

FILED BY FAX
ALAMEDA COUNTY

January 06, 2014

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CLERK OF
THE SUPERIOR COURT
By Alicia Espinoza, Deputy
CASE NUMBER:
RP13707598

Amicus Curiae

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

<p>LATASHA, WINKFIELD, as an individual, and a Guardian Ad Litem and mother of Jahi McMath, a minor.</p> <p>Petitioner,</p> <p>V.</p> <p>CHILDREN'S HOSPITAL & RESEARCH CENTER AT OAKLAND; Dr. David Durand, and Does 1 - 100, Inclusive</p> <p>Respondents ..</p>	<p>Case No. PR 13-707598</p> <p>Emergency Request</p> <p>Immediately Issue a Continuation of the Temporary Restraining Order to January 14th to Enjoin Defendants from Ending Life Support for Jahi McMath.</p> <p>The Honorable Evelio Grillo</p> <p>DEPT: 31</p> <p>DATE: JANUARY 6, 2014</p> <p>TIME: 3:00 PM, PST</p>
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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD IN THIS
ACTION

Declarations

I, Daniel Lappin, Amicus, declare as follows:

1. Amicus has no legal or financial interests with any party in this case.
2. Preparation of this briefing has been under the complete financial and editorial sponsorship of the Amicus.
3. Amicus is a credible healthcare professional, uniquely qualified to present this Learned Treatise for the specific conditions of Jahi McMath. Amicus will present a 'meta-analysis' of relevant issues. With adequate time, Amicus could invite several local subject-matter experts to elucidate the points asserted in this treatise.
4. Amicus' motivation 1: To advance the state of medical and legal knowledge and practice relative to this case, To improve public health and wellness, to prevent tragedies like this from occurring again.
5. Amicus' motivation 2: Amicus is a survivor of a long-term medical trauma that parallels Jahi's condition prior to her December 9th surgery. Amicus see the opportunity to uses his unique insight and skills to help this current case and prevent it from happening again.

Actions Requested

~~A. Immediately, as of Monday January 6th, issue an extension of the Temporary Restraining Order until Jan 14th. Physically moving Ms. McMath from Children's Hospital without proper life support may increase her risk of mortality from cardiac arrest or other complications, if indeed she is still alive.~~

~~B. Order both the petitioner and respondent to discuss the proposition within this Amicus Curia briefing, that include:~~

- ~~a. Using a novel trauma model that is relevant to Jahi's current condition as the basis for assessing her mother's claim that Jahi is voluntary responding to verbal and tactile interaction with her mother thus claiming that Jahi is alive, not dead.~~
 - ~~b. Invite a team of healthcare professionals, with perspectives complementary to Western Allopathic Medicine (as practiced at Children's Hospital), to participate in this assessment.~~
- ~~C. With discussion and consent from Petitioner and Respondent~~
- ~~a. Immediately start appropriate therapeutic trauma bodywork and Acupuncture sessions for Jahi.~~
 - ~~b. These are non-surgical therapy treatments that also can provide assessment, which, in the event that Jahi is alive, would help to sustain her life.~~

Main Points and Hypotheses of this Briefing:

Hypothesis A: Jahi McMath, is a child in an early development stage, under extreme trauma, dependant and trusting of her maternal-child communication and bond. To conserve her energy, retain her consciousness and support her survival, her body involuntarily and rationally shut down the non-essential systems of her body – including her brain and brainstem. And thus, her consciousness retreated to a more primary layer of 'Systems Biology' physiology in the hope that the prevailing conditions would change and that at a time in the future the opportunities for repair and recovery would arrive.

Obviously lacking typical brain and brain stem based social communication, has Jahi's body activated other communication mechanisms to support her survival? Specifically, communication channels to her primary source of survival -- her mother.

Hypothesis B. Is Jahi McMath suffering from a complicated trauma condition, in an extreme shock state, were she is alive and volitional, despite her condition of 'Total Brain Failure'. Amicus proposes an evaluation based upon a novel, rational trauma model that may explain this apparently incongruous condition.

Hypothesis C: Her mother, by virtual of the common physiology and special case physiology is subjectively and uniquely able to perceive the existence of life and life-force within Jahi, her child. She is uniquely able to engage Jahi's voluntary responses.

