

OF THE SIXTH JUDICIAL CIRCUIT STATE FLORIDA IN AND FOR PINELLAS
COUNTY PROBATE DIVISION

CASE NO. 90-2908-GD3 I

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

MICHAEL SCHIAVO, AS GUARDIAN OF THE PERSON OF THERESA MARIE
SCHIAVO,

Petitioner, ROBERT SCHINDLER AND MARY SCHINDLER,

BEFORE: JUDGE W. GREER Circuit Court Judge

PLACE: Clearwater Courthouse
Clearwater, FL 33756

January 24, 2000
3:00 p.m.

REPORTED BY: Beth Ann Erickson, RPR Court Reporter Notary Public

EXCERPT OF TRIAL
TESTIMONY OF FATHER MURPHY

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Pages 1 - 50

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INDEX

Page

WITNESS

FATHER GERARD MURPHY

Direct Examination by Mr. Felos

3

Voir Dire Examination by Ms. Campbell	10
Direct Examination Continued by Mr. Felos	12
Cross-Examination by Ms. Campbell	28
Redirect Examination by Mr. Felos	43
Recross-Examination by Ms Campbell	48

P R O C E E D I N G S

MR. FELOS: Call Father Murphy.

THE BAILIFF: Stand here, raise your right hand to take the oath.

(THEREUPON, THE WITNESS WAS SWORN ON OATH BY THE COURT.)

DIRECT EXAMINATION BY

MR.FELOS :

- State your full name, please.

A Gerard Murphy.

- Father Murphy, are you an ordained priest in any particular faith?

A Yes. Roman Catholic.

- To what work are you assigned in the church at this time?

A At present, I am the pastor of St. Ann's Church, Ridge Manner, in Hernando County.

- Can you tell us about St. Ann's parish?

A Very small. A country parish. About 400 families. Mostly elderly. People are sick. On the edge of life.

- Father Murphy, can you please tell us your educational and clerical background?

A Well, I graduated from college, seminary college. Then went to graduate school. Four

years of theology. Also graduated with six units

of clinical pastoral education, which is an international movement of supervised pastors ministry. Each unit was 400 hours of supervised ministry in the health care setting. So I achieved 2400 hours of intensive supervised training.

- What degree did you obtain in graduate school?

A Masters of Divinity.

- Your undergraduate degree was in?

A Bachelors of Philosophy.

- Father Murphy, when were you ordained? A 1979. May.

- I'd like you to describe for us, chronologically, your work in the church since that time.

A Okay. The first eight years I was an assistant pastor at Most Holy Name in Gulfport Florida. From there I went for a year to Bayfront Medical Center, actually St. Mary's in downtown St. Pete, to be the Catholic chaplain at Bayfront Medical Center. I went back to Most Holy Name for a year-and-a-half, two years. Then I was employed by Sarasota Memorial Hospital as a Catholic

chaplain for three years. Back to St. Petersburg as Director of Pastoral Care at St. Anthony's.

And several more years as assistant pastor helping out in parishes throughout the dioceses where needed. And three years in my present assignment as pastor.

- Let's talk first about, it was Holy Name parish in Gulfport?

A Yes.

- You were there about eight years? A Eight years.

- Please describe the nature of your clerical work there.

A Ninety percent of my parish work was at the hospital. Palms of Pasadena is small, but very

active. Virtually all the census was Catholic.
Ninety percent of my time was there.

- With your work at Palms of Pasadena while at Most Holy Name parish, did you have the opportunity to work with families and counsel families who were faced with end of life care and medical treatment decisions?

A Definitely.

- Removal of life support decisions? A
Definitely.

- I believe you mentioned that during that

period you were the chaplain at Bayfront Medical Center?

A I was assigned to St. Mary's Catholic church downtown, but I covered Bayfront for them.

- Please describe your duties as chaplain at Bayfront.

A Well, you know, certainly it's administration of the sacrament, but a much larger role than that today simply because there are so many questions, moral questions. It is not as easy to die as it used to be. So there are an awful lot of questions that come up. It is a matter of helping families work their way through it.

- How many families would you say you counseled and worked with in that area when you were chaplain at Bayfront?

A At Bayfront for that year, a hundred probably.

- And before at Most Holy Name parish, how many?

A Hundreds.

- I believe you mentioned that after, after your service at Most Holy Name parish, you were the Catholic chaplain at Sarasota Memorial Hospital?

A Yes.

- And how long?

A Just under three years.

- Tell us about the nature of your duties at Sarasota Memorial Hospital as chaplain.

A Same as at the previous hospital. However, this time I was employed by the hospital so my time was exclusively theirs. At Sarasota, I was co-chairman of the Violation Commission and virtually all my work was in bioethical consultations with families and physicians.

