

GIBBS ON *SCHIAVO**

Good morning. My name is David Gibbs, and it is my pleasure to represent Bob and Mary Schindler, Theresa Marie Schiavo's parents, both of whom are here this morning.

As we look at the case of Terri Schiavo, we are dealing with some far bigger issues, quite candidly, than whether someone wants medical treatment or wants to refuse medical treatment. Let me begin by laying out a factual backdrop because I think the facts are a very large component to understanding the *Schiavo* case.

Number one, Terri is as alive as you are. You may be sitting here thinking, "Well, I've heard she is on a ventilator; she is being kept alive by tubes, and so on." But as we sit here today, Terri Schiavo is every bit as alive as you and I.

Terri goes to bed at night. She wakes up in the morning. She functions throughout the day. All of her body systems will keep her alive for many more years with one exception: she cannot put food and water down her own throat.¹ So when we talk about medical treatment, we need to be careful that we don't go to the next level of conversation. The only medical treatment Terri requires to stay alive is assistance with food and water.

Certainly many families struggle with extremely difficult circumstances. Some patients require machines and other apparatuses that can keep a body alive long after the person would otherwise have died. That is not what the Terri Schiavo case is about. Each and every day, as Terri wakes up, she receives her

* © 2005, David C. Gibbs III. All rights reserved. David C. Gibbs III is a senior partner with the Gibbs Law Firm, P.A., located in Seminole, Florida. He was lead counsel for the Schindler family as they were trying to save the life of Terri Schiavo. He received his J.D. degree from Duke University School of Law in Durham, North Carolina. He is a member of the Florida, Colorado, Minnesota, North Dakota, District of Columbia, and Texas Bars.

1. According to the autopsy report, Terri Schiavo could have lived at least another ten years. Jon R. Thogmartin, *Report of Autopsy* (Dist. Six, Pasco & Pinellas Counties June 13, 2005) (available at <http://news.findlaw.com/hdocs/docs/Schiavo/61305autopsyrpt.pdf>). However, in Michael Schiavo's medical malpractice suit, Terri Schiavo's life expectancy was estimated to be another fifty years. Art Moore, *Terri Schiavo's Life in Balance*, http://www.wnd.com/news/article.asp?ARTICLE_ID=43026 (Feb. 25, 2005).

food and water with assistance. A few years ago in the State of Florida, that would have been considered ordinary medical care.²

Our goal here is not to demonize Michael Schiavo, but the facts of this case speak for themselves. After his wife's disability occurred on February 25, 1990, Mr. Schiavo sued Terri's medical doctors, her general practitioner, and gynecologist, for malpractice.³ At the time of the trial in 1992, Mr. Schiavo told the jury and Terri's family that he was committed to taking care of his wife for the rest of her life. He was committed to getting her treatment, committed to keeping her alive, and committed to doing everything he could to help prolong her life.

It was very interesting that after he received the money, over a million dollars, and after the trial was concluded, suddenly he began to remember something new. He began to remember that Terri would not really want to live in that condition. While we can sit here and question when things are remembered, quite candidly, the undisputed fact is that Mr. Schiavo wanted Terri alive when he received more than a million dollars in a jury award, and then after receiving the money, he suddenly remembered that Terri really wouldn't want to live anymore. The timing of this remembrance is rather unusual.⁴

2. According to Section 765.101(10) of the revised Florida Statutes, "[l]ife-prolonging procedure' means any medical procedure, treatment, or intervention, including artificially provided sustenance and hydration, which sustains, restores, or supplants a spontaneous vital function." However, prior to this revision, which became effective April 10, 1992, the statute did not include the provision of sustenance as a "life-prolonging procedure." Rather, Section 765.03(3) of the Florida Statutes defined "[l]ife-prolonging procedure' . . . [as] any medical procedure, treatment, or intervention which: (a) [u]tilizes mechanical or other artificial means to sustain, restore, or supplant a spontaneous vital function; and (b) [w]hen applied to a patient in a terminal condition, serves only to prolong the process of dying."

3. The malpractice theory in the 1992 malpractice trial was that Terri's collapse on February 25, 1990, was caused by a low potassium level due to bulimia; however, there was no evidence in the autopsy report to confirm that bulimia was the cause. Thogmartin, *supra* n. 1, at 27. "Although in the malpractice proceedings the low protein values were suggested as indicators of malnutrition, this is unlikely and not generally characteristic of Bulimia Nervosa." *Id.* at 29. The cause of Terri's collapse and subsequent disability remains a mystery.

