

CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
STATE OF FLORIDA IN AND FOR PINELLAS COUNTY
PROBATE DIVISION
CASE NO. 90-2908-GD3

IN RE: THE GUARDIANSHIP OF
THERESA MARIE SCHIAVO,

Incapacitated.

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

Petitioner,

APPEAL

vs.

ROBERT SCHINDLER AND MARY SCHINDLER,

Respondents.

BEFORE: GEORGE W. GREER
Circuit Court Judge

PLACE: Clearwater Courthouse
Clearwater, FL 33756

DATE: January 26, 2000

TIME: 4:00 p.m.

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

TRIAL

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Volume V Pages 680 - 839

ORIGINAL

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P-R-O-C-E-E-D-I-N-G-S

THE COURT: Call your next witness.

MS. CAMPBELL: I'd like to call Mr. Richard Pearse to the stand.

THE COURT: Good afternoon, Mr. Pearse.

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

THE COURT: Thank you. Have a seat over here in the witness stand.

DIRECT EXAMINATION

BY MS. CAMPBELL:

Q Good afternoon. It's a little unusual in this setting. Please state your full name for the record.

A My name is Richard Pearse, Jr.

Q Where do you live?

A I live in Palm Harbor. 1449 Whitterton Way.

Q What is your occupation?

A Lawyer.

Q How long have you been a lawyer?

A I was admitted to the Florida Bar in '79, so that makes it a little over twenty years.

Q Where do you practice?

A In Clearwater, Florida.

1 Q What is the nature of your practice?

2 A It's a civil practice which focuses
3 primarily in the areas of guardianship, probate,
4 and general litigation. Probative administration.

5 Q Have you practiced in that area the
6 entire twenty years?

7 A I would say in part or in whole, yes. I
8 have had other practice areas in the past.

9 Q Do you know Theresa Schiavo?

10 A It's hard to say that I know Theresa,
11 but I have seen Theresa. I'm acquainted with the
12 general circumstances of her present condition.

13 Q How are you acquainted with Theresa
14 Schiavo?

15 A I was appointed in June of 1998 by
16 Circuit Judge Howard Rives as Theresa Schiavo's
17 guardian ad litem.

18 Q Have you ever been appointed as guardian
19 ad litem in other cases?

20 A I have.

21 Q Approximately how many?

22 A Maybe half a dozen.

23 Q Have you ever been appointed as guardian
24 ad litem concerning the petition for removal of a
25 feeding tube?

1 A I believe there may have been one other
2 case where the issue was whether life support
3 should be removed or withdrawn. I don't recall
4 the exact nature of the petition, but the case in
5 which I was appointed guardian ad litem had the
6 same basic issues involved.

7 Q How was that case resolved?

8 A My recollection is that in that case the
9 petition, or by whatever mechanism that the
10 petitioner sought removal of the feeding tube, was
11 denied.

12 Q Do you recall in that case did you make
13 an opinion and recommendation for the Court?

14 A I recall being at the hearing. I don't
15 recall whether I did a written report. I don't
16 recall the specific details. I'm sorry.

17 Q What is your understanding of the roll
18 that you were to review as being guardian ad litem
19 in this case?

20 A Well, the order appointing me says I
21 shall make such inquiry as I deem necessary and
22 file a written report and recommendations to the
23 Court. At a subsequent status conference, I
24 received some additional instructions. Some
25 specific instruction from Judge Boyer, who was the

1 presiding judge in this case at that time.

2 Q What is your, the further instruction?
3 Did that expand or narrow the limit of your
4 investigation as initially thought?

5 A Well, since the scope of the authority
6 in terms of the investigation originally granted
7 was virtually unlimited, it narrowed it in the
8 sense that Judge Boyer provided me with direction
9 about what he would like to see in the report.

10 Q Was it your understanding or did you
11 take on this responsibility with the understanding
12 was that of primarily around the issue of the
13 removal of the feeding tube?

14 A That if that was not my understanding at
15 the very outset, it very shortly became my
16 understanding that that was the principal issue
17 presented in this case.

18 Q Please tell us how you conducted your
19 investigation.

20 A After I received the order appointing
21 me, of course I filed an oath as required by the
22 Florida Probate Rules. I proceeded to make
23 contact with the lawyers involved. I spoke with
24 staff at the nursing home where Theresa lived at
25 the time and I believe still resides. I conferred

1 with Mr. and Mrs. Schindler, her parents. I
2 conferred with Mr. Michael Schiavo, her husband.
3 I conferred with her brother. There may have been
4 others with whom I spoke.

5 After I interviewed Mr. and Mrs.
6 Schindler and Mr. Schiavo, it came to my attention
7 that Theresa was or had been of the Roman Catholic
8 faith and there was at least some evidence that
9 she was a practicing Catholic. So part of my
10 investigation included making contact with the St.
11 Petersburg Diocese to seek guidance about whether
12 there was -- there was any Catholic doctrine which
13 might have a bearing on the issue before the Court
14 today.

15 Q Were you able to determine whether or
16 not there was any Catholic doctrine set forth that
17 would have a bearing on this decision?

18 A Well, there is. The answer is yes.
19 There is a statement which I understood to be
20 promulgated by the, for lack of a better term, the
21 Florida Counsel of Catholic Bishops, which I think
22 have a bearing on any situation like this where
23 life prolonging procedures are in place. But in
24 effect, it did not compel a resolution, again, as
25 I understand the doctrine, one way or the other in

1 this case.