- Please describe the workings of the Bioethics Committee at Sarasota Hospital.

A A large group of people from all the disciplines in the hospital. Social workers. Physicians. Attorneys. Risk management. Everyone who has any input into the hospital system. And presenting from that large group was a small group that made consultations. So if there was a family that had a problem, a physician that had a problem, or nurse, they had access to the consultation.

They would call us, and then a

representative group of us would meet with them,

everyone, and try to resolve the situation.

- Is it fair to say that the situations where cases were presented to the Bioethics Committee regarding removal of life support were the tough cases?

A Sure. By all means.

- After Sarasota Memorial, I believe you mentioned you were the Director of Pastoral Care at St. Anthony's Hospital? A

Yes.

- Is that a religious -- does St. Anthony's have a religious affiliation?

A It's run by Franciscan Sisters of Albany.

- Is that a Catholic hospital? A

Yes.

- How about Sarasota Memorial?

A No. County.

- Please tell us your duties as Director of Pastoral Care at St. Anthony's

A It was more administration. Although, I did keep my hands in ethics. I was the co-founder of their first bioethics committee. It was just starting. It was getting it off the ground,

rather than real well organized like Sarasota.

- Father Murphy, is it possible for you to tell us on how many occasions you have rendered pastoral clinical care regarding the subject of life care?

A Over the course of my priesthood?

- Yes.

A I would say hundreds.

- Father Murphy, have you done any research or writing regarding the opinions of the Catholic church as it concerns end of life care and treatment issues? The religious and moral implications of that?

A Yes. I do quite a bit of writing and publishing. I have written a series of pamphlets.. I have published articles in clerical journals. Mostly because of my desire to educate. I find that most people have no idea what the Catholic church teaches. Even Catholics. And I think that is gives rise to grave misunderstandings and I have real fears about that.

So I have taken to writing and public speaking about it. We give talks around the dioceses. I take that very seriously and I do quite a bit of that.

- You mentioned you had written a number of pamphlets on this subject. Are they used and distributed to any particular audiences or groups?

A Sure. Everywhere I can. I sent one, two of them, to a priest in one of the magazines I publish in frequently. He put a thing in his column. So I was deluged all over the country. But mostly in the State of Florida. We distribute them to parishes wherever we can. Hospitals.

- Is the distribution of those pamphlets authorized by the church authorities?

A Yes.

MR. FELOS: Your Honor, at this time we offer Father Murphy as an expert in the area of the Catholic church's position on end of life care and treatment issues and clinical counseling on end of life care and treatment issues.

THE COURT: Do you wish to voir dire?

MS. CAMPBELL: Yes. I do. Thank you.

VOIR DIRE EXAMINATION

BY MS. CAMPBELL!

• Father Murphy, which diocese are you with?

A I am secular as opposed to being a Jesuit or Dominican or Franciscan, which follow

the rule of that particular saint. I was just ordained to a diocese and obey a bishop.

- You said you went to four years of theology. Where was that?

A Seminary of St. Vincent De Paul. Boyton Beach.

- Do you have any education as a medical ethicist?

A No. Not formal training.

- Do you have any education as a moral theologian?

A From my training, I mean seminary training, sure. We take courses in that.

- So that would be included in the four years of theology?

A Yes, ma'am.

- Are you considered a moral theologian?

A It depends in whose eyes. I'm the one they call in the diocese of St. Petersburg when they have questions.

Q _ Do you function' in any official capacity to the diocese?

A Yes. The diocese chaplain for the Catholic Medical Association. The statewide chaplain for the Catholic Medical Association. I

am a member of Dioceses and Task Force in assisted
suicide. Formerly certified as a national
chaplain. I let my membership lapse.

MS. CAMPBELL: I have no objection. Thank
you.

THE COURT: Thank you. Proceed, Mr.
Felos.

Q (By Mr. Felos) Father, in the Catholic
church, do papal teachings or pronouncements hold primacy
as compared to the teachings and pronouncements of
bishops or cardinals?

A Yes. The pope sets the tone.

Q Are there any papal pronouncements or
teachings in the area on use or removal of artificial
life support?

A In 1953 Pope Pius the IV met with a group of physicians who considered those questions in conference. Pius was almost prophetic in foreseeing what would happen fifty -- forty years later. The teaching that he taught was that Catholics are mortally bound to respect life and to care for life, but not at all costs.

He introduced the concept of extraordinary versus ordinary means. A Catholic is mortally bound to take advantage of ordinary,

proportionate or disproportionate.

Q Has the phraseology proportionate or disproportionate as opposed to ordinary been explored more prevalent in the Catholic church as of late?