4. Michael Schiavo first went to George Felos in 1995. In 1997, the law in Florida was changed so that if a patient was diagnosed as being in a persistent vegetative state (PVS) and had no living will, a judge could determine by clear and convincing hearsay evidence that the patient would not want to live in that condition. Fla. Stat. § 765.401(3). Now hearsay evidence is accepted in court even if the patient is not in PVS, but is merely disabled. Fla. Stat. § 765.305(2). In 1984, Section 765.03(6) of the Florida Statutes defined a "terminal condition" as "a condition caused by injury, disease, or illness from which, to a

We also need to remember that the *Browning*⁵ case Mr. Felos discussed⁶ dealt with some completely different facts. Mrs. Browning had a written living will. The lawyers in the audience know that a living will is a document in which individuals have taken the time to spell out exactly what they want done with regard to medical treatment and the provision of food and water. They execute those wishes in a legally binding written document called a living will.

In the *Browning* case, there was not a divided family disagreeing over Mrs. Browning's wishes. If the family is united and an individual has a living will and would not want to continue to live, it is legitimate for the court to determine that the state should not step in and try to keep someone, like Mrs. Browning, alive with an artificial provision of food and water.

In the *Schiavo* case, we have something totally different. Terri Schiavo never executed a living will.⁷ She never indicated in any written document anything at all about her end-of-life wishes. The testimony in the courtroom in the *Schiavo* case was candidly a little disconcerting. Mr. Schiavo testified that Terri had made comments while they were watching television as young twenty-somethings. Mr. Schiavo testified that Terri saw some unspecified tragic situations on television and commented that "she would not want to live like that."⁸ Terri's family has

reasonable degree of medical certainty, there can be no recovery and which makes death imminent." Sections 765.101(12)(a) and (b) of the Florida Statutes added persistent vegetative state as a terminal condition (defining PVS as a state characterized by a "permanent and irreversible condition of unconsciousness in which there is: (a) [t]he absence of voluntary action or cognitive behavior of any kind [and] (b) [a]n inability to communicate or interact purposefully with the environment"). Until the day of her death on March 31, 2005, Terri's family and her attorneys continued to state that Terri was responsive and interactive. *Terri Schiavo Expresses Her Wishes; Attorney and Sister Testify in Court*, http://www.blogicus.com/archives/terri_schiavo_expresses_her_wishes_attorney_and_sister_testify_in_court.php (Mar. 31, 2005) [hereinafter *Terri Schiavo Expresses Wishes*] (publishing affidavits of Suzanne Vitadamo and Barbara Weller).

5. *In re Guardianship of Browning*, 568 So. 2d 4 (Fla. 1990).

6. See George Felos, *Felos on Schiavo*, 35 Stetson L. Rev. 9 (2005).

7. Nor did Terri designate a healthcare surrogate to make medical decisions.

8. See Kathy L. Cerminara & Kenneth Goodman, *Key Events in the Case of Theresa Marie Schiavo*, <http://www.miami.edu/ethics2/Schiavo/timeline.htm> (Feb. 11, 2000) (reporting the trial court ruling) (determining that Michael Schiavo's testimony that while watching a television program relating to life support, Terri Schiavo stated that "she would not want to live like that," was clear and convincing evidence of Terri Schiavo's wishes for herself, but that Mrs. Schindler's testimony that her daughter had made comments that they should "just leave Karen alone" during television news reports regarding

questioned whether Terri actually ever made such comments, but even if she did, haven't we all? I would dare say that in making such comments, Terri would never have imagined that at that point; she was executing a legally binding living will stating, "If I am ever in a condition in which I need assistance with food and water, I am now instructing my husband to go to court for permission to starve and dehydrate me to death." In our opinion, the sort of weak evidence offered in court to sustain Terri's alleged end-of-life wishes was not sufficient for the court to make a determination as to what Terri would have wanted.

We need to remember in all of this that Terri is the key component here. If somehow, as we sit here today, Terri were able to speak for herself, I think we would all agree that Terri should have the opportunity to make her own decision regarding her medical treatment. But in this case, because of Terri's disability, the fact is that she is no longer able to speak for herself, although Terri's family still questions whether, if given rehabilitation therapy, Terri could eventually speak for herself.⁹ Unfortunately, Mr.