2 The doctrine was situational and had to
3 do with analysis of the burdens placed on the
4 individual -- of the life -- with the artificial
5 life prolonging procedures in place. After
6 talking with several representatives -- or I guess
7 I should not say several -- two representatives of
8 the Diocese, and reviewing some written materials
9 I was furnished, I concluded that there was no
10 doctrine of the church that I had been made aware
11 of which would ethically or morally preclude the
12 withdrawal of the life-prolonging procedures in
13 this case.

14 Q Were there any other individuals that
15 you spoke with concerning Theresa's intent?

16 A Well, I spoke with Michael Schiavo, her
17 husband, and her parents and sister and brother, I
18 believe. It's possible I spoke with one or more
19 of her friends, whose names I was given by members
20 of the family, but I don't recall specifically
21 details of those conversations.

22 My impression at the time of my
23 undertaking of the investigation at the time I
24 filed my report, the only individual who indicated
25 that Theresa had spoken directly about this

1 subject was her husband, Michael.

2 Q Did you review the court file in this
3 case?

4 A I believe I did. Yes.

5 Q Did you review the medical records for
6 Theresa Schiavo at Palm Gardens of Largo?

7 A I did review the nursing home chart. It
8 contained not only a record of her stay there, but
9 also contained some historical record of treatment
10 or evaluation that had taken place prior to her
11 admission there, as well as the results of some
12 basic, I guess you call them consultations related
13 to, it appeared to relate to litigation, but I was
14 not certain about that.

15 Q Could you please describe the charts
16 that you reviewed? What I'm asking is, did you
17 specifically review the chart that would be kept
18 at the nurse's station near her room?

19 A As far as I know, there was only one
20 medical record at the nursing home. That was the
21 one that I reviewed. It contained a number of
22 different sections. It contained a face sheet
23 with personal information about her. It contained
24 information that existed at the time of her
25 admission. It contained sections for doctors'.

1 notes. Doctors' orders. I believe it contained a
2 section for nursing notes or notes from, you know,
3 other health care disciplines.

4 I'm quite sure there were, you know,
5 charts of her vital signs. Temperature, things of
6 this nature. There were, I believe, records of
7 medications that had been administered to her,
8 although I could not tell you today what the
9 specifics of those matters were all about.

10 Q Do you recall the files you reviewed,
11 were they in paper manilla files like the one here
12 or were they blue, heavy plastic files?

13 A They were not that manilla folder there.
14 This is what I regard as a typical patient chart
15 in a nursing facility such as Palm Garden. It was
16 in a binder of sorts, bound at the top. I think
17 it was blue. It may have been another color. It
18 was structured in a similar fashion to a standard
19 3-ring binder.

20 Q Do you recall a note on the front of the
21 chart providing instructions as to who staff would
22 be able to provide information for or not, one way
23 or the other?

24 A I don't recall whether -- I don't have
25 sufficient independent recollection of the details

1 of the pieces of paper that I saw and examined
2 except to describe them in fairly generic terms as
3 I have done. Although, certainly it came to my
4 attention during the course of my investigation
5 that there had been ongoing conflict between Mr.
6 Schiavo and Mr. and Mrs. Schindler about access to
7 medical information.

8 Q Did you see Theresa Schiavo?

9 A I did.

10 Q How long of a time period? On how many
11 occasions did you go to see Theresa Schiavo?

12 A I went to see Theresa on one occasion.

13 Q How long were you in her room?

14 A I believe I stayed in her room between
15 15 and 20 minutes. My recollection is I was
16 accompanied by one of the staff people who I was
17 talking to about the case and we -- part of the
18 time I was with Theresa. We stood and chatted
19 about the situation. Theresa was in bed. She was
20 dressed. I spoke to her, but could detect no
21 particular response to my voice. Her eyes were
22 open, but she did not seem to have any
23 appreciation for the fact that I was standing
24 there trying to speak to her.

25 Q I would like to show you -- could you

1 please identify this document?

2 A This is a photocopy of the report of the
3 guardian ad litem, prepared by me, and furnished
4 to the Court at the end of December 1998.

5 MS. CAMPBELL: Your Honor, at this time
6 I would like to move the report of the guardian ad
7 litem in as Respondent's Number Two. This is the
8 same one filed with the Court.

9 THE COURT: Is this a copy?

10 MS. CAMPBELL: Yes.

11 THE COURT: Is there an objection?

12 MR. FELOS: No.

13 THE COURT: What is Respondent's number

14 1?

15 MS. CAMPBELL: The film.

16 THE COURT: Thank you. Okay.

17 (THEREUPON, RESPONDENT'S EXHIBIT NUMBER 2 WAS
18 RECEIVED IN EVIDENCE.)

19 Q (By Ms. Campbell) Mr. Pearse, when was
20 the last time you reviewed this report?

21 Q I reviewed it fairly thoroughly in
22 anticipation of a deposition taken by me, of Mr.
23 Felos, I guess a couple of weeks ago now. I
24 glanced at it earlier today.

25 Q Can you please tell us the substance of

1 the report?

2 A Well, the report basically lays out what
3 I did and how I conducted my investigation. A
4 legal analysis and some conclusions and
5 recommendations that I draw. In preparing the
6 report, I tried to follow the format, as I
7 testified earlier, that was a status conference
8 with Judge Boyer. He provided me with guidance
9 insofar as the areas he felt would be useful to
10 him as the presiding judge at that time. I made
11 notes of that status conference. I made an effort
12 to follow that format in preparing this report.

13 The first section deals with my
14 authority, as I described. The second section
15 deals with some information I felt pertinent about
16 Theresa, herself. Basically, in the middle
17 section, it goes through a discussion of the
18 various people that I interviewed, including the
19 parties.

