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A newspaper about the law for young people

WINTER 2007

Global Warming Debate Heats Up in High Court

by Barbara Sheehan

With New Jersey temperatures at one point reaching near 70 degrees in January this year, global warming was certainly on the minds of many people. How dangerous is global warming and who is responsible for doing something about it?

These are some of the questions before the U.S. Supreme Court in a landmark case that could potentially impact the entire nation and even the world for years to come.

How it all started

The case, known as *Massachusetts v. Environmental Protection Agency*, actually dates back to 1999, when a group of environmental scientists petitioned the federal Environmental Protection Agency (EPA) to regulate the emission of certain gases linked to global warming.

Four years later, according to *The Los Angeles Times*, the EPA rejected the petition. In 2005, the U.S. Court of Appeals for the District of Columbia Circuit upheld that decision, ruling that the EPA was not required to impose the regulations sought by environmentalists in the case.

After that, 12 states, including New Jersey, and three cities joined the plaintiffs to appeal the case to the U.S Supreme Court. Their request was granted last summer and both sides presented oral arguments before the U.S. Supreme Court in November 2006.

The legal case: a summary

Essentially, the plaintiffs in the case contend that, under the Clean Air Act, the EPA is mandated to regulate emissions of carbon dioxide from new vehicles because it is a "pollutant." Enacted in 1990, the Clean Air Act is a federal law that proposed emissions trading to control pollution and added provisions for addressing other forms of pollution. Carbon dioxide is one of a number of "greenhouse gases" that exist in the earth's atmosphere, and it is reported to be accumulating at unprecedented rates, trapping radiant heat from the sun and contributing to higher world temperatures. (See sidebar.)

The defendants in the case, which includes the EPA along with 10 states and a number of vehicle trade associations and other industries, argue that "the problem of carbon dioxide emissions and other so-called greenhouse gases is too big and falls beyond the Agency's statutory mandate."

From a technical standpoint, the case could hinge on the Court's interpretation of the word "pollutant" and its definition of the EPA's legal mandate under the Clean Air Act, which according to the EPA's own website, sets "limits on how much of a pollutant can be in the air anywhere in the United States." The case could also pose a more fundamental question of environment versus economics.

In other words, Princeton environmental attorney

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DNA Databases

Keeping Society Safe or Invading Privacy

by Dale Frost Stillman

While many praise DNA testing as a law enforcement tool, a new debate is raging in America, over the constitutionality of maintaining DNA samples. Privacy advocates are at odds with public security proponents due, in part, to a decision rendered by a New Jersey state appeals court in March 2006 that gives the state the authority to save DNA evidence in a database even after a prisoner has been released, having done his or her time. Previously, the state was required to destroy all samples once a prisoner completed his or her sentence.

The New Jersey case concerned the constitutionality of the DNA Database and Databank Act of 1994. According to the lawsuit, the Act was originally created to house DNA samples from adult sex offenders, however, through legislative amendments, the Act was expanded to include juvenile sex offenders, violent offenders, and most recently in 2003, "persons convicted of any crime." In addition, the Act also makes it mandatory for an individual to "provide a DNA sample before termination of imprisonment or probation."

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Get Off My Property:

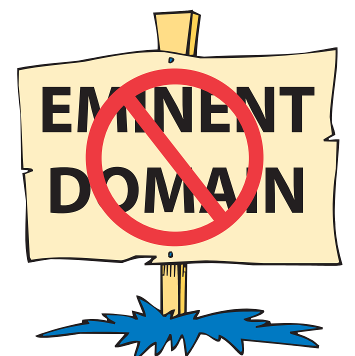
The Government's Right to Eminent Domain

by Phyllis Raybin Emert

Imagine if a real estate development corporation had its eye on your neighborhood as the location of its next redevelopment project. Even if your parents didn't want to sell, through the use of eminent domain, they might have no choice.

Eminent domain has its roots in the Fifth Amendment to the U.S. Constitution and in state constitutions as well. Essentially, eminent domain is the power to take private property for public use. The state, a municipality or private persons, such as redevelopers, usually exercise this power, which is sometimes called "condemnation" or "expropriation." The federal Constitution prohibits the exercise of eminent domain without "just compensation to the owners of the property which is taken." State constitutions, including New Jersey's, contain similar prohibitions. In other words, your parents would get fair market value or above for their house.

