

Abortion's Handmaid: The Depersonalized World of Dianna Murphy

Judge Diana Murphy is the chairwoman of the Executive Committee for the Board of Trustees of the University of St. Thomas. She was a federal district court judge and was then appointed to the Eight Circuit U. S. Court of Appeals in 1992. In the federal system, the Appeals Court is the last judicial step before the Supreme Court. It is a nice lifetime job if you can get the presidential appointment. Judge Murphy is also a donor and Vice Chair of the Association of Governing Boards of Universities and Colleges (AGB).

In the world of female careerism, she has definitely made it. She is the first woman on the Eighth Circuit. She has taken a serious interest in the once all-male military archdiocesan college now known as the University of St. Thomas. She has been a long time advocate of divorcing the Board of Trustees from any institutional diocesan authority. Her judicial reasoning is not overly complicated - she is for individual rights, against any entanglement of state funds for religious purposes and sees abortion as a fundamental constitutionally protected female freedom. She is an icon in the world of women lawyers. St. Thomas sees the engaged presence of an Appeals Court judge as a sign that the university has arrived in the recognition sweepstakes of worldly seriousness. Her high status becomes our high status.

I called Judge Murphy's office to ask her if her opposition to the Archbishop sitting as chairman or a priest being president or the vicar general being vice chairman was a "justice issue." After all, in a college with as many female students as male it would be hard for a good feminist to accept that all the major leadership positions were automatically inaccessible to "half the population," as we like to call women in situations like this. Her

female law clerk called to tell me I might not be getting an answer because the judge was sick for the rest of the week. I said that was fine, she is a busy woman and if she could call me back with a straightforward answer the next week it would be a three minute phone call. The clerk said she was going to be too busy to call me back the following week too. The next day when I talked to the university spokesman, he told me Ms. Murphy had called him about my questions. So much for dialogue, transparency, and honesty.

Diana Murphy may be a shrinking violet on the phone but she has been a powerful force in shaping public policies from the bench in the last 25 years. Nor is she on the St. Thomas Board of Trustees to fill her resume. Diana Murphy accomplishes her day-to-day tasks living the feminist dream, but when a decision about the law or the makeup of a board is before her she acts decisively and in perfect concordance with her most deeply held values. Diana Murphy knows what she wants and she knows how to get it. She knows what hundreds of feminists and thousands of pro-lifers seem to miss. She knows which battles are worth fighting.

To understand the judicial philosophy that got her on the appeals court we can look at two of her decisions as a federal judge, which had significant social consequences and were clear signals of her jurisprudence. Then we will look at two appellate decisions which display how the protective laws of states can be swept way by the decisive will of a determined judge in the right place.

In April, 1982, Federal Judge Diana Murphy rejected an appeal by the all-male Jaycees of America to retain their all-male character against a State decision which found them guilty of sex discrimination. She agreed that the Jaycees “engaged in the business of seeking to advance its members and add to their ranks by assiduously selling memberships in the state on a

nonselective basis.” It was precisely because the Jaycees sought to build a fraternity open to all men (not a private club) that their pattern of all-male association was deemed discriminatory. And I don’t know quite what it means to be “assiduously” selling memberships but I agree with the judge - it sounds pretty nefarious. While the notion of males forming civil unions as domesticated couples is gaining legal protection in states, both the Jaycees and Rotary masculine public civic associations have been outlawed in their all male form. Judge Murphy led the way.

In March, 1985 Matt Stark, a former MCLU paid employee, and Emma Senz, on leave as a St. Cloud State teacher, sued St. Cloud State for allowing student teachers to do student teaching in parochial schools in the St. Cloud area. No student had ever been forced to go to these schools and it widened the proximate clinical choices for students. It cost not a penny more to any taxpayer to include Catholic fourth graders in the clinical experiences. Mr. Stark sued as a taxpayer and alleged harm to himself. He was allowed “standing” in the case which means the court recognized the plausibility of his grievance. Judge Murphy ruled against the students and Field Experience coordinator Larry Putbrese, and in Mr. Stark’s favor saying that having student teachers train for a single semester in clinical rotation was an impermissible mixing of Church and State. (I am trying not to take this personally, but I am looking for clinical rotations for student teaching in Mankato and the instructors have told me that the Catholic school one mile from my home with one of the best biology teachers I have ever met is off limits as a training ground. “Some judge stopped it a long time ago,” the teaching profs say.)

