

IN THE FLORIDA SUPREME COURT

CASE NO. _____

**IN RE GUARDIANSHIP OF
THERESA MARIE SCHINDLER-SCHIAVO,**

Incapacitated.

ROBERT and MARY SCHINDLER,

Petitioners,

v.

**MICHAEL SCHIAVO, Guardian of the person of
THERESA MARIE SCHINDLER-SCHIAVO,**

Respondent.

EMERGENCY ALL WRITS PETITION

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IN THE FLORIDA SUPREME COURT
CASE NO. SC _____

IN RE: GUARDIANSHIP OF
THERESA MARIE SCHIAVO,
Incapacitated.

MICHAEL SCHIAVO
Respondent,

vs.

ROBERT SCHINDLER and MARY
SCHINDLER,
Petitioners.

EMERGENCY ALL-WRITS PETITION

Pursuant to 9.030(a)(3) of the Florida Rules of Appellate Procedure, and in accordance with Article V, Section (3)(b)(7) of the Florida Constitution, Petitioners Robert and Mary Schindler (“Schindlers” or “Petitioners”) as parties interested in the life of their daughter, the ward herein, Theresa Marie Schindler Schiavo (“Mrs. Schiavo”), respectfully petition this Court for emergency relief in the form of an order modifying, or directing the Circuit Court to modify, its February 25, 2005, Order of the Circuit Court for Pinellas County, Florida, Probate Division (“Circuit Court”). Specifically, the Schindlers request that this Court direct the Circuit Court to immediately reverse its February 25, 2005, Order and to

immediately re-establish Theresa Schiavo's nutrition and hydration pending this Court's more complete consideration of Petitioners' appeal of the trial court's denial of their Rule 1.540(b)(5) Motion for Relief From Judgment Pending Contemporary Medical/Psychiatric/Rehabilitative Evaluation of Theresa Marie Schiavo, their Emergency Motion for Injunction and Immediate Relief, review of the denial of their Motion to Disqualify Judge, and this Emergency All-Writs Petition. Petitioners show the following as grounds for the petition.

I. Orders and Opinions Below

On February 11, 2000, the Honorable Judge George W. Greer entered an order finding that Mrs. Schiavo was in a persistent vegetative state and that oral declarations she made before her incapacity reflected her intention that she did not want to be kept alive on a machine. The trial court therefore granted Schiavo's Petition for Authorization to Discontinue Artificial Life Support and authorized Schiavo to proceed with the discontinuance of said artificial life support for Theresa Marie Schiavo. *In re Guardianship of Schiavo*, 792 So.2d 551, 554 (Fla. 2d DCA 2001).

On February 25, 2005, the Honorable Judge Greer ordered that "Michael Schiavo shall cause the removal of nutrition and hydration from

the ward, Theresa Schiavo, at 1:00 p.m. of Friday, March 18, 2005.” (App. 1).

On March 8, 2005, the trial court denied the Motion for Relief from Judgment Pending Contemporary Medical/Psychiatric/Rehabilitative Evaluation of Theresa Marie Schiavo, including their Motion to for Permission to Provide Theresa Schiavo with Food and Water by Natural Means. (App. 2 and 3).

The provision of Theresa Schiavo’s nutrition and hydration, both by tube and by natural means, was discontinued on March 18, 2005, at approximately 1:45 p.m.

On March 23, 2004, the trial court denied the Department of Children and Families’ second Petition to Intervene based upon Dr. William Cheshire’s Affidavit testimony that Terri is not in PVS and the Department’s preliminary investigation determination of her abuse and neglect. (App. 4 and 5) On that same day he also denied the Schindlers’ request for relief from judgment based upon the new determination that Terri is not in PVS. (App. 6).

On March 25, 2005, after Ms. Schiavo had been without food and water for more than eight (8) long days, and after fruitless forays into the federal court system for relief pursuant to P. L. No. 109-3 passed by the

U. S. Congress on March 21, 2005, Petitioners again returned to the trial court, this time with their Emergency Motion for Injunction and Immediate Relief (App. 7) and their Motion to Disqualify Judge. (App. 8).

The trial judge denied the disqualification motion on March 25, 2005, and the emergency injunctive motion on March 26, 2005, at approximately noon. (App. 9). Petitioners intend to seek review of the trial court's orders denying them relief.

However, because Theresa Schiavo has now been denied all food and water since March 18, is declining rapidly, and will shortly die, an effective appeal will be impossible without this Court's intervention.

II. Statement of Issues Presented

The emergency issue presented to this Court for its consideration in this petition is:

Whether the judge of the Probate Court acted outside its jurisdiction when it denied resumption of Theresa Schiavo's nutrition and hydration when the facts prove that she is in neither a terminal condition nor in a persistent vegetative state and *she communicated her strong desire to live* despite her disability.

III. Statement of Relief Sought

Petitioners seek issuance of a writ directed to the trial court and Schiavo which commands them to immediately begin to hydrate Theresa Marie Schiavo, immediately transport her to a hospital for medical treatment

to sustain her life, and immediately resume her nutrition and hydration until this Court may consider the issues raised herein.

IV. Reasons Why the Writ Sought Should Issue

I. Introduction

Terri Schiavo's court-ordered death is a mercy killing case, although the process is anything but merciful. The State of Florida and the federal courts have failed Theresa Schiavo. Because she is disabled, she has been treated as a piece of property without voice and without value in the courts of this State and the United States. Although lip service has been paid by Florida courts to the duty to carry out Terri's wishes about her life, the courts of the state have refused to review the trial court's decisions to ignore new evidence of Ms. Schiavo's wishes and of her current medical situation. The trial court has today again denied a motion that might permit the court to hear about what Terri now wants for her own life.

Plaintiffs have alleged, and the trial court has acknowledged, that there is a significant difference of opinion concerning the present physical condition of Terri Schiavo. The following facts are undisputed:

A. Florida law defines "persistent vegetative state" as follows:

765.101 Definitions.--As used in this chapter:

(12) “Persistent vegetative state” means a permanent and irreversible condition of unconsciousness in which there is:

- (a) The *absence* of voluntary action or cognitive behavior of any kind.
- (b) An *inability* to communicate or interact purposefully with the environment. (emphasis added)

B. Judge Greer has repeatedly acknowledged in his findings that led to the 2005 order to withdraw nutrition and hydration that Terri Schiavo is conscious, albeit, on an intermittent basis (App. 3, 6, and 9), but held in essence that her level of consciousness was irrelevant to the question of her present desire to accept or reject nutrition and hydration.

C. There is evidence in the record before Judge Greer that Terri Schiavo is *not* in a PVS *as defined by Florida law*. (affidavit of William P. Cheshire, Jr., M.D., March 23, 2005). (App. 5).

D. There is evidence in the record before Judge Greer that as recently as March 18, 2005, Terri attempted to communicate her strong wish to live—she wants to live even with her disabilities. (Affidavits of Barbara J. Weller and Suzanne Vitadamo, attached to App. 7).

E. Terri Schiavo is dying only because all nutrition and hydration is being withheld from her.

F. Florida law expressly forbids mercy killing

765.309 Mercy killing or euthanasia not authorized; suicide distinguished.—

- (1) Nothing in this chapter shall be construed to condone, authorize, or approve mercy killing or euthanasia, or to permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying.
- (2) The withholding or withdrawal of life-prolonging procedures from a patient in accordance with any provision of this chapter does not, for any purpose, constitute a suicide.

The Writ should issue herein to save Terri's life while the Schindlers seek a review of the question about whether the trial court must comply with Terri's own wish to live, or whether the trial court's substituted judgment about her "quality of life" supersedes her right of self-determination.

II. The Schindlers Have Adduced Sufficient Evidence to Warrant a Writ.

A. Judge Greer's Order Authorizing Withdrawal of Nutrition and Hydration from a Person who is NOT in a Persistent Vegetative State is Unconstitutional.

Terri Schiavo's alleged "consent" to the withdrawal of her nutrition and hydration is premised on a factual finding that she is in a persistent vegetative state and would, therefore, decline to continue being fed and hydrated by any means.

The right of self-determination accepted in *In re Guardianship of Browning*, 568 So.2d 4 (Fla. 1990) is premised on *three* factual findings: 1) evidence of the patient's oral declaration is reliable; 2) the exact nature of the patient's condition; and 3) given that condition, what *fully informed* decision would they make regarding continued nutrition and hydration?

In the case at bar, plaintiffs have raised a significant question concerning the factual premise of the second question: What is Terri's present medical condition and her ability to communicate her treatment wishes? Judge Greer's findings indicate that she is *at least* "minimally conscious" and Dr. Cheshire's affidavit indicates that she may have a cognitive functioning level considerably above the baseline for the minimally conscious state (MCS). Mrs. Weller's and Mrs. Vitadamo's affidavits indicate that Terri attempted to communicate her wish to live to them on March 18, 2005.

Ascertaining *Terri's* current intent under the current circumstances is, in fact, the *only* relevant issue under *Browning*. A full factual hearing is essential if we are to ascertain whether she would want to know the following facts *before* exercising *her* admitted right to self-determination:

- (a) What is Terri's current level of cognition?

- (b) What is Terri's current level of interaction with her parents, siblings, and caregivers?
- (c) Given that level of cognition, is it possible to ascertain her present wishes, either immediately or after a period of rehabilitation?
- (d) Can she swallow, or be trained to swallow?

Without a current determination of Terri's current and potential condition and ability to communicate her own wishes, the trial court's 2000 Order is a death sentence and not a substituted judgment decision and does not comply with either *Browning* or Florida statutory law.

B. To the extent that Florida law authorizes judicial decrees ordering withholding of nutrition and hydration from a person in a minimally conscious state without first having ascertained the precise level of cognition, it is unconstitutional.

In this case, Judge Greer has authorized and even mandated Michael Schiavo's conduct that violates Terri Schiavo's constitutional right to life. Under Art. I, sections 9 and 23, Terri Schiavo has the right to live and the right to make an informed decision about her end-of-life choices. Petitioners have proffered substantial evidence that raises serious issues as to both whether Terri Schiavo would want to die in her current condition and whether that condition is PVS at all. Compelling Terri Schiavo to die

without first answering these questions violates her fundamental right to life under the Florida Constitution.

Michael Schiavo petitioned for and Judge Greer granted *authorization* to remove Terri's feeding tube. In Judge Greer's subsequent orders of 2003 and 2005, he not only *mandated* that the feeding tube be removed, he also prohibited anyone to attempt to feed Terri by mouth. (App. 1). Thus, more than just permitting unconstitutional actions to occur (removal of her food and water without determining her current condition and wishes), Judge Greer has *mandated* that the actions occur and has added his own new constitutional violation, which was never requested by Michael Schiavo, i.e., that Terri not be fed or hydrated by natural means either.

According to Judge Greer's February 25, March 8, and March 26, 2005, orders, if Terri suddenly awoke and wanted to feed herself, she would be prohibited from doing so by order of the court. Therefore, in the case at bar, Judge Greer's orders authorize what would, in ordinary circumstances, be mercy killing. His orders presuppose that Terri's life does not rise to a sufficient level of quality, and that, as a result, she *herself* would not want to continue in her present condition. Nor do the orders explain at just what level Mrs. Schiavo would want to live.

[T]hey must establish that new treatment offers sufficient promise of increased cognitive function in Mrs. Schiavo's

cerebral cortex—significantly improving the quality of Ms. Schiavo’s life—so that she herself would elect to undergo this treatment and would reverse the prior decision to withdraw life-prolonging procedures.

(App. App. 3, 6, and 9), quoting *In re Guardianship of Schiavo*, 800 So.2d 640, 645 (Fla. 2d DCA 2001). It is not his decision to make. It is Terri’s wishes that must be complied with. The courts below have consistently ignored them. Terri should be able to decide for herself whether her quality of life is such that she would reverse a prior decision to withdraw life-prolong procedures.

While *Browning* recognizes Terri’s right to make that determination, there is no evidence in the record concerning her *present* condition, or the quality of life she could have if she received (or had received) adequate therapy and rehabilitation over the last 15 years. Judge Greer, acting as Terri’s proxy, has effectively substituted his judgment for hers *without the required factual findings* required under *Browning* and Judge Greer has both prevented and approved her lack of rehabilitation and therapy.

In the best way she is able, Terri has communicated her wish to live. (Affidavits of Weller and Vitadamo). To continue to withhold her nutrition and hydration contrary to those wishes is beyond the court’s jurisdiction and an unconstitutional invasion of her right privacy.

III. This court has jurisdiction to immediately issue a writ to the trial court mandating the resumption of Theresa Schiavo's nutrition and hydration.

This Court has the authority under Article V, Section 3(b)(7) of the Florida Constitution "to issue writs of prohibition to courts and all writs necessary to the complete exercise of its jurisdiction." This section of the Constitution gives broad power to this Court. The section empowers the Court to:

issue injunctive or any other writs essential to the complete exercise of its jurisdiction, but that it will not invoke the power to granted except in cases carefully investigated and a showing made that the writ sought is indispensable to protect the rights of the party seeking it, or that the law affords no other remedy, or that some constitutional or statutory provision is about to be violated, or that the rights in litigation are of such peculiar or intrinsic value or nature that the facts of the case make it imperative that they be held in status quo pending the adjudication of the cause on appeal.

Paramount Enterprises v. Mitchell, 140 So. 2d 328, 330 (1932). The imminent death of Terri Schiavo pursuant to an unconstitutional court order make the writ indispensable in this case. Despite almost seven years of litigation and numerous efforts at legislative answers, the law has offered no other remedy to Terri.

Wherefore, petitioners prays the Court to:

- a. Enter an order granting the Schindlers' Emergency All Writs Petition directed to Michael Schiavo and the Honorable Judge George W.

Greer directing them to immediately, and under the direction of a physician, resume Ms. Schiavo's nutrition and hydration and all medical treatment necessary to sustain her life;

c. Order that Terri be immediately transported by ambulance to a hospital for all medical treatment necessary to sustain her life and to reestablish her nutrition and hydration.

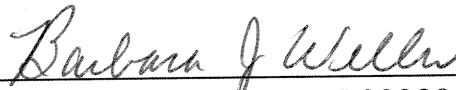
e. Order the trial court to permit Terri's evaluation by doctors and therapists to determine her current condition;

d. Order any other and further relief as the Court may deem proper.

Dated: March 26, 2005

Respectfully submitted,

GIBBS LAW FIRM, P.A.



