



Case Study # 2: The Case of Terri Schiavo

In 2005 a hotly contested case captivated the nation's attention. The case involved the question of whether a feeding tube should be removed from a patient who had been in a coma for many years. The patient's husband requested the removal and her parents objected. The following is an excerpt from a report prepared for the Governor of Florida who had become a central figure in the case. The report was prepared by Jay Wolfson and is dated December 1, 2003. I retrieved the report from

<http://news.findlaw.com/legalnews/lit/schiavo/index.html>

While the full report is 38 pages, this summary of the historical facts provides the essence of this case and sets up the questions to which you are asked to respond.

Historical Facts in Theresa Marie Schiavo's Case

Theresa Marie Schiavo was born in the Philadelphia, Pennsylvania area on 3 December 1963 to Robert and Mary Schindler. She has two, younger siblings, Robert Jr., and Susan. Through the age of 18, Theresa was, according to her parents, very overweight, until she chose to lose weight with the guidance of a physician. She dropped from 250 pounds to around 150 pounds, at which time she met Michael Schiavo. They dated for many months and married in November of 1984. The Schiavo and Schindler families were close and friendly.

Theresa and Michael moved to Florida in 1986 and were followed shortly thereafter by Theresa's parents and siblings. Theresa worked for the Prudential Life Insurance Company and Michael was a restaurant manager.

About three years later, without the apparent knowledge of her parents, Theresa and Michael sought assistance in becoming pregnant through an obstetrician who specialized in fertility services. For over a year, Theresa and Michael received fertility services and counseling in order to enhance their strongly held desire to have a child. By this time, Theresa's weight had dropped even further, to 110 pounds. She was very proud of her fabulous figure and her stunning appearance, wearing bikini bathing suits for the first time and taking great pride in her improved good looks. Testimony and photographs bare witness to these facts.

On the tragic early morning of 25 February 1990, Theresa collapsed in the hallway of her apartment, waking Michael, who called Theresa's family and 911. The lives of Theresa, Michael and the Schindlers were to change forever.

Theresa suffered a cardiac arrest. During the several minutes it took for paramedics to arrive, Theresa experienced loss of oxygen to the brain, or anoxia, for a period sufficiently long to cause permanent loss of brain function. Despite heroic efforts to resuscitate, Theresa remained unconscious and slipped into a coma. She was intubated, ventilated and trached, meaning that she was given life saving medical technological interventions, without which she surely would have died that day.

The cause of the cardiac arrest was adduced to a dramatically reduced potassium level in Theresa's body. Sodium and potassium maintain a vital, chemical balance in the human body that helps define the electrolyte levels. The cause of the imbalance was not clearly identified, but may be linked, in theory, to her drinking 10-15 glasses of iced tea each day. While no formal proof emerged, the medical records note that the combination of aggressive weight loss, diet control and excessive hydration raised questions about Theresa suffering from Bulimia, an eating disorder, more common among women than men, in which purging through vomiting, laxatives and other methods of diet control becomes obsessive.

Theresa spent two and a half months as an inpatient at Humana Northside Hospital, eventually emerging from her coma state, but not recovering consciousness. On 12 May 1990, following extensive testing, therapy and observation, she was discharged to the College Park skilled care and rehabilitation facility. Forty-nine days later, she was transferred again to Bayfront Hospital for additional, aggressive rehabilitation efforts. In September of 1990, she was brought home, but following only three weeks, she was returned to the College Park facility because the "family was overwhelmed by Terry's care needs."

On 18 June 1990, Michael was formally appointed by the court to serve as Theresa's legal guardian, because she was adjudicated to be incompetent by law. Michael's appointment was undisputed by the parties.

The clinical records within the massive case file indicate that Theresa was not responsive to neurological and swallowing tests. She received regular and intense physical, occupational and speech therapies.

Theresa's husband, Michael Schiavo and her mother, Mary Schindler, were virtual partners in their care of and dedication to Theresa. There is no question but that complete trust, mutual caring, explicit love and a common goal of caring for and rehabilitating Theresa, were the shared intentions of Michael Shiavo and the Schindlers.

In late Autumn of 1990, following months of therapy and testing, formal diagnoses of persistent vegetative state with no evidence of improvement, Michael took Theresa to California, where she received an experimental thalamic stimulator implant in her brain. Michael remained in California caring for Theresa during a period of several months and returned to Florida with her in January of 1991. Theresa was transferred to the Mediplex Rehabilitation Center in Brandon, where she received 24 hour skilled care, physical, occupational, speech and recreational therapies.