While originally the use of eminent domain for "public use" was limited to building new roadways or schools, legislatures and state and federal courts have expanded the definition over the years. More recently, governments have utilized the power of eminent domain to revitalize cities and towns resulting in construction of large redevelopment projects that include residential and commercial uses. For years, however, the use of eminent domain for redevelopment was limited to condemned or **blighted** areas. With its 5-4 decision in *Kelo v. City of New London*, handed down in June 2005, the U.S. Supreme Court broadened the public use basis for eminent domain to include property that was not blighted and was economically viable on its own. In addition, the decision allowed the government to use the power to benefit a private entity.



In *Kelo v. City of New London*, Justice John Paul Stevens wrote in his **majority opinion** that New London had the authority to take over 15 private properties as long as the owners were fairly paid. The land would be used as part of a large-scale project by a private company to create economic development, new jobs, and increase tax revenue for the New London area.

However, Stevens noted, "nothing in our opinion precludes any state from placing further restrictions on its exercise of the takings power." Since *Kelo*, 27 states have passed legislation limiting the use of eminent domain. In New Jersey, legislation to curb eminent domain has passed in

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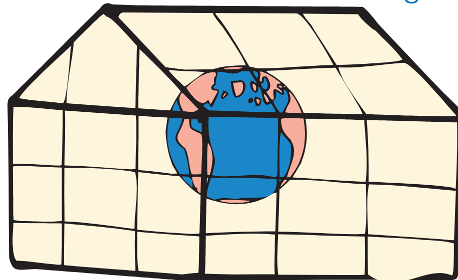
David Restaino explains, "What's better for your people—cleaning the environment or providing them with a decent wage and a decent job?"

A decision from the Court is expected before July 2007.

Oral arguments

Proponents of the EPA, which include the Bush administration, argue that mandatory regulations would be too costly for American industries and would take too great a toll on the economy. As an alternative, the Bush administration and the EPA support voluntary initiatives to address global warming.

For example, according to the EPA's website, the federal government established the multi-agency Climate Change Technology Program (CCTP) in February 2002 to accelerate the development of new technologies aimed at reducing greenhouse gas emissions. That same month, according to the EPA, the U.S. government announced "a comprehensive strategy to reduce the greenhouse gas intensity of the American economy by 18 percent over the 10-year period from 2002 to 2012."



It should be noted that while *Massachusetts v. EPA* focuses specifically on auto emissions, carbon dioxide and other greenhouse gases are also emitted from a number of other sources, including power plants, which would likely be impacted if the plaintiffs were to prevail in the pending U.S. Supreme Court case.

Deputy Solicitor General Gregory Garre, who represented the United States during oral arguments last November, stated that 85 percent of the U.S. economy is tied to sources of greenhouse gas emissions. Garre cited "substantial scientific uncertainty surrounding global climate change" as a further justification for the EPA's position in the case.

The plaintiffs in *Massachusetts v. EPA* argued that impending problems associated with global warming are well-documented and established, and that time is of the essence if meaningful changes are to be made. During the U.S. Supreme Court hearings, Massachusetts Assistant Attorney General James Milkey compared inaction to lighting "a fuse on a bomb."

When asked by Supreme Court Justice Antonin Scalia when the "predicted **cataclysm**" would occur, Milkey indicated that it is not cataclysmic but "ongoing harm" that poses a threat.

Getting to the "truth"

In his documentary on global warming, titled *An Inconvenient Truth*, former Vice President Al Gore echoes Milkey's sentiments that the consequences of not acting could be devastating. Not only does global warming threaten to dramatically alter our weather and our climate, Gore says in the film, it also could interfere with and even wipe out delicate ecosystems, raise the sea level and shrink coastlines around the world, and in numerous other ways upset the natural balance that for thousands of years has defined our planet earth.

Asserting that the U.S. is the worst contributor to global warming, accounting for 30.3 percent of carbon dioxide emissions worldwide, Gore said we are lagging behind a number of other countries in addressing the problem.

For example, Gore points out in his documentary that the U.S. can't sell its cars in China today because the cars don't meet China's environmental standards. Gore also laments the fact that the U.S. is one of only two "advanced" nations — the other being Australia — that has not ratified the Kyoto Protocol, an international agreement aimed at reducing greenhouse gas emissions.

