

## LEGAL BRIEFS

## U.S. Supreme Court Finds HIV a Disability

BY SUSAN MURRAY AND BETH ROBINSON

In an important decision released in June of this year, the United States Supreme Court recognized that HIV infection is a disability for the purposes of the Americans With Disabilities Act. The facts of the case, titled *Bragdon v. Abbott*, are as follows: Sidney Abbott has been infected with HIV since 1986. In September, 1994, she went to a dentist, Randon Bragdon, in Bangor, Maine, for a dental appointment. Ms. Abbott disclosed her HIV status on the patient registration form. At that time, Ms. Abbott was essentially asymptomatic.

The dentist examined her teeth and found a cavity. Because she was HIV+, he refused to fill the cavity in his office, but told her he would fill it for the same cost at a hospital. However, Ms. Abbott

would have had to pay the hospital's fees. She decided not to accept the dentist's terms, and instead filed a lawsuit under the Americans With Disabilities Act (the "ADA"). Eventually the case worked its way up to the United States Supreme Court.

The Supreme Court's determination that Ms. Abbott's HIV infection is a disability might seem like a no-brainer, but it was not completely obvious. The ADA defines disability to mean "a physical or mental impairment that substantially limits one or more of

the major life activities of [an] individual." Thus, in order to rule in Ms. Abbott's favor, the Court had to (1) find that asymptomatic HIV infection is a physical or mental impairment, and (2) find that the impairment limits a "major life activity."

The Court concluded that even though Ms. Abbott was largely asymptomatic, her HIV infection was indeed a physical impairment because it affects her hemic and lymphatic systems. The Court also decided that her HIV status substantially limited the "ma-

major life activity" of "reproduction," because an infected woman might infect her child during gestation and childbirth, and an infected woman who tries to conceive a child "imposes on the man a significant risk of becoming infected." Although the Court focused on "reproduction" as the major life activity involved in the case, the Court also intimated that it recognized that HIV infection affects "major life activities of many sorts." The Court ultimately sent the case back to a lower court to determine whether the dentist could come up with enough evidence to justify a trial on the question of whether his discrimination was nonetheless permissible under the ADA because Ms. Abbott's infectious condition "pose[d] a direct threat to the health or safety of others," but the Court expressed its own skepticism that the dentist would be able to come up with enough evidence to support that claim.

The Court's decision has important ramifications for HIV+ persons not only in connection with public accommodations, but also in connection with employment, housing, and a range of other activities. The case also eliminates one of the obstacles to claims by HIV+ people subject to discrimination by insurance companies,

although the law is still unsettled on the question of whether insurance policies are a "public accommodation" subject to the non-discrimination requirements of the Americans With Disabilities Act.

Moreover, although the Abbott decision involved a federal law, Vermont's own anti-discrimination laws will likely provide at least as much protection as the federal ADA. HIV+ people in Vermont can now be more confident that they enjoy not only the protections of federal law, but also the protection of Vermont's anti-discrimination laws.

Finally, the Court's decision may arguably affect employment leave, and insurance coverage, for in vitro fertilization and donor insemination since "reproduction" is a major life activity.

*Susan Murray and Beth Robinson are attorneys at Langrock Sperry & Wool in Middlebury, Vermont whose practices include employment issues, family matters, estate planning, personal injury and worker's compensation cases, and general commercial and civil litigation. This column features timely information about legal issues of interest to our community. We hope to provide information about important laws and court cases that may affect our rights, as well as practical nuts and bolts advice for protecting ourselves and our families. If you'd like to see us cover a particular topic, please feel free to write OITM or call us at 388-6356.*

### Crow'sCaws by Crow Cohen

## Radlesfem Festival

I spent the 4th of July weekend near Seneca Falls celebrating the 150th year of the signing of the "Declaration of Sentiments" drafted by Elizabeth Cady Stanton and her suffragist buddies. I also visited the Women's Rights Museum - a national park, mind you, that features a gigantic photo on the first floor of an African-American dyke holding up a huge placard which says "Black Lesbian Rights!"