20 I reviewed as part of my investigation,
21 which I did not mention before but bears
22 mentioning certainly, I reviewed the financial
23 reports in the guardianship. And there is a
24 section in the report which deals with
25 that. There is a discussion of the various actual

1 and/or potential conflicts of interest. There is
2 a legal analysis of what I perceived to be the
3 standard with withholding or prolonging of life
4 procedures. The final section is one which I
5 state my opinion and recommendations to the Court.

6 Q Included in your report, is there a
7 comment about every detail of your investigation?

8 A No.

9 Q For example, I notice there was nothing
10 in there regarding the Catholic beliefs. Was
11 there a specific reason you left that out?

12 A As I stated, after I talked with various
13 people that I talked to from the Diocese, and
14 reviewed the materials, I did not feel that the
15 Roman Catholic doctrine, as I understood it,
16 compelled one result or the other. It was
17 essentially neutral. Because the only reason I
18 investigated it in the first place was to the
19 extent that Theresa was a practicing Catholic, I
20 felt Catholic doctrine might somehow shed light on
21 what her belief structure might be.

22 But in the end when I determined, at
23 least in my own mind, that Catholic doctrine was
24 neutral on this subject under the circumstances as
25 I found them, I didn't feel that it would be

1 pertinent to include in the report, except perhaps
2 as a matter of general interest. It wound up
3 having no bearing on the opinion that I rendered.

4 Q Were you raised Catholic?

5 A No.

6 Q Are you Catholic now?

7 A No. Not Roman Catholic. I attend the
8 Episcopal church.

9 Q Were you able to determine whether or
10 not Theresa Schiavo had a written living will?

11 A I guess the answer is that I'm not sure
12 there is absolutely any way to prove a negative.
13 Certainly it is fair to say during the course of
14 my investigation and entire proceeding known to me
15 that no living will was ever produced or referred
16 to. I have to say no. I don't believe there is
17 one.

18 Q Were you presented with any oral
19 information pertaining to what Theresa's
20 intentions would be regarding withdrawl of a
21 feeding tube?

22 A The only oral evidence presented to me
23 was presented by her husband, Michael, who
24 indicated to me during the course of my
25 investigation that prior to the accident which led

1 to Theresa's current condition, the two of them
2 had had discussions wherein Theresa expressed she
3 would not want to have to be kept alive
4 artificially, to summarize. The discussions
5 included more details.

6 Mr. Schiavo provided me with more
7 information about the context of his discussions
8 with Theresa, but that was the -- that was the
9 essence of it.

10 Q Did you talk to anyone else, in addition
11 to Mr. Schiavo, regarding Theresa's intentions,
12 whoever that person may have been, as Theresa
13 expressed to them?

14 A Of course, Theresa's expressed
15 intentions were, I felt, the most critical element
16 of what I was trying to find, inasmuch as, I
17 believe that the legal standard is one where the
18 role in determining whether or not these measures
19 should be withdrawn depends on what her intentions
20 would be if she were able to express them.

21 I spoke, as I said earlier, to Mr.
22 Schiavo, her husband. To her parents. To her
23 brother. I believe I spoke with her sister. As I
24 said, I may have spoken with one or two friends,
25 but I am quite positive in my recollection that

1 the only person I talked to who was able to say to
2 me that he or she had direct conversation with
3 Theresa about that subject was Mr. Schiavo.

4 Q If you had -- you say you may have
5 talked to one or more friends. If you talked to
6 any of the friends that had a direct bearing on
7 what Theresa's intent would be, would that have
8 been included in your report?

9 A Absolutely. Absolutely. If anyone told
10 me they had a conversation with Theresa in which
11 she had expressed any intention or idea that would
12 have a bearing on what her intentions would be, I
13 know that she is in this situation and it would
14 have been a critical piece of evidence and
15 unquestionably would be included in my report.

16 Q Did you find the explanation that
17 Mr. Schiavo gave you to be credible?

18 MR. FELOS: I object to the question. I
19 don't understand it. The explanation of what?

20 Q (By Ms. Campbell) Mr, Pearse, when you
21 talked to Mr. Schiavo concerning the information
22 that he gave you pertaining to Theresa's intent
23 regarding life support, did you find the
24 information that you just testified he gave to
25 you, did you find that information to be

1 believable?

2 A Well, I guess my answer is I have no
3 basis -- I have no basis to know that Theresa said
4 something different than what he says. However, I
5 was mindful, and had been throughout these
6 proceedings, that the standard of evidence which
7 applies is one where the evidence must rise to a
8 level of being clear and convincing. I was, and I
9 have been, and I remain troubled by certain
10 aspects of the chronology and timing of various
11 decisions. And I was and remain troubled by
12 financial considerations.

13 And in the end, taking all these various
14 factors into account, it was my opinion and
15 conclusion that the evidence of which I had been
16 made aware did not, in my opinion, meet the
17 required standard of evidence to say it was clear
18 and convincing that Theresa would want to have the
19 feeding tube or any artificial measures withheld
20 or withdrawn. That was the basis of my findings,
21 conclusions, and recommendations.

22 Q Could you please discuss the details of
23 the issues that troubled you?

24 A All right. First, I was troubled by the
25 time line involved. Theresa's accident, for want

1 of a better term, or cardia arrest occurred in
2 1990, it was my understanding, based on my
3 investigation and information I received from the
4 various parties. That for a period of some years,
5 two or three, perhaps four years after the
6 original event occurred, that Mr. Schiavo pursued
7 virtually every possibility that he became aware
8 of to seek treatment and therapy for Theresa in an
9 effort to restore her to her former
10 condition, including taking her to California, I
11 believe, and having some experimental surgery done
12 in an effort to try to stimulate her central
13 nervous system.

