BLACK ROBES, BLACK HEART:

FLORIDA'S JUDICIAL HOMICIDE

By Debi Vinnedge

For most pro-lifers following the case of Terri Schindler-Schiavo, the disabled Florida woman legally murdered at the hands of her estranged husband Michael and his right-to-die advocate attorney George Felos, the verdict was a haunting and heart-wrenching reminder of the "legal" murder of millions of our innocent preborn each year. In fact, many began calling Terri's case the *Roe v. Wade* of euthanasia.

But in *Roe v. Wade/Doe v. Bolton*, few remember that it was actually a legal precedent in *Griswold v. Connecticut* (1965) that set the stage for current abortion laws. In *Griswold*, the Supreme Court ruled that the denial of contraceptives was unconstitutional under an alleged "right of privacy." Who would have thought that *Griswold*, combined with a later alarming Florida legal precedent, would predetermine Terri's fate?

Browning's guardianship

In 1986, Estelle Browning, an 86-year-old woman, suffered a stroke that left her severely brain-damaged and unable to swallow. A feeding tube was inserted by attending physicians. Browning, however, had a written advance directive, stating she didn't want artificial sustenance if she became terminally ill. In 1987, the court denied her cousin's petition to remove the tube, basing its decision on Florida's Life-Prolonging Procedures Act, which allowed patients to refuse medical treatment only under specific circumstances. Browning, the judge ruled, did not qualify.

After Browning's natural death in 1990 (with her feeding tube still intact), the Second District Court of Appeals overturned this decision based on Browning's alleged "right to privacy," and the Florida Supreme Court subsequently upheld the ruling. According to Justice Rosemary Barkett, who wrote for the 6-1 majority, "The right to privacy and freedom from intrusion into one's own body is rooted in our nation's philosophical and political heritage."

In absence of written directives, the evidence of a patient's wishes also would be determined solely by the guardian, which is called "substituted judgment." This "judgment" is supposed to be not what the guardian wishes, but what the patient (allegedly) desires. The only necessary qualifier would be "clear and convincing evidence" given in the form of an oral statement, claiming that the person does not want to live. Once this is satisfied, the court ruled, the state cannot override the so-called "right to privacy."

Arbitrator or perpetrator?

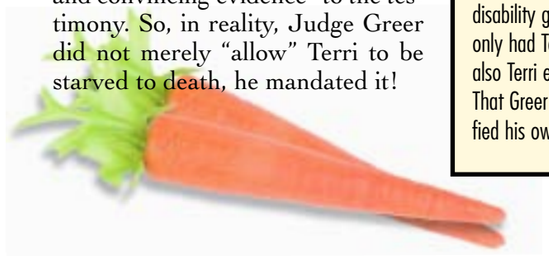
Ten years later, this "clear and convincing evidence" became the entire focus of Terri Schiavo's case. However, the testimonies given from both the Schiavo and Schindler witnesses were contradicting hearsay, leaving Judge George Greer as the sole and final arbitrator of whom he chose to believe.

Media reports claimed that at least 19 other judges had reviewed the case, but in reality not one other judge heard any testimony whatsoever. The courts simply rubber-stamped a legal decision, not an evidentiary one. In their view, Greer had acted in accord with the letter of the law, despite the fact that the "clear and convincing" evidence he heard was simple hearsay. The appellate courts only had to ensure that the law was followed—not that the evidence was credible—because hearsay is subject to opinion, not legalese.

If the court accepted that Terri didn't want to live using "life-prolonging procedures," regardless of who the guardian might be, the court would have to grant this wish. During Terri's final weeks, as the State Department of Children and Families attempted to take Terri into protective custody, attorney George Felos reminded Judge Greer of a startling fact: Even if Michael himself had suddenly decided not to remove Terri's feeding tube, it still had to be done, because the court had determined by "clear and convincing evidence" that this was Terri's wish.

(In *Governor Bush v. Schiavo*, Judge W. Douglas Baird also cited this opinion when he ruled against the constitutionality of "Terri's Law," which had allowed Terri's feeding tube to be reinserted in October 2003.)

In Terri's case, testimony was given by Michael, his brother and sister in-law, who claimed that Terri said she wouldn't want to be kept alive by artificial means. Their testimony was taken by the courts to be Terri's desire, not Michael's. Greer had only to apply the rule of "clear and convincing evidence" to the testimony. So, in reality, Judge Greer did not merely "allow" Terri to be starved to death, he mandated it!



Judicial neglect and PVS

The second determination for ordering Terri's feeding tube removal was the claim that she was in an irreversible persistent vegetative state (PVS) with no hope for recovery. The Second District Court of Appeals actually sent down a mandate to Judge Greer to ensure that medical evidence was being considered. Indeed, two of Michael's and one state-appointed neurologist testified that Terri was in a PVS, in complete contradiction to 16 others who attested she was not.

Judge Greer later admitted he didn't read all of those statements because he simply didn't find them credible. Never mind that one of Michael's witnesses, Dr. Ronald Cranford is an advocate for "End-of-Life Choices," a group promoting euthanasia. Or that the court appointed witness, Cleveland neurologist Peter Bambikidis, a colleague of Felos, spent only 30 minutes examining Terri. In truth, Greer's mind was set.