A Yes. Sure. Because of the problem. It is not as easy to die as it used to be. Nature would have taken care of a great many situations 30 or 40 years ago. My belief in the health care system is that technology is a two-edged sword. The wonderful technology meant to heal and save people and get them back on the road can also interfere with nature.

Q What factors does the Catholic church take into consideration in determining whether a treatment is an ordinary action as opposed to extraordinary or proportionate as opposed to disproportionate?

A It's not the procedure. It's the perception of the patient. Is the procedure, is it too emotionally draining? Is it too psychologically repugnant? It is too expensive? Does it offer no hope of treatment -- of recovery or little or no hope? Based upon all those factors, then you make your moral decision based

upon those issues.

Q So as I understand it, the standard by which those moral criteria are examined is the subjective standard of the patient?

A Yes.

Q In some of the literature I've read, I come across the terms burdensome and useless. That is a Catholic is not required to have a medical treatment if it is burdensome or useless. How do those concepts fit in with the ones with what you just mentioned?

A Maybe if I gave an example it might be easier. You look like kind of a healthy guy. Say you caught pneumonia this flu season. You go to your doctor. He would prescribe a course of antibiotics for you. You would be better soon and back on the road.

 But as a case I actually handled in Bayfront, St. Petersburg, many years ago, a woman in her late seventies was filled with cancer in the bronchial tree. She was dying. She came down with that pneumonia and the daughter insisted that the mother be treated for that pneumonia. I said why are you doing this? What do you hope to accomplish?

What you always have to do is weigh the

proportion. What do you hope to accomplish against what it is going to take to get there. In that case, all she was doing was keeping the mother alive for an extra three or four weeks in order to die. So that was clearly a case of prolonging the inevitable as opposed to someone like you who comes down with that pneumonia.

- Does the church then permit the consideration of whether or not the patient has any hope of recovery in whether the treatment may help the patient recover in considering whether it is ordinary or extraordinary?

A Yes.

- Let's take a case that medical treatment, or artificial life support may be medically beneficial. If artificial life support may be medically beneficial, if the patient deemed it too psychologically or emotionally burdensome for himself or herself, could such a patient refuse artificial life support and still be in compliance with the church's teachings?

A Yes.

- Father Murphy, what materials did you review in preparation for your testimony in this

case?

A The depositions of the family. The depositions of the -- the deposition of the husband. I'm not sure about that. I'm not sure. I know I reviewed the family and the report of the physicians.

Q I want you to assume, Father Murphy, for purposes of this question that Theresa Schiavo told her husband that if she were dependent on the care of others she would not want to live like that. And also Theresa Schiavo mentioned to her husband and to her brother and sister-in-law that she would not want to be kept alive artificially.

Assuming that information to be correct, father, would the removal of Theresa Schiavo's feeding tube be consistent or inconsistent with the position of the Catholic church?

A After all that has transpired, I believe, yes, it would be consistent with the teaching of the Catholic church.

Q_ How would you define, Father Murphy, a practicing Catholic?

A Off, that's a tough one.

Q Let me rephrase it. Does the church
have any particular definition of what a

practicing Catholic is?

A Certainly. We have what we call Easter duty, which means sometime from Lent to Trinity Sunday, in that three or four month window, a Catholic is required to receive holy communion. If necessary, confession. Catholics are mortally bound to assist at mass. Attend mass every Sunday. Every holy day of obligation. Certainly those are all criteria for a practicing Catholic.

Q If Theresa Schiavo had not taken communion over a two year period before her medical incident and not participated in confession, would she be considered by the church to be a practicing Catholic?

A Not according to the criteria. No.

Practicing, no.

Q Now Father Murphy, if a patient is in a permanent vegetative condition, maintained by artificial life support, and the patient's intent is not known, can a loved one who has the best interests of the patient 'at heart authorize removal of artificial life support consistent with church teachings?

A I think in a case like this where so much time and effort has elapsed, I think, yes, it

would be consistent. You have to remember, the

church will always uphold the ideal. One of the things they will do is hit the brakes, as it were, to make sure nobody is rushing into judgment. Trying to push the patient out of the picture.

In view of the length and effort here, I would say yes. What you would hope for is somebody who cared about the best interest of the patient to make the decision for them.

- And such a decision by that -- a decision to remove the feeding tube by such a person would be consistent with the church teachings?

A I believe so from my understanding of the church teachings.

- You mentioned you reviewed the depositions of Theresa's parents and siblings? A

Yes.

- I want to **ask** you some questions about those.

A Yes. '

- There are statements by Mr. and Mrs. Schindler and their siblings that if they were in a permanent vegetative or unconscious state, with no hope of recovery, that they would want all

medical treatments and procedures to keep them alive.

Do you recall those statements in the depositions you read?

A Yes.

• Is that the position of the Catholic church?

A Well, they would certainly be able -certainly be permitted to do that.