Despite aggressive therapies, physician and other clinical assessments consistently revealed no functional abilities, only reflexive, rather than cognitive movements, random eye opening, no communication system and little change cognitively or functionally.

On 19 July 1991 Theresa was transferred to the Sable Palms skilled care facility. Periodic neurological exams, regular and aggressive physical, occupational and speech therapy continued through 1994.

Michael Schiavo, on Theresa's and his own behalf, initiated a medical malpractice lawsuit against the obstetrician who had been overseeing Theresa's fertility therapy. In 1993, the malpractice action concluded in Theresa and Michael's favor, resulting in a two element award: More than \$750,000 in economic damages for Theresa, and a loss of consortium award (non economic damages) of \$300,000 to Michael. The court established a trust fund for Theresa's financial award, with SouthTrust Bank as the Guardian and an independent trustee. This fund was meticulously managed and accounted for and Michael Schiavo had no control over its use. There is no evidence in the record of the trust administration documents of any mismanagement of Theresa's estate, and the records on this matter are excellently maintained.

After the malpractice case judgment, evidence of disaffection between the Schindlers and Michael Schiavo openly emerged for the first time. The Schindlers petitioned the court to remove Michael as Guardian. They made allegations that he was not caring for Theresa, and that his behavior was disruptive to Theresa's treatment and condition.

Proceedings concluded that there was no basis for the removal of Michael as Guardian Further, it was determined that he had been very aggressive and attentive in his care of Theresa. His demanding concern for her well being and meticulous care by the nursing home earned him the characterization by the administrator as "a nursing home administrator's nightmare". It is notable that through more than thirteen years after Theresa's collapse, she has never had a bed sore.

By 1994, Michael's attitude and perspective about Theresa's condition changed. During the previous four years, he had insistently held to the premise that Theresa could recover and the evidence is incontrovertible that he gave his heart and

soul to her treatment and care. This was in the face of consistent medical reports indicating that there was little or no likelihood for her improvement.

In early 1994 Theresa contracted a urinary tract infection and Michael, in consultation with Theresa's treating physician, elected not to treat the infection and simultaneously imposed a "do not resuscitate" order should Theresa experience cardiac arrest. When the nursing facility initiated an intervention to challenge this decision, Michael cancelled the orders. Following the incident involving the infection, Theresa was transferred to another skilled nursing facility.

Michael's decision not to treat was based upon discussions and consultation with Theresa's doctor, and was predicated on his reasoned belief that there was no longer any hope for Theresa's recovery. It had taken Michael more than three years to accommodate this reality and he was beginning to accept the idea of allowing Theresa to die naturally rather than remain in the non-cognitive, vegetative state. It took Michael a long time to consider the prospect of getting on with his life – something he was actively encouraged to do by the Schindlers, long before enmity tore them apart. He was even encouraged by the Schindlers to date, and introduced his in-law family to women he was dating. But this was just prior to the malpractice case ending.

As part of the first challenge to Michael's Guardianship, the court appointed John H. Pecarek as Guardian Ad Litem to determine if there had been any abuse by Michael Schiavo. His report, issued 1 March 1994, found no inappropriate actions and indicated that Michael had been very attentive to Theresa. After two more years of legal contention, the Schindlers action against Michael was dismissed with prejudice. Efforts to remove Michael as Guardian were attempted in subsequent years, without success.

Hostilities increased and the Schindlers and Michael Schiavo did not communicate directly. By June of 1996, the court had to order that copies of medical reports be shared with the Schindlers and that all health care providers be permitted to discuss Theresa's condition with the Schindlers – something Michael had temporarily precluded.

In 1997, six years after Theresa's tragic collapse, Michael elected to initiate an action to withdraw artificial life support from Theresa. More than a year later, in May of 1998, the first petition to discontinue life support was entered. The court appointed Richard Pearse, Esq., to serve as Guardian Ad Litem to review the request for withdrawal, a standard procedure.

Mr. Pearse's report, submitted to the court on 20 December 1998 contains what appear to be objective and challenging findings. His review of the clinical record confirmed that Theresa's condition was that of a diagnosed persistent vegetative state with no chance of improvement. Mr. Pearse's investigation concluded that the statements of Mrs. Schindler, Theresa's mother, indicated that Theresa displayed special responses, mostly to her, but that these were not observed or documented.

Mr. Pearse documents the evolving disaffections between the Schindlers and Michael Schiavo. He concludes that Michael Schiavo's testimony regarding the basis for his decision to withdraw life support – a conversation he had with his wife,

Theresa, was not clear and convincing, and that potential conflicts of interest regarding the disposition of residual funds in Theresa's trust account following her death affected Michael and the Schindlers – but he placed greater emphasis on the impact it might have had on Michael's decision to discontinue artificial life support. At the time of Mr. Pearse's report, more than \$700,000 remained in the guardianship estate.