During subsequent hearings in early 2005, an additional 33 physicians submitted testimony declaring Terri had been misdiagnosed, while none were submitted by Felos to contradict their findings. Again, Judge Greer refused to consider the growing and glaring evidence. Consider part of what neurologist James Gabel, M.D., M.S., F.A.H.A, reported in his own study on Terri's condition:

Oral sustenance

Totally appalling was Greer's reaction to the Schindler'rs requests for swallowing tests for Terri. Greer angrily thundered, "I don't want anybody putting anything into that girl's mouth!" This statement also allowed Michael to deny Terri Holy Communion in 2003. However, food and water given orally is not considered medical care even by Florida's definition, which reads: "'Life-prolonging procedure' means any medical procedure, treatment or intervention, including *artificially* provided sustenance and hydration, which sustains, restores or supplants a spontaneous vital function" (FS 765.101—Definitions).

In addition, sustenance provided artificially or naturally cannot be denied to a disabled person under the Americans with Disabilities Act. It states: "Nothing in the Act or this part authorizes the representative or guardian of an individual with a disability to decline food, water, medical treatment, or medical services for that individual."

But because the federal court refused to hear simultaneous lawsuits brought by 26 disability groups decrying these and other violations, Greer's ruling stood unchallenged. Not only had Terri's nurses testified that they had fed Terri gelatin and pudding in the past, but also Terri easily swallowed the average one-liter output of saliva healthy people consume daily. That Greer would not allow oral feeding or allow any swallowing tests or therapy, simply codified his own intent to mandate Terri's execution.

"Terri Schiavo was not in a persistent vegetative state. The parts of Terri Schiavo's brain which would allow her to perceive pain, her thalami, were clearly intact and visible on her CT scan images shown by her husband, Michael Schiavo, on national television. The parts of Terri Schiavo's brain, which would allow her to swallow on her own, were intact, and, in fact, she did not suffer from medically significant dysphagia (swallowing difficulty). If she had, she would have been dead long ago from a condition known as aspiration pneumonia, an infection in the lungs which is the result of inhaling one's own saliva."

Whether Terri was in a persistent vegetative state was of little concern to her parents, Bob and Mary Schindler, who simply loved their daughter and wanted to care for her. Terri was not dying. She was not suffering or receiving any type of life support. She was simply disabled and unable to feed herself.

As noted by Dr. Gabel, Terri could have been fed orally and by law should have been. Granted, she might have needed swallowing therapy to stimulate the muscles in her throat, which had not been used for many years. Considering the medical evidence in the court's own CT scan, this would have been a relatively short and simple treatment. Yet Judge Greer refused even to consider it, as Felos incredulously argued that "Terri would aspirate the food into her lungs and die a cruel and painful death."

Congressional subpoenas

The day before the scheduled removal of Terri's feeding tube on March 18, 2005, the Senate Health Committee and the House Government Reform Committee issued Congressional subpoenas requiring both Michael and Terri to appear before Congress for a March 28 hearing. That morning, while the Hospice was being served with Congressional letters instructing them not to remove Terri's feeding tube, attorney Barbara Weller and Terri's sister Suzanne were happily explaining the upcoming trip to an elated Terri. But unbeknownst to them, the opposition was quickly moving to seek Greer's intervention. As the 2 PM deadline approached, Greer made an unprecedented ruling to ignore the federal subpoenas and ordered the hospice to proceed with the tube removal according to the court mandate.

This would be the first instance of Congress' utter failure to legally preserve Terri's life. It is a federal crime to obstruct or prevent such witnesses from appearing, and certainly such witnesses must be well enough to travel and give testimony. While members of Congress appeared outraged and threatened to charge Greer with contempt of Congress, they did nothing to enforce the subpoena, nor did they punish Greer for his judicial misconduct.

In the final week before Terri's death, Congress again tried to intervene by passing legislation requiring the federal court to do a "de-novo" review of the entire case. Yet once more, they did nothing to enforce the very legislation they passed.

Fallout

Clearly, Judge Greer stretched the interpretation of Florida statutes. But in the end, it would be the appalling court precedent of Estelle Browning's case that allowed him to do so. In turn, Greer set the stage for legalizing physician-assisted suicide in Florida. At a recent and disgraceful Florida Bar-sponsored event honoring Judge Greer, attorney George Felos stated, "I hope that future generations and future lawyers will cite *Schiavo*. At least they'll see that in our generation, the courts stood up to tests against freedom".

No, Mr. Felos. It is our prayer that future generations will look with utter horror on how we failed to protect the most basic of all freedoms—the basic right to life—from the tyranny of the courts. In truth, one relatively insignificant district judge usurped the authority of the state legislature, the state executive office, Congress and the president of the United States. He succeeded in condemning an innocent woman to death for no other "crime" than that of being disabled.

Without question, the law and the courts' tyrannical authority must be changed. For if our society becomes one that judges on the basis of a "quality of life" ethic, that society will selfishly seek any means to rid itself of any imperfections or burdens—at any cost. In the words of Rev. Clemens von Galen, the bishop of Munster, Germany, who fought fiercely against Hiltler's euthanasia policies in 1939, "Once we admit the right to kill unproductive persons, then none of us can be sure of our own life."

To be continued…

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