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Lifeline

A Legal Network in Support of Life

A PUBLICATION OF THE LIFE LEGAL DEFENSE FOUNDATION

Survivors of the Abortion Holocaust:

Anthony Wynne

THE REMAINS OF A GENERATION

In 1973, the United States Supreme Court held in *Roe v. Wade* that abortion is a constitutional right that may not be prohibited by the individual States. Twenty years later, in 1993, the late U.S. Senator Daniel Patrick Moynihan introduced the concept of "defining deviancy down."

By this he meant that each generation adjusts to an increase in anti-social behavior by redefining deviancy and, in effect, pretending that society has not gotten worse. It might be expected that the deviancy of abortion would have become accepted over the past 31 years, especially by those born during that time who have never lived in a country where abortion was not a "right."

Not if the Survivors have anything to say about it.

The Survivors (full name: "Survivors of the Abortion Holocaust") is an organization of young men and women who see themselves in the context of their *whole* generation—those aborted as well as those living. One third of their generation—45,000,000 brothers, sisters, classmates—has been lost to abortion. That makes it personal. It is the mission of the Survivors to speak for those lost members of their generation and to expose the horrific truth of abortion to the world, and particularly to their peers, fellow members of this depleted generation.

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Founded in 1998, the Survivors ministry is different from any other pro-life group. For one thing, its members are, by definition, young—some quite young. They are activists, they are well-informed and well-trained, and they are on the front lines of the battle against abortion.

Survivors attend a two-week summer camp that is, essentially, an intensive course in pro-life activism. Each session is attended by 40–60 young people (high school and college age) with new campers attending each year. There, they not only learn the theory, but also how to put that theory into practice. Speakers address the campers on sidewalk counseling, apologetics, negotiating with police, the First Amendment

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IN THIS ISSUE

GENERAL RECAP & UPDATE

Schiavo v. Schindler (Florida)—Michael Schiavo seeks court permission to kill his 37-year-old wife, Terri, by withdrawing food. Terri's parents oppose the motion; several doctors have expressed the opinion that her condition could improve with appropriate treatment, which Michael has refused to allow. After trial court judge ordered her feeding tube removed, Governor Bush and Florida legislature passed "Terri's Law"—which has resulted in a temporary delay of Terri's starvation. Michael Schiavo continues to push hard for the right to starve Terri. Now represented by the ACLU, he is challenging "Terri's Law." Terri's parents were denied permission to intervene in the case in support of the law. For updates, see www.terrisfight.org.

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National Abortion Federation v. Operation Rescue (Los Angeles)—Resurrection of 14-year-old case by ACLU and abortion providers to shut down Operation Rescue. Although there have been no clinic blockades in California for ten years, the ACLU could have sought hundreds of thousands of dollars in attorney fees against those who led and participated in rescue activity in the late 1980s. ***Victory!*** case dismissed.

Foti v. Planned Parenthood/Planned Parenthood v. Foti (San Mateo)—This action and cross-action between sidewalk counselors and PP and its escorts is now stayed, pending the outcome of a new lawsuit filed by PP in which it seeks a declaration from the court that a speech-free zone injunction it obtained eight years ago against Operation Rescue of California actually applies against these sidewalk counselors and anyone else PP serves it on. Court of appeal reversed the summary judgment in PP's favor and ruled that injunctions may not bind "all persons with notice." Case remanded for determination of whether these sidewalk counselors are all now "acting in concert" with ORC because one of them attended some rallies and gave some money to ORC over a decade ago. Case is once again active in the superior court.

Rader v. Rowlins (Glendora)—Pro-life activists arrested for carrying signs on campus of public college. Charges not filed. Claim filed against city and college district. ***Victory!*** settlement reached.

Women's Resource Network v. Gourley (Sacramento)—Constitutional challenge to state system for authorizing specialty license plates. Legislature has refused to authorize "Choose Life" specialty plates promoting adoption, while authorizing plates promoting and benefiting other causes. ***Victory!*** Preliminary injunction issued; plaintiffs' motion for summary judgment pending. Briefs available at www.freespeechdefense.com

McCullough v. Arthur (Long Beach)—Pro-life activist arrested for handing out literature on public sidewalk in front of a public high school. Police also conducted a warrantless seizure of a videotape of the

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Anne Starr

Fall 2003 Banquet

Supporters of the pro-life position can take heart—and practical lessons—from the advances of other American political movements, according to the keynote message at the 10th annual Life Legal Defense Foundation's Annual Attorney Banquet.

Cynthia and John Field with Mary Riley, Administrative Director

Dana Cody awarding Attorney of the Year to Phil Carey

Speaker Grover G. Norquist is a Republican political activist, conservative strategist, author, and the head of Americans for Tax Reform. He spoke to a crowd of just over 100 Life Legal supporters. His message was direct: When elected officials know that voting against pro-life issues will affect their political futures, they will support pro-life causes. That fact has worked for the anti-tax and pro-gun movements, and it can work for the pro-life movement, too, he indicated.

In addition to Mr. Norquist's talk, the dinner program included Executive Director Dana Cody's annual report, the Attorney of the Year presentation to Phil Carey of Sacramento, and the screening of a video related to LLDF's work in the Terry Shiavo case in Florida.