14 But the information that I had, caused
15 me to conclude that there came a point, sometime
16 three or four years after this occurred, that Mr.
17 Schiavo basically came to accept the fact that
18 Theresa was not going to respond to these various
19 treatments he had sought, and that the likelihood
20 is that she would remain in the condition that she
21 is now in for the rest of her life.

22 I was greatly troubled by the fact that
23 Mr. Schiavo, having knowledge as he claimed of
24 what Theresa's intentions would be, waited for,
25 well, waited until 1998 to take steps to carry out

1 her intentions. That fact troubled me. I was
2 especially troubled by the idea that in the
3 interim, Mr. Schiavo filed lawsuits based on what
4 had happened to Theresa which resulted in a
5 substantial settlement.

6 The idea -- that to do that I felt
7 reasonably certain that somewhere along the line
8 an argument was made based on her condition and
9 her need for future treatment and what her normal
10 life expectancy would be. I was troubled by the
11 idea, and this comment has more to do with general
12 policy and system than necessarily does with this
13 case, but I have been troubled that we have a
14 potential in this of doing things where a person
15 can on the one hand seek damages based on a normal
16 life expectancy, while having knowledge of another
17 person to want artificial life procedures withheld
18 or withdrawn, and after the financial arrangements
19 are completed in regard to the lawsuits, then take
20 the steps that will certainly inevitably lead to
21 the death of the disabled person, if you will. So
22 that part troubled me as well.

23 The other major factor was the money.
24 Some indication, although certainly not a clear or
25 uncontroverted indication, that there were

1 difficulties in the relationship between Michael
2 and Theresa before this happened. But I have
3 been, I have recognized from the beginning that
4 both Mr. Schiavo and the Schindlers are in either
5 actual or potential financial conflict depending
6 on the various scenarios which this case might be
7 resolved.

8 One such scenario would be that Michael
9 might seek a dissolution of their marriage, in
10 which case because I understand Theresa had no
11 will, he would lose his status as her sole heir
12 at law and her parents would become heirs at law.
13 Whereas, if she died while they were married, he
14 would be the sole heir at law and inherit whatever
15 money was in the guardianship at the time of her
16 death.

17 So neither side, as I understand how
18 this case is being presented, neither side is
19 without some actual or potential conflict. But in
20 the end, Michael, as I understand it, if he
21 remains married, remains Theresa's sole heir at
22 law. Again, I don't have knowledge that is more
23 current than December of 1998, but I believe there
24 to be presently a substantial sum of money in the
25 guardianship that would become his upon her death.

1 Q Were you made aware of the fact that
2 Mr. Schiavo is engaged to another woman?

3 A I was made aware that Mr. Schiavo had
4 relationships. I use the plural there only
5 because -- for no particular reason. I don't know
6 if there were one or more after Theresa's
7 accident. Some years after her accident. Whether
8 or not I knew he was engaged to be married, I
9 don't think I was made aware of that specific
10 fact, but certainly aware that he had had other
11 relationships.

12 Q Do you have any personal reasons why you
13 would -- that would -- through your decision in
14 advocating for the maintaining of the feeding
15 tube, have a hidden agenda that you did not reveal
16 to the Court prior to your appointment or upon
17 release of your report?

18 A The answer is no. I have no personal
19 stake in this case or the outcome of this case. I
20 was not acquainted with any of the parties prior
21 to this case. I believe I was acquainted with
22 both you and Mr. Felos prior to this case. I took
23 an oath to follow the law. I believe that I have
24 done that to the best of my ability. I have no
25 particular hidden agendas.

1 Obviously, this is a matter about which
2 any reasonable person might have strong, deeply
3 held personal beliefs, but to the extent that any
4 beliefs of mine might be at odds with the existing
5 law, I put my interpretation of what the law
6 requires ahead of those beliefs.

7 MS. CAMPBELL: Thank you. No further
8 questions at this time.

9 THE COURT: Thank you. Cross?

10 CROSS-EXAMINATION

11 BY MR. FELOS:

12 MR. FELOS: Good afternoon, Mr.
13 Pearse. Your Honor, may I have the exhibits,
14 please?

15 THE COURT: Yes, sir.

16 Q (By Mr. Felos) Mr. Pearse, I want to
17 clear up a matter that was brought up in testimony
18 right before you got on the stand. Mrs. Schindler
19 testified that she did receive a letter from
20 Attorney Bushnell in September of 1986
21 (sic), September 1986, stating that she and her
22 husband could receive information, medical
23 information, regarding their daughter, Theresa,
24 from Palm Garden and the contact person was a
25 Betty Snowden?

1 MS. CAMPBELL: 1996.

2 MS. FELOS: 1996.

3 Q (By Mr. Felos) Thank you. September
4 1996. I think she also testified that Ms. Snowden
5 left the nursing home within a couple months and
6 she could no longer obtain information regarding
7 Theresa from Nurse Snowden. Am I correct that you
8 talked to some of the nurses and personnel at Palm
9 Garden?

10 MS. CAMPBELL: Before he answers, I
11 would like to interpose an objection. I believe
12 the testimony from Mrs. Schindler was that she was
13 transferred, not necessarily that she left the
14 nursing home. She was transferred.

15 MR. FELOS: I don't recall that,
16 Your Honor. I believe she said --

17 THE COURT: Called again and told she
18 was transferred.

19 MS. CAMPBELL: Thank you.

20 THE COURT: But on cross, to her
21 understanding, by the end of 1996 did not know
22 where she was. That's what my notes reflect.