But the main purpose of schlepping out to the Finger Lakes Region of upper New York State for the weekend was to attend the Radical Lesbian Feminist Festival at the Seneca Women's Peace Camp - women's land that has been more or less operating for 15 years. This gathering was organized by Lierre Keith from Northampton who had also created a Radlesfem weekend this past February in Deerfield, Mass. which I was thrilled to attend. (See OITM/Feb. 98 "Radical Feminism")

Now, here were close to 20 of some of the most contentious, opinionated dykes the patriarchy has to offer and you never saw such a bunch of considerate, respectful, gentle, earth-loving wimmin. No more will I accept the accusation that I love to argue for the sake of arguing. Put us in an environment where we don't have to deal with feminist backlash on a daily basis and we turn into a bunch of pussy cats. Now these dykes weren't coming here to get their ya-yas off. Of course we laughed a lot, sang, and sat way into the night by the bonfire; but our chief purpose was not to be passively entertained by queer superstars, overpriced craft "malls," or workshops on the latest, greatest sexual techniques.

We were there to get passionate, no doubt, but in the broader (as opposed to genitally restricted) sense of exchanging our beliefs, values, ethics, visions, stories and hopes related to affirming lesbian feminist culture. We ranged in age from 18 to 55 but the majority were in their late 20's, early 30's. Instead of being on my guard against ageism which happens when 55 year old me is surrounded by ambitious younger women ready to dismiss us as old-fashioned, I was extremely heartened that I found this new generation of fervently committed radical feminist dykes who recognized that the queer movement had little to offer them in terms of analyzing male domination which pollutes our minds and bodies.

Now in case you haven't noticed, radlesfem theory is no longer popular despite the wider acceptance of G/L folk in the mainstream and B/T folk in the movement. I'm not suggesting that more visibility and inclusiveness are necessarily bad things, but if we don't fortify ourselves with an incisive analysis of how domination/submission patterns destroy our souls as well as the planet earth, then we are being lulled into thinking that once we're accepted by the patriarchy we have nothing to worry about.

Here are some of the ideas I picked up. We're not "separatists," we're "connectionists." We aren't "dykosaurus." We have to be on multiple levels and parallel tracks to attack the patriarchy. Being radical includes challenging the norm; it's not about reform. It includes an analysis of classes of people; it's not about individualism. The accusation that we radfem dykes

are so "divisive" is bullshit. The divisions are already there. We often have the courage to name them (bring them to light) so they can be dealt with and healed.

The overused word "incest" should be replaced by "the rape and torture of children." And lest I fall into the trap that it's all just words and words don't matter, here's a favorite quote by Andrea Dworkin that was posted inside the outhouse door from

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## VCLGR COALITION NOTES

BY VIRGINIA RENFREW

VCLGR thanks all who made Pride Day '98 a large success. The Coalition had a table under the tent to register voters; we signed up a few new members as well. We also had the honor of marching in front of Bread and Puppet leading the parade with our banner. Thanks Nat.

VCLGR is still looking for individuals to help with our conference in October. VCLGR and the UVM GLBT Alliance will be hosting the conference at UVM on October 10th. MARK YOUR CALENDAR. On August 19 at 6pm we will be having a conference meeting at the Peace and Justice Center. If you would like to help make this conference a success please come. If you want to help but can not attend the meeting call Virginia. If you are interested in doing a workshop or having a table at the conference please contact Virginia Renfrew at renfrew@sover.net or call 496-4333 or via the Coalition toll

free number 1-888-825-4989. We are also looking for a child care provider for the day.

VCLGR will be surveying candidates for the 1998 statewide election, results to be printed in OITM. If you have questions that you would like to have asked of the candidates contact Keith at kgoslant@ddmhs.state.vt.us or call 454-8552 or via our toll free number 1-888-825-4989.

Over the last few months we have heard individuals remark that they will only vote for those candidates that support the repeal of Act 60. When deciding who to vote for please look at all the issues. Make sure that the candidates support civil rights for all Vermonters. We have heard some candidates state if they are elected a priority is to change the look of our Supreme Court. They would like to see the Court be less "radical" or "activist." As minority communities has often sought remedies for discrimination via the court sys-

tem this attempt to politize the Vermont Supreme Court be very dangerous for our, and other minority, communities.

Judging by some of the calls received by the Liaisons it is clear we still have work to do before true equality is achieved for our communities. We have received requests to participate in presentations regarding diversity in the workplace, working groups looking at Hate Crimes and sexual assaults, and requests to participate in mediation to resolve workplace and educational difficulties.

Please remember both Liaisons are available for information or assistance if you encounter discrimination. If you are aware of issues that may require legislative remedy or policy changes on a statewide basis, please do not hesitate to contact us. Both our home phone numbers and the Coalition toll free number are listed on OITM's resource page on an ongoing basis.