Mr. Norquist opened with a question: "How do we make the politics of the pro-life movement work?" He took into account shortfalls, successes and failures. Mr. Norquist, who also is a board member of the National Rifle Association, detailed how people against gun control and new taxes have achieved political goals. He suggested that the pro-life movement take heed.

He compared recent political activity of the gun and pro-life movements. Polls show that 65 percent of Americans are generally pro-life, while 65 percent of Americans generally support some gun control laws, he said. But among those whose votes are guided by those issues, 4 percent of voters use their stance on gun control as the principle for choosing a candidate. Meanwhile, 12 percent of pro-life voters use their pro-life position to determine their votes, while 6 percent of pro-abortion voters use their beliefs as the most important guideline for their votes. The margin of error for those statistics is 4 to 6 percent plus or minus, he noted.

How did the statistically less robust gun movement achieve passage of conceal/carry weapons laws in 36 states, Mr. Norquist asked, while the pro-life movement counts just 19 states with "partial-birth" abortion laws? And why can gun supporters claim that new state laws have done "everything the Second Amendment movement wants," while changes to abortion laws are "the bare minimum the pro-life people want"?

Meanwhile, the anti-tax movement, which he helps lead at the national level, has enjoyed success. Mr. Norquist linked former President

Fr. Jerry Jung, Vicki Evans (Archdiocesan Respect Life Program) and Fr. Bob Cipriano (founder of Priests for Life), with John Streett, LLDF President

Dr. Mary Davenport, Aggie Laubacher, Executive Director Dana Cody, Doug Cody, and Diana Champion

Guest speaker Grover G. Norquist

"we need to convince elected officials that voting against pro-life issues will affect their future careers."

George H. W. Bush's lost bid for a second term in the White House to the breaking of his "no new taxes" pledge. Since then, "no Republican in Washington has voted for a tax increase," he said.

Why have pro-life people failed to match the political success of either the gun movement or the no-new-taxes crowd? "It is not enough to say that the press hates us or the public is not focused on our issues," he said. "We are winning this fight, but not as fast as we need to—especially given the losses every day." Mr. Norquist concluded that "we need to convince elected officials that voting against pro-life issues will affect their future careers."

Conceding that "we don't have enough votes to do everything," he left the audience with several suggestions for action.

In the short term, pro-life supporters must engage in "an annual fight that we have a shot at winning, such as partial-birth abortion, or Choose Life license plates." He advised "wisdom and humility" in choosing issues at the state and national levels. "It is our job to make it easy for elected officials to vote pro-life, to pave the way for them to do the right thing. In every state, there needs to be a pro-life vote. Pro-life supporters need to ask elected officials, 'Are you moving in our direction or in the other direction?' Choose Life license plates are not everything we want, but it's a small step in the right direction. If we get a vote, we have a record." Based on his political experience, Mr. Norquist believes that "after each victory, a greater percentage (of lawmakers) will be willing to go with you."

Looking ahead, he advised vigilant attention to the issue of judicial appointments and international politics, because "the other team has decided they can't win in Congress and so they have shifted their efforts to the courts, and will more and more shift to the United Nations." He also warned of the dangers in the Patriot Act, passed in reaction to the Sept. 11 attacks. It gives the government broad powers that could be used against the pro-life movement "if the other team gets to determine what a terrorist is." He suggested support for a sunset provision to the act.[1]

In summary, pro-life supporters "need to wear bifocals," he said. "A lot of time our team gets tripped up," unbalanced between visionary goals and today's urgent problem. Long-term and immediate issues both need attention. "Our goal is no abortions (but) this year, what can we accomplish? You can't get them to go with you to the Promised Land if you can't get through the next three months. We're not talking about compromising the goal, but what do you do today, next month, next election cycle? It is going to take patience and determination on our part. Small victories today will build to big victories in the years to come." L

[1] According to the Associated Press, on Tuesday, January 27, 2004, U.S. District Judge Audrey Collins ruled that certain provisions of the act are vague, thereby threatening First and Fifth Amendment rights. The judge reasoned that the vague language does not distinguish between impermissible advice on violence and encouraging the use of peaceful, nonviolent means to achieve goals.

"The USA Patriot Act places no limitation on the type of expert advice and assistance which is prohibited and instead bans the provision of all expert advice and assistance regardless of its nature," the judge said.

While this may not apply directly to pro-life speech the precedent set by implementation of the act will certainly impact the free exercise activities of opponents of abortion that are sometimes classified as "domestic terrorists."

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incident, threatening the videographer with arrest if he didn't hand over the tape. No charges were filed on the arrest. Civil complaint against city and school district filed. ***Victory!*** On November 19, federal district court issued an injunction prohibiting defendants from interfering with the pro-lifers' expressive activity. *See p. 11.*

People v. Moreno (Long Beach)—Three pro-life activists arrested on public college campus while showing students the truth about abortion. They were charged with two offenses. ***Victory!*** One charge dismissed on demurrer, the other dismissed by the prosecutor on the day of trial.