"Ultimately, this is not a political issue so much as a moral issue...," Gore says in *An Inconvenient Truth*. "If we do the right thing," he says, "we're going to create a lot of wealth and a lot of jobs because doing the right thing moves us forward."

What will the Court do?

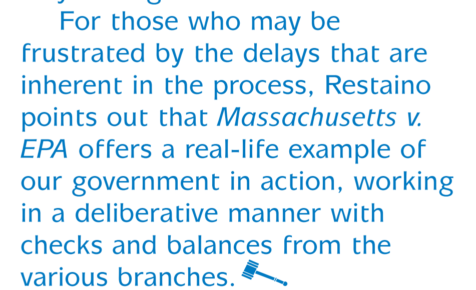
Now that the arguments have been made in *Massachusetts v. EPA*, what will the High Court do? The answer, says Restaino, could be one of a number of things.

First, Restaino says, the Court may consider whether the state governments have "standing," meaning do they have the right to sue for the relief they are requesting. If the Court decides the plaintiffs do not have standing, then the case is closed.

If standing is established, however, the Court would then likely consider whether carbon dioxide is an "air pollutant," Restaino said. In such instances, Restaino points out that it is not uncommon for the Court to defer the question to an expert, which in this case would presumably be the EPA. Again, if they were to do this, then this particular case would be over, Restaino says.

Regardless of how the Court rules in this particular case, Restaino suggested that the issues raised are probably not going to go away. In fact, according to *CBS News*, a separate but similar legal case to *Massachusetts v. EPA* — this one concerning EPA regulation of greenhouse gas emissions from power plants — is "making its way through the federal courts."

For those who may be frustrated by the delays that are inherent in the process, Restaino points out that *Massachusetts v. EPA* offers a real-life example of our government in action, working in a deliberative manner with checks and balances from the various branches.



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Global Warming 101

Few people dispute reports that the earth is getting warmer and that we are experiencing global warming. In fact, federal climate officials recently reported that 2006 was the hottest year on record, capping a nine-year warming trend.

According to the Environmental Protection Agency, a warming trend of about 0.7 to 1.5 degrees Fahrenheit occurred during the 20th century. The United Nations' Intergovernmental Panel on Climate Change (IPCC) projects that global temperatures will rise an additional three to 10 degrees Fahrenheit by century's end.

The IPCC claims there is "new and stronger evidence that most of the warming observed over the last 50 years is attributable to human activities." Many scientists believe that this is occurring because of the unprecedented level of carbon dioxide in the air, largely due to emissions by automobiles, power plants and other sources.

Carbon dioxide, which also occurs naturally in the environment, is one of the primary greenhouse gases produced by human activities. According to the the EPA, these gases can remain in the atmosphere for "periods ranging from decades to centuries," trapping radiant heat from the sun and contributing to warming temperatures.

While a healthy dose of carbon dioxide is necessary and helps to make earth livable, environmentalists contend that too much carbon dioxide is disturbing the delicate balance of nature and is resulting in unnatural and even dangerous consequences.

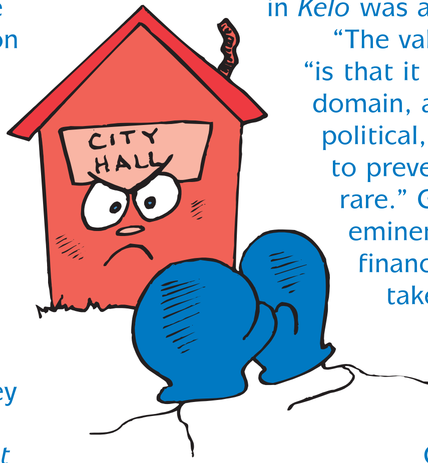
Global warming facts

Below are some global warming facts that were presented in a *National Geographic News* article.