Karen Ann Quinlan was not germane to the decision of Terri Schiavo's intent for her own future). Hearsay testimony regarding the end-of-life wishes of a terminal or persistent vegetative state patient was not permitted under Florida law in the absence of a living will or a healthcare surrogate designated by the patient until October 1, 1997. Fla. Stat. § 765.401(3).

9. The Schinders filed a motion for relief from judgment on February 23, 2005, seeking a reevaluation of Terri using 2005 medical procedures claiming (1) that the 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. Respt.'s Fla. R. Civ. P. 1.540(b)(4) Mot. for Relief from Judm. Pending Contemporary Med./Psychiatric/Rehabilitative Evaluation of Theresa Marie Schiavo, *In re Guardianship of Schiavo* (Fla. Cir. Ct. 6th Dist. Feb. 23, 2005) (on reserve with *Stetson Law Review*).

The respondents' motion was "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." Or. Denying Respt.'s Motion, *In re Guardianship of Schiavo 2* (Fla. Cir. Ct. 6th Dist. Mar. 9, 2005) (on reserve with *Stetson Law Review*). Michael Schiavo presented no medical evidence in opposition. In a six-page order, issued March 9, 2005, Judge Greer denied the motion, stating, "Significantly, [respondents] 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." *Id.* at 3-4.

Schiavo, as the legal guardian, has cut off all therapy for many years, beginning in 1992.¹⁰

We are left with many questions about whether Terri could ever learn to speak for herself. Today there are many experimental therapies that could be utilized to try to help Terri express her own wishes. None of these therapies are being afforded to Terri, so at this point, we have no way to know truly what Terri herself would have wanted.¹¹

You might be wondering how I know how alive Terri is. Well, I have had the opportunity to walk into her room and look at her.¹² There is something else quite distinctive in this case that the court has had the opportunity to review. There have been videotapes of Terri made available to the court. However, Terri Schiavo has never had the opportunity to appear in the courtroom herself while her fate was being determined.¹³

Some of you may be aware that this afternoon, we are going to be having a hearing before the trial court judge in which one of our arguments will be that the court should void the legal judgment in which it was determined in 2000 that Terri would indeed want to have her food and water removed.¹⁴ Some of the components of that argument are interesting.

10. Terri had no swallowing tests after 1992. See Moore, *supra* n. 1 (stating that Michael Schiavo had prevented swallowing tests or swallowing therapy since 1993).

11. See *In re Guardianship of Schiavo*, 780 So. 2d 176, 179 (Fla. 2d Dist. App. 2001) (holding that the trial court had sufficient evidence to end Terri's life support).

12. Although Michael Schiavo succeeded in petitioning the court to limit Terri's visitors, there still are many accounts, from visitors, of Terri's responsiveness to her mother and family. Or. Limiting Visitation, *In re Guardianship of Schiavo* (Fla. Cir. Ct. 6th Dist. Mar. 24, 2000) (available at <http://www.miami.edu/ethics2/Schiavo/timeline.htm>; see Tom Brodersen, *Independent Media Center, Terri's Clear Responsiveness to Talk, Song, and Fun*, <http://portland.indymedia.org/en/2005/03/31390.shtml> (Mar. 21, 2005) (stating that during his visits with Terri, Terri's father observed that "Terri responds to a variety of stimuli, [sic] including responding to both her mother's and [his] voices, both in person and over the phone, by fixing her attention and frequently by laughing").

13. Terri was represented by three guardians ad litem during the proceedings. See *Schiavo ex rel. Schindler v. Schiavo*, 357 F. Supp. 2d 1378, 1386 (M.D. Fla. 2005) (stating that the record reveals that Richard Pearse, John Pecarek, and Jay Wolfson served as guardians ad litem for Terri throughout the proceedings). However, Judge George W. Greer never personally visited Terri Schiavo, in spite of the requirements of Section 744.3725 of the Florida Statutes (2005) (requiring the court to "[p]ersonally meet with the incapacitated person to obtain its own impression of the person's capacity, so as to afford the incapacitated person the full opportunity to express his or her personal views or desires with respect to the judicial proceeding and issue before the court").

