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Schiavo Case Affirms Rule of Law **by Sheldon Richman**

At first glance the case of Terri Schiavo can look like a horrible miscarriage of justice. This is understandable. Reasonable and compassionate people are reluctant to believe that a brain-damaged young woman has no hope of recovery, and they naturally want to err on the side of life. When someone proposes to withdraw life-support from such a patient we suspect foul play.

But we must go beyond first glances to understand the case. Much of the commentary has obscured the facts. For example, the case has been described as judicial homicide.

In fact, the removal of Terri Schiavo's feeding and hydration tubes was not a judicial or state action. What the Florida court did was to prohibit *interference* with the termination of life support by her husband. To call this homicide is to misuse an inflammatory word. Terri Schiavo is not being killed. She is being allowed to die — according to her own wishes. The moral distinction is vast.

How do we know what Terri Schiavo wanted? One can reasonably argue that the law ought to require written or videotaped proof that a patient in a coma or a persistent vegetative state with no chance of recovery had expressed a wish not to be artificially sustained. But that is not the law now. Florida requires "clear and convincing" evidence of the patient's wishes. That is what the trial judge, George Greer, found. Judge Greer did not casually agree to Michael Schiavo's request to terminate his wife's life support. On the contrary, in 2001 the judge held a full evidentiary, adversarial proceeding, complete with cross-examination, which the Florida Court of Appeals later held was conducted according to law.

Judge Greer concluded from the testimony that Michael Schiavo was a devoted husband to his stricken wife and a proper guardian. He was, the judge wrote, "the most regular visitor to his wife." In 1994, four years after his wife took sick, her parents, the Schindlers, sought to replace him as guardian, alleging abuse and other grounds. A guardian named by the court to investigate found no cause for removal.

As the judge noted, however, this was a side issue. What mattered was Terri Schiavo's wishes. The court-appointed guardian had cautioned the judge that Michael Schiavo's testimony

alone was not clear and convincing evidence of his wife's intentions. But Greer pointed out that he had heard other credible testimony from Michael Schiavo's brother and sister-in-law. The testimony to the contrary he found to be not credible.

Criticizing the judge shows a lack of understanding of the rule of law and due process, which are intended to protect individual liberty. Judge Greer was the finder of fact, like a jury. He wrote: "The court has had the opportunity to hear the witnesses, observe their demeanor, hear inflections, note pregnant pauses, and in all manners assess credibility above and beyond the spoken or typed word."

Who among the observers can say that?

Only then did Greer rule that Michael Schiavo's termination of his wife's life support would be lawful.

Incidentally, the evidence in favor of Terri Schiavo's wish to be allowed to die is bolstered by common sense. Who would want not only to live that way, but also to put his or her loved ones through such hell indefinitely?

A review of the record shows that due process and the rule of law were scrupulously observed and the right decision was made in the Terri Schiavo case.

Due process and the rule of law consist in the protection of individual liberty and autonomy through fair and reasonable procedures known in advance and generally applicable. Nothing more surely undermines the rule of law than ad hoc suspension of those procedures to generate particular results or to benefit specific parties. Yet that is what some people sought in this case. Fortunately they did not succeed, for that is the path to tyranny.

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