• Um-hmm.

A The church would not tell them what they should do, only what they may do. If that is their wish, then that would certainly be permissible.

• But does the Catholic church require, require someone to have all medical treatments and procedures to keep them alive?

A No. In fact, Pope Pius said that in 1953. It was a direct quote. He said that kind of suffering may be admirable, but certainly not required.

Q In fact, even if a patient is not vegetative, does the Catholic church require all medical treatments to keep the patient alive?

A No.

• There were also statements in the

deposition also to the effect -- and these are

statements by the mother and the brother and sister -- that if they were in that permanent unconscious state with no hope of recovery and had gangrene and their limbs had to be amputated that they would choose that rather than to die. Do you recall reading that?

A Yes.

• Does the Catholic church require any such action -

A No.

• -- by a person like that? A

No.

• In all your years of pastoral clinical counseling, Father Murphy, have you ever come across such extreme opinions?

A With all due respect, no.

- Have you, from your pastoral clinical experience, have you come across any dynamic which would explain such a viewpoint?

A I think grief is a large part of it. And I think there is a healthy versus unhealthy grieving process. I think everybody goes through it in a different way and at a different time speed. There is no set time frame, I think, for

grief .

I was just reminiscing yesterday about my own grief for my mother. I concluded it just two weeks ago. When I was ordained, I bought myself this ring, or a copy of the original, which is envisioned as a commitment to Christ. Kind of like my wedding ring for the church.

When my mother died a year-and-a-half ago, I put it on her finger in the casket and wore her anniversary ring from my father. About two weeks ago, it was time to let go. I got this copy and put her ring away.

I think that is an example of the grieving process. I knew of a little old lady in Sarasota, after 60 or 70 years of marriage, every night she set a place at the table for her deceased husband, and eventually stopped about a year later. I think that is a healthy kind of grieving. But the other side is not being able to let go at all. I think that is very problematic.

Q In the Catholic' faith, is death something that a practicing Catholic need fear?

A No. No. In fact, that is a fundamental part of the Catholic faith. We call ourselves a pilgrim people. Life here on earth is really seen

as a temporary stay. Catholics believe that our destiny is Heaven. Therefore, you can't do everything to prevent yourself from getting there.

What is so hard to deal with in educating Catholics in these issues is that death is a part of life. It is a part of life. It's part of the process. No, Catholics should not fear death.

Q There was a statement in Mrs. Schindler's deposition that, in addition to wanting every type of medical treatment to preserve herself in a permanent unconscious state should hypothetically she be in that state, that she would, if medical treatment impoverished her family, that she would still want that treatment.

Is there any recognition in the Catholic faith in this area about the cost of treatment? Is the cost of treatment ever a factor?

A That's one of the criteria in deciding whether it's proportionate or disproportionate. Excessive or ordinary. What you would hope is that somebody is helping the patient work through those

issues. That, you know, maybe you need to rethink that.

You know, that again, the church would

not tell them what to do, but you know, a good bioethical consult or caring pastor I think would help somebody like that say, you know, maybe we need to take another look at this. You know, talk a little bit more.

- So hypothetically, if a patient had a choice whether to receive a treatment or not, and the treatment let's say, let's say that offered no hope of recovery and the patient decided not to have it because they didn't want to place a financial burden on their family, would such a decision by the patient be consistent with Catholic teachings?

A Absolutely.

- Now in the deposition of Theresa's siblings, do you recall there was discussion of God's will?

A Um-hmm.

- I believe there were a number of statements. Well, Terri, ought to remain alive because -- she should be treated -- she should have all type of medical treatment to keep her alive because it's God's will. If it was God's will that she die, she would be dead with medical

treatment in place. Is such a position consistent with Catholic teaching?

A No. I don't think so. I'll tell you why. When I mentioned the two-edged sword, God's will could have been easily done fifty years ago. I think this is a case where the wonderful technology, rather than being an act of health and recovery, has become the obstacle for nature taking its course. I think it's a good example.

You know, there's also the case of my father. My father, I found him crying in his bed one day. He was dying of cancer and it was hard to tell which was worse, getting up and going for chemo or the cancer. He wanted to know if it would be a sin if he stopped going to chemo. I said of course not. He did stop and he died peacefully thereafter.

I said there is another example of where chemo does wonderful things for people, or it can, but what is the good that you hope to achieve? For my father, it was only prolonging the inevitable. He was not going to get better. So in that case, the chemotherapy which was meant to be the agent of health became the obstacle.

Q Father Murphy, I'd like to read you a

portion from Mary Schindler's deposition of August

12, 1999. This is Page 39, Line 16.

Question. Well, in your mind, does there come a point in time when the experience of discomfort or pain on the part of the patient become a factor in deciding whether to remove life support?