Meyers v. Mathews (Athens, Ohio)—Pro-lifers arrested for pro-life speech on college green. First Amendment claims were dismissed and injunctive relief denied. Court found that popular student gathering place was not a public forum. Sixth Circuit affirmed the dismissal. Petition for re-hearing pending.

Estavilla v. Romo and West (Yolo County)—etal homicide suit for injury and constitutional violations includes two issues: 1) wrongful death statute is unconstitutional because it denies equal protection to babies killed in utero; and 2) interference with the right to privacy and reproductive rights includes interference with the right to carry a pregnancy to term, not just to have an abortion.

Soria v. Jacobsmeyer—Pro-life activists arrested on public college campus for displaying signs without permit. Pro-lifers were informed that to obtain a permit, they would need to provide proof of liability insurance. In another incident, a pro-lifer was arrested for failing to disperse from an "unlawful assembly." No criminal charges filed. Claim against college district filed. ***Victory!*** Settlement reached.

Mason et al. v. Wolf (Denver)—Picketers and leafletters arrested at University of Denver. Civil suit filed. Defendants' motion to dismiss denied in large part, as was their motion to stay proceedings. Discovery is now under way.

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BEYOND TERRI'S LAW

Wesley J. Smith

What we can learn from the Schiavo case.

It is the calm before the storm in the Terri Schiavo case. The Florida woman, who was in the throes of a court-ordered death by dehydration last October when Florida's legislature and Governor Jeb Bush intervened, continues to receive tube-supplied food and water. But this good news may not last. In December, as her family and many supporters celebrated her 40th birthday, their joy was tempered by the knowledge that powerful cultural forces are adamant that Terri Schiavo not live to see age 41.

The Schiavo case was one of the most important stories of 2003. The big news wasn't that she was ordered dehydrated to death: Conscious and unconscious cognitively disabled people like Terri are often denied tube-supplied food and water in America's hospitals and nursing homes. What made this case remarkable was the successful public campaign mounted by Terri's parents Bob and Mary Schindler to prevent their daughter from suffering a slow and potentially agonizing death. As a result, millions of people awakened to the ugly reality that we treat helpless humans in a way that would be criminal if done to a horse.

When more than 100,000 people contacted Florida governor Jeb Bush demanding that he intervene and save Terri's life, the result was the passage of "Terri's Law," a measure that permits the governor to suspend the removal of a feeding tube from patients (a) who do not have a written advance directive instructing that they not be nourished and (b) whose families disagree with the decision to dehydrate. Bush acted and Terri's food and water were restored.

But Michael Schiavo, Terri's quasi-estranged husband—he's lived with another woman for several years and has two children with her—remains adamant that Terri die. Assisted by the American Civil Liberties Union (ACLU) and cheered on by the bioethics establishment and media, which view the case through a distorting "right to die" prism, Michael Schiavo sued to have Terri's Law declared unconstitutional. If he succeeds, Judge George Greer of Florida's Sixth Judicial Circuit will undoubtedly order Terri's feeding tube removed as he has done twice before.

This, despite a Florida statutory requirement that an ad litem be appointed whenever a conflict of interest may arise between a guardian and a ward, as it clearly has between Michael and Terri.

As we await further court proceedings, it is a good time to take stock of the case, clear up some common misperceptions, and see whether anything can be done to prevent future Terri Schiavos.

The Myth of 19 Judges: Supporters of Terri's

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Dana Cody

A Cup of Water

As this issue of *Lifeline* is being prepared for publication it is just days after the 31st anniversary of *Roe v. Wade*. Because of *Roe* we have an entire generation emotionally invested in seeing that abortion remains legal. For the individuals persuaded by *Roe* to "terminate a pregnancy," to even imagine that *Roe* and its death ethic could be overturned is to acknowledge their part in an unspeakable holocaust.

Another holocaust is in its early stages, mounted once again in the name of privacy and choice. This choice is the right to refuse medical treatment. This sounds harmless until you remember that the partakers of *Roe* are legislators, judges, lawyers, doctors, nurses, and bioethicists who have a sphere of influence in which they can persuade families to pursue the death ethic when the use of life-sustaining treatment is in dispute, even where providing such treatment may be medically suitable.

LLDF receives call after call for help in just such situations. In providing legal advice in response to the calls where cessation of treatment will result in hastened and forced death, we have learned that it is the standard of care in the medical community to remove nutrition and hydration from individuals, even in cases where providing such "treatment" is wanted and medically appropriate.

In point of fact, using the term "life-sustaining **treatment**" to describe administering foods and fluids via a feeding tube demonstrates that the death ethic has already permeated our culture.

Those who live by the death ethic decry legal intervention to save the life at issue and claim they want to leave the "private decision" to the family. Slowly but surely those emotionally invested in the death ethic facilitate the growth of the new victim class. We believe that is what is being attempted in the case of Terri Schiavo.[1]

The guests at our annual dinner sat in stunned silence after viewing a videotape of Terri, which clearly shows Terri is conscious, interactive and struggling to live. LLDF is doing its best to see that Terri does not become the next disabled person to join the new victim class.