On September 11, 2000, as an Appeals Court judge, Murphy ruled a very different group of plaintiffs to be without standing. Multiple legislators, pro

life groups, physicians and citizens objected to the State of Minnesota paying for abortions with their tax dollars. The federal government had banned such use of funds and so had the Minnesota legislature. The State Supreme Court found the State ban on funding to be unconstitutional and the plaintiffs hoped to bring the case for further review at higher levels. By judging that the plaintiffs had no standing, Murphy insured the Appeals Court did not have to engage the heart of their argument. Their argument would have provided a forum to threaten the State Supreme Court's usurpation of legislative power. Even if the Eighth Circuit had ruled against the group, the case would then be eligible for Supreme Court review. The decision on who has standing is a crucial area of jurisprudence. Diana Murphy knows what she believes and knows how to effectively live out her core judicial values. A baby's soul has no standing against the imperial female will. Citizens and state legislators in protective roles have no standing against the naked power of judicial will.

On October 25, 2006 Judge Murphy ruled in favor of Planned Parenthood against another State Legislature trying to inform women of the nature of abortion. The State included in a new informed consent law:

(b) That the abortion will terminate the life of a whole, separate, unique, living human being;

(c) That [the patient] has an existing relationship with that unborn human being and that the relationship enjoys protection under the United States Constitution and under the laws of South Dakota;

(d) That by having an abortion, her existing relationship and her existing constitutional rights regards to that relationship will be terminated.

A female District Judge immediately found this an onerous violation of a woman's right to an abortion and a doctor's right to free speech. The district court found that the law expressed the state's "ideology on an unsettled medical, philosophical, theological, and scientific issue." Judge Murphy agreed.

Judge Diana Murphy gave the introductory address at the dedication of the University of St. Thomas Law Building on October 17, 2003. The dedication coincided with a symposium on God, the Person, History and the Law in the thinking of Judge John T. Noonan. Noonan had written in one of his many books that he hoped some day courts would recognize "the extraordinary beauty of each human being put to death in the name of the abortion liberty and concealed from legal recognition by a jurisprudence that substitutes a judge's fiat for the truth." There was he said a, "substantive evil of killing millions of embryonic human beings." Noonan did not judge the personhood of new human life to be mere "ideology amidst a continued scientific philosophical and medical debate." There is plenty of debate about the legal right to abort. There is no serious medical theological or scientific debate about the beginning of human life.

In Judge Murphy's remarks, she mentioned the names of several atriiums and courts named after prominent donors. She paid careful homage to the money donors. But there seemed one name she dare not speak. She discussed faith, hope and charity which "are said to be the theological virtues," but "can also be on a more worldly level." It was a peculiar stance on a day dedicated to God and personhood, to empty the theological virtues of their personal object which gives them their unique theological character. Wasn't that the whole idea of a Catholic law school in a time that enrollment and demand for lawyers was dropping? At a Catholic school, we wouldn't

be afraid of talking as if God exists in our life as a Church and our life as a nation. That certainly isn't Judge Murphy's take. In the November 13, 1998 *Mpls. St. Paul Magazine*, the writers were puzzling as to why St. Thomas would build a new law school in such a glutted market. If you thought it was to clear a space for God and personhood in history and law, then think again. The newspaper reporters decided being "small and classy" is what they heard most from St. Thomas boosters. Judge Murphy clarified things for all. "I don't think anyone has used the term 'boutique' but it is rather like that." Thanks, Judge. That explains your talk of a universe without a personal God, public life without the contamination of religious institutions, and the depersonalization of early human life.

What is not explained is how Diana Murphy came to play such a pivotal role at St. Thomas. For is not St Thomas meant to be a sacramental of the Church- a microcosm of a culture of Life? That culture holds God and the person sacred. When we talk of faith or hope or charity we talk about believing in, trusting and loving God. That is what orders our life and renders human beings sacred. We know all of this will be an empty word unless men form the protective military and legal associations needed to protect religion and human life as effectively as Diana Murphy protects abortion. It may be that feminist judges will mandate an asexual, godless society of giant bureaucracies and soulless men. This is not the Catholic strategy. We worship to center our public lives on the personal God and we foster the romantic customs of monogamy to discipline our sexual desires by the lifelong personal love of a spouse. Catholic culture holds female virginity and the male seed as sacred realities which are protected by self discipline and visual cultures which keep certain personal matters out of sight. (The real meaning of obscenity is not dirty but ob—sceneo.) To live

this Catholic culture on a campus we need shared rules and serious articulate authorities who enforce the code. The code protects purity and purity protects our students.