Hypothesis D. The neurological determination of death may be incomplete for the case of Jahi McMath.

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- o Main Point:

- Mother and child communicate at the level of systems biology, not dependant upon brain and brain stem function.
- Is this a normal, but poorly understood aspect of maternal-child 'Secure Attachment'?
- Attachment theory research is young compared to Neuroscience.
- Is the maternal instinct a function only of brain regions?

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Is Jahi McMath exhibiting symptoms of an extreme and rare form of trauma response, and thus, is alive?

Main Point: Is Jahi's volitional consciousness residing in the dynamical systems of Systems Biology? 'System Biology' is a layer of communication below the brain, brainstem and nervous system?

See: http://en.wikipedia.org/wiki/Systems_biology

This hypothesis is based upon a novel Trauma Physiology model informed by Integrative Healthcare, translational science, Western Allopathic Medicine, and professional practice. A significant contribution is the personal experience and insights of the Amicus who recovered from a prolonged, complex medical trauma that defied standard medical evaluation. The Amicus' personal medical condition was similar to Ms. McMath's condition prior to her Dec. 9th surgery.

Novel 'Conservation of Energy' Trauma Model based upon Systems Biology

Is Jahi McMath in a special, extreme case of ‘conservation of energy’ (Hobfoll) due to the trauma during surgery?

Arnicus proposes a physiology model based upon ‘Conservation of Energy’ in response to trauma that hypothesizes that Ms. McMath may be conscious and volitional in regions of her physiology that do not depend upon brain and brain stem function.

Under the principles of the ‘Conservation of energy’ (HobFoll) applied to medical trauma, a body experiencing physical trauma makes rationing decisions to preserve its vital functions. The body goes through involuntary choices to focus on critical functions and to shut off non-critical functions. For example, the body under physical trauma will reduce blood flow to the arms and legs so that the internal organs have adequate blood supply.

Hypothesis: Jahi McMath, a child in an early development stages, under extreme trauma, dependant and trusting of her maternal-child communication and bond, to conserve her energy and retain her consciousness and support her survival, involuntarily and rationally shut down the non-essential systems of her body – including her brain and brainstem. And thus, her consciousness retreated to a more primary layer of ‘Systems Biology’ physiology in the hope that the prevailing conditions would change and that at a time in the future the opportunities for repair and recovery would arrive.

Thus, hypothetically, a child in this unique condition can be alive without brain and brain stem function. This may be more possible for a child than for an adult, as the child is at an earlier developmental stage and thus able to retreat more easily into their primary physiology.

And thus, hypothetically, due to the special physiology of maternal-child communication and bonding, Jahi's mother perceive her volitional, voluntary existence in her current state and interact with her in this state?

This novel trauma physiology framework proposes anatomy and physiology as a network, not a top-down or bottom up communication system centered on neurology. In this model, especially for a child in earlier development stages, anatomy and physiology is reflective of a parallel processing system. Failure in one part of the system is compensated by control and organization in another part of the system. There are multiple modes of system back up.

These parallel back-up systems are governed by principles of system biology, a more fundamental biological layer than neurology. Systems Biology governs the principles involved with the function of stem cells or the early multi-celled fetus in utero. This is a more primary layer of biophysical force than Neurology.

Amicus may be the first healthcare practitioner to propose this model from a Western Integrated Health Perspective. There may not be references to any similar model in any current academic, professional, medical or scientific journal. This model is based upon Amicus' uncommon personal medical experience and broad cross-disciplinary training. This is based upon patient case studies that are informed by related Randomized Controlled Trials.

Special Case Communication Physiology

In Jahi's current condition, her brain-based social engagement physiology is impaired. Does this mean that she has no other communication mechanisms to utilize?

Obviously lacking typical communication, has Jahi's body activated other communication mechanisms to support her survival? Specifically, communication channels to her primary source of survival – her mother.

Is Jahi similar to people who are deaf, blind or mute?

In the absence of typical sensory communication between people, the body heightens other mechanisms.

It is common knowledge that when a person is either born or becomes deaf, their visual awareness increases. When a person goes blind, their hearing becomes more perceptive. A person blind utilizes touch to access the world.

People who are mute and lose their voice engage more facial expressions, and hand gestures and American Sign Language.

