

AFFIDAVIT

STATE OF FLORIDA)
COUNTY OF PINELLAS)

BEFORE ME the undersigned authority personally appeared Alexander T.

Gimon, Ph.D., who being first duly sworn, deposes and says:

1. My name is Alexander T. Gimon, Ph.D. I am over the age of eighteen years of age. I am engaged in the private practice of clinical neuropsychology, and have been so continuously since 1983. I work with patients, both brain injured and general populations.
2. I took my Ph.D. from Yeshiva University in 1973 and had a fellowship from NIMH and a Clinical & Research Internship. As a Ph.D. candidate, I worked as a Senior Research Associate at Harvard University's Research Institute for Educational Problems and have had other extensive experience in special education and various facets of the practice of psychology. My full curriculum vitae is attached.
3. Clinical neuropsychology is a specialty profession that focuses on brain functioning. A clinical neuropsychologist is a licensed psychologist with expertise in how behavior and skills are related to brain structures and systems. In clinical neuropsychology, brain function is evaluated by the measurement of specific behavioral markers through standardized testing

and careful observation.

4. In my practice, I work with many brain injured patients, and I am familiar with states of impairment known as coma, coma-like, minimally conscious and persistent vegetative state. As a part of my professional practice, I evaluate the brain function of patients whose differential diagnosis include such conditions. During my career as a clinical neuropsychologist, I have personally evaluated approximately eleven patients with a clinical profile similar to that of Terri Schiavo.
5. I have not physically examined Terri Schiavo; however, I have studied the video clips presented at the October 2002 Medical Evidentiary Hearing. The observations that follow are all within the parameters of the profession of clinical neuropsychology, and are similar to the observations that I am called upon to make regularly in the course of evaluating patients as a clinical neuropsychologist. All conclusions are based on standards used in the clinical neuropsychology profession in the evaluation and treatment of patients such as Theresa Schiavo.
6. Based on my experience and my observations, Mrs. Schiavo is clearly able to respond cognitively to environmental stimuli. She interacts verbally and motorically with her mother and with doctors giving verbal instructions. It is clear on its face that she has brain matter for these functions, but has been

deprived of appropriate therapy and stimulation. This is documented in the following behaviors noted in the following video segments:

H 01 (Examination of Dr. Hammesfahr 9/3/02) - This segment begins with Terri's mother entering the room and addressing Terri. Terri's face goes from no expression, which is her typical baseline in the absence of specific stimuli, to a smile with turned-up corners and eyes opening wider. With the smile she made a sound from the throat and slightly closed lips. Her expression at that point is indicative of recognition of her mother and a vocalization which appears to be specific to her mother. Her eyes focused on her mother's face with eye contact with her. This is indicative of cognitive recognition with an appropriate vocal expressive gesture.

H 02 In this sequence Terri's mother told Terri she was going to play music. The volume had been left on high, and when the music began it caused a startle response. Later Terri laughs during the music, but it is not clear whether it is in recognition of the song or is prompted by her mother's voice.

H 03 Manipulation of Terri's left arm. Terri responded to the doctor

through eye focusing and turning her head toward the massage and stretching. She was able to hold the focus for an extended period of time, which indicates interaction and involvement with both the therapist and the therapy, as well as the ability to direct and hold her attention for a substantial period of time.

H 04 Facial and head response to arm stimulation. When raised even with her head, Terri gave a slight grimace of pain. This indicates sensorium between her conscious mind and that extremity. If the only reaction involved the extremity which was the source of the pain, it could be argued that this was a reflex, but reacting through facial expression necessarily involves the conscious mind.

H 05 Continued arm movement with minimal pain response (possible peripheral nerve atrophy). During the manipulation, the doctor asked Terri to open her eyes, and then to look at her mother. She responded well with slow movements. Terri was also able to hold the focus on her mother.

H 06 A swab was applied to Terri's lips, and she responded to the touch and registered her displeasure by frowning and turning her head away.

H 07 During a return visit from her mother, Terri greeted her by speaking the word “Hi”.

H 08 Dr. Hammesfahr introduced a balloon and asked her to look at it. Terri successfully accomplished this task.

H 10 Eye examination. Terri responded to being asked to open her eyes and had effective pupil dilation to light.