23 MR. PEARSE: Before I answer the
24 question, may I have a glass of water, please?

25 Q (By Mr. Felos) Mr. Pearse, in your

1 petition for order authorizing payment of fees and
2 costs, you have a time record of your work on this
3 case. I believe you have an entry on June 22,
4 1998, that you visited the ward at Palm Gardens
5 and you conducted a review of the chart and you
6 conducted interviews with Gina McClusky (phonetic)
7 nursing home social worker, Sandy Gildemen,
8 (phonetic) and Betty Showden (sic), LPN. Do you
9 recall talking with Betty Showden?

10 A Well, the bill entry in the petition to
11 which you refer is a typographical error. The
12 person I talked to was Betty Snowden. The answer
13 is I recall talking to all three women on that
14 day.

15 Q On that day, June 23, 1998, did you have
16 difficulty finding Betty Snowden?

17 A My recollection was that she was not
18 working specifically on the unit where Theresa was
19 residing, but was working elsewhere in a rather
20 large nursing home complex. But I guess the
21 answer to your question would be that on that date
22 at that time and place, no. I think Betty's name
23 was suggested to me by either Gina McClusky or
24 Sandy Gildemen as a person who had additional
25 knowledge and information about Theresa, who was

1 working in another part of the facility.

2 I seem to recall that Betty Snowden, and
3 I'm not 100 percent certain about this, but I seem
4 to recall that one of these three had worked in
5 the previous nursing home and had come to work at
6 Palm Gardens more recently. She had been
7 acquainted, and I think it was Betty that had been
8 acquainted with Theresa's case, and her, at a
9 prior nursing facility where she worked at that
10 time, and later she went to work at Palm Garden.

11 But at the time of June 22nd, of my
12 interview, all three ladies were present in the
13 building. I was able, without prior arrangement,
14 to meet and talk with all three on that visit.

15 Q Is it fair to say that the conclusion
16 and ultimate recommendation you made in your
17 report was a close call?

18 A Yes. That is fair to say. In fact, I
19 spent some weeks considering the decision before I
20 ultimately made the report. One of the reasons
21 for the status conference was because the report
22 was not prepared and filed within the originally
23 contemplated time frame because I was having a
24 difficult time with it.

25 Q Now I'm paraphrasing from your report.

1 Is it fair to say -- correct me if this is
2 wrong -- that because there was no corroborative
3 evidence of the ward's intent, and the only
4 witness having evidence is the husband, who would
5 realize a substantial financial benefit from the
6 ward's death, you concluded that the evidence did
7 not meet the clear and convincing evidence
8 standard? I believe that is on the bottom of Page
9 12, top of Page 13.

10 A I think that is probably a fair
11 paraphrasing of what is in the report.

12 A Okay. So is it also fair to say, had
13 there been corroborative evidence of the ward's
14 intent, that that would have been highly pertinent
15 to your investigation?

16 A That is absolutely no question.

17 Q And your conclusions?

18 A No question that any evidence,
19 corroborative or not, would have had a great deal
20 of bearing. If there had existed credible
21 corroborative evidence, it certainly would have
22 had a bearing on both my investigation and very
23 likely on my conclusions. At the time of my
24 investigation and at the time I filed the report,
25 I was not aware of any.

1 Q Again, what was the date your report was
2 filed?

3 A I believe the certificate of service
4 indicates it was filed on or about the 29th day of
5 December 1998.

6 Q At this trial, there has been testimony
7 by Scott Schiavo. I believe we discussed that
8 testimony at your deposition?

9 A You made me aware, and I believe it was
10 for the first time, that two persons related to
11 Michael Schiavo had provided evidence that was
12 characterized by you as corroborative.

13 Q Right.

14 A I put my answer that way, not to take
15 issue with you, but because I have not talked with
16 them and heard what they said. I have not had an
17 opportunity to judge for myself what they had to
18 say.

19 Q I understand that. Again, paraphrasing
20 testimony, Scott Schiavo testified that at the
21 funeral luncheon after his grandmother's funeral,
22 which was attended by Mike and Terri, there was a
23 discussion of what happened to the grandmother,
24 who was put on a respirator for a short time
25 against the grandmother's wishes. At the funeral

1 luncheon, there was a discussion held that they
2 were upset about that. They would not want --
3 people would not want to have that happen to them.

4 And Mr. Schiavo, Scott Schiavo,
5 testified that Theresa, who was sitting next to
6 him, agreed with that position that it was wrong
7 what happened to the grandmother and she would not
8 want to be kept alive like that or on machines.

9 Would that information have been
10 something that you would have been interested in
11 pursuing in your investigation?

12 A Unquestionably.

13 Q Assuming that that information that I
14 have relayed to you is found credible, and I know
15 this has to be hypothetical because you did not
16 hear Scott Schiavo and see him, but assuming you
17 found that information to be credible, how might
18 that have changed in any way the conclusions in
19 your report?

20 A Assuming that I found both the content
21 of the information, as well as the circumstances
22 surrounding it being imparted to me credible and
23 reliable so that I believed it to be true, I would
24 say it would have had a great deal of bearing and
25 may well have changed the outcome of my report.

1 Q In addition, there has been testimony by
2 a Joan Schiavo, a sister-in-law of Michael
3 Schiavo, but not the spouse of Scott Schiavo, the
4 spouse of another Schiavo brother, that she became
5 best friends with Theresa. That they, while they
6 lived in Philadelphia together, they either talked
7 on the phone or met almost on a daily basis. That
8 a girlfriend of Joan Schiavo had a baby who was
9 born with significant impairments and was being
10 kept alive artificially. That became a subject of
11 discussion between Joan and Theresa on many
12 occasions.

13 And that the family, the parents of that
14 baby, decided to remove artificial life support
15 from the baby and the baby died. That Theresa
16 Schiavo expressed on many occasions her
17 concurrence or agreement with the position of the
18 parents removing life support.