And what about Ms. McMath? Apparently having lost, maybe permanently, maybe temporarily, all of her brain and brain stem based communication functions, is her body compensating by heightening a real mechanism of communication whose physiology is unclear, but whose existence can be verified by her interaction with her mother?

Why does Jahi respond to her mother's voice? Communication in Oriental Medicine and Acupuncture.

Acupuncture principles may explain how Jahi is communicating. For example, a foundation of Oriental Medicine and Acupuncture are the meridian

systems of the body. These are channels of communication in the body that are distinct from and parallel to the nerves of the body. They are not dependant upon spine, nerve, brain and brain stem function. Possibly they are an active component of the petitioner's reports of Jahi's voluntary responses.

Specifically, in Acupuncture, the 'Kidney Meridian' is a channel the runs from the ear to the kidneys. The kidney stores the 'life force' of the person. It is called 'Jin' or 'essence'. When the Jin is depleted the person dies.

Could this meridian be involved with the petitioner's reports that when speaking to her child, and the child hearing her voice, she responds. Could Jahi's volitional consciousness be resident in the kidney's – the source of life force in Acupuncture.?

The Importance of of Maternal-Child Communication and Physiology.

Main Points and Hypotheses:

1. Amicus proposes that mother and child communication is whole body: Face to face, skin to skin, heart beat to heart beat, molecular signal transduction to molecular signal transduction. The brain and brain stem are not the sole source of communication between two people.
2. Are the reports of voluntary movement within Jahi an example of extreme 'Secure Attachment' physiology? Are real mechanisms of communication active in this case, but these mechanisms are not well understood within medical and psychological science.

3 Attachment theory research is young compared to Neuroscience research. Formal study of Attachment Theory began in western psychological science in the 1960's with Richard Bolby. Neurology and brain science have a more robust formal inquiry with early foundations in the 16th century

Thus, it is plausible that there are real physical mechanisms within the framework of 'Attachment' that exist to explain the Petitioner's claim, yet medical and behavioral Science simply hasn't caught up with her real experience wither child.

This case is an opportunity to gather evidence of the existence of phenomena, even thought the underlying mechanisms may not be identified.

Maternal Instinct

Main Point:

Is the maternal instinct a function only of brain regions?

Ms. McMath is both a minor and a child in a pre or early stage puberty body. The physiology of a child in this developmental stage is significant to this case.

The Amicus proposal asserts the following: Ms. McMath, as a child in an early developmental stage, is dependent upon her mother and other caretakers for her physical survival. She has not achieved full individuation from her mother. And thus, her physiology can be considered an extension of her mothers – they can be considered 'one body' operating under an agreement structure. The child would not exist without the mother. They are highly biologically symbiotic. There are real mechanisms of physiology involved with this survival and child development system. These mechanisms are pertinent to this case.

Amicus proposes that these domains of physiology contain unique properties of communication, relationship and perception (i.e. Maternal instinct) that are valid in the broader field of Integrative Medicine, Western Science, and Integrative Pediatrics, but are less acknowledged within Western Allopathic Medicine and Pediatrics, such as is practiced at Children's Hospital Oakland.

Understanding this domain of physiology may help to explain the submitted evidence by the petitioner that Ms. McMath has voluntary, volitional control of her body despite suffering from Total Brain Failure. The voice and touch of Jahi's mother may have valid physiology pathways to trigger Jahi's voluntary body response without involving brain regions or the brain stem.

Communication via Maternal Mitochondrial Genetics?

Maternal Mitochondria Genetics have been used in legal forensic cases.

<http://summit.sfu.ca/item/8685>

However, Maternal Mitochondria Genetics can serve as a potential basis for communication between mother and child without the function of the brain and its social engagement brain regions. Or, the brain stem and its governance of vocal and facial, and ocular functions.

Across the world, in culture and in medicine, people generally recognize a special relationship between the mother and her child. Where as the relationship of the mother and the father can be equally as strong, the visceral, embodied relationship of the mother is embedded into the psyche of many cultures.

One physical mechanism that may explain this special relationship is mitochondrial DNA.

Are Jahi and her mother communicating via 'genetic affinity' ?