- Rising temperatures have a dramatic impact on Arctic ice, which serves as a kind of "air conditioner" at the top of the world. Since 1978, Arctic sea ice area has shrunk by nine percent per decade, and thinned as well.
- Over the very long term, Greenland's massive ice sheet holds enough melt water to raise sea level by about 23 feet. Arctic Climate Impact Assessment climate models project significant melting of the sheet throughout the 21st century.
- Worldwide some 100 million people live within three feet of mean sea level. Rises of just four inches could promote flooding in many South Sea islands, while in the U.S. the states of Florida and Louisiana could be at risk.
- Climate models suggest that global warming could cause more frequent extreme weather conditions. Intense hurricanes and storm surges could threaten coastal communities, while heat waves, fires and drought could also become more common.
- By 2050, rising temperatures exacerbated by human-induced belches of carbon dioxide and other greenhouse gases could send more than a million of Earth's land-dwelling plants and animals down the road to extinction, according to a recent study conducted by 18 renowned scientists from around the world.
- Vast quantities of fresh water are tied up in the world's many melting glaciers. When Montana's Glacier National Park was created in 1910 it held some 150 glaciers. Now fewer than 30, greatly shrunken glaciers, remain. Tropical glaciers are in even more trouble. The legendary snows of Tanzania's Mount Kilimanjaro 19,340-foot peak have melted by 80 percent since 1912 and could be gone by 2020.

the State Assembly and is now in the Senate for consideration.

According to the Institute for Justice, a non-profit, public interest law firm located in Arlington, Virginia, the number of private properties targeted by the government since the *Kelo* decision has tripled nationally and New Jersey is ranked fourth on the list of 50 states with more than 600 threatened properties. One attorney at the Institute declared New Jersey as "one of the worst states in the country," when it comes to eminent domain.



On the other hand, the chief executive officer of the New Jersey Builders Association, Patrick J. O'Keefe, noted in the *Courier-Post* that 600 properties in a state with 3.4 million homes is still a very small amount, less than one-100th of one percent.

Legal Background

The Fifth Amendment to the U.S. Constitution states, "No person shall… be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." Up until the mid-twentieth century, the term "public use" referred to projects that benefited the general population such as highways, bridges, tunnels and public buildings.

With its 1954 decision in *Berman v. Parker*, the U.S. Supreme Court expanded public use to include a blighted area of Washington D.C. As part of a redevelopment project, the city condemned a residential area and planned to replace a section with schools, public facilities and new roads, and lease or sell the remainder to private parties for low-cost housing. In a unanimous decision, Justice William Douglas wrote, "If those who govern the District of Columbia decide that the nation's capital should be beautiful as well as sanitary, there is nothing in the Fifth Amendment that stands in the way." With the *Berman* ruling, the High Court approved the idea of economic redevelopment of run-down, deteriorated areas for the good of the community as a proper exercise of the power of eminent domain.

The *Kelo* case

In 2000, the city of New London (population 24,000) developed a plan to use 90 acres of waterfront property (which was not blighted or condemned) near a new research center being built by Pfizer. The project included plans for office buildings, luxury housing, and a boat marina, which officials hoped would create a thousand new jobs and generate more than $600,000 in local property taxes for the city. Most of the property was purchased by the city from willing homeowners, but nine people who owned 15 homes located on about 1.5 acres refused to sell.

The city then attempted to use the power of eminent domain to acquire the remaining homes for a fair market price. Susette Kelo and the other homeowners sued the city, claiming that the taking of these properties did not qualify as public use and violated the Fifth Amendment. The Supreme Court of Connecticut upheld the actions of New London, as did the U.S. Supreme Court.

Former Justice Sandra Day O'Connor wrote the **dissenting opinion** and was joined by the late Chief Justice William Rehnquist, and Justices Antonin Scalia and Clarence Thomas. O'Connor declared, "Under the banner of economic development, all private property is now vulnerable to being taken and transferred to another private owner, so long as it might be upgraded — i.e., given to an owner who will use it in a way that the legislature deems more beneficial to the public."

O'Connor expressed her concern in the opinion that "The beneficiaries are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms." She declared, "The Founders cannot have intended this perverse result."

Robert S. Goldsmith serves as chair of the Redevelopment Group at a law firm in Woodbridge and teaches redevelopment law at Rutgers Law School — Newark. He declared that Justice O'Connor's dissent in *Kelo* was an overstatement.

"The value of *Kelo*," stated Goldsmith, "is that it has sensitized people to eminent domain, a tool of last resort. Economic, political, and judicial protections are there to prevent abuse, which is extraordinarily rare." Goldsmith explained that in eminent domain actions, there is a financial risk factor that developers take, there is also "a risk by elected local officials of being run out of office at the next election," and there is a judicial review process.