19 She also testified as to a conversation
20 she had with Theresa Schiavo, spurred by watching
21 a movie where a diver was in an accident and
22 severely injured and on various life support, and
23 both Joan and Theresa expressed their opinion that
24 they would not want to be kept alive in that
25 manner.

1 Is that information, had it come your
2 way during the course of your investigation, would
3 you have found that important?

4 A Well, certainly the later bit of
5 information that you have conveyed where it's --
6 you have indicated that Theresa talked about not
7 wanting to be kept alive that way, as if in the
8 first person, I think that would be highly
9 pertinent. I think her reaction to a similar
10 situation and concurrence to withdrawal of life
11 support to a third party would have some bearing,
12 but not quite as persuasive, in my mind.

13 I think we can often think about
14 agreement or disagreement about what's happening
15 to other people without adopting those attitudes
16 when applied to ourselves. Certainly, it would be
17 pertinent if the evidence were credible. Again,
18 based on the same assumptions that I mentioned in
19 response to a previous question, it might well
20 have changed my conclusions.

21 Q Okay. Now I understand -- am I correct
22 in understanding that you received no information
23 from Mr. or Mrs. Schindler or any of their
24 representatives during your investigation as to
25 what Terri's intent may be in this situation?

1 A I received nothing of a direct nature.
2 By that, I mean neither her mother, nor father,
3 nor any of her other blood relatives with whom I
4 spoke was able to relate to me a conversation or a
5 communication, either verbally or in writing, from
6 her to any of them in which she directly expressed
7 what her intentions were.

8 All of them were quite ready and willing
9 to express to me what they believed her intentions
10 would be, based on various circumstances, but
11 there was, they had nothing of a direct nature.
12 That would have been just as pertinent to my
13 investigation as would have been the evidence from
14 the two individuals that you alluded to earlier.

15 Q Now both Mr. and Mrs. Schindler have
16 testified that approximately two years ago they
17 spoke with a Diane Meyer, who is allegedly a
18 friend of Theresa back when Theresa lived in
19 Philadelphia. That Diane Meyer had conversations
20 with Terri about the Karen Ann Quinlan case, which
21 were important conversations regarding the issue
22 of Terri's intent. Did Mr. and Mrs. Schindler
23 mention that to you?

24 A I'm reviewing my notes. I don't
25 recall -- I certainly don't recall any references

1 by anybody to the Quinlan case. The name Diane
2 rings a bit of a bell, although my notes don't
3 reflect I was given that specific name by Mr. and
4 Mrs. Schindler, or anyone else, as a friend to
5 contact.

6 Q You mentioned that in your mind the
7 question of Terri's intent was paramount in your
8 investigation?

9 A Yes.

10 Q Had Mr. and Mrs. Schindler said we have
11 a friend, Diane, who talked to Karen Ann Quinlan
12 about Terri, do you believe that is something you
13 would recall?

14 A I think you mean talked to Terri about
15 Karen Ann Quinlan.

16 Q Yes.

17 A I believe it would be something I would
18 recall. I believe I would have judged it to have
19 been pertinent. I believe, and certainly would
20 like to hope, if I had this information it would
21 have resulted in a contact by me with Diane so
22 that I would have interviewed her directly, and I
23 don't believe I did in this case.

24 Q In her cross-examination, I asked Mrs.
25 Schindler why she did not tell you about that. I

1 believe she answered, well, something to the
2 effect that I just answered Mr. Pearse's
3 questions, or he asked the questions and I
4 answered them.

5 Did you ever indicate to Mr. and Mrs.
6 Schindler that your conversation with them was
7 restricted specifically to your questions? Did
8 you limit it in any way, the information that they
9 might be able to give you?

10 MS. CAMPBELL: Your Honor, I object to
11 his characterization of the testimony provided by
12 Mrs. Schindler. I believe she went on to
13 elaborate after that to say, to agree she was not
14 necessarily restricted in her -- it was not a
15 question/answer format.

16 THE COURT: Well, one of them answered
17 that they were not asked. So whether they cleared
18 it up, I still, this is probative as to that
19 response. Objection is overruled.

20 A I did not expressly restrict anything.
21 I hope that I did not do anything that implied
22 that any such restrictions were intended. On the
23 contrary, I was looking for a full and free
24 exchange of information because at the time that I
25 -- I believe I have spoken with the Schindlers --

1 there was one lengthy interview. One lengthy
2 conference. There have have been, I think there
3 may have been maybe some very minor conversations
4 other than that.

5 But at that time of the investigation,
6 my investigation was really just beginning. It
7 was wide open. I was looking for any and all
8 information that I could find. So I did not
9 restrict it. It did not intend to, and I hope no
10 one got that idea from me.

11 Q I believe you mentioned you found
12 Theresa Schiavo to be, to lack cognizance when you
13 visited her; is that correct?

14 A That is correct.

15 Q And you mentioned you talked to the
16 nursing home personnel?

17 A Yes.

18 Q Or some nursing home personnel?

19 A Yes.

20 Q Did you come across any contrary
21 opinions as to Theresa's cognizance from the
22 nursing home personnel?

23 A No.

24 Q Did you come across any contrary
25 diagnoses or opinions from any of the physicians

1 or physicians' statements or notes or reports?

2 A No.

3 Q Now you testified on direct examination
4 as to two factors which I believe you said
5 troubled or concerned you about the credibility of
6 Mr. Schiavo. The first one was the chronology of
7 the case. I believe you testified that certainly
8 while Mr. Schiavo had a hope for recovery for
9 Theresa in the initial period, I believe you
10 stated it was three or four years, that it
11 certainly would not be, would not adversely affect
12 his credibility that he did not seek to remove
13 life support at that time; is that correct?