One LLDF case that didn't receive the national notoriety of Schiavo was that of the hospitalized elderly man who told his grandson he was thirsty. Because the elderly gentleman's feeding tube had been removed, his grandson had to quench his thirst by repeatedly moistening a paper towel so that grandpa could suck water out of it. This continued for thirty minutes while his grandson, the only family member who did not want the feeding tube removed, held the towel in place.

It is because of cases like that of the elderly grandfather that LLDF has resolved to stick to our motto, "No case is too small." Grandpa wasn't concerned that his case receives national notoriety or set precedent to save others—he just wanted a cup of water.

15 years ago LLDF was established to provide innocent and helpless human beings of any age a trained and committed voice against the threat of death, and to support their advocates in the courtroom. LLDF will continue in their resolve to help these individuals until they are no longer calling for help.

We know we couldn't do it without you. L

[1] See *Beyond Terri's Law,* by Wesley J. Smith (p. 4).

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People v. Owen (Washington)—Pro-life activist arrested for trespass while picketing a Seventh-Day Adventist Church. ***Victory:*** case dismissed. Civil suit for false arrest and first amendment violations initiated.

Corrigan v. UC (Davis)—Pro-life counter-demonstrator falsely arrested for disturbing the peace at *Roe v. Wade* celebration at UC Davis. Complaint filed against UC. Settlement reached.

Pedigo v. Hershey (California)—Amniocentesis detrimentally used on pre-born child with improper consent. Civil suit filed.

People v. Moorissey (New York)—Pro-lifer enters clinic to warn client has eaten recently and risks aspiration complications, charged with criminal trespass, misbehavior, harassment. Trial set for spring.

O'Toole v. Foothill/De Anza Community College District (Cupertino)—Pro-lifers arrested and signs confiscated on public college campuses after they displayed signs disapproved of by the administration. Charges not filed. Claims filed against college district.

Kelly v. Orange (California)—Nurse Karen Kelly, who was fired for not violating her pro-life convictions sued the County of Orange for wrongful termination and religious discrimination. Ninth circuit court of appeal pending. Oral arguments set for March.

Cano v. Bolton (Georgia)—Sandra Cano and Norma McCorvey have filed to reopen their *Roe v. Wade* cases. LLDF filed amicus brief in support of effort. *See p. 9.*

O'Toole v. San Diego Community College District—Pro-lifer arrested and held for carrying sign on public college campus; he was released two days later, without having been cited. Claim filed and rejected. Civil suit to be filed shortly.

Milton v. Serrata (San Francisco)—Pro-lifers arrested or threatened with arrest for holding signs on public university campus. No criminal charges filed. Civil complaint filed.

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dehydration often argue that Terri's rights have been fully protected through extensive judicial oversight. Michael Schiavo put it this way on "Larry King Live": "Nineteen judges have come to the conclusion that this [dehydration] was Terri's wish." His attorney George Felos then added, "This case has gone from the trial court to the appellate Court to the Florida Supreme Court, to the U.S. Supreme Court, to the Federal District Court. All of those judges have looked at this case, have looked at the facts, and have found that Mike acted properly."

Well, bunk. The case has been shunted back and forth between the Sixth Judicial Circuit Court and the Florida Second District Court of Appeal, where the rulings have been repeatedly replayed like a looping audio tape. Only one trial judge and one appellate court actually reviewed the evidentiary record. Moreover, contrary to Felos's assertion, the Florida Supreme Court and the U.S. Supreme Court did not look at the facts. Rather, both declined to review the case. Refusing to rule is not the same thing at all as studying the record.

This is a crucial point because many important and highly relevant facts have never been fully litigated. For example, because the Schindlers could not afford to hire a neurologist to examine Terri at the time of the original trial, Judge Greer heard only one perspective about Terri's medical condition.

This situation has now changed. Several doctors and rehabilitation experts have signed affidavits asserting not only that Terri is conscious, but also that she could be weaned off her feeding tube with rehabilitation. Judge Greer refused to permit this evidence to be presented fully in open court, however, because to do so, he said, would be to retry the case.

But the case *should* be retried. A human life is at stake. And there are many other issues in addition to the heterodox expert medical opinions about Terri's condition that must be considered if justice is to prevail over mere legal procedure.

For example, Michael Schiavo was not cross-examined at the first trial about the two different stories he has told to two different courts, from which he wanted two different verdicts. When he wanted a money award from a medical malpractice jury, he presented evidence that Terri would have a normal life span, that she would need extensive and expensive rehabilitation throughout her life, and that he would provide her this care as long as he lived. (In cases such as this, the longer the patient is likely to live, the higher the award probably will be.)

Six years later, when he wanted his wife's feeding tube removed, he changed his story, contending that she told him she wouldn't want to live "on anything artificial." Surely, the credibility gap created by this 180-degree turnabout is worth considering, given that Michael's testimony and that of his brother and sister-in-law constituted the only evidence presented to Judge Greer that Terri would want to die.

There are other inconsistencies in Michael Schiavo's story: After the medical malpractice jury money was safely in the bank, he withheld antibiotics from Terri when she developed an infection. Because of this, the Schindlers sued to remove him as Terri's guardian. When Michael was questioned in a deposition about a conversation he had with a doctor about removing Terri's feeding tube, he testified, "I said [to the doctor] I couldn't do that to Terri." He also admitted that he did not want Terri to regain consciousness because he did not think it in her best interests.