Answer. No.

Under Catholic, under the teachings of the Catholic church, is the pain or discomfort of the patient, that the patient might feel, is that a valid factor to be considered -

A Yes.

Q -- in determining whether care is ordinary or extraordinary?

A Yes.

Q How does that become a factor?

A As you know, Catholics have an understanding of suffering as being redemptive. You know, Mother Theresa of Calcutta always said that. Certainly suffering had a higher redemptive value, but certainly you are not bound to take all the suffering that comes your way. That is -that was my father's case. My father basically arrived at the notion that enough is enough. All

we are doing is prolonging the inevitable.

Q Father Murphy, there was a section in the depositions of Mr. and Mrs. Schindler read in court already. You may remember them. Mr. and Mrs. Schindler were basically asked, just hypothetically, assume these were Terri's wishes. That she did not want to be kept alive artificially and that she did not want to be kept alive if she were a burden to others. Would that change your position in this case?

They both answered no.

My question is, is disregarding the intent of the patient consistent at all with Catholic teachings?

A No. It is the perception of the patient that determines the morality of the action. Not the family, not the doctor, but the perception of the patient.

Q In Terri's sister's deposition, she made the statement that taking away life support is murder. Is that the position of the Catholic church?

A Absolutely not. My father's case again. There are still people telling me that my father killed himself. Absolutely not true. Absolutely

inconsistent with church teaching. All they do is allow nature to take its course.

Q I believe the sister also made the statement in her deposition that a patient may have medical treatment, even if it's against his or her will if it can keep the patient alive.

A Absolutely not.

Q Do you recall in the deposition of Theresa's brother his testimony that he believes his parents or his parents believe, Mr. and Mrs. Schindler, that Terri is aware of their presence, and he testified that Terri's continued life is a joy to him? A joy to him and his family to keep Terri alive in this condition?

He was even asked -- he was even asked if Terri needed -- do you recall if Terri needed a respirator to keep her alive, would it still give you joy to have her alive on a respirator? And he said yes.

He was asked if her limb had to be amputated,
would it give you joy to have her alive

i

in this condition? And he said yes.

My question is, father, what are the teachings
of the Catholic church regarding keeping a loved one alive
for your own personal pleasure

or benefit?

A I think that is contrary to the gospel. We all take pleasure in relationships with people, family. People who get married. I think, you know, keeping someone around strictly for your own pleasure strikes me as very anti-gospal. Sounds more like using someone than loving someone.

MR. FELOS: I have no other questions.

Thank you, father.

CROSS-EXAMINATION

BY MS. CAMPBELL:

• Good afternoon. My name is Pam Campbell. I represent Mr. and Mrs. Schindler. Have you had the opportunity to meet Mr. and Mrs. Schindler?

A No. I regret that. I wish I were their pastor.

• Have you had the opportunity to meet Theresa Schiavo in this case? A No.

• When you say you reviewed the depositions of the family, who were -- whose depositions were you specifically referring to?

A I remember Mr. and Mrs. Schindler. I remember a woman named Carr. And a brother.

- The woman named Carr, Susan Carr, the sister?

A Yes.

- Did you review any medical records of Theresa Schiavo?

A I read a summary of the physician who went and reviewed the case.

- Do you recall the name of the physician? A Karp.

- Dr. Karp? K-a-r-p?

A As I recall, that is him.

- It was about three pages long? A Yes.

- How did you get personally involved in end of life issues?

A That's a long story. I discovered early on in the priesthood, for me it was kind of a loveless marriage until I started visiting hospitals and taking care of the sick and dying. For me that resonated deeply. I was very, very sick as a child. Almost died as a child. So I felt a natural inclination --

empathy, not inclination -- for people in those circumstances.

So that really set the tone for my priesthood. And more and more in recent years, my

interest has been fueled by what I see are very

dark horizons in health care and the necessity to help families get through.

Q Can you be more specific in what you mean, dark horizons?

A Yes. I think that Catholics particularly make no distinction between allowing yourself to die from an illness and actively killing yourself. That is why there are people to this day that think my father killed himself by removing chemotherapy. I think that is a tremendous factor.

And I think when assisted suicide passes in the State of Florida, as I believe it will, that they will not have to market it because the people I know, and I think with due respect, the reason I found this such an unusual situation is that virtually everyone I know is terrified of a case like this. That is why I believe they would line up to take a pill or shot and go to sleep.

My mother's death is a perfect example. She was a good Catholic. I think if she had a chance to review her last week on earth, I'm not so sure if she would have taken a pill and wanted to go to sleep. That is what I mean by dark

horizons that fuel my attention.

I have stepped up my writing, works, publishing with the medical association to try to educate clearly what is morally necessary.

- Do you support, personally, physician assisted suicide?