Goldsmith noted that 85 to 95 percent of all eminent domain cases are negotiated to the satisfaction of all parties involved. But in the case of the few holdouts, he declared, "The reality is that all laws have to draw lines and the greater good is more important."

Norwood's greater good

The fear that anyone's home could be taken away by the government has led to a negative reaction to *Kelo* throughout the country. In Ohio, homeowners fought back to curb eminent domain. In 2002, the city of Norwood, a Cincinnati suburb, tried to take about 70 houses in what was termed a deteriorating neighborhood to be replaced by office buildings, shops, and restaurants. Most of the property owners voluntarily accepted prices much higher than the market value. However, three owners refused to sell. They wanted to stay in their homes regardless of the price offered.

"We raised our children in that home, we lived there for 35 years, and we planned to live out our retirement there," Joy Gamble, one of the three holdouts, told *The New York Times*.

But city attorney Tim Burke explained to *Parade*, "When you're a community like Norwood, you've got to be concerned with the entire citizenry, and… there are going to be instances where, in order to better the lives of the many, the property of the few will have to be taken."

In July 2006, the Ohio Supreme Court in City of *Norwood v. Horney* et. al. and City of *Norwood v. Gamble* et. al. unanimously held that Norwood could not take private property by eminent domain for a redevelopment project. The Court ruled that the term "deteriorating area" was unconstitutional because it took into account the future condition of the house to be taken and not the current condition. Justice Maureen O'Conner wrote, "For the

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Putting up a Fight in New Jersey

What would you do if the government or a developer wanted your home and offered you a fair price to relocate? Would you leave or put up a fight to keep your home? Here's what two families in New Jersey did.

Piscataway versus the Halpers

The Halper family had owned 75 acres of land in Piscataway since 1922. Simon and Bella Halper grew crops, operated a dairy farm, and kept chickens. Their sons and grandchildren kept the dairy going until the 1980s, then opened a horseback-riding school, a mulch business, and a small farm store. They also sold pumpkins and Christmas trees. As the years passed, new housing and shopping areas were built around the Halper's property.

In 1998, Piscataway township officials tried to purchase the property in an attempt to prevent further development and maintain an area of open space for the community. They hoped to use it as a public park with an arboretum, a dog run, and jogging and bike trails. In 1999, the Halpers turned down an offer from the township to buy the property for $4.3 million.

The Home News Tribune reported that municipal officials considered the Halper property to be an eyesore and claimed the farm had not been active for years. In addition, officials said preserving the land as open space would be "in the best interests of the majority of the township's residents."

After years of failed negotiations with the Halpers, the local government condemned and seized the property under eminent domain in September 2004. The Superior Court of Middlesex County upheld the township's seizure to prevent the Halpers from selling to a developer, but pushed back the family's eviction date, so they could remain on the property longer. In *Piscataway Township v. Mark Halper*, et al, the Halpers claimed that the fair market value of the farm at the time of the seizure was $23 million. The Superior Court jury awarded the Halpers approximately $18 million.

After an appeal, the case went to the New Jersey Supreme Court, which held that the action by the township was in the interest of maintaining open space for the public, and issued a final eviction notice for July 10, 2006. Township officials are currently appealing the $18 million jury award.

Long Branch homeowners fight back

The city of Long Branch used the power of eminent domain in an attempt to take beachfront homes in a middle class neighborhood and replace them with luxury townhouses and condominiums as part of a redevelopment plan. The neighborhood in question is called MTOTSA (which stands for the street names of Marine Terrace, Ocean Terrace, and Seaview Avenue) and is composed of working-class family and retirees.

The city claimed that the redevelopment was necessary to eliminate a blighted area, but the property owners disagreed, noting their neighborhood contains modest single family cottages and bungalows, some built in the early 1940s.

A Monmouth County Superior Court judge upheld the city's development plan in March 2006 and ruled against the presentation of evidence by homeowners that their neighborhood was not blighted or that the action by the city of Long Branch violated the law. The decision is being appealed. New Jersey Public Advocate Ronald K. Chen stated that his office will participate in the appeal as *amicus curiae* (a friend of the court) in support of the homeowners.

Chen told *The Star-Ledger*, "The facts in this case raise serious concerns regarding whether these homeowners received fair treatment throughout this process, and I believe it is appropriate for the Appellate Division to review this case."