14. Respt.'s Fla. R. Civ. P. 1.540(b)(4) Mot. for Relief from a Void Judm., *In re Guardianship of Schiavo* (Fla. Cir. Ct. 6th Dist. Jan. 6, 2005) (on reserve with the *Stetson Law*

Terri Schiavo, the person at interest here, the person with the privacy right to accept or reject medical treatment, has never been afforded what we believe to be proper due process. How can you determine that a person would want to die without ever giving that person her own lawyer? Certainly, in this country, we understand the basic concept that if a criminal is charged with a crime, he receives, under due process of law, the right to counsel, the right to representation, the right to call witnesses, and the right to cross-examine. These are all basic due-process protections. But here we have a disabled young lady who cannot speak for herself and who has never been afforded her own legal counsel throughout this entire legal proceeding.

Please understand that the guardian, Mr. Schiavo, has been very adequately represented. Mr. Felos has done an outstanding job representing his interests throughout the entire proceeding. And Mr. Schiavo and Mr. Felos have had access to Terri's medical

Review). The Schindlers argued that Judge Greer's February 11, 2000, Order authorizing the discontinuation of artificially provided food and water for Terri Schiavo was void because (1) she was never appointed independent legal counsel in violation of her due process rights; (2) the Court impermissibly applied post-1990 substantive law to her pre-1990 oral declarations regarding end-of-life issues and (3) the Court acted beyond its judicial powers and violated the separation of powers doctrine by making the health-care decision for [Theresa Schiavo].

Or. Denying Respt.'s Mot. for Relief, *In re Guardianship of Schiavo* 1–2 (Fla. Cir. Ct. 6th Dist. Feb. 11, 2005) (on reserve with the *Stetson Law Review*).

Respondents also argued that Terri's "nondelegable rights of access to the court, of counsel, and of privacy under Sections 744.3215(1)(k), (l) and (o) of the Florida Statutes were triggered by her Guardian's application to the Court for authority to discontinue her artificially-provided food and water." *Id.* at 4. Judge Greer, in a nine-page order, determined that

a proceeding which seeks termination of artificially-provided hydration and sustenance is not one of the actions or procedures listed in FS 744.3725(1) and FS 744.3215(4). Prior to 1994, discontinuing a ward's life support systems was included within the statute but it was removed from the statute before the Guardian in this case initiated a petition to remove [Theresa Schiavo's] hydration and sustenance. Florida Statute 744.3725(1) on which Respondents rely is, therefore, simply inapplicable to this proceeding.

Id.

The court also explained that its decision as the surrogate decision-maker for Terri Schiavo was not applied retroactively because the court had not applied statutory law in 2000, but

the issue that was determined was [Theresa Schiavo's] "intention as to what she would want done under the present circumstances. . ." (February 1, 2000 Order, p. 9) and this Court determined that it was called upon to apply the law as set forth in *In Re Guardianship of Estelle M. Browning*.

Id. at 7.

malpractice money to use those funds to petition the court to remove her feeding tube and to starve and dehydrate her to death. Her parents had no such funding available to them, although the parents have had legal counsel throughout this entire process, and their interests have been very adequately represented by a number of fine lawyers. Terri did not have an attorney who could have used her malpractice award funds to put forward her own interests. We are here now with Terri Schiavo, the person with the most to gain and the most to lose, the person with the right of privacy, the person with the right to decide whether she receives medical treatment or not, and she has never been afforded a lawyer of her own throughout the entire process.

We believe this is a huge due-process violation and that, indeed, Terri, in this kind of situation, both on statutory and on constitutional grounds, has been rendered a void judgment by the court. And we are going to ask the court today to consider these arguments.

We have previously raised another argument before the court, which has been unsuccessful to this point but which is now on appeal—Terri’s religious faith dictates that she would not want to be starved or dehydrated to death.¹⁵ For those of you less familiar with the facts of this case, Terri was a devout Catholic from her earliest years as a child all the way up through her married and adult life. She was very faithful to the Roman Catholic Church. In March 2004, the Church issued a new position paper and clarified its teachings regarding this issue, indicating that food and water is not extraordinary medical treatment, but is ordinary care.¹⁶ What that March 2004 declaration indicates is that

15. As a result of Pope John Paul II’s March 20, 2004, Papal Declaration, the Schindlers filed a motion for relief from judgment in the Circuit Court for Pinellas County, Florida, Probate Division, which was based upon the fact that Terri’s Catholic religious faith prohibited adherents from refusing artificial sustenance and hydration. After oral argument and extensive briefing, the motion was denied by Judge George W. Greer on October 22, 2004. Or. Dismissing Pl. Mot. for Relief from Judm. and Mot. to Reconsider under R. 1.540(b)(5) *In re Guardianship of Schiavo 2* (Fla. Cir. Ct. 6th Dist. Oct. 22, 2004) (available at <http://www.miami.edu/ethics2/Schiavo/timeline.htm>).