The majority of Human DNA is located within the cell nucleus. But a smaller, specialize portion of DNA is located only in an organelle within the cell called the mitochondria. This packet of genetic material is different because in virtually all human, this genetic material only comes from the mother. The fathers Mitochondrial DNA is destroyed during egg fertilization.

Mitochondria produce energy for the cell. At the layer of molecular systems biology, energy is a form of communication. Energy expresses the existence of life itself.

Could the mitochondria also provide a communication 'life force' signal as well? A communication signal that the mother is specifically attuned to? Is the mother uniquely, biologically designed to perceive the existence of life and life force signals in the child?

People and cultures congregate around shared language. French people generally find it easier to speak with other French speaker, than people who speak Japanese. Dogs congregate with other dogs. Sparrows congregate with other sparrows.

Is this affinity due only to communication functions of the brain and brain stem?

Is there a communication function and biological Symbiosis between individuals at a layer of the brain and brain stem function?

The mechanism might not be known, but the issues seem obvious.

Is the interaction of Jahi and her mother and example of this?

Research and writing on this topic has been explored by Developmental Biologist Rupert Sheldrake.

See: <http://www.sheldrake.org/>

Pre-neurological communication mechanisms in the Early Multi-Cellled Embryo.

Main Point: there is a domain of communication within the body the precedes the development of the entire nervous system, spine and brain and brain stem.

For the child and the adult, there is a continuum of communication mechanism from the adult cortex and pre-frontal cortex, down into cellular, molecular and genetic communication signaling layers.

The typical person is unaware of the functions at these deeper layer. But for a child in trauma, who is early in a developmental stages, does their volitional consciousness retreat to that layer?

There is an important stage of development in the multi-celled embryo: before and after the development of the spine and nervous system.

See:

http://php.med.unsw.edu.au/embryology/index.php?title=Neural_System_Development

http://en.wikipedia.org/wiki/Neural_crest

The multi-cell embryo functions with communication signaling within the domain of system biology. At a later stage of development, the cluster of cells activates what is called "the neural fold", "Neural Tube". A portion of the membrane of the cell cluster folds and becomes the spinal cord. Portions of this fold or tube migrate to form the nervous system, brain, etc.

In her trauma, has Jahi retreated to this pre-nervous system layer of communication, and can her mother perceive her at this layer?

Non-traditional models of Communication are appropriate to consider in this case.

This is position supports that:

1. Consciousness exists in the body, both inside and outside of the nervous system and brain.
2. Communication signaling, and communication 'work' and 'commerce' do not depend exclusively upon the brain.
3. As long as Ms. McMath has a functional mechanism of communication with her caregivers, then she can achieve 'work' and 'commerce', albeit in a significantly reduced capacity, being in the state of 'Total Brain Failure'.

Models of communication and relationship exist in frontier Western research organizations, spiritual traditions and non-western cultures. These models of consciousness extend beyond the five traditional senses of western science and medicine.

Western science-based organizations that study or have studied these phenomena include:

- A. The Institute of Noetic Sciences - founded by NASA (National Aeronautics and Space Administration) astronaut Dr. Edgar Mitchell
 - a. See: Noetic.org
- B. Stanford Research Institute program on Remote Viewing

- a. See: http://en.wikipedia.org/wiki/SRI_International
- C. The Academy of Intuitive Medicine: a post-secondary educational school with approval from the California *Bureau for Private Postsecondary and Vocational Education* which offers continuing education for selected classes to Registered Nurses and Members of the Associated Bodywork & Massage Professionals See: <http://www.intuitionmedicine.com/academy/>
- D. The United States Central Intelligence Agency
- E. The Heartmath Institute. See: <http://www.heartmath.com/>

Expert witnesses from these organizations can make comments in this case that augment the framework of medical and legal ethics. Amicus proposes that they are pertinent to this case.

One such plausible expert witness is Russell Targ, PhD. Mr. Targ is a physicist and author who was a pioneer in the development of the laser and laser applications, and was co-founder of the Stanford Research Institute's investigation into psychic abilities in the 1970s and 1980s for the Central Intelligence Agency (CIA).

See: <http://www.irva.org/conferences/speakers/targ.html>

http://en.wikipedia.org/wiki/Russell_Targ

Public Health Relevance of this Case

This case holds immediate relevance to the parties involved. In addition, the entire course of events is a learning opportunity to improve medical and public health principles and practice.

