

March 25, 2005  
1664 Buttercup Road  
Encinitas, CA 92024-2451

Honorable Alberto R. Gonzales  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530-0001

8116 0458 4442  
FedEx Airbill No.

Re:

- Request for Representation to File Petition for Certiorari in the U.S. Supreme Court (Case No. 04-55769, 9<sup>th</sup> Cir., denied en banc 3/14/2005)
- ADA Title II Access to the Courts
- Denial of Medical Care

Dear Attorney General Gonzales:

#### Introduction

On February 17, 2005, I wrote to request that DOJ file an amicus brief in support of my en banc petition. I also sent all pleadings by Federal Express. DOJ has neither acknowledged nor responded to my request. That request has become moot, as the Ninth Circuit denied my petition on March 14, 2005.

#### Request Statement and Justification

1. I now request that DOJ represent me in petitioning the Supreme Court to support my argument that the Rooker-Feldman doctrine does not bar suit for injunctive relief from the facially unconstitutional, discriminatory California Rule of Court 989.3.
2. DOJ briefs have addressed the Rooker-Feldman doctrine and ADA Title II in the Popovich and Guttman cases, but the government has never taken a position.
3. When state courts construct unconstitutional laws to strip federal courts of jurisdiction to hear ADA Title II cases, all disabled Americans are at risk of sharing Terri Schiavo's fate.
4. By representing me in the U.S. Supreme Court, DOJ is able to accomplish five objectives:

- To remedy nine years of disability discrimination by California courts and judges that evaded DOJ review in 1996.
- To state the government's position regarding ADA Title II and Rooker-Feldman doctrine abstention barring suit to challenge facially unconstitutional, discriminatory state court rules.
- To deter the California Judicial Council from enacting other unconstitutional, discriminatory laws.
- To deter 49 other states from enacting unconstitutional, discriminatory laws similar to CRC 989.3 in violation of ADA Title II.
- To implement Congress' goal of assuring jurisdiction by the federal courts to enforce the First and Fourteenth Amendments rights of all disabled patients.

#### DOJ Violated Its Own ADA Regulations

**In violation of its own ADA regulations, 28 CFR 130(b)(1)(v) and 28 CFR 130(b)(3), DOJ has aided and perpetuated discrimination by providing significant assistance to the California Judicial Council in implementing a blatantly exclusionary policy and procedure (CRC 989.3) that undercuts ADA Title II.**

In 1996, DOJ's Settlement Agreement with the Santa Clara Superior Court ordered the court to apply the California Judicial Council's facially unconstitutional, discriminatory rule in its future accommodations of disabled persons. DOJ displays the Santa Clara settlement on its website's ADA Enforcement link. (Attachment No. 1)

DOJ's negligence and/or willful blindness caused the repetition of discrimination by that same superior court in 2001. The Santa Clara Superior Court's application of CRC 989.3 denied accommodation to a deaf Assistant District Attorney. The District Attorney sued the Santa Clara Superior Court. (Attachment No. 2)

#### CRC 989.3 Shocks the Conscience

CRC 989.3 was proposed by a California U.S. district judge and was drafted by the California Bar. Both the judge and the California Bar publicly announced

that "...the rule is consistent with the Americans with Disabilities Act." In fact, CRC 989.3 is not only noncompliant, but also cripples ADA. (Attachment No. 3)

The California Judicial Council's intentional enactment of a law that was intended to injure the constitutional and statutory rights of disabled persons shocks the conscience. *Tennessee v. Lane* affirmed that such judicial misconduct is unjustifiable.

CRC 989.3 was capable of repetition, but had evaded review until 2003, when the California courts applied the rule to me. In 2004, I filed a federal civil action for injunctive relief.

The Ninth Circuit's refusal to enjoin CRC 989.3 reflects a conflict of interest and bias against declaring unconstitutional a law proposed and promoted by a California federal judge and the California Bar.

DOJ's failure to enjoin this facially unconstitutional, discriminatory law will continue to provide significant assistance to the California Judicial Council in implementing a blatantly exclusionary policy and procedure.

#### Disabled Americans Do Not Have A Duty To Die

The nation's concerns about Terri Schiavo's civil rights have added a sense of urgency to DOJ's commitment to the enforcement of ADA Title II. Absent disabled Americans' fundamental constitutional right to access the courts, as decided in *Tennessee v. Lane*, they have no protection from state oppression manifested by the enactment of laws smacking of Nazi eugenics.

Justice Souter stated in his concurring opinion:

"Many of these laws were enacted  
to implement the quondam science of eugenics..."

Had I lived in Nazi Germany, as a Jew and a six year old polio victim, I and my family would have experienced the horror of eugenics. Indeed, in Auschwitz, the gassing of prisoners began under a euthanasia edict for all physically handicapped and mentally retarded.

Like Terri Schiavo, I have been denied medical care. However, although I have the physical and mental ability to speak to my doctors, my HMO and the state regulatory agency have denied my right to exercise free speech without prior

restraint. The courts have denied my right to access them to petition for relief. I have no duty to die to increase HMO profits.

ADA Title II rights belong to Americans of all faiths. As a Jew, I am deeply appreciative to persons of all faiths for their protection of Terri Schiavo's civil rights and by extension the right to life of every disabled American.

Over 20 years ago, Governor Richard Lamm (D., Colorado) stated, "...as leaves fall from the trees, so old people have a duty to die." Ten years ago my husband and I attended an "education session" at which our HMO's bioethicist sent that same eugenics message to disabled patients.

Due to my inability to access the courts, ADA Title II has not protected me. Rather, in 1996 DOJ violated ADA Title II by protecting the California courts' violation of disabled persons' First and Fourteenth Amendment rights.

#### Conclusion

For all the aforementioned reasons, I request DOJ's representation to petition the U.S. Supreme Court for certiorari. Supreme Court Rules state that I must submit my petition within 90 days of the Ninth Circuit's final ruling of March 14, 2005. It is critical that you inform me of your decision as soon as possible.

Yours truly,

Jacquelyn Finney "/S/"

Attachments:

1. Settlement Agreement, (p. 1) DOJ/Santa Clara Superior Court, October 10, 1996
2. The Recorder, January 2002
3. California Bar Journal, February, 1996

Cc: R. Alexander Acosta  
Assistant Attorney General  
Civil Rights Division

David K. Flynn, Chief  
Civil Rights Division