16. Pope John Paul II, *Papal Declaration* (Mar. 20, 2004). On March 20, 2004, following an international symposium at the Vatican on life-sustaining treatments and the vegetative state, Pope John Paul II issued a pronouncement that the administration of food and water, even when provided by artificial means, is not a medical act, but rather a natural means of preserving life. *Id.* The Pope proclaimed that its use should always be considered “ordinary and proportionate” and, as such, “morally obligatory.” *Id.* (emphasis in

it would be a violation of Church teachings, as proclaimed by Pope John Paul II, the head of the Church, for Catholics to end their lives by refusing to take food and water, even artificially.

We have asked the court to take a serious look at this recent clarification by the Roman Catholic Church in 2004.¹⁷ The trial court declined to do so, indicating in its denial of our motion that the issue of Terri's Catholic faith had been reviewed at the trial in 2000.¹⁸ That issue is now on appeal to the Second District Court of Appeal. That court initially denied our appeal, but is currently reconsidering it as we stand here today.¹⁹

As you consider this case, I think you have to look at some of the big-picture issues. Number one, you have in play an interesting dynamic of the love of parents like Bob and Mary Schindler. If you look at the controversy in this case, and Mr. Felos correctly stated it, nobody in his or her right mind would voluntarily step into this kind of whirlwind, this frenzy of legal activity. But do you know who would voluntarily step into that whirlwind? A mom and dad who thought that their son-in-law and a judge, with an order from a court, wanted to kill their daughter, a daughter they love very much and just want to take care of.

Please understand that this killing would not be by lethal injection. This would not be a quick process.²⁰ Remember that if you were to try to starve or dehydrate a criminal on death row, that

original). With this pronouncement, Pope John Paul II profoundly changed the worldwide debate on how Catholics should respond to the condition of PVS. He issued the first clear and explicit papal statement on the obligation to provide food and water for patients in a persistent vegetative state. The Pope declared,

I should like particularly to underline how the administration of water and food, even when provided by artificial means, *always* represents a *natural means* of preserving life, not a *medical act*. Its use, furthermore, should be considered, in principle, *ordinary* and *proportionate*, and as such morally obligatory, insofar as and until it is seen to have attained its proper finality, which in the present case consists in providing nourishment to the patient and alleviation of his suffering.

Id. (first emphasis added, remaining in original).

The Schindlers' argument to the court based upon this pronouncement was that, as a faithful Catholic, Terri would want to obey the Pope's new directive and would change her decision about refusing artificially supplied sustenance and hydration.

17. *Id.*

18. Or. Dismissing Pl. Mot., *supra* n. 15, at 3–4.

19. The Second District Court of Appeal affirmed the trial judge's order with a one-word affirmance and without issuing a decision, thus barring access to the Florida Supreme Court. *In re Guardianship of Schiavo*, 895 So. 2d 1075 (Fla. 2d Dist. App. 2004).

20. Ultimately, Terri's death was slow. Terri's feeding tube was removed by court order on March 18, 2005, and she died from dehydration on March 31, 2005.

would be immediately overruled as unconstitutional. It would be cruel and unusual punishment. It would not in any way be allowed.²¹

But in this case, we have a mom and dad who twice now have seen food and water removed from their daughter.²² They are now looking at that prospect once again as these current court proceedings move forward.

As we look at this case, it is certainly unfortunate that these matters must be put before the court. Certainly, it would be desirable for the family to resolve this among themselves. Terri's family has repeatedly offered to resolve this matter and to take over Terri's care. They have asked Mr. Schiavo, Terri's husband, to please just get on with his life and give Terri back to them.²³ They have a real question as to why Mr. Schiavo, who has now moved on with his life and has a significant relationship and several children with another woman, would not just walk away and leave Terri's care to her parents.

This is a troubling question because, quite candidly, with a single stroke of a pen, with a single decision, Mr. Schiavo could say, "You know what? I disagree, but the mother and father, the brother and sister, they believe so strongly she can improve. All of her blood relatives want her to live. Why don't I just walk away? I mean, I married into this family. It is unfortunate that Terri has this disability. But if the mom and dad feel that strongly—" And it is a very troubling question. The mom and dad continue to ask the question, "Mr. Schiavo, why will you not just walk away?" And Mr. Schiavo's standard answer so far has been, "We want to do what Terri would want." But I am saying that this extended fifteen-year legal controversy puts what Terri would want in huge dispute.