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CERTIFICATE OF SERVICE

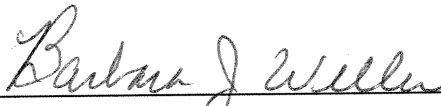
I HEREBY CERTIFY that a true copy hereof has been mailed on this
twenty-sixth day of March 2005 to the following addressees:

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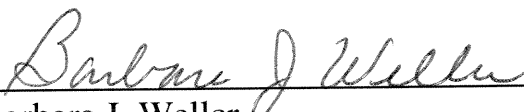
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Barbara J. Weller

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing has been prepared and is submitted
in Times New Roman 14-point font.



Barbara J. Weller

IN THE FLORIDA SUPREME COURT

CASE NO. _____

**IN RE GUARDIANSHIP OF
THERESA MARIE SCHINDLER-SCHIAVO,**

Incapacitated.

ROBERT and MARY SCHINDLER,

Appellants/Respondents,

v.

**MICHAEL SCHIAVO, Guardian of the person of
THERESA MARIE SCHINDLER-SCHIAVO,**

Appellee/Petitioner.

APPENDIX TO ALL WRITS PETITION

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- No. 3 Order, *In re Guardianship of Schiavo* (March 8, 2005)
- No. 4 Order, *In re Guardianship of Schiavo* (March 23 2005)
- No. 5 March 23, 2005, Affidavit of Dr. William Polk Cheshire
- No. 6 Order, *In re Guardianship of Schiavo* (March 23, 2005)
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APP. 1

Order, *In re Guardianship of Schiavo* (February 25, 2005)

The Court notes that it received on the day of the hearing courtesy copies of the Respondents' new Fla. R. Civ. P. 1.540(b)(5) motion based on new medical procedures and petition for the ward to undergo experimental treatment. Also, minutes before the hearing, the Court was presented with a motion to intervene filed by the Florida Department of Children and Families. Respondents had previously filed a Motion for Clarification and Emergency Temporary Stay, which is now moot.

The Court after hearing excellent argument of counsel, reviewing the pleadings and being otherwise advised in the premises, finds as follows:

Five years have passed since the issuance of the February 2000 Order authorizing the removal of Theresa Schiavo's nutrition and hydration and there appears to be no finality in sight to this process. The Court, therefore, is no longer comfortable in continuing to grant stays pending appeal of Orders denying Respondents' various motions and petitions. The process does not work when the trial court finds a motion to be without merit but then stays the effect of such denial for months pending appellate review. Also, the Court is no longer comfortable granting stays simply upon the filing of new motions and petitions since there will always be "new" issues that can be pled. The Respondents will need to demonstrate before the appellate courts that their requests have merit and accordingly are worthy of a stay.

The parties through counsel have requested this Court to rule on the issue of whether or not the Petitioner needs court permission to act upon the February 11, 2000 Order once the stay expires. Counsel agree that the Court is not required to have another hearing to set such time and date should the Court wish to do so. The Court is persuaded that no further hearing need be required but that a date and time certain should be established so that last rites and other similar matters can be addressed in an orderly manner. Even though the Court will not issue another stay, the scheduling of a date certain for implementation of the

App. 2

Order, *In re Guardianship of Schiavo* (March 7, 2005)

**IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA
PROBATE DIVISION
File No. 90-2908-GD-003**

**IN RE: THE GUARDIANSHIP OF
THERESA MARIE SCHIAVO,
Incapacitated.**

MICHAEL SCHIAVO,
Petitioner,

vs.

**ROBERT SCHINDLER and MARY
SCHINDLER,**
Respondents.

ORDER


THIS CAUSE came before the Court for hearing on March 7, 2005 on Respondents' Emergency Expedited Motion for Permission to Provide Theresa Schiavo with Food and Water by Natural Means after the assisted nutrition and hydration are discontinued. The Court heard the argument of Daniel C. Gibbs, III, Esq., for the Respondents, and of George J. Felos, Esq., for the Petitioner.

Having also reviewed portions of declarations or affidavits of several doctors, which were submitted to the Court by Respondents, it has become clear that the motion is part and parcel of Respondents' Fla. R. Civ. P Rule 1.540(b)(5) motion on medical evaluations. The same declarations are being used for both motions and the motion appears to be an alternative pleading

to the 1.540(b)(5) motion. Both are asking for an experimental procedure. The Court reasons that if the 1.540(b)(5) motion is granted, there is no need for this motion. If the 1.540(b)(5) motion is denied, the Court should not do indirectly what it has not done directly. It is therefore

ORDERED AND ADJUDGED that Respondents' Emergency Expedited Motion for Permission to Provide Theresa Schiavo with Food and Water by Natural Means is DENIED.

DONE AND ORDERED in Clearwater, Pinellas County, Florida, this 8 day of March, 2005.


GEORGE W. GREER
CIRCUIT JUDGE

TRUE COPY

Copies furnished to:
David C. Gibbs, III, Esq.
George J. Felos, Esq.
Deborah A. Bushnell, Esq.
Gyneth S. Stanley, Esq.
Hamden H. Baskin, III, Esq.
Joseph D. Magri, Esq.

App. 3

Order, *In re Guardianship of Schiavo* (March 8, 2005)

**IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA
PROBATE DIVISION
File No. 90-2908-GD-003**

**IN RE: THE GUARDIANSHIP OF
THERESA MARIE SCHIAVO,
Incapacitated.**

MICHAEL SCHIAVO,
Petitioner,

vs.

**ROBERT SCHINDLER and MARY
SCHINDLER,**
Respondents.

ORDER

THIS CAUSE came before the Court for hearing on March 8, 2005, for determination of the facial sufficiency of Respondents' Fla. R. Civ. P. 1.540(b)(5) Motion for Relief from Judgment Pending Contemporary Medical-Psychiatric-Rehabilitative Evaluation of Theresa Marie Schiavo. The Respondents move the Court for relief from its final Order rendered February 11, 2000, based on several contentions: (1) that her prior evaluations are out-dated and that she is entitled to be reevaluated using 2005 medical procedures and technology; (2) that there is a high rate of misdiagnosis of persistent vegetative state and that some severely brain-injured patients do improve; (3) that she is no longer in a persistent vegetative state but that she has moved into a "minimally conscious state" since her 2002 evaluations; (4) that a new neurological test can determine

whether she is in a minimally conscious state (MCS); (5) that therapeutic methods developed since 2000 may help her learn to swallow; and (6) that her guardian testified that he would want her to receive any treatment that would help her. The Respondents further request that if further testing and evaluation indicates that her condition has changed since 2002, that an evidentiary hearing should be permitted to determine if she would still wish to refuse her assisted feeding.

Attached to Respondents' motion are this Court's February 11, 2000 Order; the guardian ad litem Jay Wolfson's report; pages of prior applicable testimony; reports in the media about brain-injured patients; and reports in medical journals of applicable studies and new diagnostic tools. Respondents' motion is also accompanied by thirty-three affidavits from doctors in several specialties, speech pathologists and therapists, and a few neuro-psychologists, all urging that new tests be undertaken.

The Court heard argument from David C. Gibbs, III, Esq., for the Respondents, and from George J. Felos, Esq., for the Petitioner.

In *In re Guardianship of Schiavo*, 800 So.2d 640 (Fla. 2d DCA 2001) (*Schiavo III*), the Respondents argued that Terri Schiavo's medical condition in February 2000 was misrepresented to the trial court and that she was not in a persistent vegetative state, among other things, and attached several affidavits from doctors, which varied in their bases and suggestions. Dr. Webber's affidavit, which was closely examined by the appellate court, claimed that she was not in a persistent vegetative state and that she exhibited purposeful reaction to her environment and that he might be able to restore her ability to speak and otherwise restore her cognitive function. The Second District Court of Appeal stated, "when numerous doctors dispute the diagnosis of persistent vegetative state based on the records

available to them, it is difficult for judges untrained in any medical specialty to summarily reject their opinions without additional evidence.” The appellate court then discussed the burden the Respondents faced to show that the initial judgment is no longer equitable.

“To meet this burden, they must establish that new treatment offers sufficient promise of increased cognitive function in Mrs. Schiavo’s cerebral cortex—significantly improving the quality of Mrs. Schiavo’s life—so that she herself would elect to undergo this treatment and would reverse the prior decision to withdraw life-prolonging procedures.” *Schiavo III* at p. 645.

As a result of this opinion, a new evidentiary hearing on Terri Schiavo’s condition was conducted in October 2002 and current diagnostic testing procedures and high quality brain scans were undertaken, the results of which were presented to this Court along with evidence of any new medical procedures that would significantly improve the quality of her life. The Order from the 2002 trial reflects the Court’s Order that Terri Schiavo remained in a permanent or persistent vegetative state and that no treatment existed that would significantly improve the quality of her life so that she would reverse the prior decision to withdraw life-prolonging procedures. This Order was affirmed by the Second District Court of Appeal after they closely examined all the evidence in the record and concluded that if they were called upon to review the decision de novo, they would still affirm it. *In re Guardianship of Schiavo (Schindler v Schiavo)*, 851 So.2d 182 (Fla. 2d DCA 2003) (*Schiavo IV*).

Respondents are now again asking the Court to once again determine whether Terri Schiavo remains in a permanent or persistent vegetative state since 2002. Significantly, they are not alleging that any new treatment exists that would significantly improve the quality of her life so that she would

reverse the prior decision to withdraw life-prolonging procedures. They are arguing that a new diagnostic tool, the fMRI, has been developed that is useful in recording brain activity in patients who are in a minimally conscious state. They also allege that the VitalStim swallowing therapy would benefit Terri and they cite patient Sara Scantlin who regained partial ability to speak after being in a coma for many years as a case study showing the improvement possible for severely brain-injured patients.

The Court cannot see how the Respondents have met the burden established by *Schiavo III*. Most of the doctor affidavits submitted are based on their understanding of Terri's condition from news reports or video clips they have seen. Many are obviously not aware of the medical exams undertaken for the 2002 trial since they suggest the very tests that were given at that time or appear to be unaware that batteries of tests have been given at all. Others recommend that the new fMRI test be given since they believe that Terri is not in a permanent or persistent vegetative state based on the available video footage but that she must be in a minimally conscious state or even better. The video footage referred to is either, a portion of, or all of the 4½-hour videotape that was examined at the 2002 trial and was part of the basis of the Court's decision that she remained in PVS, which was affirmed by the Second District Court of Appeal. The minimally conscious state was discussed at some length with witnesses at the 2002 trial so it is certainly not new. According to the article in *Neurology*, the fMRI was employed in a study that showed that some MCS patients may retain widely distributed cortical systems with potential for cognitive and sensory function despite their inability to follow simple instructions or communicate reliably. One of the Respondents' affiants cautions that fMRI testing is an experimental procedure that has shown promise but is not yet routinely used

for clinical purposes and that any fMRI testing should be conducted in an academic setting with ongoing research protocols investigating coma/VS/MCS. Petitioner contends that no MRI can be conducted on Terri Schiavo without brain surgery to remove a device that was previously inserted in her brain and that such an invasive procedure has not been previously favored. A few of the other affiant doctors have appeared in this case before and their diagnoses and recommended courses of treatment have been previously considered. Although all of the affiants urge that new tests be given, most are vague as to the course of treatment that should be given, while other suggest treatment that has already been considered (e.g., hyperbaric oxygenation). Both sides have cited guardian ad litem Wolfson's report in which he found the evidence of PVS to be compelling.


In regard to swallowing tests, she has previously undergone them. The issue of swallowing saliva has also been previously heard by the Court. The Respondents and some of the affiants, notably speech pathologists or therapists, have recommended the swallowing therapy called VitalStim, but notably there has been no allegation that VitalStim can be performed on patients who are in PVS. Dr. Wolfson also recommended such swallowing tests, but only if the parties agreed. Without an agreement to be bound by the results, he suggested that those tests had no feasibility. It is conceded that this was his attempt to broker an agreement between the parties to resolve this matter.

In regard to patient Scantlin, news reports state that she was able to blink on command, and therefore, was apparently not in PVS, so the issue of her improvement has limited, if any, applicability to this case.

Based on the Respondents' request for relief as submitted, this Court does not believe that a colorable entitlement to relief has been established. It is therefore

ORDERED AND ADJUDGED that Respondents' Fla. R. Civ. P. 1.540(b)(5) Motion for Relief from Judgment Pending Contemporary Medical/Psychiatric/Rehabilitative Evaluation of Theresa Marie Schiavo is **DENIED** because the movants have not shown that their motion is legally sufficient to go forward.

DONE AND ORDERED in Chambers, at Clearwater, Pinellas County, Florida this 9 day of March, 2005.


GEORGE W. GREER
CIRCUIT JUDGE

90-2908-GD-003

Copies furnished to:

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TRUE COPY

App. 4

Order, *In re Guardianship of Schiavo* (23, 2005)

**IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA
PROBATE DIVISION**

**IN RE: THE GUARDIANSHIP OF
THERESA MARIE SCHIAVO,
Incapacitated.**

**MICHAEL SCHIAVO, as Guardian of
the person of THERESA MARIE SCHIAVO,
Petitioner,**

vs.

**UCN:521990GA002908XXGDXX
File No. 90-2908-GD-003**

**ROBERT SCHINDLER and MARY
SCHINDLER,
Respondents.**

ORDER

THIS CAUSE came on to be heard on March 23, 2005 upon the Florida Department of Children and Families (DCF)'s second Petition for Intervention. The request for leave to intervene in the guardianship proceeding is for the limited purpose of obtaining standing to object to the entry of the final order allowing termination of life support during the pendency of DCF's investigation, which has a statutory 60-day deadline. Before the Court were Jennifer Lima-Smith, Esq, and Keith J. Ganobsik, Esq, representing DCF; and George J. Felos, and Hamden H. Baskin, III,


judgment and order setting the removal date in violation of the separation of powers doctrine. As was stated in *Bush v Schiavo*, 885 So.2d 321,330-331 (Fla. 2004):

The power of the judiciary is "not merely to rule on cases, but to *decide* them, subject to review only by superior courts" and "[h]aving achieved finality ... a judicial decision becomes the last word of the judicial department with regard to a particular case or controversy." *Plaut*, 514 U.S. at 218-19, 227, 115 S.Ct. 1447. Moreover, "purely judicial acts ... are not subject to review as to their accuracy by the Governor." *In re Advisory Opinion to the Governor*, 213 So.2d 716, 720 (Fla.1968); see also *Children A, B, C, D, E, & F*, 589 So.2d at 269 ("The judicial branch cannot be subject in any manner to oversight by the executive branch.").