A Absolutely not.

- Do you think that the church's teachings would be in support of physician assisted suicide?

A Absolutely not.

- What would be the church's position on euthanasia?

A Absolutely not.

- Suicide?

A Absolutely not, except that what the church would recognize is that a person who commits suicide is very likely in a diminished capacity, so in terms of judging the morality of their action, they would not be held morally accountable. In order to sin, you have to clearly want to_ do it and have the competence to be able to sin.

- And the church, they have a position against abortion?

A Definitely.

- You stated earlier that many Catholics are confused as to what the church's position would be?

A Yes.

- Is it understandable to you why that would occur when the church's position on euthanasia, suicide, and abortion is such a pro life stance? Do you understand my question?

A Um, that is a good question. Yeah. I'd say so, but I would think that the average, elderly Catholic is used to a Catholicism that tells them exactly what to do. I'd say you are probably right. There is merit in your question.

- Would it be your understanding that probably, in general, practicing Catholics would believe that it would be the church's position to support artificial feeding, hydration, nutrition? That the church's position would be to support that?

A Probably, just like my family, father asked me if stopping chemo would be a sin.

- Your father was Catholic? A Irish.

- Have you ever had your deposition taken? A
No, ma'am.

- In reading through the deposition of Mr.

and Mrs. Schindler and Terri's siblings, could you get the sense of the room in the deposition when you were reading through those?

A A little bit.

- Could you get the feel of the emotions past the black and white page? A A little bit.

- Could you sense that perhaps the people that were being deposed felt they were being backed into a corner?

A I don't think so. That was not my sense. Do you want to know how I felt?

- Yes.

A The sense that I felt more was great empathy. Not just because I'm a good pastor, but I watched my parents bury two of their own children. I know it destroyed them. My mother never got over it. My father did. They were an interesting case in grief.

So my heart, without knowing them, my heart goes out to the Schindlers because this must be killing them. But you know, it was awful for me to be a son and yet very good for me to be a son to my parents to help them work through it. I

don't think most people have that. They have to

rely on what they hear on radio or see on television or something.

• In weighing the benefits and burdens of a position in making a determination with a family, you talked about cost -

A Yes.

• -- being a factor. Are you aware of the financial circumstances of this particular case?

A Not really. That there is money involved. I don't recall dollars. Amounts.

• Is it your impression that cost is a factor here? The cost of her care being a benefit or burden?

A Yes. But I think that would be my own surmise. Knowing what health care cost in general, years and years of health care must be astronomical, I would think. That is just a hunch on my part.

• You have not reviewed her medical records to have assessments of her medical costs? A No.

- To your knowledge, has Theresa Schiavo's condition been evaluated by any bioethics committee?

A No. Not to my knowledge. That is, I

think, probably a flaw in this case. It would have been great if they had.

- Generally, had she been at St. Anthony's for example and this case was presented through, would that have gone through the Bioethics Committee?

A You see, someone will have to call for it. Whether it is a family member -- I assume, given the dynamics of the situation, I assume one of them or the physician would have said could we sit down. Yes. It would have happened.

- Are you aware whether or not there is a bioethics committee at Palm Gardens in Largo?

A I have no idea. I don't even know where that is.

- Generally when this comes up in a hospital setting, in a Catholic hospital setting, does it not go through a committee?

A Yes. You would not have seen that five or ten years ago. Nowadays, I assume it's almost automatic.

- So a number of people would be reviewing the benefits and burdens of Theresa Schiavo's personal case?

A Yes.

- Have you discussed this case with other Catholic colleagues of yours in the medical ethics area?

A Yes. Two of them that we work together on doing consultations in the diocese. I discussed in general the situation with the two of them.

- But you have never talked to the Schindlers to receive their input? A No.

- In a committee setting, when a true committee would have been formed to review Theresa Schiavo's circumstances, would the husband's feelings have been taken into consideration?

A Everyone's feelings would have to be taken into consideration. That is one of the goals of the ethics connotation is to try to get everybody moving at the same pace.

- So in this case, have you had the benefit of any of the other family's -

A No.

- -- thoughts on this?

A No. If I recall, Mr. Felos told me that

sure I told him whatever -- because I get calls

all the time -- and I'm sure I told him what I tell everybody. You have my home phone number. Private number. Cell number. I would be happy to sit down with you and the family. Call.

- Do you recall maybe being contacted by a Richard Pearse of the guardian ad litem?

A I think that is the name.

- Probably it was Mr. Pearse and not one of the Schindlers?

A Okay. I'm sorry.

- Would that be your recollection?

A I recognize the name Pearse.

- He was the guardian ad litem appointed

in this case.

A Okay.

• Are you familiar with the ethical and religious directives of Catholic Health Care Services published by the National Conference of Catholic Bishops?