21. U.S. Const. amend. VIII; Pub. L. No. 109-3, 119 Stat. 15 (2005) (applying the same federal habeas rights to Terri civilly).

22. Before this speech, which predated the third and final removal of the feeding tube, the tube had been removed and replaced twice. The feeding tube was first removed on April 24, 2001, and was reinserted on April 26, 2001; the feeding tube was again removed on October 15, 2003, and reinserted on October 21, 2003. Cerminara & Goodman, *supra* n. 8, at <http://www.miami.edu/ethics2/Schiavo/timeline/htm> (accessed July 28, 2005).

23. See *Judge Gives Terri's Parents until Feb. 7; Parents Publicize Rejected Settlement Details*, <http://www.mediaculpa.com/archives.php?id=A2005011> (Jan. 29, 2004) (citing the *Tampa Tribune* and referencing the November 2004 offer made by the Schindlers to Michael Schiavo).

The parents continue to stand strongly by the fact that their daughter would want to live.²⁴ Terri was the little girl who always took care of stray animals. She would take in stray dogs. To sit here and think that their daughter would want to starve to death is an abhorrent idea to her family and friends. It is absolutely an unbelievable concept to them. And remember that we are not talking here about invasive medical treatment. We are not talking about chemotherapy. We are not talking about violative surgeries or extraordinary medical procedures. We are merely talking about giving Terri food and water to keep her alive.

We need to realize, as we look at this case, the extraordinary love of these parents, Bob and Mary Schindler. We also need to recognize the duty of courts to protect the weak in society. Our law, our judicial system, was never designed to favor the powerful, to favor the strong. Instead, our courts were designed to make sure that the individual, the weak among us, would have the opportunity to have his or her rights protected.

In this case, Terri cannot speak for herself. Her very right to life is at stake. Those that are disabled in our society are extremely troubled by this case and by the fact that our laws and our courts are now deliberating troubling concepts such as what it costs to care for a disabled person and whether a disabled person can sufficiently contribute economically to society. Disability groups are worried that cases like the *Schiavo* case are moving our nation towards a Nazi or Hitleresque society.²⁵

Please understand the context of these right-to-die cases. The unborn are unable to speak for themselves. Now, suddenly, we have moved the bar to include the disabled who cannot speak for themselves. Most of us think that America could never slide to the point reached by Nazi Germany in the 1930s and 1940s. Let me say that I don't think we will reach that point as long as people like Bob and Mary Schindler stand and speak out on behalf of

24. See CNN, *Before Fight over Death, Terri Schiavo Had a Life*, <http://edition.cnn.com/2003/LAW/10/24/schiavo.profile.ap/> (Oct. 25, 2003) (referencing Terri's statement to a close friend regarding Karen Ann Quinlan: "'Where there's life,' [Diane] Meyer recalls her saying, 'there's hope'").

25. See ADA Watch, Disability Rights Center, *Not Dead Yet, et al., Statement Regarding Terri Schiavo*, <http://www.raggededgemagazine.com/schiavostatement.html> (Oct. 27, 2003) (asserting, in a joint statement signed by twenty-three disability-rights groups, concerns with the widely held belief that severely disabled individuals are "better off dead").

those with no voice to speak out and say, “We do not want our society to move in that direction. Just because a person is disabled and cannot speak for herself, does not mean that her legal rights can be ignored.”

Mr. Felos mentioned some of the pressures in this case. This seminar topic is on living though the *Schiavo* case from an attorney’s perspective. I would mention that it is a source of incredible pressure because there are life-and-death issues at stake. Please understand that in most cases, courts are involved with giving people what they want or telling them they cannot get what they want. A lot of cases involve telling people that they get the money or they don’t get the money. Some cases in the criminal world determine whether you will spend time in jail or pay a fine. But when the issue is life or death, the stakes get very high.

The *Schiavo* case is very much like a death-penalty case in the criminal context.²⁶ With every hearing and every motion, our side literally carries the burden that I may have to look these wonderful parents in the eye and I may have to tell them that we have done all we can do, but we are now at the point at which their beautiful daughter is going to be starved and dehydrated until she is dead, merely because she is disabled and cannot speak for herself. I pray that day never comes.²⁷ I know that these dear people have lived through that day twice before. As I live with this case, the life-and-death pressures are staggering.