We cultivate among men the character needed for the ordering of public life. We build local communities of work called corporations and labor unions. We build local communities of study called colleges and universities. We build local communities of protection called towns and cities. We know as Catholics that we live in groups. We know that to keep something sacred in a world of evil we need to fight for it. That is why St Thomas once built that fundamental structure of Catholic culture- the male group. The male group is how we shape male character to submit our risk-taking nature for the good of the group. Even on a campus with female students that cultural task of male group formation is still needed. Priests are not the only Catholic men who need group communities to refine their character. We all need forms of brotherhood. That was one of the strongest reasons for single sex education throughout Catholic history. Catholic culture has never seen male leadership of wide scale public groups as a form of discrimination and oppression. We think the whole human race can be represented by the personal male pronoun. "He" is Christ and "he" has us all covered. Catholic higher education has always been associated with sports teams. Knute Rockne at Notre Dame, and the daily communicant Vince Lombardi from Fordham, are as much a part of Catholic education as Dante. Is it not clear that this whole cultural explanation is utterly foreign to the world and mindset of Diana Murphy?

The deeper one studies the agenda of Diana Murphy, the AGB, and the large scale dissident faculty, the clearer becomes the irresolvable conflict being built into our college life. It is starting to feel too deliberate. Practical

atheism, feminism, the protection of abortion and the celebration of sexual disorientation are quite incompatible with the Trinitarian patriarchy, apostolic fraternity, spousal love and Marian femininity which sustain Catholic culture. Once the possibility of a shared moral community has been ruined then the forces for disintegration and individualism become the cultural practice de facto. That is the present state of the modern university and it is definitely not what we want for Catholic learning. There are too many openly anti-Catholic forces at the University of St. Thomas to consider this an accident. Some dissidents hire large numbers of staff and some are out “cultivating new Board members.” It seems obvious that Fr. Dease has orchestrated most of this and allowed all of it. In a few months he personally, as a diocesan priest, will be under the authority of Archbishop John Nienstedt. If the University of St. Thomas can be pulled from the life of the Church, could Dennis Dease decide to play James Shannon and leave also? (I recognize that saying Dease could be like Shannon is like saying Clinton was like Kennedy, but suffer the analogy.)

I speculate about this because only a deep kind of treason can explain the governing prominence of Diana Murphy. Her hands are soaked as red as Lady Macbeth’s by her role in sustaining abortion in the Midwest states. How could anyone who loved the Church allow Diana Murphy such a hand in our governance, unless the mission of the church had long ago been discarded?

It becomes a question of “standing” as the lawyers like to say. Who has standing? Whose voice shall be listened to? Whose presence shall be acknowledged? We see clearly in the speeches of Diana Murphy and the institutional addresses of Dennis Dease that there is no living personal God who must be acknowledged, prayed to and yes - obeyed. We see in the

decisions of Diana Murphy that the sacredness of the human person is not a sure axis around which we build our moral code. It is an unsettled issue—scientifically, medically and theologically. We see in her decisions that a male group devoted to service and character formation had no standing to define itself. “You are businesses: selling memberships and excluding women!” shouted the tyrant judges to the small bands of men who had gathered in the cities and towns and counties of the country to build the social capital of public male fraternity. Those male personalities we call on to clear our highways and empty our garbage in the early freezing morning are the same male groups who have always defended us in times of war and danger. They have lost their standing.

The Catholic Church and its institutions keep us attentive to truths which are easy for each new generation to forget. She reminds us who has standing. “Hear O Israel I am the Lord thy God.” (He definitely has standing - all the time and everywhere.) We are reminded by the feast days of the Annunciation and the Immaculate Conception that human life begins at conception. The little ones have standing. We live in the presence of the fathers who have gone before us and we are duty bound to the generations to follow. No sitting board or present generation can cut itself off from the communion of beings seen and unseen in which we abide.

This is the drama we are watching at St. Thomas. Possibly in God’s wisdom, Diana Murphy is cast in her role so we can see more clearly the costs of Eve’s autonomy. For the black-robed pinnacle of the feminist dream is purchased at a cost. In the modern age of communication, the mist of deceit is suddenly cleared and the lie unravels. The black-robed feminist and the hollowed white-collared priest are now caught in the light. He could have served her better by teaching her of God so she could see the beauty of

the littlest humans. But he fawned and scurried before her position and status. She needed a father and she got Dennis Dease instead. We see them now revealed – Abortion’s handmaid long hiding in the open at the top of a Catholic university. We see her serious brow of a woman in charge beside his calculating smile of a cleric on the make. We see them most clearly against the backdrop of their fruits: a field of bones, the blood of innocents, the silencing of the grown ups, and now a robbery from the Church.

I hear Diana Murphy is a very nice lady in person and I am hardly surprised, as she joins a long list of good women since my high school days who haven’t returned my phone calls. But all serious Catholics have to ask three questions about the Judge. How did she come to be a decision maker on the St. Thomas Board of Trustees? If Archbishop Nienstedt is considered too busy to be on the board, why would an appellate judge devote so much time to secularizing this once sacred and masculine center of diocesan culture? And finally, even if we never figure out how she got on the Board, how do we get her off?

David Pence, for the docsociety

(See Murphy citations below)

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