Mr. Pearse concludes that Michael's hearsay testimony about Theresa's intent is "necessarily adversely affected by the obvious financial benefit to him of being the sole heir at law..." and "...by the chronology of this case...", specifically referencing Michael's change in position relative to maintaining Theresa following the malpractice award.

Mr. Pearse recommended that the petition for removal of the feeding tube be denied, or in the alternative, if the court found the evidence to be clear and convincing, the feeding tube should be withdrawn.

Mr. Pearse also recommended that a Guardian Ad Litem continue to serve in all subsequent proceedings.

In response to Mr. Pearse's report, Michael Schiavo filed a Suggestion of Bias against Mr. Pearse. This document notes that Mr. Pearse failed to mention in his report that Michael Schiavo had earlier, formally offered to divest himself entirely of his financial interest in the guardianship estate. The criticism continues to note that Mr. Pearse's concern about abuse of inheritance potential was directly solely at Michael, not at the Schindlers in the event they might become the heirs and also choose to terminate artificial life support. Further, significant chronological deficits and factual errors are noted, detracting from and prejudicing the objective credibility of Mr. Pearse's report.

The Suggestion of Bias challenges premises and findings of Mr. Pearse, establishing a well pleaded case for bias.

In February of 1999, Mr. Pearse tendered his petition for additional authority or discharge. He was discharged in June of 1999 and no new Guardian Ad Litem was named.

Actions by the Schindlers to remove Michael as Guardian and to block the petition to remove artificial life support took on a frenetic quality at this juncture. More external parties on both sides made appearances as potential interveners.

On 11 February 2000, consequent to hearings and the presentation of competent evidence, Judge Greer ordered the removal of Theresa's artificial life support.

The Schindlers aggressively sought means by which to stop the removal of Theresa's feeding tube. Most of the motions in these efforts were denied, but not without apparent careful and detailed review by the court, often involving hearings at which considerable latitude was afforded the Schindlers in their efforts to proffer testimony and admit evidence.

The motion and hearing process continued through 2000. Then the Schindler's sought to introduce new evidence that was believed to be of a sufficiently substantial nature as to change the court's decision regarding the removal of the feeding tube.

The hearings and testimony before the trial court leading to the decision to discontinue artificial life support included admitted hearsay from Theresa's brother-in-law (Michael Schiavo's brother) and his wife (Michael's Schiavo's sister-in-law) along with testimony from Michael.

The testimony of these parties referenced specific conversations in which Theresa commented about her desire never to be placed on artificial life support. The testimony reflected conversations at or proximate to funerals of close family members who had been on artificial life support. The context and content of the testimony, while hearsay, was deemed credible and consistent and was used by the court as a supporting bases for its decision to discontinue artificial life support.

The Schindler's new evidence ostensibly reflected adversely on Michael Schiavo's role as Guardian. It related to his personal romantic life, the fact that he had relationships with other women, that he had allegedly failed to provide appropriate care and treatment for Theresa, that he was wasting the assets within the guardianship account, and that he was no longer competent to represent Theresa's best interests.

Testimony provided by members of the Schindler family included very personal statements about their desire and intention to ensure that Theresa remain alive. Throughout the course of the litigation, deposition and trial testimony by members of the Schindler family voiced the disturbing belief that they would keep Theresa alive at any and all costs. Nearly gruesome examples were given, eliciting agreement by family members that in the event Theresa should contract diabetes and subsequent gangrene in each of her limbs, they would agree to amputate each limb, and would then, were she to be diagnosed with heart disease, perform open heart surgery. There was additional, difficult testimony that appeared to establish that despite the sad and undesirable condition of Theresa, the parents still derived joy from having her alive, even if Theresa might not be at all aware of her environment given the persistent vegetative state. Within the testimony, as part of the hypotheticals presented, Schindler family members stated that even if Theresa had told them of her intention to have artificial nutrition withdrawn, they would not do it. Throughout this painful and difficult trial, the family acknowledged that Theresa was in a diagnosed persistent vegetative state.

The court denied the Schindler's motions to remove the guardian, allowing that the evidence was not sufficient and in some instances, not relevant. It set a date for the artificial life support to be discontinued, as of 24 April 2001.

The decision was appealed to the Florida 2nd District Court of Appeals (DCA), and was affirmed in January 2001. The requested appeal to the Florida Supreme Court was denied on 23 April 2001, one day before the scheduled removal of Theresa's feeding tube.