Certainly the media coverage of this issue is another interesting component of the case. This is styled as a privacy rights case, yet there is nothing private about it. When you as a lawyer are in the courtroom and rows of cameras are filming every move, every time you scratch your chin or twitch your ear, you become very aware that you are being watched and critiqued constantly. However, I think the media coverage adds a certain dynamic that is probably good for this case and good for society. The coverage allows the world and the nation literally to watch what is happening. In a measure, I am delighted with the Internet, television,

26. Pub. L. No. 109-3, 119 Stat. 15 (2005) (enacting civil habeas corpus protections for Terri similar to the protections afforded death row criminals).

27. That day arrived on March 25, 2005, when the final motion was filed with an affidavit stating that Terri tried to say, “I want to live,” on the morning the feeding tube was removed. *Terri Schiavo Expresses Her Wishes*, *supra* n. 4.

and other media outlet coverage of this case because I believe these are important issues for our nation and for the world to consider. These are critical issues.

Our founding fathers said, “life, liberty and the pursuit of happiness.”²⁸ If our nation is going to move to the point of devaluing life at the level it is being devalued in this case, that is a warning that should be shouted from the housetops and blared across the media outlets.

I have not been in this case as long as Mr. Felos has. But I would add from my own perspective that it is always interesting for a lawyer to transition into an ongoing case. I was co-counsel for a few years with others in this process. I did not do the original trial.²⁹ Reviewing the work of other attorneys always adds an interesting dynamic. And there have been many fine lawyers previously involved in this case.

Another factor in this case is the staggering amount of unsolicited offers to help. As this case is being put out to the world, the emails and suggestions are pouring in. Everybody has an idea or a suggestion. People you have never met show up at your office with all kinds of ideas. In all of that, there is a kind of friendly pressure. These are good people and they want to help. But that is another dynamic of a high-profile case that I, candidly, had not expected. The amount of good-natured people, many of them non-lawyers and lay people, who have an idea for winning the case that they want to explain to you, can become overwhelming.

As we sit here and consider this case, I would restate that we have a standing settlement offer to Mr. Schiavo. It has been rejected, but I will restate it here because I think it bears restating. The Schindler family’s offer is this—Mr. Schiavo can keep every dollar of Terri’s malpractice award. He can have any rights to any future money to be made from this case. He can stay married or he can divorce Terri. He can get on with his life. But would he please just allow Bob and Mary Schindler, at their own expense, to take care of the daughter they love?

You might say, “Well, Mr. Gibbs, is Terri’s life a life worth living?” I would reply that I have watched Terri Schiavo in her hos-

28. *Declaration of Independence* [¶ 2] (1776).

29. Mr. Gibbs became lead counsel in September 2004, although he had previously been involved in the case, including drafting Terri’s Law.

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pice room. I have watched her interact with her mom and dad. I have watched her talk and grunt and move.³⁰ You might point out that Terri is severely disabled. Absolutely, she is. But she is also as alive as you and me. In America, we cannot starve animals or execute death row prisoners by refusing to give them food and water. I don't want to live in an America in which we starve and dehydrate innocent people merely because they are disabled and cannot speak for themselves.

(Applause)

30. At the autopsy press conference, Dr. Stephen J. Nelson, Chief Medical Examiner of the Tenth Judicial Circuit of Florida, who acted as designated consultant neuropathologist for the Pinellas County Medical Examiner, said Terri could not have been responsive; however, his report says there is no way to tell that from an autopsy. Ltr. from Stephen J. Nelson, M.D., Chief Med. Examr. of the 10th Jud. Cir. of Fla., to Jon R. Thogmartin, M.D., 6th Jud. Cir. of Fla. Med. Examr., *Neuropathology Report on Theresa Marie Schiavo* 9 (June 8, 2005) (available at <http://news.findlaw.com/hdocs/docs/Schiavo/31605autopsyrpt.pdf>). Dr. Nelson stated, "Neuropathologic examination alone of the decedent's brain—or any brain, for that matter—cannot prove or disprove a diagnosis of persistent vegetative state or minimally conscious state." *Id.* Blindness was also a new issue that was not raised before. All the attorneys and family members stand by their observations while Terri was alive; she did interact with them and could follow light and focus on people's faces. Since no tests were performed on Terri prior to the removal of her feeding tube and her death, the Schindlers still do not know whether their daughter was in a persistent vegetative state.