It is therefore

ORDERED AND ADJUDGED that the petition/motion to intervene filed by DCF is hereby **DENIED**.

DONE AND ORDERED this 24 day of March, 2005 at 1:00 p.m.


GEORGE W. GREER
CIRCUIT JUDGE

Copies furnished to:
Jennifer Lima-Smith, Esq.
Keith J. Ganobsik, Esq.
David C. Gibbs, III, Esq.
George J. Felos, Esq.
Deborah A. Bushnell, Esq.
Gyneth S. Stanley, Esq.
Hamden H. Baskin, III, Esq.
Joseph D. Magri, Esq.

TRUE COPY

App. 5

March 23, 2005, Affidavit of Dr. William Polk Cheshire

AFFIDAVIT

**STATE OF FLORIDA
COUNTY OF DUVAL**

Before me this day personally appeared William Polk Cheshire, Jr., M.D. who, being duly sworn, deposes and says:

I, William Polk Cheshire, Jr., M.D., have personal knowledge of the facts stated in this declaration and, if called as a witness, I could and would testify competently thereto under oath. I declare as follows:

I am a neurologist practicing in the State of Florida and am certified by the American Board of Psychiatry and Neurology. In regard to my educational background, I received an A.B. in biochemical sciences from Princeton University, an M.A. in bioethics from Trinity International University, and an M.D. from West Virginia University. I completed an internship in internal medicine at West Virginia University, a residency in neurology and a pain fellowship at the University of North Carolina.

I am also an appointed volunteer with the Florida statewide Adult Protective Services team, in which capacity I was called on March 1, 2005, to provide an independent and objective medical review of allegations of possible abuse, neglect, or exploitation of Ms. Theresa Marie Schiavo.

Although no one from the Department of Children and Families has inquired about my personal views about treatment decisions in cases of persistent vegetative state (PVS), I would like to disclose that I came into this case with the belief that it can be ethically permissible to discontinue artificially provided nutrition and hydration for persons in a permanent vegetative state. Having now reviewed the relevant facts, having met and observed Ms. Schiavo in person, and having reflected deeply on the moral and ethical issues, I would like to explain why I have changed my mind in regard to this particular case.

In my daily conversations with colleagues, I have been interested to hear what others have thought about the issues surrounding this case. I have heard from neurologists, other physicians, nurses, other paramedical professionals, attorneys, ethicists, clergy, geriatricians, teachers, the elderly and the young. I have heard from people of many faiths, Roman Catholic, Protestant, Jewish, and people without a particular faith commitment. Generally, I have found that many people who have thought seriously about this case say that they have been unable to reach a judgment. They acknowledge valid principles on both sides of the arguments, and they recognize the difficulty of ascertaining from the media accurate and complete facts needed to reach a trustworthy conclusion. All agree that this is an extraordinarily difficult case and that the family members on both sides must be suffering greatly.

There is, at the heart of this case, uncertainty regarding the neurologic diagnosis on which treatment decisions have rested. The courts have ruled, on the basis of credible expert testimony, that Terri is permanently in a persistent vegetative state (PVS), which is a

specific neurologic diagnosis meaning wakefulness without awareness. Patients in a persistent vegetative state lack integrated function of the cerebral cortex while retaining involuntary brain stem reflexes that regulate heart rate, digestive, circulatory, sleep and other involuntary bodily functions. Their behaviors are automatic, nonpurposeful, uninhibited reflexes no longer under voluntary control by higher brain centers.

On the other hand, there have been repeated claims that Terri at times seems more responsive, even intentional and interactive. Such observations, if true, would be inconsistent with a diagnosis of PVS, the diagnosis upon which medical and legal decisions have been based. The question thus arises, whether Terri might be in what neurologist call a "minimally conscious state." This question is important, for in making decisions that affect the life and welfare of Terri, one would like to know whether she is aware of her environment, aware of others, aware of her own bodily discomfort, or has thoughts that we would regard as human even if she cannot communicate them to us. As my charge is to investigate the possibility of abuse or neglect, it matters whether Terri would be able to recognize and feel the consequences of abuse or neglect. Some actions might even be unintentionally neglectful if performed by persons unaware of Terri's level of awareness.

There are many behaviors typical for patients in PVS that someone without neurological training could easily mistake as voluntary. The non-neurologist seldom has experience in observing how the brainstem and basal ganglia behave when deprived of input from the cerebral cortex where consciousness is believed to reside. It is quite common for dedicated and caring family members, hoping desperately for a sign from their loved one, to misinterpret these reflexes as evidence of communication. Such behaviors can include involuntary arousal, eye opening, random eye movements (nystagmus and horizontal scanning), brief eye contact, reflexive withdrawal from a noxious stimulus, movement of the lips or mouth or turning of the head in response to oral stimulation (suck and rooting reflexes which also occur in newborn infants), spontaneous grimacing or smiling or displays of emotion (affective release, usually a momentary gesture), and certain other nonsustained behaviors usually not seen in healthy adults. Some of the video clips of Terri Schiavo that have been presented in the media display such involuntary behaviors. It is the responsibility of neurologists in cases like this to educate family members so that they will not develop a false hope of recovery.

Where is the neurologist in this case at this time? It is my understanding that nearly three years have passed since Terri has had the benefit of neurologic consultation. How, then, are we to be certain about her current neurologic status? There remain, in fact, huge uncertainties in regard to Terri's true neurologic status. Although exploring such questions may be uncomfortable, I believe that medicine has an obligation to ascertain the neurological facts to the highest possible degree of certainty.

Some studies have indicated, upon follow-up over time, a high rate of false initial diagnosis of PVS.^{1,2} Furthermore, the diagnosis of minimally conscious state had not yet

¹ Andrews K, Murphy L, Munday R, et al. Misdiagnosis of the vegetative state: retrospective study in a rehabilitation unit. *British Medical Journal* 1996; 313: 13-16.

become standard parlance in the field of neurology at the time of Terri's initial diagnosis. The minimally conscious state has emerged as a distinct diagnostic entity only within the last few years.^{3,4}

Although Terri has undergone structural imaging studies of her brain (such as the CT scan which I have reviewed), she has not, to my knowledge, undergone functional imaging studies, such as positron emission tomography (PET) or functional magnetic resonance imaging (fMRI). The structural studies have shown substantial loss of cerebral cortex which was deprived of blood supply for more than 40 minutes in 1990, but there does remain some cerebral cortex.

New facts have come to light in the last few years that should be weighed in the neurologic assessment of Terri Schiavo. Significant strides have been made in the scientific understanding of PVS and minimally conscious states since Terri last underwent neurologic evaluation. As usually happens in science, the newest evidence is prompting the medical community to think about this field in new ways. With new evidence comes fresh appreciation for what is actually happening in the brains of persons with profound cognitive impairment. And there is a great deal more to be learned.

Of particular interest was the fMRI study published just this year by Schiff and colleagues of two patients at Cornell University. When these patients, who had been diagnosed as being in a minimally conscious state, listened to narratives read by a familiar person, large areas of the cerebral cortex normally involved in language recognition and processing lit up. The presence of metabolic activity in those brain cells was far more than expected given their inability to follow simple instructions reliably or otherwise demonstrate at the bedside evidence of comprehension or communication.⁵ From this study one may conclude that there is still a great deal we do not know about what previously unsuspected cerebral cortex functions may yet be occurring in the minds of persons who have sustained profound brain damage and are no longer able to communicate outwardly what their thoughts may be.

Based on my review of extensive medical records documenting Terri's care over the years, on my personal observations of Terri, and on my observations of Terri's responses in the many hours of videotapes taken in 2002, she demonstrates a number of behaviors that I believe cast a reasonable doubt on the prior diagnosis of PVS. These include:

1. Her behavior is frequently context-specific. For example, her facial expression brightens and she smiles in response to the voice of familiar persons such as her parents or

² Childs NL, Mercer WN, Childs HW. Accuracy of diagnosis of persistent vegetative state. *Neurology* 1993; 43: 1465-1467.

³ Giacino JT, Ashwal S, Childs N, Cranford R, Jennett B, Katz DI, Kelly JP, Rosenbtrg JH, Whyte J, Zafonte RD, Zasler ND. The minimally conscious state: definition and diagnostic criteria. *Neurology* 2002; 58: 349-353.

⁴ Laureys S, Owen AM, Schiff ND. Brain function in coma, vegetative state, and related disorders. *Lancet Neurology* 2004; 3: 537-546.

⁵ Schiff ND, Rodriguez-Morano D, Kamal A, Kim KHS, Giacino JT, Plum F, Hirsch J. fMRI reveals large-scale network activation in minimally conscious patients. *Neurology* 2004; 64: 514-523.

her nurse. Her agitation subsides and her facial demeanor softens when quiet music is played. When jubilant piano music is played, her face brightens, she lifts her eyebrows, smiles, and even laughs. Her lateral gaze toward the tape player is sustained for many minutes. Several times I witnessed Terri briefly, albeit inconsistently, laugh in response to a humorous comment someone in the room had made. I did not see her laugh in the absence of someone else's laughter.

2. Although she does not seem to track or follow visual objects consistently or for long periods of time, she does fixate her gaze on colorful objects or human faces for some 15 seconds at a time and occasionally follows with her eyes at least briefly as these objects move from side to side. When I first walked into her room, she immediately turned her head toward me and looked directly at my face. There was a look of curiosity or expectation in her expression, and she maintained eye contact for about half a minute. Later, when she again looked at me, she brought her lips together as if to pronounce the letter "O," and although for a moment it appeared that she might be making an intentional effort to speak, her face then fell blank, and no words came out.

3. Although I did not hear Terri utter distinct words, she demonstrates emotional expressivity by her use of single syllable vocalizations such as "ah," making cooing sounds, or by expressing guttural sounds of annoyance or moaning appropriate to the context of the situation. The context-specific range and variability of her vocalizations suggests at least a reasonable probability of the processing of emotional thought within her brain. There have been reports of Terri rarely using actual words specific to her situational context. The July 25, 2003 affidavit of speech pathologist Sara Green Melt, MS, on page 6, reads, "The records of Mediplex reflect the fact that she has said 'stop' in apparent response to a medical procedure being done to her." The Adult Protective Services team has been unable to retrieve those original medical records in this instance,

4. Although Terri has not consistently followed commands, there appear to be some notable exceptions. In the taped examination by Dr. Hammesfahr from 2002, when asked to close her eyes she began to blink repeatedly. Although it was unclear whether she squeezed her grip when asked, she did appear to raise her right leg four times in succession each time she was asked to do so. Rehabilitation notes from 1991 indicated that she tracked inconsistently, and although did not develop a yes/no communication system, did follow some commands inconsistently and demonstrated good eye contact to family members.

5. There is a remarkable moment in the videotape of the September 3, 2002 examination by Dr. Hammesfahr that seemed to go unnoticed at the time. At 2:44 p.m., Dr. Hammesfahr had just turned Terri onto her right side to examine her back with a painful sharp stimulus (a sharp piece of wood), to which Terri had responded with signs of discomfort. Well after he ceased applying the stimulus and had returned Terri to a comfortable position, he says to her parents, "So, we're going to have to roll her over...." Immediately Terri cries. She vocalizes a crying sound, "Ugh, ha, ha, ha," presses her eyebrows together, and sadly grimaces. It is important to note that, at that moment, no one is touching Terri or causing actual pain. Rather, she appears to comprehend the

meaning of Dr. Hammesfahr's comment and signals her *anticipation* of pain. This response suggests some degree of language processing and interpretation at the level of the cerebral cortex. It also suggests that she may be aware of pain beyond what could be explained by simple reflex withdrawal.

6. According to the definition of PVS published by the American Academy of Neurology, "persistent vegetative state patients do not have the capacity to experience pain or suffering. Pain and suffering are attributes of consciousness requiring cerebral cortical functioning, and patients who are permanently and completely unconscious cannot experience these symptoms."⁶ And yet, in my review of Terri's medical records, pain issues keep surfacing. The nurses at Woodside Hospice told us that she often has pain with menstrual cramps. Menstrual flow is associated with agitation, repeated or sustained moaning, facial grimacing, limb posturing, and facial flushing, all of which subside once she is given ibuprofen. Some of the records document moaning, crying, and other painful behavior in the setting of urinary tract infections.

The neurologic literature has traditionally distinguished between, on one hand, the patterned reflex responses resulting from mere activation of spinal and brain stem pain circuits in PVS and, on the other hand, conscious awareness of pain which requires participation by the cerebral cortex, including interpretation, felt emotional awareness, and volitional avoidance behavior that would not be expected to occur in PVS. Recent studies suggest, however, that such a distinction may not be the clear bright line previously imagined. Laureys and colleagues demonstrated, for example, neuronal processing activity in the primary somatosensory area of the cerebral cortex in response to noxious stimuli in patients with PVS.⁷

Regardless of what objective measures may be available, the conscious experience of pain remains a phenomenon directly discernable only through introspective awareness, which means that one cannot directly know with certainty the pain another person experiences. If, as the authors of a consensus statement on PVS wrote in 1994, there are some cases in which "the absence of a response cannot be taken as proof of the absence of consciousness,"⁸ then should not the clear presence of pain be given serious consideration as possibly indicating conscious awareness in Terri Schiavo? The fact that Terri's responses to pain have been context-specific, sustained, and, in the taped example I cited, in response to a spoken sentence, all suggest the possibility that she may be at some level consciously aware of pain.

Terri has received analgesic medication as treatment for her pain behavior. This seems to be appropriate medical treatment if one cannot know with certainty whether her behavior indicates conscious awareness of pain. If a patient behaves as if in pain, then the

⁶ <http://www.aan.com/about/ethics/109556.pdf>

⁷ Laureys S, Faymonville ME, Peigneux P, Damas P, Lambertont B, Del Fiore G, Degueldre C, Aerts J, Luxen A, Franck G, Latry M, Moonen G, Maquet P. Cortical processing of noxious somatosensory stimuli in the persistent vegetative state. *Neuroimage* 2002; 17: 732-741.