A- Yes, ma'am.

• What would be your general thoughts concerning that publication?

A I think it's the teaching of the church. What the bishops teach.

- Are you familiar with the specific detectives under issues for care and issues and care for the dying?

A Yes, ma'am.

- Would you specifically be familiar with number 58?

A No.

- If I read that to you, would you tell me -- I would like to read that for you and tell me if that is within your same mind set. The directive 58 says there should be a presumption -

MR. FELOS: Excuse me. If she is going to be reading from a source like that, does counsel have additional copies so that I can follow it and perhaps Father Murphy as well?

MS. CAMPBELL: I do not have additional copies. I would be glad to let Mr. Felos look over my shoulder.

THE COURT: Very well.

- (By Ms. Campbell) Number 58 says there should be a presumption in favor of providing nutrition

and hydration to all patients, including patients who require medically assisted nutrition and hydration, as long as this is of sufficient benefit that outweighs the burdens involved to the

patient. Does that sound familiar?

A Yes.

Q How would you square that directive with your earlier testimony concerning Theresa Schiavo?

A As I think I said earlier, the church will always take the high road. They will always uphold the ideal. They will always resist immediate action. I think they always want to slow down, take advantage of every possible opportunity, to make sure that the outcome is not promising.

So even Cardinal Bernadine, who taught us so much about how to die well, that was one of his most forceful arguments is that artificial hydration and nutrition is not mandatory in every single case. You have to go back and evaluate the proportion. Where are you going? What do you hope to achieve against what is it going to take to get there? What is the outcome that you are looking for?

Q- Have you ever worked with one of the patients in many of the hundreds of families that you worked with that have received, or believed they have received, a miracle from God?

A Sure. My father.

- Would they, would that involve

continuation of life?

A Um-hmm. Yes.

- In this case, if you witnessed Theresa Schiavo with her mother and there was an outpouring of love between the two of them, would that be something that would be a factor in your consideration of whether or not it would be acceptable to withdraw a feeding tube?

MR. FELOS: I object to that question for lack of foundation. I heard no testimony -- I deposited Mrs. Schindler. She has taken no depositions. I don't recall any testimony of an outpouring of love from Theresa. I would object on lack of foundation to that question.

THE COURT: I certainly have heard enough.

MS. CAMPBELL: I'll rephrase.

- (By Ms. Campbell) If you witnessed

Mrs. Schindler, Theresa's mother, with Theresa and watched her laughter, her smiling, on a, say a regular basis whenever Mrs. Schindler would visit, is that something you would consider?

A I would consider it.

- How would that -- would that change your

opinion in this case?

A It could.

• Could you elaborate on how you think that could?

A Well, what I would look for is the lesson that one of the chiefs of intensive care at All Childrens told me. He said, father, you divide up the brain. There is a part of the brain that is who the person was. Then there is a part of the brain what the person was. Who the person was is gone and they are not coming back. But what the person was is still functioning.

So he described for me local stimuli. Things that appear to be cognizance, appear to be awareness. Again, I'm not a physician. I would want to talk to the physician about that. So I would give you a cautious yes, I could consider it.

- But you would consider the physician's input?

A Well, that is his expertise. That is not mine.

- Do you think that would do anything with any teaching of perhaps God's will and for a miracle?

A I don't mean this as flip as it sounds.

If God is going to work a miracle, he does not need machinery or technology. I think he will just do it. So I have never been persuaded by the argument that we have to keep all the machinery going so God can work his miracle. I don't believe God needs that.

- Do you think there is a timetable that God expects you to consider one way or the other?

A No. I mean in terms of I don't think it's six months or a year or whatever. But I think that when it becomes a long, long time, I think a good pastor would have to sit down with the principals involved and say maybe, maybe it's time to let go.

- This would be a pastor that probably worked with the family?

A Yes. Sure.

- It would be a pastor maybe that had witnessed any type of relationship between the incapacitated, or ward, and the people that are asking for the feeding tube to be maintained?

A Sure.

MS. CAMPBELL: I have no further questions.

THE COURT: Redirect?

MR. FELOS: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. FELOS:

- In the portion of the ethical and religious directives which was read to you by opposing counsel, father, it does state that providing nutrition and hydration is conditioned by the phrase "as long as this is of sufficient benefit to outweigh the burdens to the patient." That gets back to the factors we talked about on direct examination; doesn't it?

A Yes.

- Those factors are looked at in the mind of the patient?

A Yes.

- Let's assume again that Theresa Schiavo expressed an intent not to be kept alive artificially. Does the fact

that her mother derives joy from being with Theresa, does that negate Theresa's intent? ,

A No.

- Let's even assume for purposes of this question that Theresa does smile and laugh and her mother derives joy from that. Does that negate

Theresa's intent?