With the rise of childhood obesity, metabolic disorders in children and adults, and the increase in immune related conditions across the population, the case of Jahi McMath is like 'a Canary in the coal mine'. Could Jahi's case be a leading indicator of future risks in child and family healthcare?

Amicus proposes that conducting an evaluation of the Petitioner's claims will improve understanding of physiology mechanisms, and improve prevention and diagnostic actions.

This is a unique opportunity to study these phenomena and potentially advance public health and reduce social costs.

Blindspot in Medical Science: Neurological Determination of Death via Total Brain Failure?

In this case, Is the court witnessing a gap in Medical science ?

If the petitioner's reports are accurate, then a blind spot exists in the standard medical practice of determining death via the neurology condition of 'Total Brain Failure' . Do the traditions of the professional medical societies need to be updated?

In Ms. McMath's current condition - no blood flow to the brain, no ability to breathe without the ventilator and no sign of electrical activity in her brain - are there physiology mechanisms deeper than brain stem and brain that hold her volitional consciousness and can support her recovery?

Opportunity to Explore and Potentially Advance Medical Science

If the Petitioner's assertion is correct, this is an opportunity to explore, assess and potentially to advance Medical Science.

If the respondent ignores the Petitioner's claims, the respondent is missing a plausible opportunity to advance medical science.

Are the Petitioner's assertions correct and does medical science simply lack an adequate framework to comprehend, and tools to measure, her real experience with her daughter?

Could this be a situation where principles, that are less known to physicians who practice Western Allopathic Medicine, are real and active in the case? Are these less known principles responsible for Jahi's voluntary, volitional interaction with her mother? And that these principles prove that she is, in fact, alive.

Via mechanisms that are both plausible and unknown, is this a special case of maternal-child symbiotic communication? A maternal instinct, 'a mother knows', are these mechanisms active within this case?

Additional Points

- It is only a remote possibility that these evaluations and treatments will successfully demonstrate that Ms. McMath is alive.
- This plan does not propose that the evaluation and treatment will establish if Jahi McMath is dead.
- Amicus does not propose to contribute to the ethical debate such as "life at all costs" or the potential recovery progress from her current state, if she is alive.

Unique Qualification of the Amicus

Amicus is uniquely qualified to present this Learned Treatise. Amicus is a professional Trauma Body Worker, practicing massage in the State of California since 1997. He has training in early child trauma, trauma physiology and somatic psychology. He is active in the National Integrative Health Field. He has attended events held by The Institute of Medicine, The North American Research Conference on Integrative Medicine and Health and the American Academy of Pediatric. He provides pro-bono work in Integrative Healthcare Law.

Amicus has an uncommon perspective, having spent 35 years recovering from a complex medical condition involving severe metabolic syndrome, sleep disorder and histamine mechanisms. These conditions are generally parallel to the conditions of Ms. McMath prior to her December 9th surgery.

BA Economics, The University of Chicago, 1981
Conditional Certified Massage Practitioner (Application Pending)
Licensed in California since 1997 as a Massage Therapist

For further information about Amicus credentials, Health practice and education,
see:

<http://daniellappin.com/about.html>

<http://daniellappin.com/health-promotion.html>

Dated: January 3, 2014

Daniel Lappin BA, CCMP (Pending)

To: The Honorable Evelio Grillo
From: Daniel Lappin BA, CCMP (Pending)
RE: Application to File Amicus Curiae Briefing in the case of Winkfield versus Children's Hospital Oakland
Date: Monday, January 6, 2014, 10:00 AM PST

Your Honor,

As a matter of record, and to inform the court for future related cases, I am submitting this application to file an Amicus Curiae Briefing in the case of Winkfield .v. Children's Hospital Oakland. I understand that the settlement has been reached between the parties.

Please file this brief. No additional action is requested.

My position is that case contains insight into potential medical science gaps in the determination of death due to 'Total Brain Failure' in cases involving mothers and their minor children.

It was prepared in the event that the two parties did not reach settlement by the Tuesday deadline of the Temporary Restraining Order.

I will be contacting the California Department of Public Health and offering to support their investigation into this case. I am submitting this briefing to Children's Hospital Oakland with the intent to support their review of procedures in this case.

Please contact me if I may be of future service to the court.

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