the

best use of public funds, the Legislature has previously decided.

Privacy. This issue comes up in many guises, and we expect it to arise again this year. There is some leftover work around access to prescription drug records, and the federal Real ID law may generate some opposition to intrusive government practices. Surveillance cameras are an increasing concern.

Reproductive freedom rights. There has been discussion of the introduction of a “Freedom of Choice Act,” codifying in state law the principles of the federal *Roe v. Wade* decision and establishing basic protections for women accessing abortion services. Additionally, the bill would formally repeal the extant state law making it a crime to provide abortions.

BOOK REVIEW

Strange Times, My Dear: The PEN anthology of contemporary Iranian literature. Editors Nahid Mozaffari and Ahmad Karimi Hakkak.

An eye-opening feature of this book is the story of its publication. All of the authors had first-hand knowledge of Iran’s draconian censorship. Many of the stories reflect that experience. Ironically, *Strange Times, My Dear* was itself the target of U.S. censorship.

While Iran now makes the U.S. news on a regular basis, it often appears simply as a hostile Islamic country, straight from central casting. Americans are rarely exposed to the depth of Persian culture, and to the many ways in which Iran differs from —

and is often anathema to — its neighbors to the West. The PEN anthology of Iranian prose and poetry, all written since the 1979 revolution, goes a long way towards remedying this cultural ignorance. Among the many stories and poems here, the reader meets Muslim surrealist schoolgirls, a Zoroastrian PR manager, a gay man sent to the gallows, and grumpy exiles in Paris. The pieces chosen are by turns comic and heartbreaking.

In the book’s publication saga, the Office of Foreign Assets Control held that its publication would violate

trading-with-the-enemy regulations that currently apply to Iran, Cuba, and the Sudan. OFAC demanded that the publishers apply for a permit. This they refused to do, and in the wake of the ensuing lawsuit, the OFAC rules were relaxed to allow publications of this nature. This vindication of First Amendment rights on an international stage is timely, and it could hardly have involved a more interesting book.

Reviewer Ethan Mitchell is a stonecarver living in Addison County. He serves on the ACLU Board of Directors.

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FERRY SEARCH CHALLENGE FAILS

The court did acknowledge that the case raised a “legitimate concern” about limits to the government’s power to conduct suspicionless searches. But the court noted that the government imposed security requirements only on the nation’s largest ferries and only after “extensive findings” about the risks these vessels present. The court said that the concerns raised, therefore, were not “implicated by the facts in this case.”

The U.S. Court of Appeals for the Second Circuit has upheld the dismissal of an ACLU-Vermont lawsuit challenging security searches on Lake Champlain ferries. “We’re disappointed with the decision,” said ACLU-Vermont Executive Director Allen Gilbert. “We knew that this case would be an uphill battle. But we felt we couldn’t let the government’s over-reaching of power go unchallenged. We were hopeful the court would be brave and say, ‘These searches go too far.’ It didn’t.”

The “screenings” require random searches of car trunks or, in the case of

walk-ons, bags and backpacks. The screenings are part of the federal government’s anti-terrorist activities.

William Nelson, a Middlebury lawyer acting as an ACLU cooperating attorney, filed the action in 2004 with and on behalf of Michael Cassidy, also an attorney, who uses the ferries daily to commute from his home in Colchester to a job in Plattsburgh, N.Y. Cassidy has been stopped numerous times to have the trunk of his car inspected. Joining as a second plaintiff was Robert Cabin, another commuter.

When the suit was originally filed with the U.S. District Court in Vermont, Nel-

son noted: “We don’t disagree with the possible need for screenings on some ferries in some parts of the country. But the government must show a need to infringe on the privacy protections of the Fourth Amendment. The government has shown no such need for the Lake Champlain ferries. These are suspicionless searches, and courts have ruled such searches illegal.”

U.S. District Judge Garvan Murtha dismissed the suit, essentially stating that if the government says the searches are necessary, then they’re constitutional. The Second Circuit agreed with that view.