

THE DEFENDER



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JUNE 2009

GENE PATENT LAWSUIT FILED

The practice of patenting the knowledge derived from studying human genes is being challenged by the

national American Civil Liberties Union.

The lawsuit was filed in federal court in New York on behalf of breast cancer and women's health groups, individual women, and scientific associations.

Defendants are the U.S. Patent and Trademark Office, as well as Myriad Genetics and the University of Utah Research Foundation, which hold the patents on the

BRCA genes.

The lawsuit is the first to apply the First Amendment to a gene patent challenge. It charges that patents on two human genes associated with breast and ovarian cancer stifle research that could lead to cures and limit women's options regarding their medical care.

Mutations along the genes, known as BRCA1 and BRCA2, are responsible for

most cases of hereditary breast and ovarian cancers.

The patents granted to Myriad give the company the exclusive right to perform diagnostic tests on the genes and to prevent any researcher from even looking at the genes without first getting permission from Myriad.

Women are being denied access to information that could help them, said ACLU attorney Sandra Park.

THOUGHT AND EXPRESSION IN A CHANGING WORLD

Our early-summer seminar focuses on free speech issues. Please join us June 29. Details inside.

CUBA TRAVEL RULES EASED

Family members face fewer restrictions visiting Cuban relatives. The Bush-era rules were the subject of a federal court case in which the ACLU of Vermont and two other affiliates assisted the plaintiffs.

ACLU-VT LITIGATION

The ACLU-VT has also been active in the courts.

We filed suit in U.S. District Court against an Irasburg teacher for proselytizing in the classroom. Evidence shows the teacher's alleged impermissible actions extend over a number of years.

A hearing in early June will likely determine the outcome of our lawsuit in Washington Superior Court against Barre's sex offender residency restriction ordinance.

The authority of local officials to regulate the sale of legal substances is being challenged in a suit against Middlebury.



Photo by Andrea Warnke

Attorney Bob Gensburg speaks to the BFA-Fairfax senior class about abuse of power and rule of law at the May Bill of Rights 101 student conference held at the St. Albans Historical Museum.

FROM THE EXECUTIVE DIRECTOR

Allen Gilbert, Executive Director

It has been difficult to accept some of the recent decisions by the Obama administration regarding treatment of detainees and other aspects of the “war on terror.”

The new president had emphasized the rule of law during the campaign and in his inaugural address. The Constitution would no longer be set aside, he said.

Guantanamo would close, torture would stop, and secret memos would be released.

Yet we then learned that the Military Commissions created during the Bush administration would be revised and revived, the doctrine of state secrets would be defended in several ongoing court cases, and photos of prisoner abuse would not be released (contrary to a

ruling in a case brought by the ACLU).

Some form of detention may be necessary for certain individuals, despite the protections of habeas corpus.

The president’s own political party stymied plans to close Guantanamo.

A Vermont lawyer working with detainees at the Cuban prison told me “nothing has changed” since the new administration took office. His frustration was palpable.

The resignation of a Supreme Court justice and the announcement of a nominee to take his place helped redirect the public’s attention. But a wariness remained.

Civil liberties advocates, it is said, have neither permanent friends nor permanent enemies — only permanent principles.

One hopes that as Ameri-

can politics move forward, principles gain an ascendancy that reverses their virtual abandonment during a difficult period in our history — a period whose abuses we are still struggling to deal with.

President Obama carries the burdens created during those years. They are our burdens as well. How they’re dealt with depends not just on the president’s actions, but on the concerns we communicate to congressional members and the opinions we share with others — through conversations, through letters to the editors of our local papers, through participation in discussions online or in-person.

A permanence of principles is assured through vigilance from citizen advocates.

SHARING ACLU STORIES

Some people join the ACLU after a civil liberties incident captures their attention and concern. For many people, however, it’s a decision that comes quietly after many years of awareness. Three of our newer members had that experience.

Sarah Thompson, member since January 2009, reports that when she was young, an older person told her about the ACLU and encouraged her to join. She didn’t do it. But she did value civil liberties and knew the ACLU played an impor-

tant role. Now, many years later, she received an invitation letter in the mail and decided it was “the right time” to become a member.

John Pierce, member since October 2007, is retired. When he was working, he admired the ACLU but was too busy. Now that he is retired, he has more time to participate; he attended our most recent annual meeting.

Ted Allen, member since May 2008, also joined after many years of appreciating ACLU from the sidelines. He also was happy with the personal response he received

from the Vermont affiliate when he called about duplicate mailings. He spoke to a person rather than a machine and his request was taken seriously.

These aren’t dramatic stories but point to the many ACLU supporters in our state who are not yet members. If we let our neighbors and colleagues know that we belong to the ACLU, that may encourage them to join — an invitation that comes at the right time.

Contact Dorie Wilsnack to share *your* story at dwilsnack@acluvt.org.

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LEGISLATIVE SESSION WRAP-UP

Passage of a same-sex marriage bill (S. 115) was the 2009 session's civil liberties high point (see full story, Page 4).

Other bills of note during the session:

Sex offender bills (S. 13 and S. 125). These two bills, passed into law, pose significant civil liberties issues. Their most troublesome provisions include mandatory collection of DNA upon arraignment for felony crimes (and some misdemeanors), expansion of the Internet sex offender registry (despite no evidence that registries work), and limits on the use of depositions in certain proceedings. We expect a court challenge to the DNA provision when it takes effect.

Mandatory seatbelt use (H. 147). A bill passed the House, but not the Senate,

that would allow police to stop and fine motorists for not using a seat belt. Currently, police can cite someone for a seat belt violation only if stopped for some other violation (so-called "secondary" enforcement). While seat belt use is a good idea, we worry that "primary" enforcement could result in discriminatory stops — stops based on a person's color, gender, or age rather than seatbelt use.