On 24 April 2001, Theresa Schiavo's artificial feeding tube was clamped, and she ceased receiving nutrition and hydration. Under normal circumstances, Theresa would die naturally within a week to ten days.

Two days after the clamping of Theresa's feeding tube, the Schindlers filed a civil action in their capacity as "natural guardians" for Theresa. The trial court, in emergency review, granted a temporary injunction and the tube was

unclamped. Michael Schiavo filed an emergency motion to vacate the injunction. This led to the second review and appeal to the 2nd DCA.

The 2nd DCA found that the intention of Florida Statutes 765 with respect to matters such as Theresa's, is to help expedite proceedings of the court when decisions have been made by the bona fide guardian. The 2nd DCA also noted that the Court had acted independently as proxy decision maker regarding the removal of artificial life support.

In October 2001, the 2nd DCA concluded that the Schindlers "have presented no credible evidence suggesting new treatment can restore Mrs. Schiavo." The injunction was lifted and plans moved forward to discontinue artificial nutrition.

Fresh and exhaustive motions regarding new evidence were again crafted and proffered to the trial court by the Schindlers resulting in a lengthy hearing. Affidavits from medical doctors and others alleged that Theresa's condition could be improved.

In particular, the sworn statement of a single, osteopathic physician, Dr. Webber, claimed that he could improve Theresa's condition and had done so in like and similar cases.

The quality of evidence in this affidavit was marginal, but the court allowed it to create a colorable entitlement to additional medical review. The case was remanded to the trial court with the charge that each side would select two expert physicians (a neurologist or a neurosurgeon, according to the court) and agree between them regarding a fifth, and if they could not agree on the fifth, the court would select it.

By May of 2002, the physicians were selected by both sides, but no agreement could be reached about a fifth, so the court selected one. Curiously and surprisingly, Dr. Webber, who had served as the basis for this entire process at the 2nd DCA, did not participate in the exams or the procedure.

Each of the physicians was afforded access to Theresa for the purpose of conducting a thorough examination. Video tape recordings were made of some of the examinations along with segments in which family members interacted with Theresa. The physicians were deposed and proffered testimony regarding their findings.

Written reports of the examinations were prepared by all five physicians, and a very detailed hearing was held in October of 2002.

The clinical evidence presented by the five physicians reflected their examinations and reviews of the medical records. Four of the physicians were board certified in neurology, as suggested by the court, and one physician was board certified in radiology and hyperbaric medicine. All of the physicians had excellent pedigrees of medical training.

The scientific quality, value and relevance of the testimony varied. The two neurologists testifying for Michael Schiavo provided strong, academically based, and scientifically supported evidence that was reasonably deemed clear and

convincing by the court. Of the two physicians testifying for the Schindlers, only one was a neurologist, the other was a radiologist/hyperbaric physician. The testimony of the Schindler's physicians was substantially anecdotal, and was reasonably deemed to be not clear and convincing.

The fifth physician, chosen by the court because the two parties could not agree, presented scientifically grounded, academically based evidence that was reasonably deemed to be clear and convincing by the court.

Following exhaustive testimony and the viewing of video tapes, the trial court concluded that no substantial evidence had been presented to indicate any promising treatment that might improve Theresa's cognition. The court sought to glean scientific, case, research-based foundations for the contentions of the Schindler's physician experts, but received principally anecdotal information.

Evidence presented by Michael Schiavo's two physicians and the fifth physician selected by the court was reasonably deemed clear and convincing in support of Theresa being in a persistent vegetative state with no hope for improvement.

Simultaneous appeals of this decision and renewed actions to remove Michael Schiavo as Guardian were initiated based upon new evidence.

The June 2003 appeal to the 2nd DCA was Schiavo IV. The 2nd DCA panel of judges engaged in what approximated a de novo review of all of the facts, testimony and video tapes presented at trial. The appellate court affirmed the trial court's ruling and its conclusions, and in addition, ordered the trial court to set a hearing date for removal of the artificial life support.

The trial court set 15 October 2003 as the date for the removal of Theresa's artificial nutrition tube.

The Schindler's renewed efforts to remove Michael Schiavo as Guardian, and to disqualify judges, were not successful. Multiple amicus briefs and affidavits from parties supporting the Schindler's were submitted through the Schindler's actions and in some instances, independently to the court.

By mid 2003, the landscape and texture of Theresa Schiavo's case underwent profound changes. National media coverage, active involvement by groups advocating right to life, and the attention of the Governor's office and the Florida Legislature, catapulted Theresa's case into a different dimension.