C 01 (Examination of Dr. Cranford on July 9, 2002) - After Terri’s mother enters the room, Terri greets her by speaking the word “Hi,” and makes good eye movement toward her. Later Dr. Cranford touches Terri’s face much in the same manner as her mother typically does. Terri responds to this stimulation initially by smiling, but the smile is not sustained, and it is not equivalent to her response to her mother.

M 02 and M 03 (Examination of Dr. Maxfield 9/4/02) - When Terri’s father moves a balloon and a box of bright lights, Terri is presented with too much stimulation and turns her head away. Later, when her father mentions a humorous event from her childhood, she rolls her eyes and laughs. This

demonstrates a quality indicative of a memory shared interpersonally with an appropriate response.

7. The above behaviors are all indicative of cognition and (with the exception of pupil dilation) are volitional in nature. They are completely inconsistent with a diagnosis of vegetative state. Terri's condition cannot be considered persistent because she has obviously improved over the term of her disability, despite the fact that she has not received physical therapy, speech therapy, cognitive therapy or occupational / recreational therapy in many years.
8. I have also reviewed an audio recording made on November 29, 2002. In this tape, recorded by Terri's father Robert Schindler in Terri's room at Hospice, Terri interacts with her father as well as several people on the telephone, including Terri's mother Mary Schindler, while Robert Schindler holds the phone to Terri's ear. Terri's voice is clearly audible on the tape, along with Robert Schindler's contemporaneous descriptions of her physical behaviors, although the speaking, singing and playing of music on the phone is not audible.
9. At the beginning of the recording, Robert Schindler greets Terri and asks how she is. Terri responds, albeit with a slight delay, with a throaty sound.

Mr. Schindler asks Terri if she can smile for him, to which she responds by saying “yeah”. He then asks how she is doing, and Terri changes tone and inflection to a sound which is apparently specific to her father.

10. Early in the recording Terri responds to a number of Mr. Schindler’s requests by saying the word “yeah,” including when he asks her to “say something to me,” when he asks “can you say hi,” and when he asks if something is hurting her. When Mr. Schindler made the repeated inquiry about something hurting her, listing various body parts that might hurt, he assumes that she understands all the body-part names (arm, leg, and the tease “elbowgan”), which may or may not be true. During this listing Terri’s voice becomes soft and more guttural, then makes little or no response, which is ambiguous, in that it may be taken to be a negative response or may mean that she did not understand the word employed. By contrast, Dr. Hammesfahr, in referring to various limbs, combines speaking the name with directing her attention there by touch, facilitating her understanding. Of course, Mr. Schindler is a lay person and cannot be expected to understand the finer points of working with a disabled person such as Terri. Under normal circumstances, Terri would receive the complete range of therapies, including physical and occupational, recreational, cognitive and speech-language therapy, and her family would

become more skillful in her care through involvement in her treatment, but here they have been deprived of those experiences.

11. Later in the recording there are several instances where Terri is apparently receiving no stimulation, and Terri remains quiet. This demonstrates that she does not vocalize randomly, as is also demonstrated by the several extended lengths of time during the Hammesfahr examination in which Terri remains quiet.
12. During the first interval in which Terri is listening to stimulation on the telephone, Mr. Schindler observes that “there is a smile on your face,” which is accompanied by softer sounds from Terri, each of which indicate her pleasure at the stimulation being provided by a clearly familiar voice. Terri’s soft responses while on the phone continue. Her laughter is more directed. Terri’s sounds are not random, nor are they repetitive. Again Terri uses the word “yeah” a number of times. Mr. Schindler again observes that Terri smiles and appears wide-eyed, indicating her consistent pleasure at being provided stimulation. She exhibits spontaneous laughter. Later Terri appears to be quiet and relaxed, the major stimulation having passed. This demonstrates a relaxation and resting after stimulation of a pleasing nature.