There is also considerable evidence that would be presented in a new trial casting doubt on Michael's good intentions toward Terri. Several nurses who cared for Terri in the mid-1990s have come forward and signed sworn affidavits that are highly relevant to the dispute over Terri's medical condition and Michael's good faith. For example, the nurses testified in their affidavits that Terri was responsive and could even speak on occasion.

The affidavit of Carla Sauer Iyer, RN, is especially damaging to Michael's case. She testified that Michael refused medical recommendations that Terri be given therapy, insisting that "Terri should not get any rehab, that there should be no range of motion [therapy], whatever, or anything else… One time I put a wash cloth in Terri's hand to keep her fingers from curling together, and Michael saw it and made me take it out, saying that was therapy."

Even more disturbing, Iyer has stated under penalty of perjury:

> Throughout my time at Palm Gardens [Terri's former nursing home], Michael Schiavo was focused on Terri's death. Michael would say, "When is she going to die?" "Has she died yet?" and "When is that bitch going to die?"

Of course, Iyer's accusation should not be accepted at face value and should be tested by rigorous cross-examination. But so too should Schiavo's version of his disputes with care providers. He admits clashing with Terri's nurses, but claims he was angry because they were not providing her with good enough care.

These matters are sufficiently serious to warrant a thorough airing in a full-blown trial. This should be uncontroversial. After all, if Terri were a condemned murderer facing execution and factual matters of this import and relevance had not been adequately addressed in the original proceeding, the ACLU would never stop suing. Yet, even though Terri's case is just as much a death case as any murder proceeding, the ACLU wants Terri to die.

Unfortunately, the judges of the Sixth Judicial Circuit are not eager to face new facts. Indeed, Judge Greer's Sixth Judicial Circuit colleague, W. Douglas Baird, has now refused to permit Governor Bush's attorneys to conduct any factual discovery in the lawsuit over the constitutionality of Terri's Law.

This is to stack travesty upon travesty. Despite the general legal rule that laws are to be presumed valid when being challenged constitutionally, Baird instead declared Terri's Law "presumptively unconstitutional" before Governor Bush had even filed pleadings in the case. Such a statement at least presents a sufficient appearance of bias to require Baird be removed. Instead, the looping tape brought the controversy back to the Second District Court of Appeal, which true to

form refused to order that Baird be disqualified. And now, even though Judge Baird has been transferred to a criminal court, he has nonetheless held on to the Schiavo case.

The Missing Guardians *ad Litem*: "I have never seen anything like the Terri Schiavo litigation," the Schindlers' attorney Pat Anderson told me recently. "I call it the 'Rule of Terri's Case.' If following a legal procedure will likely result in Terri dying, it will be adhered to. But if a procedure could make that outcome more difficult to attain, it will not be followed. It's the most frustrating experience of my legal career."

Judge Greer's Sixth Judicial Circuit colleague, W. Douglas Baird, has now refused to permit Governor Bush's attorneys to conduct any factual discovery in the lawsuit over the constitutionality of Terri's Law.

Bitter words from a lawyer who has, so far, lost her case? I don't think so. Consider the fact that Terri does not currently have a guardian *ad litem* who would be duty-bound to look out for her interests. This, despite a Florida statutory requirement that an *ad litem* be appointed whenever a conflict of interest may arise between a guardian and a ward, as it clearly has between Michael and Terri.

Terri once had a guardian *ad litem*, attorney Richard L. Pearse Jr. of Clearwater, Florida. But after opining before the trial that Terri's dehydration should not be permitted and further urging that she continue to be represented by a guardian *ad litem*, he was dismissed from the case and no replacement has ever been appointed. When the Schindlers appealed, the Second District Court of Appeal brushed their concerns aside, ruling in essence that Judge Greer could serve both as Terri's advocate and as a neutral arbiter of her fate. As a consequence, Terri was sentenced to die without having an unbiased, zealous advocate acting solely on her behalf.

The same pattern has now occurred under Terri's Law, which explicitly requires a guardian *ad litem* be appointed for a patient whose dehydration has been suspended by the governor. Accordingly, David A. Demers, chief judge of the Sixth Judicial Circuit, appointed health law professor Jay Wolfson to represent Terri and ordered him to review the case and report back to the court and to the governor within 30 days. Wolfson filed a 38-page report on December 1, 2003. While accepting Judge Greer's ruling that Terri is in a persistent vegetative state, he recommended that Terri be given a swallow test—she has not had one since 1992—opining that if she "has a reasonable hope of regaining any swallowing function," her feeding tube should not be removed. Wolfson also expressed his belief that "due process requires that the ward's interests continue to be represented in all further proceedings herein" by a guardian *ad litem* or "other appropriate fiduciary."

Judge Demers was having none of that. He thanked Wolfson for his report and dismissed him from further service. Thus, Terri is yet again being denied an advocate to call her own.

The Lack of a Legal Presumption for Life: The Terri Schiavo case shows the acute dangers posed to the most weak and vulnerable among us by the so-called right to die. We are now a society that too often gives the benefit of the doubt to death in cases such as Terri's. Terri's Law was merely a stopgap measure.