⁸ Multi-Society Task Force on PVS. Medical aspects of the persistent vegetative state – second of two parts. *New England Journal of Medicine* 1994; 330: 1572-1579.

clinically prudent and compassionate response, when in doubt, is to treat the pain. If a patient behaves at times as though there may be some remnant of conscious awareness, then the clinically prudent and compassionate response, when in doubt, is to treat that patient with respect and care. If Terri is consciously aware of pain, and therefore is capable of suffering, then her diagnosis of PVS may be tragically mistaken.

7. To enter the room of Terri Schiavo is nothing like entering the room of a patient who is comatose or brain-dead or in some neurological sense no longer there. Although Terri did not demonstrate during our 90 minute visit compelling evidence of verbalization, conscious awareness, or volitional behavior, yet the visitor has the distinct sense of the presence of a living human being who seems at some level to be aware of some things around her.

As I looked at Terri, and she gazed directly back at me, I asked myself whether, if I were her attending physician, I could in good conscience withdraw her feeding and hydration. No, I could not. I could not withdraw life support if I were asked. I could not withhold life-sustaining nutrition and hydration from this beautiful lady whose face brightens in the presence of others.

The neurologic signs are in many ways ambiguous. There is no guarantee that more sophisticated testing would definitively resolve that ambiguity to everyone's satisfaction. There would be value, I think, in obtaining a functional MRI scan if that is possible.

This situation differs fundamentally from end-of-life scenarios where it is appropriate to withdraw life-sustaining medical interventions that no longer benefit or are burdensome to patients in the terminal stages of illness. Terri's feeding tube is not a burden to her. It is not painful, is not infected, is not eroding her stomach lining or causing any medical complications. But for the decision to withdraw her feeding tube, Terri cannot be considered medically terminal. But for the withdrawal of food and water, she would not die.

In summary, Terri Schiavo demonstrates behaviors in a variety of cognitive domains that call into question the previous neurologic diagnosis of persistent vegetative state. Specifically, she has demonstrated behaviors that are context-specific, sustained, and indicative of cerebral cortical processing that, upon careful neurologic consideration, would not be expected in a persistent vegetative state.

Based on this evidence, I believe that, within a reasonable degree of medical certainty, there is a greater likelihood that Terri is in a minimally conscious state than a persistent vegetative state. This distinction makes an enormous difference in making ethical decisions on Terri's behalf. If Terri is sufficiently aware of her surroundings that she can feel pleasure and suffer, if she is capable of understanding to some degree how she is being treated, then in my judgment it would be wrong to bring about her death by withdrawing food and water.

At the time of this writing, Terri Schiavo, as the result of decisions based on what I have argued to be a faulty diagnosis of persistent vegetative state, has been without food or water for 5 days. She is thus at risk of death or serious injury unless the provision of food and water can be restored. Terri Schiavo lacks the capacity to consent to emergency protective services and must trust others to act on her behalf. If she were to be transferred to another facility, it would be medically necessary first to initiate hydration and ensure that her serum electrolytes are within normal values.

How medicine and society choose to think about Terri Schiavo will influence what kind of people we will be as we evaluate and respond to the needs of the most vulnerable people among us. When serious doubts exist as to whether a cognitively impaired person is or is not consciously aware, even if these doubts cannot be conclusively resolved, it is better to err on the side of protecting vulnerable life.

Respectfully submitted,

William Polk Cheshire, Jr., M.D., M.A., F.A.A.N.

William P. Cheshire, Jr.

Sworn to (or affirmed) and subscribed before me this 23 day of March, 2005, by William Polk Cheshire, Jr., M.D.

Personally known OR
Produced Identification _____
Type of Identification Produced _____

Christine A. Lent



CHRISTINE A. LENT
MY COMMISSION # 00 825759
EXPIRES: September 22, 2007
Became Thru Judicial Notary Services

App. 6

Order, *In re Guardianship of Schiavo* (March 23, 2005)

**IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA
PROBATE DIVISION
File No. 90-2908-GD-003**

**IN RE: THE GUARDIANSHIP OF
THERESA MARIE SCHIAVO,
Incapacitated.**

MICHAEL SCHIAVO,
Petitioner,

vs.

**ROBERT SCHINDLER and MARY
SCHINDLER,**
Respondents.

ORDER

THIS CAUSE came before the Court for hearing on March 23, 2005, for determination of the facial sufficiency of Respondents' Fla. R. Civ. P. 1.540(b)(5) Motion for Relief from Judgment. The Court heard legal argument from David C. Gibbs, III, Esq, for Mr. and Mrs. Schindler and from George J. Felos, Esq, for the Petitioner.

The Respondents move the Court for relief from its final Order rendered February 11, 2000, based on (1) the fact that an Act of Congress was passed granting de novo jurisdiction to the federal court and that this Court's Order is in opposition to Congress's intent; (2) that Theresa Marie Schiavo has been neglected or abused, as approved by this Court, and that she is in need of further medical evaluation and rehabilitation to assess her current condition based on Florida Department of Children and Families (DCF)'s determination that she is not in a persistent vegetative state; and (3)

Terri Schiavo's improvement or misdiagnosis of PVS, as stated in Dr. Cheshire's affidavit.

Although the Motion as filed is legally insufficient in form, the Court permitted Respondent's legal argument based on the affidavit of Dr. William Polk Cheshire, Jr., which was an exhibit attached to the petition/motion for intervention submitted by DCF. Dr. Cheshire, described as a board-certified neurologist, observed Theresa Marie Schiavo as part of his volunteer work with DCF Adult Protective Services Team's investigation of allegations that Terri Schiavo has been abused, neglected and/or exploited. DCF counsel conceded that he did not medically examine her. He also reviewed her medical records and viewed portions of videotapes that have already been considered by this Court. As a result, he believes that there is a greater likelihood that she is in a minimally conscious state rather than in a persistent vegetative state.

The Court analyzed a Rule 1.540(b)(5) motion filed by Respondents a few weeks ago that similarly alleged that Terri Schiavo should be reevaluated based on affidavits of doctors and the availability of new diagnostic testing procedures. The Court will not repeat what it said in its previous Order denying Rule 1.540(b)(5) motion for medical evaluations, other than to reconfirm that the Second District Court of Appeal set forth the burden that proponents of Rule 1.540(b)(5) motions in this case face in order to show that the initial judgment is no longer equitable.

To meet this burden, they must establish that new treatment offers sufficient promise of increased cognitive function in Mrs. Schiavo's cerebral cortex—significantly improving the quality of Mrs. Schiavo's life—so that she herself would elect to undergo this treatment and would reverse the prior decision to withdraw life-prolonging procedures.

(In re Guardianship of Schiavo (Schiavo III), 800 So.2d 640, 645 (Fla. 2d DCA 2001).

Neither the present motion nor Dr. Cheshire's affidavit alleges that there is any new treatment that would significantly improve the quality of her life so that she would reverse the prior decision to withdraw life-prolonging procedures. The fMRI testing is a diagnostic tool, not a treatment that will significantly improve her quality of life, as was previously ruled by this Court. Dr. Cheshire primarily reviewed the evidence that was received at the 2002 trial and reached a different conclusion.

Theresa Marie Schiavo cannot live without a nutrition and hydration tube and Dr. Cheshire does not suggest otherwise. By clear and convincing evidence it was determined that she did not want to live under such burdensome conditions and that she would refuse such medical treatment/assistance. This motion does not show any significant change in her circumstances or that it would no longer be equitable to enforce this Court's judgment of February 2000, the Second District Court of Appeal's mandate, or this Court's order of February 25, 2005. Based on the Respondents' request for relief, this Court does not find that a colorable entitlement to relief has been established. It is therefore

ORDERED AND ADJUDGED that Respondents' Fla. R. Civ. P. 1.540(b)(5) Motion for Relief from Judgment is **DENIED** because the movants have not shown that their motion is legally sufficient to go forward.

DONE AND ORDERED in Chambers, at Clearwater, Pinellas County, Florida this 24 day of March, 2005. *at 12:45 p.m.*


GEORGE W. GREER
CIRCUIT JUDGE

TRUE COPY

90-2908-GD-003

Copies furnished to:

David C. Gibbs, III, Esq.

George J. Felos, Esq.

Deborah A. Bushnell, Esq.

Gyneth S. Stanley, Esq.

Hamden H. Baskin, III, Esq.

Joseph D. Magri, Esq.

App. 7

Emergency Motion for Injunction and Immediate Relief

**IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA
PROBATE DIVISION
File N. 90-2908GD-003**

**In re: THE GUARDIANSHIP OF
THERESA MARIE SCHIAVO,
Incapacitated.**

**MICHAEL SCHIAVO
Petitioner,**

v.

**ROBERT SCHINDLER and
MARY SCHINDLER,
Respondents.**

//

**EMERGENCY MOTION FOR INJUNCTION AND IMMEDIATE
RELIEF**

**RESPONDENTS' FLA. R. CIV. P. 1.540(b)(5) MOTION
FOR RELIEF FROM JUDGMENT BASED UPON THE
INCAPACITATED'S ARTICULATION OF END OF LIFE WISHES**

Respondents Robert and Mary Schindler, as interested persons in the welfare of their daughter and the ward herein, Theresa Marie Schiavo, by and through undersigned counsel, pursuant to FLA. R. CIV. P. 1.540(b)(5), and hereby move the Court for relief from its final Orders rendered February 11, 2000 and February 25, 2005, in the above-entitled adversary proceeding

pending new evidence regarding the end of life wishes of Theresa Marie Schiavo. As grounds for this Motion, Respondents show the following.

I. Mrs. Schiavo has had cognitive interaction with others.

1. This Court has received a recent affidavit from Dr. William Polk Chesire Jr. of Mayo Clinic in Jacksonville, Florida, which indicates that Mrs. Schiavo is much more cognitive than was previously determined.

2. Attorney Barbara Weller from Gibbs Law Firm has been visiting with Mrs. Schiavo since December 24, 2004.

3. Mrs. Weller has seen Mrs. Schiavo interact with her family at a purposeful and cognitive level.

4. Several affidavits are attached to this Motion to demonstrate that, should this Court give Mrs. Schiavo sufficient time, it is likely that her communication skills could improve beyond those she currently has.

5. An affidavit is also attached to this motion to indicate why Mr. Schiavo might have had a reason to tell this Court that Mrs. Schiavo would want to die in contravention of her own end of life wishes.

II. Mrs. Schiavo has attempted to verbalize her end of life wishes.

6. On March 18, 2005, Mrs. Weller visited with Mrs. Schiavo and interacted directly with Mrs. Schiavo at a cognitive level.

7. At one point during her visit, Mrs. Weller attempted to elicit a direct statement from Mrs. Schiavo regarding her end of life wishes.

8. Mrs. Weller told Mrs. Schiavo that this whole matter could end if Mrs. Schiavo could articulate one sentence: "I want to live."

9. In the presence of Suzanne Vitadamo and Suzanne's aunt, Mrs. Schiavo attempted to verbalize that sentence. She managed to articulate the first two vowel sounds, first articulating "AHHHHH" and then virtually screaming, "WAAAAAAA." She became very agitated but could not complete the vocalization attempted.

10. Suzanne's husband, Michael Vitadamo, and a police officer were standing outside the door of Mrs. Schiavo's room at the time.

III. This attempted vocalization is significant with regard to the question of Mrs. Schiavo's end of life wishes.

11. The standard for end of life wishes is clear and convincing evidence.

12. New evidence that Mrs. Schiavo has attempted to verbalize her end of life wishes is highly significant new information that calls into question the findings of this Court that Mrs. Schiavo would now want to die.

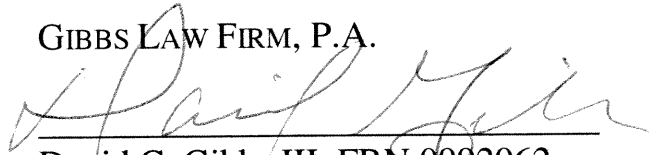
13. This motion is of the utmost urgency since Mrs. Schiavo is now in her eighth day of starvation and dehydration under order of this Court.

She will very soon expire against her will or experience further disability without immediate relief from this Court's order.

Wherefore, Respondents respectfully request this Court to relieve them and Mrs. Schiavo from the 2000 and 2005 orders of this Court that authorizes and then mandates the guardian to discontinue Mrs. Schiavo's assisted feeding and immediately issue an order to reinstate her feeding tube forthwith, based upon Mrs. Schiavo's attempt to articulate her wish to live.

Respectfully submitted,

GIBBS LAW FIRM, P.A.



David C. Gibbs III, FBN 0992062
5666 Seminole Blvd., Ste. 2
Seminole, FL 33772
Telephone: 727-399-8300
Facsimile: 727-398-3907

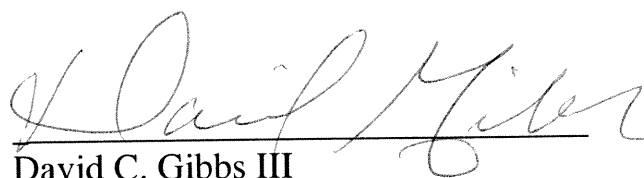
I HEREBY CERTIFY that a true copy hereof has been faxed on this 25th day of March 2005 to the following addressees:

GEORGE FELOS
Felos & Felos, P.A.
595 Main Street
Dunedin, FL 34698

DEBORAH A. BUSHNELL
204 Scotland Street
Dunedin, FL 34698

HAMDEN H. BASKIN, III
Baskin & Fleece
13577 Feather Sound Drive, Ste. 550
Clearwater, FL 33762-5527

Keith Ganobsik, Esquire
11351 Ulmerton Road
Largo, FL 33778-1630


David C. Gibbs III

DECLARATION OF BARBARA J. WELLER

STATE OF FLORIDA)

COUNTY OF PINELLAS)

I, BARBARA WELLER, Attorney for Respondents in the above-styled case, hereby declare under penalty of perjury:

1. I visited with Terri at various times during the day on March 18, 2005, the day her feeding tube was removed.

2. During the morning I was in the room with Terri and various members of her family. Terri was in good spirits that morning. The mood in her room was jovial, particularly around noontime, as we knew Congressional attorneys were on the scene and many were working hard to save Terri's life. For most of that time, I was visiting and talking with Terri along with Terri's sister Suzanne Vitadamo, Suzanne's husband, and Terri's aunt, who was visiting from New York to help provide support for the family. A female Pinellas Park police officer was stationed at the door outside Terri's room.