A No.

- As to Theresa and whether this continued life maintained artificially is burdensome, that was for Theresa to decide, not her mother; isn't that correct?

A Yes.

- You were asked the question whether you talked to Mr. and Mrs. Schindler? A Yes

- Did you talk to **Mr. Schiavo?**

A No.

- There was -- you mentioned Mother Theresa, by the way. Did you ever work in any of Mother Theresa's centers?

A Yes. I tried to volunteer as much as I could up at the Washington -- in Washington, DC. It's an AIDS Hospice right near Catholic U. I go there a couple times a year.

- What type of work do you do there?

A _ Just loving the patients. Watching the nuns. They have taught me so much about the care of the dying. You don't see any machinery there. All you see is the nuns bathing these old people. Just loving them.

- Have you ever participated in any patient care yourself?

A Sure. I never forget them. While talking about them, I was in DC last week. A black man dying of AIDS named Willie, I held Willie in my arms after I baptized him. One of the little nuns took a spoonful of Ensure. Took a piece of the communion wafer and poured it down Willie's throat. He died shortly thereafter. I can still feel Willie's skin and bones. To me, that is what compassion is all about. Suffering with people.

- So your interest and knowledge in this area is not just purely theoretical?

A No. Certainly much more I'd say because I have been there.

- There was some discussion about submitting this case to a bioethics committee.

A Um-hmm.

- Isn't it correct that such a bioethics committee, or review process, is designed to bring a consensus among the participants in decision making?

A Well -

- If you have, let's say a family dispute

as to care, that the purpose of the review process

is to try to reach a common ground?

A In terms of heart and mind, yes. But for example, as in the case of my mother, it took two or three days to work my two brothers. I was the surrogate. So it was my right to make the decision.

So if you mean consensus to validate my decision, no, but what you hope to do is get everybody emotionally on the road to recovery.

• Were you aware that Mr. Schiavo proposed to the Schindlers to participate in hospice counseling?

A No.

Q You noted that the ethics committee, in many cases like this in the hospital, may be submitted to an ethics committee. Do you know whether that is the case in nursing homes?

A Yes.

• When you say a case like this, do you mean a case that involves a family dispute? A

Yes.

- Isn't it true that feeding tubes are routinely removed from unconscious patients in hospitals and nursing home settings?

A Definitely hospitals. I'm not certain

about every nursing home. Definitely hospitals.

- Father, there was, you mentioned that something could be learned by how the patients are treated at Mother Theresa's Hospice. How are elderly nuns and priests treated in end of life situations like this?

A I often tell my own colleagues that we'd learn a lot if we went to these old nunneries and watched the way they take care of the old nuns. It's ice chips. Maybe a spoonful of soup or Gatorade, if they can tolerate it. Face clothes on the forehead. Holding their hand. That I think is dying with dignity.

The machinery and everything, that is what was heartbreaking about my mother's situation because there was not enough chance to give her the love like I knew she deserved. I could never get in the room.

- There was some talk about assisted suicide and I just want to clear this up. How do you feel about physician assisted suicide?

A Absolutely against it. It is morally wrong to do anything to take your life.

- Correct me if I'm wrong. Was the gist

of your testimony that you believe that people

might be given to physician assisted suicide because they will receive medical treatment against their will?

A Absolutely.

• That is why you are teaching people to let them know that under the Catholic faith you don't have been to be treated at all costs?

A Absolutely.

• And the consequence of people believing that may force them, lead them, to take their own life?

A Absolutely.

• That is the dark horizen in the medical system that you are afraid of today?

A In my view, yes.

MR. FELOS: I have no other questions.

THE COURT: Re-cross?

MS. CAMPBELL: One, please.

RE-CROSS-EXAMINATION

BY MS. CAMPBELL:

- Would you consider the credibility of the statement -- for example, in this case you heard there was a statement made as to the wishes of Theresa Schiavo. Would you consider the

credibility of circumstances around that statement

in considering her wishes?

A Credibility? If you mean in terms of did someone want to DC everything in 36 hours or 72 hours, I certainly would say there is something wrong here. In view of the length of time here, yes, I would consider it. I would be concerned about factors. Factors surrounding that.

MS. CAMPBELL: Thank you.

THE COURT: Anything further?

MR. FELOS: No, Your Honor.

THE COURT: Is Father Murphy under

subpoena?

MR. FELOS: No. He is not.

THE COURT: Father, thank you very
much. You are free to go.

(THEREUPON, THE TESTIMONY REQUESTED TO BE
TRANSCRIBED ENDED AT 4:05 P.M.)

CERTIFICATE OF REPORTER

STATE OF FLORIDA) COUNTY OF PINELLAS)

I, BETH ANN ERICKSON, court reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.