A more thorough and well-thought-out law is

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Redmond v. Owen (Washington)—Pro-lifer cited for violating sign ordinance. ***Victory!*** *See story p. 9.*

People v. Arvela (Stockton)—Sidewalk counselor charged with erecting a sign in the city. Trial pending.

DUPLICATES

Please help us conserve! If you are receiving duplicate newsletters, let us know.

LIFELINE MISSION STATEMENT

The mission of Life Legal Defense Foundation is to give innocent and helpless human beings of any age, and particularly unborn children, a trained and committed defense against the threat of death, and to support their advocates in the courtrooms of our nation.

LIFELINE EDITORIAL POLICY

The purpose of LLDF is set forth in our mission statement above. To that end, Lifeline welcomes all ideas, opinions, research and comments, and all religious and political points of view, so long as not seen to be clearly divisive, and so long as fundamentally based upon the twin pillars of truth and charity.

Please consider making a tax-deductible contribution today. Your generosity allows LLDF to fulfill its mission to provide a trained and committed voice in the courtroom so that pro-lifers can continue their life-saving work.

If you have stock that gives you more tax trouble than earnings, please consider donating it to LLDF. You can deduct the full value of the stock at the time of donation (no need to determine the basis). Thus, what may be a burden to you can be turned directly into support for the defenders of the defenders of life.

(**SURVIVORS** CONT'D FROM PAGE 1)

Alecia McCullough explains the signs to passers-by at a Show the Truth. Venice Beach, Calif.

Christine, a life-long pro-life activist, admits that even she is impressed by the courage she sees displayed by her fellow-Survivors while working the front lines.

Jason Conrad talks to a student at CSU Fullerton.

right of free speech, and dealing with the media. Then the campers take that knowledge to the streets (sidewalks, actually) and learn how to put it into practice.

Christine Reeves, age 20, has been with the Survivors since the beginning, and is enthusiastic about the quality of the training the campers receive. "I have watched 14-, 15- and 16-year-olds converse with college professors and seen the professors walk away upset, because they couldn't respond [to the young Survivor]. That says a lot." The campers return to their communities trained and inspired, and often recruit friends to organize new chapters of the Survivors in their schools and towns.

One of the primary activities of the Survivors is their Campus Life Tour. Throughout the year, a small number of college-age Survivors takes to the road for a month or more in an RV and trailer, visiting scores of high school and college campuses. (The goal is to visit one of each every day.) There they stand quietly, displaying large, admittedly grisly photographs that depict the grisly truth of abortion. They pass out literature to those who approach them, answer questions, and when possible, have rational, civil discussions with the students. Sometimes they are even invited into classrooms to speak. It is safe to say, however, that their campus visits are always controversial.

In Christine's experience, young people are generally far easier to engage in discussion than adults. "The young people are more open-minded. They are still trying to decide what is right and wrong. By the time they reach their late-20's and early-30's, they may have already made mistakes and are not as likely to listen with an open mind."

Frequently the school administrators—as well as teachers and professors—are the ones most adamantly opposed to the Survivors' presence on or near the campus. Such opposition results in calls to the campus or local police and demands to remove or arrest the Survivors. However, the Survivors sometimes have a better knowledge of their free-speech rights than do the police, with the result that the Survivors have been ordered off public campuses (or even off adjacent public sidewalks) and arrested. In those instances, the Survivors often call upon the services of LLDF.

Thanks to the efforts of LLDF attorneys in over 20 arrests of Survivors in the past two years, not one case has gone to trial. All the cases have either been rejected for filing or the complaint has been dismissed. In some instances these incidents have also resulted in colleges revamping their speech policies or ensuring that their employees fully understand those policies.

In a few cases, however, schools have remained adamant in their refusal to allow Survivors meaningful access to students, thus necessitating further legal action. For example, in September 2002, Christine and three companions went to Millikan High School in Long Beach, California and stood on the public sidewalk with signs and literature. Though students were receptive, the principal and police demanded that they leave and stand across the street. When former Survivors director Dan McCullough refused, he was arrested. Christine and the others moved across the street under threat of arrest.

No criminal complaint was filed, and the four, represented by LLDF Legal Director Katie Short, sued the principal and the police for violating their First Amendment rights. The school district countered by claiming that the arrest and the actions of the police and principal were entirely lawful, and that the pro-lifers had no right to show "offensive" pictures and literature to the students. The court disagreed. On November 19, 2003, the federal district court in Los Angeles issued a preliminary injunction prohibiting the principal and police from arresting or otherwise interfering with the pro-lifers' peaceful expressive activities.

The Campus Life Tour is just one of many activities of the Survivors. Last year, a contingent of the Survivors was among the tens of thousands of participants in the March for Life in Washington, D.C. on the 30th anniversary of *Roe v. Wade*. They have also made appearances in less welcoming venues such as the Democratic National Convention and the MTV Awards.