13. On the second side of the recording, Mr. Schindler repeatedly asks Terri if she wants him to call her mother on the phone. She responds immediately to the question with a short sound, like an “ah” sound, which is a shortened version of “ah-hah.” This is a typical mode of conversational response when interacting with a person who is well known and with whom she enjoys an easy comfort level. Mr. Schindler repeats the question in slightly different fashion, perhaps in an effort to elicit as much speech from Terri as possible. Terri vocalizes in response consistently during this question, indicating the level of her desire to speak to her mother, but when Mr. Schindler indicates that he will call Mrs. Schindler, Terri becomes quiet and patient while he dials the phone. When there is a delay in getting through to Mary Schindler, Terri begins vocalizing again, and Mr. Schindler apparently perceives the need to reassure Terri that he is trying to get her mother on the phone. When Mrs. Schindler is finally reached and Mr. Schindler puts Terri on the phone with her mother, Terri becomes very quiet as she listens attentively. As the conversation progresses, Terri periodically responds with an “uh-huh” sound, which repeats, but at varying rather than regular time intervals, as is natural in conversation.
14. The Schindler family relates that, during the interval immediately after the October, 2002 hearing held in this case and the time of this recording, that,

having been inspired by the interactions noted in the Hammesfahr examination, they undertook to encourage Terri to vocalize more, and encouraged her to say the word “yeah” as a way of answering “yes.” Although they had previously heard Terri use the “uh-huh” and “ugh-ugh” sounds, they had never heard her say “yeah” since her collapse. At the time of the recording, Terri clearly had added this word to her repertoire, and uses it meaningfully to answer questions, although there is no basis to conclude that she is able to answer in the affirmative this manner in any consistent, reliable manner. This learned behavior, under the guidance of laypersons suggests that Terri could perhaps make much greater strides in her ability to communicate if she were permitted to receive professional cognitive therapy, including most especially speech-language therapy.

15. Recent research at Johns Hopkins Medical Center and Duke University demonstrate that the brain has “plasticity” and can be stimulated, and new neural (dendrite) connectors can be formed, which could further improve Terri’s neurological functioning. Such therapy increases cognitive function by increasing the number of connections between existing functioning neurons, and will also bring additional existing, dormant neurons into use.
16. Neuroaerobics is a mode of treatment whereby specific tasks are used to

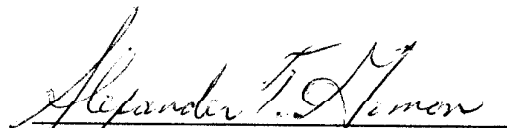
stimulate specific parts of the brain and specific brain functions, and are repeated or exercised for maximum effect. This is similar to a right-handed pitcher practicing pitching with his left hand until he develops an increased ability to use the non-dormant arm. Other examples include professional drivers who develop the ability to read text backward in their rear-view mirrors, or salesmen who develop the ability to read documents upside down to a prospect sitting across the table from them. In each case increased neural pathways are built and cognitive ability is enhanced through repeated effort. Such therapy can also trigger latent memories to be restored. Terri demonstrates control of cognition and would, within a reasonable degree of clinical therapeutic certainty, respond to neuroaerobics.

17. It is my opinion that Mrs. Schiavo is not in a persistent vegetative state. Terri exhibits extensive and varied purposeful reactions to her environment. These behaviors are particularly pronounced in interactions with her family. There is much research to affirm the fact that close family members typically perceive cognitive behaviors in brain-injured patients before other caregivers recognize them.
18. Depriving brain-damaged patients of medical, physical, occupational, recreational and speech-language therapy is both neglect and abusive. By

denying such patients the stimulation provided by enjoying a variety of visitors, such common comforts as cards and flowers in her room, and the opportunity to leave her room, their cognitive functioning is necessarily depressed from what it would otherwise be. Given the neglect which Terri has suffered and the number of years over which it has occurred, it is striking that her current cognitive functioning is as strong and varied in expression as it is. This indicates that sufficient brain structure exists for further cognitive and behavioral progress to be made. Terri is an excellent subject for a variety of cognitive treatment protocols designed to improve her neurological function, including neuroaerobics, physical therapy, recreational / occupational therapy, and speech-language therapy.

19. It is my professional opinion, within a reasonable degree of clinical therapeutic certainty, that Mrs. Schiavo's cognitive function and ability to communicate and otherwise interact with her environment can be greatly enhanced by the modalities mentioned.

FURTHER AFFIANT SAYETH NAUGHT.


Alexander T. Gimon, Ph.D.

The foregoing instrument was acknowledged before me this 25th day of August, 2003,

by Alexander T. Gimon, Ph.D., who produced an Illinois driver's license as identification,
and who did / did not take an oath.



Notary Public

My commission expires:



Thomas A. Brodersen
MY COMMISSION # DD189485 EXPIRES
March 4, 2007
BONDED THRU TROY FAIN INSURANCE, INC.