14 A I believe I said I could understand why
15 he would do something like that. I did not find
16 that to be an unreasonable response.

17 Q Okay. You did mention the lawsuits,
18 though. That they somehow troubled you. The
19 malpractice lawsuit was filed in February 1992.
20 The verdict was rendered in November 1992, which
21 the suit would have been filed almost two years
22 exactly, almost two years after Theresa's incident
23 in February 1990; and the verdict nine months
24 later. So within the later, within the span of
25 the first three years, completely within the first

1 three years the suit was filed. The verdict was
2 rendered.

3 If you concluded that in the first three
4 or four years that Mr. Schiavo was aggressively
5 trying to help his wife at all costs, and it's
6 certainly understandable why he would not want to
7 remove life support thinking there is a chance for
8 recovery, why would it trouble you or affect prior
9 opinion of his credibility that that lawsuit was
10 filed in February of 1992 with the verdict
11 concluded in November of 1992?

12 A Well, as I said, part of what troubles
13 me about the whole scenario was that I believe,
14 based on my knowledge of how in general personal
15 injury lawsuits are conducted, that I believed it
16 very likely it was argued that a jury would have
17 been charged with finding damages based on Theresa
18 Schiavo's normal life expectancy. Part of it was
19 a systemic difficulty.

20 I think I had more problem in terms of
21 the lawsuit situation and resolution of those with
22 the timing or the chronology which involved Mr.
23 Schiavo's decision to cease his efforts to restore
24 his wife and the coincidence of that decision with
25 the receipt of the settlement funds or of the

1 judgment funds.

2 Q Let's backtrack on the first issue.
3 What seems to bother you, as I understand it, is
4 making an argument in a malpractice suit for
5 damages based upon somebody's long life span, when
6 somebody might believe that artificial life
7 support will be removed and the live span in fact
8 will be a short one? Is that the gist of your
9 difficulty?

10 A I think you captured the essence of the
11 idea. Yeah.

12 Q What I don't understand is, if you
13 concluded that in the first three or four years
14 Mr. Schiavo still had hope and still thought his
15 wife was going to recover, there was a chance of
16 recovery, and within that period filed the
17 lawsuit, why -- what is the difficulty or problem
18 of claiming damages for long life span when
19 somebody still believes there is a chance of
20 recovery and the person may live a long life span?

21 A I don't think that particular isolated
22 element of it is particularly problematic. I
23 think the point you are trying to make -- and I
24 agree with you, that it is consistent. What I'm
25 troubled by is the fact that once the lawsuit is

1 concluded and the money is in the bank, it is at
2 that point that apparently this change of, at and
3 around that time, based on the information that I
4 have, that the change of heart occurred.

5 I was further troubled by the fact that,
6 you know, after a period of time had passed when
7 it seemed that any reasonable person could have
8 reached a point of understanding things were never
9 going to get better, it required an additional
10 period of some years before Mr. Schiavo ultimately
11 filed the petition which is at issue today.

12 Q So it was not per se the filing of the
13 lawsuit and claim for damages over a long term
14 that you don't understand or affects Mr. Schiavo's
15 credibility, but a time connection of when the
16 money is received his position changes; is that
17 correct?

18 A I'm not sure I would totally discount
19 the first. I think the later point you just made
20 was somewhat more heavily on me than the former
21 one. Although, as I said in previous testimony,
22 part of what troubles me about the whole
23 chronology is the fact that he would, by his own
24 claim, have had knowledge of these intentions
25 throughout the entire process with Theresa having

1 been administered this feeding tube very early in
2 the process. The feeding tube, as I understand,
3 was put in place within days after the accident
4 occurred in 1990.

5 Q Well, certainly don't you think it's
6 reasonable for a loved one or spouse to want
7 artificial life support removed in an accute
8 situation when the prognosis for the patient is
9 not actually formed, when you don't know the
10 probability of recovery?

11 A I have no quarrel with that as I stated.

12 Q If there is a reasonable chance of
13 recovery or hope, do you have, is there a problem
14 with a loved one maintaining life support while
15 that chance of recovery exists?

16 A Again, I don't have a particular quarrel
17 with that concept, although one can always argue
18 whether one's belief in that regard is reasonable
19 or not.

20 Q Right.

21 A Assuming it's reasonable, I have no
22 problem with that concept.

23 Q Now isn't it true, based upon your
24 investigation, you found -- the first evidence you
25 found of Mr. Schiavo's change of position

1 regarding Terri's care was not to treat an
2 infection in early 1994?

3 A When you say the first evidence I found,
4 are you talking about the earliest evidence or
5 talking about the first bit of information that
6 came to me during the course of my investigation?

7 Q The former.

8 A I think the first evidence was earlier
9 than that. Mr. Schindler related to me a
10 conversation, in fact a rather vehement argument,
11 that he had had with Michael over Michael's
12 decision to seek no further treatment with the
13 money generated by the legal action. And Mr.
14 Schindler was under the impression that the
15 purpose of the lawsuit, again as he related to me,
16 that the purpose of the lawsuit, among other
17 things, were to provide funds whereby further
18 treatment, I guess of an experimental nature,
19 further treatment for Theresa would be sought.

20 At some point, Michael communicated to
21 him that he was no longer going to be seeking such
22 treatment. I think that incident occurred before
23 the business about the infection. I'd say that
24 would be -- the conversation that Mr. Schindler
25 related would be the first evidence I had. If my

1 memory serves me, the infection business came
2 later.

3 Q You already noted the potential or
4 appearance of conflict for both petitioner and
5 respondent in this case. Is it fair to say you
6 took Mr. Schindler's statements with a grain of
7 salt?