The Institute for Justice issued this statement, "Across the nation, local governments label thriving neighborhoods as 'blighted' to justify transferring valuable property to private developers. If the non-blighted MTOTSA neighborhood — located in a non-blighted area— can be condemned in the name of urban renewal, then so can any other ordinary neighborhood anywhere. This case is about ensuring that overreaching governments and their backers in the property development industry are made to respect the clear limitations on eminent domain found in the New Jersey and U.S. Constitutions."

The Court of Appeals is expected to make a decision in the spring of 2007.

—Phyllis Raybin Emert

DNA Databases CONTINUED FROM PAGE 1

While a lower New Jersey court held that the Act "would deprive offenders of **due process** and permit unreasonable searches unless [the Act] was modified to include a right of **expungement** upon completion of sentence." The New Jersey appeals court, in deciding the constitutionality of the Act, concluded that the government's interests in saving the biological sample and profile for the purpose of using it in a subsequent criminal investigation outweigh the individual's privacy interest. They disagreed with the trial judge's conclusion that "completion of sentence revives a privacy interest relevant to use of identifying information in a subsequent criminal investigation."

In her appeals court decision Appellate Judge Jane Grall wrote, "This Act is about collection and maintenance of information identifying offenders, after guilt is established, in order to detect and deter their **recidivist** acts, should there be any; it is not about law enforcement officers electing to search the general population with the hope of detecting criminal activity."

Although Judge Edwin Stern concurred with this opinion, he expressed concern that deterrence of **recidivism** does not justify using the DNA sample to solve a past crime by that defendant.

Defending the Fourth Amendment

"The state has gone too far since its initial (DNA) testing law which required samples only from sex offenders," Ed Barocas, legal director of the American Civil Liberties Union of New Jersey, told the *Associated Press*. "Once the government was given that inroad it has expanded beyond belief. Now a 13-year-old who shoplifts will have his DNA code collected by the government and maintained throughout his life. We're becoming more and more of a surveillance society," Barocas contended.

According to a *New Jersey Law Journal* article, objectors like Barocas believe that allowing DNA collection "would be to allow suspicionless searches prohibited by the Fourth Amendment." The Fourth Amendment gives citizens the right to be secure "against unreasonable searches and seizures." In other words, it protects our privacy.

After the decision was rendered, the plaintiff's attorney in the case, Lawrence Lustberg of Newark, told the *Home News Tribune*, "It threatens to obliterate all of our rights against search and seizure, even though this is a statute that only applies to people who have been convicted of a crime. It could be all of us," Lustberg contended. "That's going to happen. All of us will be required to give DNA," he said.

It seems that Lustberg's prediction is not so far-fetched. A recent article in *The Washington Post* reported, "some in law enforcement are calling for a national registry of every American's DNA profile." This registry would presumably give police the information they need to make an arrest almost instantly after comparing DNA left at a crime scene, while at the same time deter criminal activity.

"This is the single best way to catch bad guys and keep them off the street," Chris Asplen, a Washington, DC attorney and former executive director of the National Commission on the Future of DNA Evidence, told *The Washington Post*. "When it's applied to everybody, it is fair, and frankly you wouldn't even know it was going on."

Opponents to a "universal database," including William C. Thompson, a professor of criminology, law and society at the University of California at Irvine, worry about potential errors while processing so many samples. Professor Thompson has conducted studies on DNA lab accuracy and told *The Washington Post* what he found was "very uneven."

One embarrassing account that Professor Thompson documented involved an old crime scene specimen that led police to a juvenile offender as a possible suspect until they realized that the teenager would have been in diapers when the crime was committed. It seems that blood taken from the juvenile had been accidentally mixed and processed with another sample thereby contaminating both samples.

Other implications

Saving DNA, opponents say, is not only an invasion of privacy, but has other potential violations of a person's civil liberties. *The Washington Post* reported that DNA information also contains other genetic information such as disease susceptibilities. This additional information, *The Post* noted, could possibly be used by insurance companies to determine eligibility or could affect employment.

Dr. Paul Ferrara, director of Virginia's Division of Forensic Sciences, however, told *Court TV* that the small section of DNA used for profiling is called "junk DNA."