Christine, a life-long pro-life activist, admits that even she is impressed by the courage she sees displayed by her fellow-Survivors while working the front lines. "There are times when someone comes up, gets upset, and yells at them. But these kids are brave—they will take anybody on. They have had big people come up and scream and yell at them, and the smallest, petite

(**SURVIVOR** CONT'D ON PAGE 10)

Michael Marcus

Now Here's the Rest of the Story

A big news story in the Seattle-Tacoma area—on the day when many of your friends and mine were marching for life in Washington, D.C.—involved a Redmond, Wash., ordinance restricting the display of portable signs.

The ordinance was challenged by Dennis Ballen, owner of "Blazing Bagels," who regularly stationed an employee outside his establishment with a sandwich sign reading: "Fresh Bagels—Now Open." The big news on January 22nd was that Ballen won his case. The Honorable Thomas S. Zilly, of the U.S. District Court for the Western District of Washington, ruled that the City's ban "is more extensive than necessary and not narrowly tailored to the City's interests."

The spin most newspapers put on the story emphasized the tasty and appealing aspects of the case. "Banning boards boosting bagels is bad," declared Dan Richman of the Seattle Post-Intelligencer Reporter. Ballen himself had argued against the ban with an appeal to the harmlessness of bagels. "If a person has right to wear a Nike shirt advertising Nike," he asked in an earlier Post-Intelligencer story, "why can't I sell bagels?"

And indeed, it's hard to understand why the City of Redmond would want to inhibit the excesses of the bagel trade. Were some crazies in city government beginning to believe that bagels were people, too?

So, as Paul Harvey has long said, here's the rest of the story …

The City of Redmond had not in fact targeted the purveyors of bagels: Ballen was cited only as an afterthought. The actual target of the ordinance was Ben Owen, a local pro-lifer known for displaying very large pictures of dead babies where people who killed babies didn't want to see them. Owen's attorney pointed out that Ballen was violating the ordinance without any trouble; for the sake of consistency, the City decided to give Ballen trouble; and the rest was Redmond bagel history.

Due to the adverse judgment on the ordinance, pro-lifer is now free to show the grisly truth about abortion to those who can't stand to see it. The decision may also affect similar ordinances in other municipalities.

An interesting footnote: although Ballen was represented by William Maurer of the Institute for Justice, he received extensive vocal support from ACLU-Washington staff attorney Aaron Caplan.

So don't say the ACLU never did anything for pro-lifers.

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APPEALS COURT WILL HEAR PRO-LIFE CASE TO OVERTURN *ROE* ABORTION DECISION

New Orleans— The U.S. Fifth Circuit Court of Appeals has announced that it will hear oral arguments in Norma McCorvey's attempt to overturn the *Roe v. Wade* Supreme Court decision. McCorvey's case is on appeal after a federal judge dismissed it only days after the case was filed. Attorneys for McCorvey, the former Roe, filed a motion appealing the judge's determination that case could not be reopened because too much time had elapsed since the original decision. "We are excited about this historic opportunity to reverse *Roe v. Wade*," lead attorney Allan Parker told *LifeNews.com*. The appeals court hears oral arguments in less than ten percent of the cases filed, and Parker said the decision is "quite a breakthrough." McCorvey's lawsuit relies on a Rule 60 motion that original parties to a lawsuit can use to overturn a prior decision, so long as there is new information pertinent to the case. McCorvey's attorneys submitted thousands of signed affidavits from women who have been hurt by abortion as evidence and reason for the court to reconsider the *Roe* decision. L

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…While we are on the subject of Michael Schiavo treating Terri as if she were already dead: I recently completed reading his November 19, 1993 deposition. The examination took place after the Schindlers attempted to remove Schiavo as Terri's guardian because he refused to allow the administration of antibiotics to treat a serious infection. After admitting to having been romantically involved with other women during this period, he was asked what he did with Terri's jewelry. He answered: "Um, I think I took her engagement ring and her—what do you call it—diamond wedding band and made a ring for myself." Sweet.

[Excerpted from Wesley Smith's article *The Rule of Terri's Case Strikes Again* (*The Weekly Standard*, January 30, 2004)]

(**TERI,** CONT'D FROM PAGE 7)

clearly needed. Such legislation has been filed in Florida. Senate Bill 692, to be considered in the 2004 session, would create an explicit legal presumption in favor of providing tube-supplied food and fluids to cognitively disabled patients. But this general rule would not be ironclad. The presumption would not apply for patients who had signed a written advance medical directive instructing that the tube-supplied sustenance be withheld if it "would not contribute to sustaining the incompetent person's life or provide comfort to the incompetent person."

Such a common sense law would strike a proper balance between the right to make our own medical decisions and the right to life of our most vulnerable citizens. It would also go far in preventing bitter intra-family litigation such as the Schiavo case that has roiled the nation in recent years. A just and compassionate society should accept no less.

L

[Wesley J. Smith is a senior fellow at the Discovery Institute, an attorney for the International Task Force on Euthanasia and Assisted Suicide, and a special consultant to the Center for Bioethics and Culture. This article originally appeared in *The Weekly Standard* (January 19, 2004, www.weeklystandard.com) and is here reprinted by kind permission of the author. Mr. Smith has a number of other articles about Terri's case. (Search for Schiavo on weeklystandard.com). Readers are directed in particular to *The Rule of Terri's Case Strikes Again* describing the circumvention of "Terri's Law" as well as Mr. Schiavo's heartless disposition of the couple's wedding and engagement rings.]