3. Terri was sitting up in her lounge chair, dressed and looking alert and well. Her feeding tube had been plugged in around 11 a.m. and we all felt good that she was still being fed. Suzanne and I were talking, joking, and laughing with Terri, telling her she was going to go to Washington D.C. to testify before Congress, which meant that finally Terri's husband Michael would be required to fix her wheelchair. After that Suzanne could take Terri to the mall shopping and could wheel her outdoors every day to

feel the wind and sunshine on her face, something she has not been able to do for more than five years.

4. At one point, I noticed Terri's window blinds were pulled down. I went to the window to raise them so Terri could look at the beautiful garden outside her window and see the sun after several days of rain. As sunlight came into the room, Terri's eyes widened and she was obviously very pleased.

5. Suzanne and I continued to talk and joke with Terri for probably an hour or more. At one point Suzanne called Terri the bionic woman and I heard Terri laugh out loud heartily. She laughed so hard that for the first time I noticed the dimples in her cheeks.

6. The most dramatic event of this visit happened at one point when I was sitting on Terri's bed next to Suzanne. Terri was sitting in her lounge chair and her aunt was standing at the foot of the chair. I stood up and leaned over Terri. I took her arms in both of my hands. I said to her, "Terri if you could only say 'I want to live' this whole thing could be over today." I begged her to try very hard to say, "I want to live." To my enormous shock and surprise, Terri's eyes opened wide, she looked me square in the face, and with a look of great concentration, she said, "Ahhhhhhh." Then, seeming to summon up all the strength she had, she virtually screamed, "Waaaaaaa." She yelled so loudly that Michael Vitadamo, Suzanne's husband, and the female police officer who were then standing together outside Terri's door, clearly heard her. At that point, Terri had a look of anguish on her face that I had never seen before and she seemed to be struggling hard, but was unable to complete the sentence. She became very frustrated and began to cry. I was horrified that I was obviously causing Terri so much anguish.

Suzanne and I began to stroke Terri's face and hair to comfort her. I told Terri I was very sorry. It had not been my intention to upset her so much. Suzanne and I assured Terri that her efforts were much appreciated and that she did not need to try to say anything more. I promised Terri I would tell the world that she had tried to say, "I want to live."

7. Suzanne and I continued to visit and talk with Terri, along with other family members who came and went in the room, until about 2:00 p.m. when we were all told to leave after Judge Greer denied yet another motion for stay and ordered the removal of the feeding tube to proceed. As we left the room, the female police officer outside the door was valiantly attempting to keep from crying.

8. About four in the afternoon, several hours after the feeding tube was removed, I returned to Terri's room. By that time she was alone except for a male police officer now standing inside the door. When I entered the room and began to speak to her, Terri started to cry and tried to speak to me immediately. It was one of the most helpless feelings I have ever had. Terri was looking very melancholy at that point and I had the sense she was very upset that we had told her things were going to get better, but instead, they were obviously getting worse. I had previously had the same feeling when my own daughter was a baby who was hospitalized and was crying and looking to me to rescue her from her hospital crib, something I could not do. While I was in the room with Terri for the next half hour or so, several other friends came to visit and I did a few press interviews sitting right next to Terri. I again raised her window shade, which had again been pulled down, so Terri could at least see the garden and the sunshine from her lounge chair. I also turned the radio on in her room before I left so that when she was alone, she would at least have some music for comfort.

9. Just before I left the room, I leaned over Terri and spoke right into her ear. I told her I was very sorry I had not been able to stop the feeding tube from being taken out and I was very sorry I had to leave her alone. But I reminded her that Jesus would stay right by her side even when no one else was there with her. When I mentioned Jesus' Name, Terri again laughed out loud. She became very agitated and began loudly trying to speak to me again. As Terri continued to laugh and try to speak, I quietly prayed in her ear, kissed her, placed her in Jesus' care, and left the room.

FURTHER YOUR DECLARANT SAYETH NOT.

I hereby declare, under penalty of perjury, that the foregoing is true and accurate to the best of my knowledge and belief. Executed this 22nd day of March, 2005, at Seminole, Florida.

Barbara J. Weller

BARBARA J. WELLER

Sworn to and subscribed before me this 25nd day of March, 2005.

Warren R. Bennett III

Notary Public, State of Florida



Warren R. Bennett, III
Commission #DD296556
Expires: Mar 04, 2008
Bonded Thru
Atlantic Bonding Co., Inc.

Printed Name: Warren R. Bennett III

Personally Known

Produced _____

as identification.

DECLARATION OF SUZANNE VITADAMO

STATE OF FLORIDA)

COUNTY OF PINELLAS)

I, SUZANNE VITADAMO, sister of the Petitioner in the above-styled case, hereby declare under penalty of perjury:

1. I visited with Terri at various times during the day on March 18, 2005, the day her feeding tube was removed.

2. Terri was in good spirits that morning. My husband, Michael Vitadamo and Terri's aunt, Claudia Tamarro, were in the room with myself and Attorney Barbara Weller when Terri attempted to speak to Mrs. Weller. A female Pinellas Park police office were standing at the door of Terri's room.

3. Terri was sitting up in her lounge chair and Mrs. Weller and I were sitting on her bed. My aunt was standing at the found of Terri's chair.

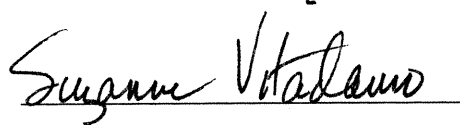
4. Mrs. Weller stood up and learned over Terri. She took her arms in her hands. Mrs. Weller begged Terri to try to say, "I want to live." Terri's eyes opened wide, she looked at Mrs. Weller with great concentration and said, "Ahhhhhhh." Then, with great effort, she screamed, "Waaaaaaa" so loudly that Michael Vitadamo and the female police officer who were then standing together outside Terri's door, clearly heard her. Terri had a look of anguish on her face and she seemed to be struggling hard, but was she

could not complete the sentence. Terri began to cry and Mrs. Weller and I began to stroke Terri's face and hair to comfort her.

5. Mrs. Weller and I continued to visit and talk with Terri, along with other family members who came and went in the room.

FURTHER YOUR DECLARANT SAYETH NOT.

I hereby declare, under penalty of perjury, that the foregoing is true and accurate to the best of my knowledge and belief. Executed this 22nd day of March, 2005, at Seminole, Florida.



SUZANNE VITADAMO

Sworn to and subscribed before me this 25nd day of March, 2005.



Notary Public, State of Florida



Warren R. Bennett, III
Commission #DD296556
Expires: Mar 04, 2008
Bonded Thru
Atlantic Bonding Co., Inc.

Printed Name: Warren R. Bennett III

Personally Known

Produced FL Drivers license

as identification.


1 **DECLARATION OF [Lawrence Jay Caldwell]**

2 I, [Lawrence J. Caldwell], have personal knowledge of the facts stated in this declaration and
3 if called as a witness, I could and would testify competently thereto under oath. I declare as
4 follows:

5 1. [I do not know and I have never personally seen Terri Schiavo, her husband Michael, or
6 her parents, the Schindlers.]

7 2. [My name is Lawrence J. Caldwell. In 1993 I conceived of a device that would allow a
8 person such as Terri, or others in a condition like hers (those who have the inability to speak
9 vocally), to communicate using the modulated equivalent of prevocalized thoughts. Up to the
10 present date, I have continued to research and document the feasibility of this technology. The
11 technology takes advantage of commercial, off-the-shelf hardware which includes non-invasive
12 sensors (similar to EKG sensors applied to the surface of the skin), a computer, a waveform
13 modulator, and an amplifier. The sensors, placed appropriately, would detect brainwaves that
14 are equivalent to prevocalized thoughts. Pattern recognition software would "translate" the
15 thoughts to words. The words would then be output to either a computer screen or audio
16 speaker.]

17 3. [There are a number of significant competitors involved in developing this technology.
18 In March 2004, Dr. Chuck Jorgensen of NASA Ames Research Center in California, announced
19 a working version of a device very similar to the one described in (2) above. His device, at the
20 time of the declaration, recognized thought words at an average of 92% accuracy. He said,
21 "(T)he keys to this system are the sensors, the signal processing and the pattern recognition...."
22 The research was funded by the Computing, Information and Communications Technology
23 Program, part of NASA's Office of Exploration Systems. There is a patent pending for the
24 technology.]

25
Declarant initials: 

- 1

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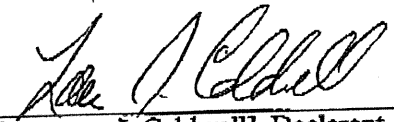
4. Other significant researchers in this field include Dr. Raymond Kurzweil, Dr. Patrick Flanagan, the US military (DoD) (see US Patent # 5,159,703), MIT and other universities, as well as research hospitals such as Johns Hopkins and Jefferson.

5. My experience, aside from the research cited in (2) above, includes 15 years as an engineer in the telecommunications and electronics industries. My educational background includes a BS in Ceramic Engineering and a MS in Industrial Engineering. A partner working with me has 16 years of experience in biotechnology and electrical engineering. His educational background includes a BS Electrical Engineering and a MS in Biomedical Engineering.

6. It is my opinion that the use of such technology could enable persons such as Terri Schiavo, or others like her who do not have vocal communication ability, to communicate by thought recognition. Given that I do not know her or the precise state of her medical condition, particularly the presence and quality of her brainwaves that would be necessary to detect and modulate to output, I cannot render an opinion of the probability of success of this device. As cited above in (3), the accuracy of such a device could be sufficient to permit someone such as Terri to communicate, and thus express her own personal testimony in this case.

I declare under the penalty of perjury under the laws of the State of New Jersey that the foregoing is true and correct.

Executed this 24th day of March 2005, in Medford Lakes, New Jersey.



[Lawrence J. Caldwell], Declarant

Declarant initials:



DECLARATION OF DR ELIZABETH A SCHMIDT, MD
In reference to Mrs. Terri Schindler Schiavo, a 41 year old, caucasian female

I, Elizabeth A Schmidt, MD have personal knowledge of the facts stated in this declaration and, if called as a witness, I could and would testify competently thereto under oath. I declare as follows:

1. I, Elizabeth A. Schmidt, MD graduated from Creighton University School of Medicine in 1983. I hold a license to practice Medicine and Surgery in the State of Missouri. I opted to withdraw from the activities of medical practice with the arrival of the first of our seven children. But I believe that my Medical School Training has prepared me to make the following observations about Terri Schindler Schiavo. My interest lay in the specialty of Child and Adolescent Psychiatry, I observed psychiatric and neurological patients at Creighton and at the University of Oregon where I did an externship in Child and Adolescent Psychiatry.
2. I have familiarized myself with Terri's diagnosis by viewing and reviewing video clips and reports on the internet. Based on video observation of Mrs. Schiavo on six different video clips, I do not agree that her status, at the time of video recording, was consistent with a Persistent Vegetative Sstate.
3. I have formed my opinion with the observational and evaluative skills developed during my study in the departments of Neurology and Psychiatry and in doing an externship in Child and Adolescent Psychiatry in Portland Oregon. I feel that I

Elizabeth A Schmidt, MD

Page 1 of 7

am able to make a determination using audio-visual evaluations of Terri Schiavo's motor, interpersonal and cognitive status, though I have not examined her personally, nor do I consider myself to have attained all the training necessary to provide quality care of psychiatric or neurological patients. I did have occasion, in school, to care for a patient who carried the diagnosis of PVS

4. On the video clip labeled "Big Eyes"(44sec) Terri is apparently dozing when the examiner says "Terri, open your eyes." Terri is lying in a 10 degree raised supine position apparently resting. In response she begins to try to open her eyes, by about 35 seconds of blinking and contortions of her mouth. Her eyes open wider with each successive blink. This shows an intentional and appropriate response to a verbal command to open her eyes. Once she has her eyes fully opened, she attempts to identify and face the speaker, requiring that she raise her head off the pillow, while at the same time adjusting her shoulder girdle and turning to focus her eyes on the speaker. This demonstrates a complex, intentional response. She hears and identifies speech and responds appropriately to a directive to open her eyes. She recognizes that she must turn her head to see the speaker. Terri executes this rather complex move unaided. "Terri Big Eyes".

<http://switchboard.real.com/player/email.html?PV=6.0.12&&title=Terri%20Big%20Eyes&link=http%3A%2F%2Fjohnsipos.com%2Fterrivideos%2FTerri%2520Big%2520Eyes.r>
m

5. In the video clip labeled "Terri and her mother"(1min 07sec) Mrs. Schindler enters the room while Terri appears to be staring at the ceiling. The radio is softly playing in the background. When Mrs. Schindler comes closer, shuts off the radio, gets right in Terri's

Elizabeth A. Schindler, MD

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face, and says "Hi, it's Mommy," Terri registers an immediate look of recognition and delight, focusing her eyes, most notably, on Mrs. Schindler's close gaze. This elicits guttural vocalizations with higher pitched tones of delight. This demonstrates a desire for interpersonal communication with Mrs. Schindler and an appropriate focusing response to the close gaze of her mother. There is a clear registration of the emotion of happiness. Terri focuses her eyes, smiles and vocalizes in response to Mrs. Schindler's questions. Appropriate, though rudimentary, interpersonal relationship ensues.

<http://switchboard.real.com/player/email.html?PV=6.0.12&&title=Terri%20and%20her%20mother&link=http%3A%2F%2Fjohnsipos.com%2Fterrivideos%2FTerri%2520Mum.rm>

6. In the clip labeled "Terri Music"(29sec) again there is a voice identifying the visitor as her mother. The music, Christmas piano music in swing style, is playing when this clip starts. Terri has a wide eyed look of relative alertness, and amusement. She openly guffaws when her mother asks if she likes the music. This demonstrates some rudimentary musical recognition and the emotions of delight and laughter.

<http://switchboard.real.com/player/email.html?PV=6.0.12&&title=Terri%20Music&link=http%3A%2F%2Fjohnsipos.com%2Fterrivideos%2FTerri%2520Music.rm>

7. I saw the clip labeled "Swab test"(35sec)several times, but when I tried to pull it up for review, it was unavailable. So I will have to give my observations from my memory of this clip. I got the impression that a simple neurological exam was being performed. The examiner touches Terri's mouth with a cotton swab, and rubs it in and around her mouth while speaking to

Elizabeth A. Schmidt

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her. Terri registers a marked look of consternation and grimaces after being repeatedly probed in the face, an obvious irritation to her. She attempts to avoid the stimulus by turning her head to the opposite side and throwing it back against the pillow in a kyphotic pose, as far as she can get from the examiner. This demonstrates appropriate avoidance behavior to a noxious stimulus.