"It does not contain vital health or hereditary information," Dr. Ferrara said and contended that his social security number contains more information than his DNA profile.

Still, Barry Steinhardt, associate director of the American Civil Liberties Union, told CNN he was worried "that not all state laws clearly specify what types of tests police can conduct on DNA samples collected from inmates. New York law, for instance, states the information can only be used for law enforcement purposes, but Massachusetts law allows DNA test results to be used for 'humanitarian purposes' without defining that term."

Philip Bereano, chairman of the ACLU Committee on Databases and Liberty and professor of Technology and Public Policy at the University of Washington, told *Court TV*, "The solving of a heinous crime does not justify the violation of civil liberties."

Jon Cassady, a constitutional attorney in West Orange, is also distressed by the New Jersey court decision, fearing that constitutionally protected rights are being taken away.

Noting the great strides that have been made in identification techniques over the years, however, including fingerprinting, Cassady said, "DNA is just the latest technology in identification, but it gives so much more information."

The wealth of information that DNA provides does not appear to bother New Jersey courts. On January 24, 2007, the New Jersey Supreme Court unanimously ruled that the benefits of maintaining a DNA database outweigh "a slight intrusion on a convict."

Eminent Domain CONTINUED FROM PAGE 3

individual property owner, the appropriation is not simply the seizure of a house, it is the taking of a home — the place where ancestors toiled, where families were raised, where memories were made."

New Jersey Public Advocate urges reform

The New Jersey State Constitution addresses the issue of taking private property stating: "Private property shall not be taken for public use with out just compensation. Individuals or private corporations shall not be authorized to take private property for public use without just compensation." However, some in the state don't think the constitution goes far enough.

In May 2006, New Jersey's Public Advocate Ronald K. Chen declared that the state's use of eminent domain should be changed to protect the rights of property owners. Chen recommended the terms eminent domain and blighted areas be redefined to provide specific restrictions as to their use by local governments. He noted that these words have come to mean "underutilized" or "not fully productive" and New Jersey law requires an area to be blighted before it can be taken under power of eminent domain.

Chen also urged pay-to-play reform in New Jersey so that contractors and redevelopers who donate large amounts of money to political campaigns would not receive public contracts if their political party gets in power.

New Jersey legislation to curb eminent domain

New Jersey Assemblyman John Burzichelli sponsored a bill that was overwhelmingly approved (52–18) by the state assembly in June 2006. The bill attempts to address the problems of eminent domain abuse noted by Public Advocate Chen.

According to the bill's text, it "would put the burden on government to prove redevelopment is necessary, ensure property owners receive fair market value and require more notice be given when a municipality is looking to redevelop." In addition, the bill allows eminent domain to be used in no more than 20 percent of the total property for a redevelopment project, calls for payment to "equal the highest possible value of the property," restricts non-blighted property in a new project to 20 percent or less, and gives displaced people relocation assistance.

Burzichelli told *The Record of Bergen County*, "A person's home is their most prized possession, and the state's eminent domain laws needed to be tightened and strengthened with respect to preventing abusive practices."

Critics of the New Jersey bill like Assemblywoman Amy Handlin and the NJ chapter of the Sierra Club believe it doesn't go far enough in addressing pay-to-play issues or in limiting the definition of blight or underutilized. Robert Goldsmith believes that the change in the burden of persuasion to the municipality "will be devastating to economic development in the state of New Jersey. I support better notice, fairness in the valuation process, but I am opposed to the burden of persuasion change."

According to Goldsmith, New Jersey is the most densely populated state with many protected areas that cannot be developed. Therefore, redevelopers and investors must look to older urban and suburban areas to stimulate the economy with new projects. He declared, "Redevelopment is a positive, desirable, and excellent policy, especially in New Jersey."

The bill is now in the State Senate Committee of Community and Urban Affairs.

blighted — decayed or ruined.

cataclysm — an overwhelming flood or any violent change such as an earthquake.

dissenting opinion — a statement written by a judge that disagrees with the opinion reached by the majority of his or her colleagues.

due process — legal proceedings, such as a trial, which enforce and protect our rights.

expungement — the act of having something erased.

majority opinion — a statement written by a judge that reflects the opinion reached by the majority of his or her colleagues.

recidivism — tendency to relapse, for example, into a life of crime.

recidivist — a habitual criminal.