The Schindlers, acting on behalf of Theresa, filed a motion in federal district court seeking a preliminary injunction to stay the removal of the artificial life support from Theresa, scheduled to occur on 15 October 2003. On 6 October 2003, Florida Governor Jeb Bush filed an Amicus brief in support of the motion for a preliminary injunction. The brief argues that removal of artificial nutrition, resulting in death, should be avoided if that person can take oral nutrition and hydration. The Governor predicates his memorandum on the pivotal question as to whether Theresa could ingest food and water on her own. That Theresa is in a diagnosed, persistent vegetative state is explicitly recognized.

On 15 October 2003, Theresa Maria Schiavo's artificial feeding tube was disconnected, for the second time.

The Florida legislature, in special session, passed HB 35 E on 21 October 2003, authorizing the Governor to stay the disconnection of the artificial feeding tube and required, among other things, the appointment of a Guardian Ad Litem to produce this report.

On that same day, 21 October 2003, the artificial feeding tube was re-inserted per the stay ordered by Governor Bush. Other suits and actions were initiated immediately. The governor became a named party in the matters involving Theresa Schiavo.

Ultimately this case made it to the US Supreme Court, which refused to intervene and the tube was removed. To summarize the final chapter of this saga, note the following newspaper article excerpt copied from a course on ethics offered by Michigan State University's Center for Ethics and Humanities in the Life Sciences. The original article appeared in the New York Times on June 16, 2005 and was authored by Abby Goodnough:

An exhaustive autopsy found that Terri Schiavo's brain had withered to half the normal size since her collapse in 1990 and that no treatment could have remotely improved her condition, medical examiners said on Wednesday.

The autopsy results, released almost three months after Ms. Schiavo died after the court-ordered removal of her feeding tube, effectively quashed allegations by her parents that she had been abused by her husband. Yet the findings also questioned the prevailing theory that an eating disorder had prompted Ms. Schiavo's collapse, stating there was not enough hard evidence.

The report generally supported the contention of Ms. Schiavo's husband, Michael, accepted by judges in six courts over the years, that she was unaware and incapable of recovering. And it countered arguments by her family, who badly wanted to win custody of Ms. Schiavo, that she was responsive and could improve with therapy.

In the last months of her life, the fight over Ms. Schiavo produced a searing national debate about the rights of incapacitated people and when their lives should end if they left no specific instructions. The question of whether Mr. Schiavo should bring about his wife's death by removing her feeding tube, or whether he should cede custody to her parents, went on for seven years, reaching the

Vatican, the White House, Congress and finally the United States Supreme Court, which declined to hear the case. Retrieved from https://www.msu.edu/course/hm/546/schiavo_case.htm

You now know the specifics of the case and the outcome. You have also read the Epilogue on Dying and Acceptance. Read the supplemental materials in the course website and then respond to the following in a 2-page minimum, 4-page maximum paper:

1. The Terri Schiavo case did not involve a conflict over religious or ethnic traditions, but another case might. Given what you have read in the textbook what role if any should cultural traditions play in determining “the right to die” or requirements for medical treatment?
2. The decision to use the brain’s status rather than the heart sets up many of the issues surrounding the question of when does death occur. Given the material in the textbook what are the arguments for and against the use of the brain in this decision?
3. We might differ regarding whether the decision in the Terri Schiavo case reflected active or passive euthanasia, what are the arguments you would make in deciding?

WRITING TIPS: Please remember to CITE EVERYTHING. You must have a full APA-style reference for every author you reference at the end of your paper. Do not go under or over the allotted page range. Your reference page is NOT included in that total, neither is a cover page, if you decide to include one (not mandatory). Unlike the last case study, these questions don’t necessarily “flow” together, though they could, given the topic of choice. Please do not include the questions within the body of your paper, nor the number. You can use sentences such as, “In regards to using brain status to determine when death has occurred...” Or “When discussing what type of euthanasia the Terri Schiavo case entailed, I posit (or, I argue) that...” This will indicate the transition to the next question. And/or, you can use centered and bolded headings, as well, i.e. **The Right to Die** or **Active or Passive Euthanasia**.

References

The Terri Schiavo Case retrieved from https://www.msu.edu/course/hm/546/schiavo_case.htm on 1/5/11.

Wolfson, Jay (2003). A Report to Governor Jeb Bush and the 6th Judicial Circuit In the Matter of Theresa Marie Schiavo. Retrieved from <http://news.findlaw.com/legalnews/lit/schiavo/> on 1/5/11.