(**SURVIVOR** CONT'D FROM PAGE 7)

little girl will jump on them and say, "You're wrong", and explain why. These kids aren't afraid to stand up for what they believe in. They are not afraid to have a conversation with anyone."

Dan McCullough talks to students at UC Davis.

According to Katie Short, one of the benefits of representing the Survivors is watching them in action on video. The group usually has one member assigned to videotape their activities, in case of trouble or to fend off false accusations that they are causing a disruption or blocking passage. "I love watching footage of students listening intently to the Survivors and scrutinizing their signs and literature. It's clear this is news to them, and they are open to learning. The biggest kick is when the students start discussing the issue among themselves, with the pro-life ones using the Survivors' signs to make their point."

The Survivors, in turn, are very appreciative of their LLDF lawyers. Says Survivors director Cheryl Conrad: "Words cannot express the appreciation that we at Survivors have for Life Legal Defense Foundation. I am quite confident in saying that the work of Survivors would be seriously impaired—if not made impossible—without the partnership and legal assistance of LLDF."

Every boy and girl, man and woman, born in the United States since 1972 is a survivor of the abortion holocaust whether he or she has joined this organization or not. Those who have, however, are working to prevent what remains of their generation from accepting the deviancy of abortion, so that the next and succeeding generations will not suffer the same slaughter that theirs has. L

[For more information about the Survivors, visit their website at www.survivors.la.]

Federal Court Grants Relief to Pro-Lifers Removes from Public Sidewalk Near High-School

Los Angeles—Federal Judge Edward Rafeedie of the Central District of California issued a preliminary injunction in favor of four pro-life activists who seek to communicate to young people the truth about abortion. The pro-lifers were represented by Catherine Short, Legal Director of Life Legal Defense Foundation.

The injunction prohibits the Long Beach Unified School District, a high school principal, six Long Beach police officers and the city from arresting or otherwise interfering with the pro-lifers "holding signs, distributing literature, and discussing abortion with students and other present on the sidewalk adjoining Millikan High School during school dismissal periods."

The decision arose out of a civil rights action filed by Dan McCullough, Eric Milton, Myh Vo, and Christine Reeves. On September 26, 2002, the four were holding signs and distributing literature on the public sidewalk in front of Millikan High School in Long Beach. The police told them they were trespassing because the sidewalk was considered school property and the principal didn't want them there. When threatened with arrest, three of them retreated to the opposite sidewalk, but Mr. McCullough refused to leave and was taken into custody.

About twenty minutes later, the police demanded that Mr. Milton hand over his videotape of the incident. When he declined to do so, they threatened him and the others with arrest. Ultimately, the police got the tape from Mr. Milton by placing handcuffs on him. Fortunately, the tape was later retrieved from the police.

The defendants initially argued that the public sidewalk adjacent to a high school is not a public forum, then that the plaintiffs' speech could be restricted because it was "offensive" and the students were a "captive audience," and finally that part of the public sidewalk technically belonged to the school district. The district court rejected all of these arguments.

Mrs. Short stated, "We are very pleased with the court's order allowing our clients to return to Millikan High School and show their peers the ugly and, yes, 'offensive,' truth about abortion."

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HUGE WIN FOR TERRI SCHIAVO: COURT BACKS GOVERNOR BUSH, TERRI'S FAMILY

Clearwater, Fla.—The family of Terri Schiavo got its first big break from a court in a long time when the Florida Second District Court of Appeal ruled Friday that a judge should have allowed Terri's family to defend their daughter in the lawsuit filed against Terri's Law. The court also said Governor Bush's attorneys can question witnesses in the case. According to the appeals court, Circuit Court Judge Douglas Baird should have allowed Bob and Mary Schindler, Terri's parents, to intervene in the lawsuit filed by Terri's estranged husband Michael seeking to declare Terri's Law unconstitutional. Pat Anderson, the Schindler's attorney, said she was "stunned" by the decision because Florida courts have ruled against Terri's family so many times in the past. "It's been three years since the law has been followed in this case," Anderson said. The appeals court also ruled that attorneys for Governor Bush who are seeking to defend the pro-life law in court should be able to question witnesses in the case. Ken Conner, the pro-life attorney who is Bush's lead counsel, wanted Baird to hold a trial to determine whether Terri would want to remain alive and receive lifesaving medical treatment and rehabilitative therapy. L

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MARK YOUR CALENDARS

Please mark your calendars for LLDF's 2004 Fall Banquet. Our guest speaker this year will be Kate Adamson, the survivor of a severe stroke in 1995 when she was just 33 years old. Ms. Adamson will be sharing her story with us, including her struggle to receive appropriate medical care.

Ms. Adamson is the volunteer spokesperson for the American Stroke Association and the United Way. She is also the author of *Kate's Journey, Triumph Over Adversity*. To learn more about Kate Adamson you can visit her web site, www.katesjourney.com.

The date of the banquet is Saturday, November 6, 2004, the Plaza Waterfront Hotel at Jack London Square, Oakland, California. The reception will begin at 5:00 p.m. Dinner will be served at 6:30 p.m.