<http://switchboard.real.com/player/email.html?PV=6.0.12&&title=Terri%20Swab&link=http%3A%2F%2Fjohnsipos.com%2Fterrivideos%2FTerri%2520Swab.rm>

8. The clip labeled "How's your cold?"(48sec) gives a good view of Terri focusing her eyes up close and vocalizing in response to her mother's questions. The attribute seen is appropriate interpersonal communication, though infantile and appropriate voluntary focusing of Terri's eyes and vocalization in response to her mother's question, "How's your cold?"

<http://switchboard.real.com/player/email.html?PV=6.0.12&&title=How%27s%20that%20cold%3F&link=http%3A%2F%2Fjohnsipos.com%2Fterrivideos%2Fhow%27s%2520that%2520cold.rm>

9. The clip labeled "Tracking a balloon" was unavailable for my review. However I feel that I may remember enough of what I had seen on the first three viewings to comment briefly here. Terri is asked to look at an object, which appears by shadows to be a large, colorful balloon. As evidenced by the shadows traveling across the room, she focuses her gaze on the balloon and tracks it across the room. I do not recall if she gave any vocalizations, head or upper body movements, or if there were any other directives given in this clip.

Elizabeth A. Schmidt, MD

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10. This limited evaluation firmly establishes the answer I was seeking to the question "Is there video evidence of Terri Schiavo having demonstrated a PVS?" I feel that by observation alone it has been established for me that Terri Schiavo was responsive to auditory, visual, and tactile stimuli. It is observable that she responds appropriately to some simple verbal directives, visual and auditory stimuli, and interpersonal communication and delight with a trusted individual, her mother. She displays interest and delight when the stimulus is interesting or delightful. She displays annoyance and consternation with aversive stimuli. Though these observations are limited, Terri Schiavo appears like an adult in a Minimally Cognitive State from extreme oxygen deprivation. A condition that one can confuse with PVS. This can improve somewhat with the various therapies, over time. She appears to be in a MCS rather than the presumed PVS, her standing diagnosis.

11 The video clips

show no drooling which could lead one to believe that Terri can also swallow. If in fact there is no drooling, swallowing therapy should be attempted. If it works, it could potentially allow for the safe removal of any feeding tube.

12 Her condition may also be improved with concomitant hyperbaric oxygen therapy. I have heard reports of healing of brain tissue and ocular nerve tissue with hyperbaric oxygen therapy. A relatively new scientific finding is that brain tissue is continually regenerated, as are all the other tissues in the body, from the amygdala, and the hippocampus. This stem type tissue needs to differentiate in response to regular and repeated stimulus.

Elizabeth A. Schmidt, MD

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13 These nuclei are the subject of much research because they are the sites of at least some of the immature neurological cells that replenish in the case of injury. With appropriate physical, speech, and cognitive therapy given regularly and consistently, with the loving contact of trusted individuals, she has the potential of a better quality of life than she is now enjoying. Finally, in evaluating Terri Schiavo's current diagnosis of PVS, I would like to submit information on just some of the promising research that is being done in neurology. This is by no means an exhaustive list.

14 Helen Gill, MD from the Royal Hospital for Neuro-disability, London, UK writes about the Misdiagnosis of the Vegetative State. "The patient in VS as showing no evidence of awareness of self or the environment at any time, with no volitional response to sensory or noxious stimuli and with no level of language comprehension or expression . It is evident from the discussion of the issues outlined above that there is considerable potential for misdiagnosis. This is a concept that is of great importance to the patient, the family and the Court. There have been several studies which have shown that misdiagnosis of the vegetative state is very common. For instance Tresch et al (8) found that 18% of long term patients in nursing homes in the USA, diagnosed, as being in the Vegetative State were able to communicate. Nancy Childs et al (9) found that 37% of patients admitted to her rehabilitation unit with a diagnosis of the vegetative state were aware. Research at the Royal Hospital for Neuro-disability by Andrews et al (10) found that 43% of patients admitted with a diagnosis of VS for

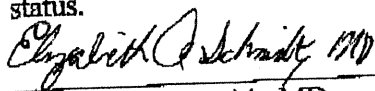
Elizabeth A. Schacht, MD

6 of 7

longer than 6 months were misdiagnosed, including several patients who had been thought to be vegetative for several years."

15 Victoria White writes in her article "A Molecule Family Hinders Spinal Chord Regeneration", UF Brain Institute University of Florida News, Nov. 22, 1999 "Up until 20 years ago, it was thought that spinal cord neurons simply did not have the capacity to regenerate," noted Douglas Anderson, chairman of UF's neuroscience department and a career research scientist with the Malcom Randall Veterans Affairs Medical Center in Gainesville. "But once it was demonstrated that they could grow in the appropriate terrain, the hunt has been on to make that happen."
For more information contact Victoria White, 352/344-2738, vickiwhite@xtalwind.net

Thank you for the opportunity of sharing my opinion on this patient's Neuro Cognitive status.



Elizabeth A Schmidt, MD

I declare under the penalty of perjury under the laws of the State of Wyoming, that the foregoing is true and correct.


Executed this 24th day of March, 2005, in Albin, Wyoming

7027

- 1 Emergency Department
- 2 Sharp Grossmont Hospital
- 3 5555 Grossmont Center Drive
- 4 La Mesa, California 91944
- 5
- 6 SPECIALTY BOARD American Board of Emergency Medicine, 1993
- 7 CERTIFICATION
- 8 POST GRADUATE
- 9 Residency Chief Resident in Emergency Medicine, 1989 - 1990
- 10 Boston City Hospital
- 11 Boston University - School of Medicine
- 12 Boston, Massachusetts
- 13 Emergency Medicine, 1987 - 1990
- 14 Boston City Hospital
- 15 Boston University - School of Medicine
- 16 Boston, Massachusetts
- 17 Internship Transitional Internship, 1985 - 1986
- 18 | Carney Hospital
- 19 Boston University - School of Medicine
- 20 Boston, Massachusetts
- 21 EDUCATION
- 22 Medical School Doctor of Medicine, 1985
- 23 Michigan State University
- 24 College of Human Medicine
- 25 East Lansing, Michigan
- Undergraduate Bachelor of Arts/Psychology, 1980

Declarant initials: _____

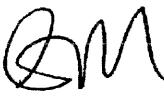
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 Valencia, California 91355
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- 1 Taylor University
- 2 Upland, Indiana
- 3 DIRECTOR Forensic Medical Unit, 2002 - Present
- 4 Family Justice Center
- 5 San Diego City Attorney's Office
- 6 San Diego, California
- 7 HOSPITAL Emergency Physician, 1996 - Present
- 8 APPOINTMENTS Sharp Grossmont Hospital
- 9 La Mesa, California
- 10 Emergency Physician, 1996
- 11 Sharp Chula Vista Medical Center
- 12 Chula Vista, California
- 13 Emergency Physician, 1995 - 1996
- 14 Sharp Coronado Hospital
- 15 Coronado, California
- 16 Emergency Physician, 1993 - 1996
- 17 Sharp Cabrillo Hospital
- 18 San Diego, California
- 19 HOSPITAL Emergency Physician, 1990 - 1993
- 20 APPOINTMENTS Redlands Community Hospital
- 21 CON'T Redlands, California
- 22 CERTIFICATION Diplomate, American Board of Emergency Medicine
- 23 Diplomate, National Board of Medical Examiners
- 24 AWARDS AND Who's Who in America, Marquis 36th Ed., 2004
- 25 HONORS Guardian Angel Award

Declarant initials: _____

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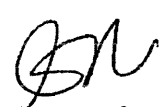
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- 1 California Legislature, 1999
- 2 San Diego Domestic Violence Council, 1999
- 3 "Changing the World Award",
- 4 San Diego City Attorney Casey Gwinn, 1999
- 5 Fellow, American Academy of Emergency Medicine, 1993
- 6 Fellow, American College of Emergency Physicians, 1992
- 7 Who's Who in the West, Marquis, 24th Ed., 1992
- 8 First Chief Resident in Emergency Medicine
- 9 Boston University School of Medicine
- 10 Boston, Massachusetts, 1990
- 11 ACADEMIC Michigan State University College of Human
- 12 HONORS Medicine Clinical Clerkships
- 13 Boston City Hospital Emergency Medicine Residency Clinical Rotations
- 14 LICENSURE California
- 15 ACADEMIC Stanford Medical School
- 16 APPOINTMENTS Emergency Department Rotation,
- 17 Department of Family Medicine
- 18 Sharp Family Practice Residency, 1996-2001
- 19 University of California, San Diego School of Medicine
- 20 Postgraduate Institute for Primary Care and Emergency
- 21 Physicians, 1997
- 22 National College of District Attorneys, 1996 - present
- 23 California District Attorneys Association, 1996 - present
- 24 San Diego Law Enforcement Academy, 1996 - present
- 25 PUBLICATIONS

"A Review of 300 Attempted Strangulation Cases, Part I: Criminal Legal

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- 4


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1 Issues," Journal of Emergency Medicine, Volume 21, Number 3, October 2001.
2 PUBLICATIONS
3 "A Review of 300 Attempted Strangulation Cases, Part II: Clinical Evaluation
4 of the Surviving Victim" Journal of Emergency Medicine, Volume 21, Number 3,
5 October 2001.
6 "A Review of 300 Attempted Strangulation Cases, Part III: Injuries in Fatal
7 Cases," Journal of Emergency Medicine, Volume 21, Number 3, October 2001.
8 "Improve your Investigation and Prosecution of Strangulation in Domestic
9 Violence Cases," Training Wheel, Las Vegas Metropolitan Police Department,
10 October-December 2001.
11 "Identifying the Primary Aggressor," Law Enforcement Television Network
12 Monthly Publication, September 2000.
13 PUBLICATIONS
14 CON'T
15 "How to Investigate and Prosecute Strangulation Cases," National College of
16 District Attorneys Practical Prosecutor, December 1998.
17 The Collection of Choking and Strangling Evidence Domestic Violence
18 Newsflash, Polaroid
19 Corporation, Penfield, New York, summer, 1996
20 RESEARCH: Comprehensive summary and discussion of the body of international
21 literature on the medical aspects of criminal strangulation, 1998
22 and continuous
23 Identifying characteristics of the Emergency Department narcotic-
24 Seeking patient with complaint of migraine headache or back pain
25 1996 (ongoing)

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1
2 PROFESSIONAL Physicians for Violence - Free Society Charter Member, 1996
3 SOCIETIES American College of Emergency Physicians
4 American Academy of Emergency Medicine California Chapter, American College
5 of Emergency Physicians
6 Phi Beta Pi Medical Fraternity
7 Editor
8 Michigan State University
9 College of Human Medicine Chapter
10 Sharp International Institute
11 San Diego, California
12 PROFESSIONAL Physicians for Violence - Free Society
13 COMMITTEES Co-Chair Annual Conference
14 San Diego, California, 1999
15 Stanford University School of Medicine
16 Chair, Internal Review of Sharp Family Practice Residency
17 Sharp Health Care,
18 San Diego, California 1999
19 Family Practice Committee
20 Sharp Grossmont Hospital
21 La Mesa, California, 1999
22 Psychiatry Committee,
23 Sharp Grossmont Hospital
24 La Mesa, California 1998
25 Community Relations Committee
Sharp Cabrillo Hospital

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- 1 San Diego, California, 1996
- 2 Boston University School of Medicine Committee on Admissions
- 3 Senior Resident Adviser for Boston City Hospital Emergency Medicine
- 4 Residency Program
- 5 Boston, Massachusetts, 1988-1990
- 6 Massachusetts Medical Society Interspecialty Committee
- 7 Boston, Massachusetts, 1990
- 8 Massachusetts Medical Society Committee on Nutrition
- 9 Boston, Massachusetts, 1989
- 10 Michigan State University College of Human Medicine Committee on
- 11 Admissions
- 12 East Lansing, Michigan, 1982
- 13 EMS Crew Classic Emergency Physician
- 14 Mission Bay, California, 1995 - 1996
- 15 Southwestern College
- 16 EMT Proctor
- 17 San Diego, California, 1993 - Present
- 18 Crafton Hills College
- 19 Paramedic Course Instructor
- 20 Yucaipa, California, 1990 - 1992
- 21 Northeastern University
- 22 EMT Course Instructor
- 23 Boston, Massachusetts, 1988 - 1990
- 24 MEDIA NBC's Crime and Punishment,
- 25 Featured as expert on Domestic Violence in televised trial
National Programming July 7, 2003

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- 7


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- 1 KFMB and KGTV Television
- 2 Multiple news interviews for clinical aspects of teen drug abuse, child
- 3 abuse and domestic violence
- 4 San Diego, California, 1996 - present
- 5 KGET Television
- 6 Featured physician in news -coverage of Alliance Against Family
- 7 Violence Conference
- 8 Bakersfield, California, 1999
- 9 Star Tribune
- 10 Featured as lead speaker in ! First Annual Wyoming Conference against
- 11 Domestic Violence, Casper
- 12 Wyoming, August, 1997
- 13 Law Enforcement Television Network
- 14 Educator in video presentation on Medical Aspects of Criminal
- 15 Strangulation, August, 1997
- 16 Union Tribune
- 17 Interviewed for feature article on Elder Abuse from an Emergency
- 18 Physician's Perspective
- 19 San Diego, California, May 1997
- 20 KGTV Television
- 21 Featured physician in production of Mandated Medical Reporting
- 22 Of Domestic Violence
- 23 San Diego, California 1996
- 24 KNSD Television
- 25 Featured physician in production of Alcohol-Related Illness,
San Diego, California 1995

Declarant initials: _____


- 8

ZM
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23929 W. Valencia Blvd., Suite 309
Valencia, California 91355
(661) 799-7777