Automatic Selective Service registration (S. 67). Efforts by Selective Service officials to link drivers' license applications with Selective Service registration failed. Both "opt-out" and "opt-in" approaches were considered and rejected. House members decided there is no rational connection between drivers' li-

censes and draft registration. They also noted the gender discrimination inherent in helping enforce a federal law that only affects men.

Cyber-bullying. A study committee urged the Legislature to broaden schools' authority to punish students for out-of-school misconduct. While there was some discussion of the committee's report, no action was taken. The ACLU-VT is concerned that cyber-bullying legislation could lead to disciplinary action that should be left to parents.

Prison co-pays. The Department of Corrections tried once again for authority to levy co-pays on inmates who visit a prison doctor. Co-pays are punitive, they're bad health policy, and they don't raise much money. Once again, the effort failed.



Serena Hollmeyer assisted our legislative advocacy efforts this year as an ACLU-VT Loomis Fellow. We're grateful for her help!

SAVE THE DATES

Our annual meeting will be held on Saturday, October 31st, at the Capitol Plaza Hotel in Montpelier.

Circle the date of Thursday, November 18 — Arlo Guthrie returns to Burlington's Flynn Theater, this time with his children. ACLU-VT again plans to hold a reception with him following the concert. Watch for details in our fall newsletter.

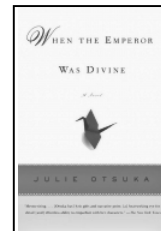
NOMINATIONS

A slate of nominees for the ACLU-VT Board of Directors is put forth by our Nominating Committee, but any member can also gain nomination through a petition signed by 10 members. Petitions must be submitted to the ACLU office by Aug. 14. Elections take place in the fall, through ballots in our September newsletter.

FIRST BOOK IN MIDDLEBURY READING SERIES

BOOK REVIEW

When the Emperor was Divine, a novel by Julie Otsuka; Anchor edition, 2003



Internment of Japanese-Americans in World War II was repudiated by Congress in the Civil Liberties Act of 1988 but questions about the legality of internment in times of war have never been completely settled.

Julie Otsuka's 2002 novel of one Berkeley, Calif., family forcibly relocated for four years was selected by the Vermont Humanities Council as the 2009 "Vermont Reads" title. Each year the VHC promotes one book for state-wide activities. Because this novel relates to the issues of habeas corpus and the Fifth Amendment's due

process of law, the Education Committee of the ACLU of Vermont has organized a series to discuss other books that also deal with various Constitutional concerns.

Otsuka gently relates in five chapters, each told from a different perspective, the story of a father who was taken from his home the evening of Pearl Harbor and of his family who were taken five months later to Utah, where they were kept for three years, five months. Otsuka's calm, matter-of-fact presentation belies the tragedy of their confinement. Descriptions of their "Americanisms" make the story per-

sonally gripping. Later experiences of African-Americans and Muslims remind us the hysteria turned to Japanese-Americans can shift to other minorities.

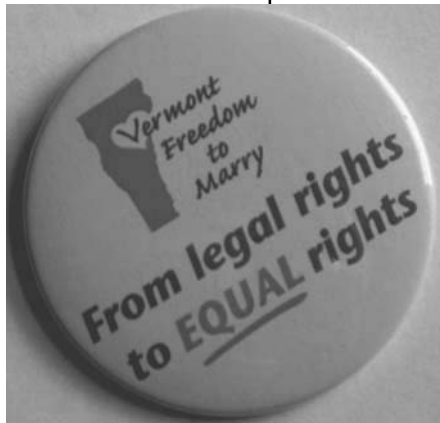
The other books in our discussion series, slated to begin this fall in Middlebury, are *Arc of Justice* (Boyle), *Gideon's Trumpet* (Lewis), *In Our Defense: The Bill of Rights in Action* (Kennedy and Alderman), and *Naming Names* (Navasky).

— Reviewer David S. Clark is the director of Ilseley Public Library, Middlebury, and chairs the ACLU-VT Board of Directors' Public Education Committee.



For an audio (or large-print) version of this newsletter at no charge, contact us at (802) 223-6304 or info@acluvt.org.

MARRIAGE EQUALITY FIGHT IS WON



An additional victory: While the Vermont Legislature debated same-sex marriage, the Iowa Supreme Court ruled that its state constitution provides marriage equality.

Despite a gubernatorial veto, the Legislature managed to muster the votes to pass a marriage equality bill, granting same-sex couples the same full right in Vermont to marry as heterosexual couples.

The passage of S. 115 was the greatest civil liberties success of this year's legislative session and indeed of all sessions since the civil unions bill of 2000. (A summary of other bills considered this session can be

found on Page 3.)

Vermont is the first state to provide marriage equality through legislation rather than court order.

Drama suffused the debate on the bill, but it was a different sort of drama than during the 2000 civil unions debate.

The harsh divisiveness of 2000 was, for the most part, absent. The drama this time came when Gov. James Douglas announced he would veto any marriage bill the Legislature passed — and then, two weeks later, when both the Senate and House overrode his veto.

The House vote was as close as an override can be, 100-49. Victory was not as-

sured until the clerk had gotten deep into the roll-call vote, and key “undecideds” said “yea.”

Marriage initiatives moved in multiple New England states this winter.

New Hampshire and Maine, in addition to Vermont, took up bills. New Hampshire's tripped on final wording regarding protections for churches not wishing to perform religious marriages for gays. Maine's passed but is now the likely subject of a referendum.

Both Massachusetts and Connecticut already allowed gay marriage. Only Rhode Island among the New England states denies marriage equality (or civil unions).