

ELDER LAW TODAY



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Are There Any Lessons We Can Learn From The Terri Schiavo Controversy?

Wow! What a devastating scenario! A young woman falls into a permanent vegetative state from an apparent potassium imbalance and not only is she and her family's life affected...but it affects literally the entire country. (And probably the entire world.)

But let's not dwell on the issues that made national headlines, that created thousands of hours of airtime on TV and talk radio.

You know the issues of who should or shouldn't get to decide what happened or didn't happen to Terri's life support.

The questions of who should be in charge of keeping her feeding tube in, or taking it out.

See, we're not going to discuss all that sort of stuff as it relates to this amazing story...because not only have all those issues been debated to death already...but also because those are issues that are very personal, possibly very religious...and yes, even very political.

No, see the issues we DO want to discuss are those that this tragedy cause you to need to think about, to pay attention to.

What issues are those? Well, let's look back at what caused this whole drama to be played out in public on the national stage.

When Terri fell ill, unfortunately she and her husband had NOT signed any documents that would have legally covered how Terri's health care was supposed to be handled in the event of such a dire medical condition.

The crux of the cause of the case REALLY centered around the fact that Terri had no WRITTEN instructions which detailed:

1. Who, if anyone, she wanted to make her life and death decisions for her in the event of her incapacitation, and/or
2. What exactly she would choose to have happened to her if she became permanently incapacitated...*based on her own decisions!*

See, everyone got caught up in the emotions and human soul issues, so caught up that very little was discussed about the fact that while the reality of the life or death decision was thrust upon the families...and all of us...*it need not have been an issue at all!*

If Terri had simply signed the appropriate legal documents that comply with Florida law...papers that would have expressed her wishes as to whether she wanted her husband, or her parents...or whomever...to decide what would happen to her when she became so sick...none of this private tragedy would have become a tabloid and news media circus!

The REAL heart of the dispute between Terri's husband and his in-laws was not that they had fundamental disagreement as to what "Terri would have wanted"...but rather that no one truly knew what Terri's wishes were.

Sure, her husband said Terri had told him what to do if this kind of thing happened. And who are we to say if this really happened or not? None of us was privy to their private conversations, so we cannot determine whether this conversation ever took place.

On the other side, many people agreed that Terri's parents "knew" what Terri would have wanted, and Terri would have chosen life.

As emotional, sad, and heartbreaking as this situation is...again, no one, not even Terri's folks...truly knew what she would or wouldn't have wanted.

While all of us can palpably feel the horrible misery her parents and husband have suffered through, and will continue to suffer through...our hearts and prayers go out to them.

But, with all that said, the true core of the whole mess is that the courts and medical authorities had to either take the word of a husband...or believe that the parents were the only ones who truly knew Terri's soul, and knew what Terri wanted.

But the bottom line is that because there were no simple, clear, and WRITTEN instructions and/or wishes... everyone in America, and practically everyone on earth, was dragged into this private family nightmare.

So, what can WE derive from this? Does Terri's death provide the seeds of answers from which we can all learn? Well, as you won't be surprised to hear, we KNOW Terri's legacy is that we ALL need to have properly drafted legal documents signed and properly notarized...NOW! Like yesterday.

We recommend getting a qualified estate planning/elder law attorney to help you prepare ALL the estate planning documents you'll need if something happens to you or other family members. (For example, if you have a will, when's the last time you had it reviewed for current accuracy? Do you have an updated Living Will or Durable Power Of Attorney signed?)

People will still procrastinate about estate planning because it's not fun to deal with, and they can find any number of things to do instead. Now, we hope Terri's gift to us all is the gift of peace. Let's not dishonor her memory by not updating and implementing a set of current estate documents that spell out your wishes EXACTLY as you want them to be carried out. What a way to compound Terri's tragedy by not following through on your own WRITTEN final wishes.

Now think about that. You CAN AVOID putting your loved ones through the Schiavo disaster...