- 1 National Public Radio
- 2 Featured physician for "A Day in a Level-One Trauma Center" 1990
- 3 Time Magazine
- 4 Interviewed for cover story, "Emergency," regarding the Nation's
- 5 Emergency Departments' crisis
- 6 New York, New York 1989
- 7 WGBH Television
- 8 Featured physician in Chronicle - an award-winning television
- 9 Production of "Armed and Dangerous: us: The Trauma Center at Boston
- 10 City Hospital"
- 11 Boston, Massachusetts and Toronto, Canada, 1989
- 12 COMMUNITY San Diego Law Enforcement Academy
- 13 SERVICE Course Instructor on Medical Aspects of Criminal Strangulation,
- 14 San Diego, California, 1997 - 1999
- 15 San Diego County Police
- 16 Presentations on the Medical Aspects of Criminal Strangulation,
- 17 Cities of: Carlsbad, Chula Vista, Coronado, Imperial Beach,
- 18 National City and San Diego, California, 1996
- 19 Junior League,
- 20 Domestic Violence: The Emergency Department Perspective
- 21 San Diego, California, 1996
- 22 Republican National Convention
- 23 Official Physician,
- 24 San Diego, California, 1996
- 25 PRESENTATIONS
- 2003 California Chief's of Probation

Declarant initials: _____


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Batza & Associates Investigations
23929 W. Valencia Blvd., Suite 309
Valencia, California 91355
(661) 799-7777

- 1 The Global Nature of Domestic Violence Conference
 - 2 Concord, California (1/03)
 - 3 New Mexico's Coalition of Sexual Assault Programs
 - 4 Strangulation and Domestic Violence Injuries
 - 5 Albuquerque, New Mexico (1/03).
 - 6 California District Attorney's Association
 - 7 Domestic Violence Prosecution, Proving Strangulation Cases without an
 - 8 Autopsy and Domestic violence Injuries
 - 9 Sacramento, California (2/03)
 - 10 Perinatal Service Providers
 - 11 Proving Strangulation Cases without an Autopsy
 - 12 San Diego, California (4/03)
 - 13 International Domestic Violence
 - 14 Stalking and Sexual Assault Conference, "Proving Strangulation Cases without
 - 15 an Autopsy"
 - 16 San Diego, California (4/03)
 - 17 United States Army
 - 18 Domestic Violence Conference "Domestic Violence Injuries and Strangulation"
 - 19 Mannheim, Germany (5/03)
 - 20 2002 Peace Officers Standards and Training (POST) Domestic Violence
 - 21 Investigator's
 - 22 Course, Prosecuting Strangulation Cases
 - 23 Fresno, California (2/02)
 - 24 Sexual Assault and Domestic Violence Conference
 - 25 San Diego, California (3/02)
- Lake County District Attorney's Office

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Batza & Associates Investigations
23929 W. Valencia Blvd., Suite 309
Valencia, California 91355
(661) 799-7777

- 1 Lake County, California (5/02)
 - 2 Battered Women's Justice Project
 - 3 Spokane, Washington (5/02)
 - 4 POST, Domestic Violence Investigator's Course
 - 5 Strangulation Injuries
 - 6 San Diego, California (6/02)
 - 7 Battered Women's Justice Project
 - 8 Minneapolis, Minnesota (6/02)
 - 9 Maryland Network Against Domestic Violence
 - 10 Strangulation, A-Z
 - 11 Maryland (6/02)
 - 12 POST, Domestic Violence Investigator's Course
 - 13 San Diego, California (9/02)
 - 14 2002 Family Violence Prevention Fund's National Conference
 - 15 Con't Strangulation, A-Z (9/02).
 - 16 United States Airforce
 - 17 Elmendorf Air Force Base, "Building a Coordinated Community Response,
 - 18 Anchorage, Alaska (9/02)
 - 19 United States Navy
 - 20 Partners in Peace Conference
 - 21 San Diego, California (10/02)
 - 22 National College of District Attorneys
 - 23 Domestic Violence Conference
 - 24 Chicago, Illinois (10/02)
 - 25 New Jersey District Attorney's Office
- Strangulation

Declarant initials: _____

- 11


Batza & Associates Investigations
23929 W. Valencia Blvd., Suite 309
Valencia, California 91355
(661) 799-7777

- 1 New Jersey (11/02).
 - 2 2001 California District Attorneys Association
 - 3 Conference on "Medical Evidence: From the Exam Room to the Courthouse
 - 4 Monterey, California (1/01).
 - 5 Alaska Regional Hospital
 - 6 Domestic Violence Conference
 - 7 Anchorage, Alaska (1/01)
 - 8 National College of District Attorneys
 - 9 Gang Prosecution Conference
 - 10 San Diego, California (2/01).
 - 11 Croydon Council's International Domestic Violence Conference
 - 12 Policies into Practice
 - 13 London, England (3/01).
 - 14 Grossmont Hospital, Sharp Healthcare
 - 15 Celebrating Excellence in Nursing Symposium
 - 16 San Diego, California (3/01).
 - 17 National Domestic Violence and Sexual Assault Conference
 - 18 San Diego, California (4/01).
 - 19 California District Attorneys Association
 - 20 Domestic Violence Conference
 - 21 Sacramento, California (5/01)
 - 22 Maui Police Department
 - 23 Strangulation and Domestic Violence Injuries
 - 24 Maui, Hawaii, (7/01)
 - 25 Kauai Police Department
- Strangulation


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Batza & Associates Investigations
23929 W. Valencia Blvd., Suite 309
Valencia, California 91355
(661) 799-7777

- 1 Kauai, Hawaii (7/01)
- 2 Las Vegas Police Department
- 3 Las Vegas First Annual "No Hitter" Conference
- 4 Las Vegas, Nevada (8/01)
- 5 Alaska District Attorney's Office
- 6 Strangulation Detection & Prosecution
- 7 Anchorage, Alaska
- 8 National College of District Attorney
- 9 Domestic Violence Conference
- 10 Reno, Nevada (10/01).
- 11 Domestic Abuse Intervention Project, National Training Project
- 12 Prosecuting Strangulation Cases
- 13 Las Vegas, Nevada (11/01)
- 14 POST, Investigators Course
- 15 Prosecuting Strangulation Cases
- 16 San Diego, California (12/01)
- 17 2000 California Board of Pharmacy, "Characteristics of gender-specific
- 18 narcotic-seeking
- 19 Behavior in Emergency Department patients
- 20 Sacramento, California 2000
- 21 Battered Women's Justice Project
- 22 Domestic Violence Conference
- 23 Tucson, Arizona (1/00)
- 24 San Diego Police Department
- 25 Academy Training Domestic Violence

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Batza & Associates Investigations
23929 W. Valencia Blvd., Suite 309
Valencia, California 91355
(661) 799-7117

- 1 San Diego, California (3/00)
 - 2 California District Attorneys Association
 - 3 Maryland Network Against Domestic Violence
 - 4 Strangulation, A-Z
 - 5 Maryland (6/02)
 - 6 POST, Domestic Violence Investigator's Course
 - 7 San Diego, California (9/02)
 - 8 2002 Family Violence Prevention Fund's National Conference
 - 9 Con't Strangulation, A-Z (9/02).
 - 10 United States Airforce
 - 11 Elmendorf Air Force Base, "Building a Coordinated Community Response,
 - 12 Anchorage, Alaska (9/02)
 - 13 United States Navy
 - 14 Partners in Peace Conference
 - 15 San Diego, California (10/02)
 - 16 National College of District Attorneys
 - 17 Domestic Violence Conference
 - 18 Chicago, Illinois (10/02)
 - 19 New Jersey District Attorney's Office
 - 20 Strangulation
 - 21 New Jersey (11/02).
 - 22 2001 California District Attorneys Association
 - 23 Conference on "Medical Evidence: From the Exam Room to the Courthouse
 - 24 Monterey, California (1/01).
 - 25 Alaska Regional Hospital
- Domestic Violence Conference

Declarant initials: _____

- 14


Batza & Associates Investigations
23929 W. Valencia Blvd., Suite 309
Valencia, California 91355
(661) 799-7777

- 1 Anchorage, Alaska (1/01)
 - 2 National College of District Attorneys
 - 3 Gang Prosecution Conference
 - 4 San Diego, California (2/01).
 - 5 Croydon Council's International Domestic Violence Conference
 - 6 Policies into Practice
 - 7 London, England (3/01).
 - 8 Grossmont Hospital, Sharp Healthcare
 - 9 Celebrating Excellence in Nursing Symposium
 - 10 San Diego, California (3/01).
 - 11 National Domestic Violence and Sexual Assault Conference
 - 12 San Diego, California (4/01).
 - 13 California District Attorneys Association
 - 14 Domestic Violence Conference
 - 15 Sacramento, California (5/01)
 - 16 Maui Police Department
 - 17 Strangulation and Domestic Violence Injuries
 - 18 Maui, Hawaii, (7/01)
 - 19 Kauai Police Department
 - 20 Strangulation
 - 21 Kauai, Hawaii (7/01)
 - 22 Las Vegas Police Department
 - 23 Las Vegas First Annual "No Hitter" Conference
 - 24 Las Vegas, Nevada (8/01)
 - 25 Alaska District Attorney's Office
- Strangulation Detection & Prosecution



Declarant initials: _____

Batza & Associates Investigations
23929 W. Valencia Blvd., Suite 309
Valencia, California 91355
(661) 799-7777

- 1 Anchorage, Alaska
- 2 National College of District Attorney
- 3 Domestic Violence Conference
- 4 Reno, Nevada (10/01).
- 5 Domestic Abuse Intervention Project, National Training Project
- 6 Prosecuting Strangulation Cases
- 7 Las Vegas, Nevada (11/01)
- 8 POST, Investigators Course
- 9 Prosecuting Strangulation Cases
- 10 San Diego, California (12/01)
- 11 2000 California Board of Pharmacy, "Characteristics of gender-specific
- 12 narcotic-seeking
- 13 Behavior in Emergency Department patients
- 14 Sacramento, California 2000
- 15 Battered Women's Justice Project
- 16 Domestic Violence Conference
- 17 Tucson, Arizona (1/00)
- 18 San Diego Police Department
- 19 Academy Training Domestic Violence
- 20 San Diego, California (3/00)
- 21 California District Attorneys Association
- 22 Domestic Violence Conference
- 23 Anaheim, California (5/00)
- 24 Oregon Domestic Violence Council
- 25 Conference on Domestic Violence
- Bend, Oregon (5/00)


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Batza & Associates Investigations
23929 W. Valencia Blvd., Suite 309
Valencia, California 91355
(661) 799-7777

- 1 Family Violence Prevention Fund
 - 2 National Conference on Health Care and Domestic Violence
 - 3 San Francisco, California (10/00)
 - 4 Polaroid Corporation
 - 5 First National Virtual Domestic Violence Training
 - 6 San Diego, California (10/00)
 - 7 National Training Center on Domestic Violence and Sexual Assault,
 - 8 Sixth Statewide Conference on Domestic Violence and Sexual Assault
 - 9 Austin, Texas (12/00)
 - 10 1999 New York State District Attorney's Association
 - 11 Prosecuting Domestic Violence Strangulation Cases
 - 12 New York Prosecutors Training Institute
 - 13 Clinton County District Attorney's Office
 - 14 Plattsburgh, New York (9/99)
 - 15 National College of District Attorneys
 - 16 9th Annual National Conference on Domestic Violence
 - 17 Reno, Nevada 1999
 - 18 California District Attorneys Association Northern Division
 - 19 Advanced Domestic Violence Prosecution Seminar
 - 20 San Francisco, California (5/55)
 - 21 Oregon Domestic Violence Education & Prevention Coalition
 - 22 Fifth Annual Domestic Violence Conference
 - 23 Salem, Oregon (4/99)
 - 24 Chief Probation Officers' Domestic Violence Conference
 - 25 San Diego, California (4/99)
- Oklahoma State Department of Health

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Batza & Associates Investigations
23929 W. Valencia Blvd., Suite 309
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(661) 799-7777

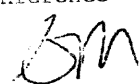
- 1 Second Annual Conference on Domestic Violence and the Impact on Children
 - 2 Edmond, Oklahoma (5/99)
 - 3 San Diego Police Department Regional Academy
 - 4 Training on Domestic Violence
 - 5 San Diego, California (5/99)
 - 6 San Jose Law Enforcement Academy
 - 7 Identification and Prosecution of Strangulation Injuries
 - 8 San Jose, California(11/99)
 - 9 State of Oklahoma, Office of Attorney General
 - 10 First Annual Domestic Violence Conference
 - 11 Oklahoma City, Oklahoma (12/99)
 - 12 Department of the Navy
 - 13 Identification of the Primary Aggressor
 - 14 San Diego, California (12/99)
 - 15 1999 Physicians for a Violence-free Society
 - 16 Con't Annual Conference
 - 17 San Diego, California (2/99)
 - 18 Alliance Against Family Violence
 - 19 Bakersfield, California 1999
 - 20 Greater Puget Sound Domestic Violence Conference
 - 21 Tacoma, Washington 1999
 - 22
 - 23 1998 Children's Hospital San Diego
 - 24 International Conference on Child Maltreatment
 - 25 San Diego, California (1/98)
- California District Attorneys Association Southern Division

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- 18


Ratza & Associates Investigations
23929 W. Valencia Blvd., Suite 309
Valencia, California 91355
(661) 799-7777

- 1 Domestic Violence Conference
- 2 Newport, California (4/98)
- 3 State of Illinois
- 4 Family Violence Symposium
- 5 Springfield, Illinois (5/98)
- 6 Law Enforcement Forum Miramar Naval Station
- 7 San Diego, California (6/98)
- 8 POST Domestic Violence Investigations Course
- 9 San Diego, California (9/98)
- 10 First Judicial District Domestic Violence Coordinating Council
- 11 Third Annual Conference on Domestic Violence
- 12 Minneapolis, Minnesota (10/98)
- 13 National College of District Attorneys
- 14 Domestic Violence Conference
- 15 Dallas, Texas (10/98)
- 16 Greater Puget Sound Domestic Violence Conference
- 17 Seattle, Washington (11/98)
- 18 Washington Domestic Violence Conference
- 19 Colville, Washington 1998
- 20 Fourth International Conference on Children Exposed to Family Violence
- 21 San Diego, California 1998
- 22 San Diego Law Enforcement Academy
- 23 Educational Conference<B! RSan Diego, California 1998
- 24 University of California San Diego School of Medicine
- 25 Domestic Violence: A Medical Perspective, Post-Graduate CME Conference
- La Jolla, California 1998



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- 19

Batza & Associates Investigations
23929 W. Valencia Blvd., Suite 309
Valencia, California 91355
(661) 799-7777

- 1 1997 San Diego Police Department
- 2 Academy Training on Domestic Violence
- 3 San Diego, California (2/97)
- 4 California District Attorneys Association
- 5 Investigation and Prosecution of Domestic Violence Cases
- 6 Newport Beach, California (2/97)
- 7 California District Attorneys Association
- 8 Advanced Domestic Violence Seminar
- 9 Monterey, California (2/97)
- 10 United States Attorney's Office
- 11 Domestic Violence Symposium
- 12 Las Vegas, Nevada (3/97)
- 13 California District Attorneys Association
- 14 Violence Against Women Act (VAWA) Conference
- 15 Anaheim, California (4/97)
- 16 1997 California District Attorneys Association Northern Division
- 17 Con't Domestic Violence Conference
- 18 Napa, California (6/97)
- 19 National College of District Attorneys
- 20 Domestic Violence Conference
- 21 Los Angeles, California (10/97)
- 22 Domestic Violence Training for Probation Officers
- 23 San Diego, California (12/97)
- 24 San Diego Law Enforcement Academy
- 25 Educational Conference
- San Diego, California 1997

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Batza & Associates Investigations
23929 W. Valencia Blvd., Suite 309
Valencia, California 91355
(661) 799-7777

- 1 First Annual Wyoming Conference Against Domestic Violence
 - 2 Casper, Wyoming, 1997
 - 3 Illinois Coalition Against Domestic Violence
 - 4 Springfield, Illinois 1997
 - 5 Colorado Domestic Violence Council
 - 6 Domestic Violence: Impact on Community and Children
 - 7 Pueblo, Colorado 1997
 - 8 California Emergency Nurses Association
 - 9 Annual Scientific Assembly,
 - 10 "Panic Disorder: An Emergency Medicine Perspective"
 - 11 San Diego, California 1997
 - 12 1996 California District Attorneys Association Southern Division
 - 13 Advanced Domestic Violence Prosecution
 - 14 Irvine, California 1996
 - 15 National College of District Attorneys
 - 16 Prosecuting Domestic Violence Strangulation Cases,
 - 17 Atlanta, Georgia 1996
 - 18 Las Vegas Police Department
 - 19 Domestic Violence Investigations and Prosecutions
 - 20 Las Vegas, Nevada (5/96)
 - 21 San Diego Police Academy
 - 22 San Diego, California (7/96)
 - 23 Polaroid School Of Law Enforcement
 - 24 Imaging Domestic Violence Educational Training, U.S. Probation Department
 - 25 San Diego, California 1996
- Department of the Navy

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Batza & Associates Investigations
23929 W. Valencia Blvd., Suite 309
Valencia, California 91355
(661) 799-7777

- 1 Domestic Violence Workshop
 - 2 San Diego, California (10/96)
 - 3 San Diego Domestic Violence Council
 - 4 4th Annual Domestic Violence Conference Scripps Memorial Hospital
 - 5 La Jolla, California 1996
 - 6 1994 Consortium of Southwestern States Medical Schools
 - 7 Physician Stress and Burnout
 - 8 Redlands, California, 1994
 - 9 1990 Tropical Emergency Medicine Field Study
 - 10 Ilha Bela, Brazil, 1990
 - 11 1989 Boston University School of Medicine, Boston City Hospital
 - 12 Dental Emergencies in the Emergency Department Setting
 - 13 Boston, Massachusetts, 1989
 - 14 1989 Boston University School of Medicine, Boston City Hospital
 - 15 Con't Cardiac Resuscitation in the Pregnant Patient
 - 16 Boston, Massachusetts 1989
 - 17 1987 Harvard Medical School, Boston Children's Hospital
 - 18 Theophylline Toxicity
 - 19 Boston, Massachusetts, 1987
 - 20 INTERNATIONAL Macha Hospital
 - 21 MEDICAL Guest lecturer,
 - 22 EXPERIENCE: Zambia, Central Africa, 1993
 - 23 Ilha Bela Medical Clinic
 - 24 Tropical Emergency Medicine Field Study,
 - 25 Ilha Bela, Brazil, 1990
- University of Parana Medical School

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Datza & Associates Investigations
23929 W. Valencia Blvd., Suite 309
Valencia, California 91355
(661) 799-7777

- 1 Guest Lecturer,
- 2 Parana, Brazil, 1986
- 3 O.M.S. International Missionary Clinic
- 4 Parana, Brazil, 1986
- 5 Guy's Hospital and Medical School
- 6 Rheumatology rotation,
- 7 London, England, 1984
- 8 Kijabe Medical Center
- 9 Premedical surgical rotation
- 10 Nairobi, Kenya, 1978

11

12 SPECIAL PROJECTS/COLLABORATIONS

- 13 Family Justice Center, Forensic Medical Unit, (FMU), Conception, Design, and
- 14 Implementation
- 15 Of the FMU, San Diego City Attorney's Office, (2002 to present)
- 16 San Diego Domestic Violence Council's Domestic Violence Talk Radio Show,
- 17 "Solutions to
- 18 Family Violence" with Casey Gwinn, (2001)
- 19 Polaroid Camera Project (10/96)
- 20 KPBS! , "These Days", a public radio talk show (12/96)
- 21 POST Domestic Violence Training Video (1996)
- 22 Law Enforcement Television Network Training Videos - Elder

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Declarant initials: _____

Batza & Associates Investigations
 23929 W. Valencia Blvd., Suite 309
 Valencia, California 91355
 (661) 799-7777

~~NOTE~~ ~~6/22/05~~

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George McClane
 George McClane, M.D., Declarant

2.4 MAR 22. 2005

Bates & Associates Investigations
 25000 N. Hollywood Blvd., Suite 200
 Hollywood, California 91606
 (818) 766-7777

App. 8

Order, *In re Guardianship of Schiavo* (March 25, 2005)

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY**

IN RE: GUARDIANSHIP OF

THERESA MARIE SCHIAVO,

Incapacitated.

**UCN: 521990GA002908XXGDXX
REF NO. 90-2908-GD-03**

_____/ **ROBERT SCHINDLER et al,**

Petitioners,

v.

MICHAEL SCHIAVO,

Respondent.

ORDER DENYING DISQUALIFICATION OF JUDGE

THIS CAUSE came before the Court upon Robert Schindler's Seventh Motion to Disqualify Judge filed March 25, 2005. The motion was considered pursuant to Florida Statutes 38.10 and Florida Rule of Judicial Administration 2.160. The statute governing disqualification of the judge for prejudice provides the substantive right to seek disqualification, whereas the rule set forth in the Rules of Judicial Administration controls the procedural process. See *Cave v. State*, 660 So.2d 705 (Fla. 1995).

Upon review, the grounds for the disqualification motion are not legally sufficient. See, *US v Grismore*, 564 F.2d 929 (10th Cir 1977); *Jackson v State*,

599 So.2d 103 (Fla. 1992); *Heier v. Fleet*, 642 So.2d 669 (Fla. 4th DCA 1994);
Dowda v Salfi, 455 So.2d 604 (Fla. 5th DCA 1984). It is therefore,

ORDERED AND ADJUDGED that the Motion to Disqualify Judge is hereby **DENIED**.

DONE AND ORDERED in Chambers, at Clearwater, Pinellas County, Florida this 25 day of March, 2005 at 4:22 p.m.


GEORGE W. GREER
CIRCUIT JUDGE

Copies furnished to:
David C. Gibbs, III, Esq.
George J. Felos, Esq.
Deborah A. Bushnell, Esq.
Hamden H. Baskin, III, Esq.
Gyneth S. Stanley, Esq.
Joseph D. Magri, Esq.

TRUE COPY

App. 9

Order, *In re Guardianship of Schiavo* (March 25, 2005)

**IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA
PROBATE DIVISION
File No. 90-2908-GD-003**

**IN RE: THE GUARDIANSHIP OF
THERESA MARIE SCHIAVO,
Incapacitated.**

MICHAEL SCHIAVO,
Petitioner,

vs.

**ROBERT SCHINDLER and MARY
SCHINDLER,**
Respondents.

ORDER

THIS CAUSE came before the Court on an emergency telephonic hearing on March 25, 2005, for determination of the legal sufficiency of Respondents' Emergency Motion for Injunction and Immediate Relief and Fla. R. Civ. P. 1.540(b)(5) Motion for Relief from Judgment Based Upon the Incapacitated's Articulation of End of Life Wishes. Attached to the Motion were affidavits from a Florida attorney who has represented Mr. and Mrs. Schindler; the sister of Theresa Marie Schiavo; an inventor of a technological device that detects brainwaves and translates them to words; and two doctors. The Court heard legal argument from David C. Gibbs, III, Esq, for Mr. and Mrs. Schindler and from George J. Felos, Esq, for the Petitioner. The Court has also reviewed the Motion and its attachments and the record in this case. Being duly advised in the premises, the Court finds as follows:

The Respondents have once again moved the Court for relief from its final Orders rendered February 11, 2000, and February 25, 2005, based upon new evidence that Theresa Marie Schiavo has attempted to verbalize her end of life wishes. The Motion alleges that Barbara J. Weller, Esq, visited with her on March 18, 2005, prior to her feeding tube being removed and, in the presence of Suzanne Vitadamo, interacted directly with Terri Schiavo at a cognitive level. The interaction was described by both Ms. Weller and Suzanne Vitadamo in sworn affidavits that were executed on March 22, 2005.

On March 23, 2005, Respondents brought before this Court a Fla. R. Civ. P. 1.540(b)(5) motion for relief from judgment. At the emergency hearing held later that day on the facial sufficiency of that Motion, the Court permitted legal argument on an affidavit by Dr. William Polk Cheshire, Jr. His affidavit, which had been executed that day, described his belief that Mrs. Schiavo's cognition level is higher than was previously determined. At that hearing, neither Ms. Weller's nor Ms. Vitadamo's affidavits were introduced or argued even though Ms. Weller had "promised Terri [that Weller] would tell the world that she had tried to say, 'I want to live.' "

In *In re Guardianship of Schtavo*, 2005 WL 600377, * 3 ___ So.2d ___ (Fla. 2d DCA March 16, 2005), the Second District Court of Appeal through Chief Judge Altenbernd stated:

We note that the case law generally allows a party to file only one motion for relief under rule 1.540(b). [Cite omitted] Indeed, courts have taken the position that they lack authority "to entertain a second motion for relief from judgment which attempts to relitigate matters settled by a prior order denying relief." [Case citations omitted]. Because of the nature of this case, neither the trial court nor this court has enforced these general rules. The Schindlers have filed numerous motions, but

they have failed to present any lawful basis for relief from judgment.

In dealing with the successive motions, this Court has heard legal argument in order to determine whether the claims rise to a colorable entitlement of relief. This has permitted the Court to sort out claims or issues that have been previously considered by the Court without having to have a full evidentiary hearing. This is the procedure established by the case law. See *In re Guardianship of Schiavo* (Schiavo III), 800 So.2d 640, 644 (Fla. 2d DCA 2001) and cases cited therein. When affidavits have been submitted that were based on evidence that has already been considered by the Court, the Court has properly disregarded the affidavits.

Although more than one motion for relief from judgment has been filed and considered in this case, none of the previous motions have depended on affidavits that were readily available before the previous court hearing on the same issue and were not then presented. Respondents do not get to pick and choose which pieces of available evidence they wish to present on an issue and then, relying on the relaxed rules in this type of case, relitigate the same issue again at another emergency hearing two days later. Respondents have waived their right to raise Terri Schiavo's alleged verbalization when they failed to present the affidavits at the March 23, 2005 hearing. Further, Respondents' Counsel concedes these affidavits were not presented to the Hon. James Whittemore at either of the hearings he conducted this week in federal district court.

Due to the critical nature of this case, this Court does not base its decision solely on the issue of waiver. While not reaching the credibility issues involved, the Court does note that according to both of these

affidavits, Terri Schiavo's sounds occurred after Ms. Weller took Mrs. Schiavo's arms in both of her hands and this is consistent with evidence presented at the 2002 trial, that from time to time she responds to stimuli, that she makes limited vocalizations, and that she can move and change facial expressions. However, all of the credible medical evidence this Court has received over the last five years is that this is not a cognitive response but rather something akin to a person jerking his/her hand off a hot stove long before he/she has thought about it. Evidence on the stimulus issue and the random verbalizations were a feature of the prior trials and have been considered by this Court. These affidavits in no way show or tend to show anything to the contrary.

In order to show that it is likely that given time Mrs. Schiavo's communication skills could improve beyond those she currently has, a third affidavit was presented that described a device that would allegedly permit a person such as Terri Schiavo to communicate "using the modulated equivalent of prevocalized thoughts" which would then be translated into words using pattern recognition software. It is clear that this device is for patients with cognitive ability whose ability to vocalize is lost. Terri Schiavo is just the opposite. Moreover, the affiant stated that "given that I do not know her or the precise state of her medical condition, particularly the presence and quality of her brainwaves that would be necessary to detect and modulate to output, I cannot render an opinion of the probability of success of this device."

The fourth affidavit, which is from a doctor, relies only on previously considered video clips and suggests that hyperbaric oxygen therapy may improve her condition, which was part of the 2002 trial. The allegations

presented in the fifth affidavit have nothing to do with this case and have also been previously considered by this Court.

Respondents have not met the burden set forth by the Second District Court of Appeal --

... they must establish that new treatment offers sufficient promise of increased cognitive function in Mrs. Schiavo's cerebral cortex—significantly improving the quality of Mrs. Schiavo's life—so that she herself would elect to undergo this treatment and would reverse the prior decision to withdraw life-prolonging procedures.

(In re Guardianship of Schiavo (Schiavo III), 800 So.2d 640, 645 (Fla. 2d DCA 2001).

Based on the Respondents' request for relief, this Court does not find that a colorable entitlement to relief has been established. It is therefore

ORDERED AND ADJUDGED that Respondents' Fla. R. Civ. P. 1.540(b)(5) Motion for Relief from Judgment Based Upon the Incapacitated's Articulation of End of Life Wishes is DENIED as is the additional requested relief.

DONE AND ORDERED in Chambers, at Clearwater, Pinellas County, Florida this 28 day of March, 2005 *at 11:45am.*



GEORGE W. GREER
CIRCUIT JUDGE

90-2908-GD-003

Copies furnished to:

David C. Gibbs, III, Esq.
George J. Felos, Esq.
Deborah A. Bushnell, Esq.
Gyneth S. Stanley, Esq.
Hamden H. Baskin, III, Esq.
Joseph D. Magri, Esq.

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