8 A I think it's fair to say I judged each
9 party's demeanor and information which was
10 imparted to me, and their credibility, as I felt
11 appropriate. Certainly it's fair to say that at
12 that particular moment in time I felt that any
13 financial conflict of interest between Theresa and
14 Michael was actual because they were married to
15 each other and Michael was her heir at
16 law, whereas the Schindlers' conflict was
17 potential. Could only come about in the event of
18 a dissolution of the marriage between Michael and
19 Theresa.

20 Q Aside from what the respondents told you
21 about Mr. Schiavo's alleged change of position
22 regarding Terri's treatment, is it fair to say
23 that the first actual evidence you found of that
24 was the decision not to treat an infection in
25 early 1994?

1 A I think everything I talked about is
2 actual evidence. If you are talking about the
3 first evidence that came to me from, other than
4 one of the parties, that would be the case.

5 Q How does getting a verdict in 1992,
6 November of '92, and a decision not to treat an
7 infection a year and three or four months later,
8 how are those two events related?

9 A Well --

10 Q If they are at all in your mind?

11 A I believed, based on my investigation,
12 that Mr. Schiavo's decision, his initial decision
13 not to seek further treatment, and I believed that
14 based on Mr. Schindler's statements to me, that
15 that conversation probably had occurred and it
16 seemed consistent to me if Michael had made a
17 decision to no longer seek treatment for her
18 neurological condition that a decision to withhold
19 treatment for infection would be consistent with a
20 decision to let matters take their course.

21 So the context of what Mr. Schindler
22 related to me was related to the receipt of the
23 funds from the settlement. So that is the manner
24 in which, at least in my mind, they were related
25 to one another.

1 Q In your deposition, Mr. Pearse, on Page
2 71, Line 21, I asked you. And so my question is:

3 Number one, is that so, and if it is,
4 in your mind how does getting a verdict in 1992
5 relate to a decision not to treat an infection a
6 year and some months later?

7 Answer. Well, I'm not sure there is a
8 direct relation between those two events.

9 You did go on in your deposition to
10 expound on it in other areas. It was a very
11 lengthy answer. But I'm asking you here today,
12 are you sure there is a direct relation between
13 those two events?

14 A Well, let me say that I have not had an
15 opportunity to read my deposition, even though I
16 did not waive the right to read it. So I don't
17 know about the question and answer there. The
18 relationship that I described a moment ago is one
19 which to me is consistent. You know, whether
20 there was an actual relationship between the two
21 events in the mind of the other individuals
22 involved in all this, I don't know.

23 If you are asking me is there some
24 logical way I can relate the two in my mind, I
25 have described that. Whether they are related in

1 anybody else's mind, I can't comment.

2 Q Would it be fair to say in the question
3 of chronology which we have been talking about
4 that the primary parts of the chronology which
5 disturbed you was the fact that once that
6 treatment, once that decision not to treat was
7 made in November or early 1994, that Mr. Schiavo
8 waited an extended period of time before filing
9 this petition? He did not pursue that line of
10 action? Would it be fair to say that is the
11 primary problem you had about the chronology?

12 A No. It's difficult to give primacy of
13 one point or other in that regard, but it
14 certainly was and are important elements of what
15 disturbed me. Yes.

16 Q You are aware that after Mr. Schiavo
17 made the decision not to treat the infection in
18 early '94 that his, that the respondents amended
19 their petition to remove him claiming that he was
20 not treating Theresa and he was abusing her? Were
21 you aware of that?

22 A I was aware that Mr. and Mrs. Schindler
23 had filed an action to remove Mr. Schiavo as
24 guardian. That had something to do with his
25 decision to seek no further treatment for her. I

1 can't say that I was specifically aware of an
2 amendment. I was aware in general that the
3 removal action was taking place. I had read,
4 although I have no clear recollection today, but I
5 certainly did read portions of the record, of the
6 court record, of those actions.

7 Q The initial petition for removal was
8 filed in July of 1993, which is before the
9 decision not to seek to remove Mr. Schiavo as
10 guardian but did not mention that as grounds. At
11 some later time, the petition was amended to
12 include the ground of a bias because of
13 nontreatment.

14 Were you aware -- will you agree that
15 certainly there is a huge emotional component
16 involved in a decision to remove a life support
17 from a spouse?

18 A Certainly.

19 Q Don't you feel that it's credible that a
20 husband, upon making a decision not to treat an
21 infection which would result in his wife's death
22 and being condemned and sued for it, might not be
23 able to carry out a decision to remove life
24 support?

25 A I certainly think that reaction is a

1 possible reaction. .

2 Q The petition for remove of artificial
3 life support filed in this case, I believe was in
4 May of 1998. It would not surprise you to learn
5 that Mr. Schiavo initiated this process some
6 period of time before an actual suit was filed?

7 A I don't really have any knowledge, any
8 current knowledge of any activities on his part
9 prior to the filing of the suit. If you told me
10 that he was talking to people about it and making
11 arrangements to file, certainly in any lawsuit,
12 any legal action, there is some period of time of
13 planning and preparation before an actual suit is
14 filed. I don't have any specific knowledge of
15 that.

16 Q If that period of planning and
17 preparation in this suit was, let us say at least
18 a year or year-and-a-half, that would shorten that
19 gap of time and gap in chronology; wouldn't it?

20 A I don't know that I would agree with the
21 premise that a year or year-and-a-half preparation
22 and planning time would necessarily be a
23 reasonable amount of time for a case.

24 Q Let's assume that is correct.

25 A If you are asking me to assume, without

1 regard to the reasonableness of the period of
2 time, I don't have any knowledge. It is certainly
3 possible he was planning it for that time. If so,
4 then it would have a tendency to compress the
5 chronology. Yes.

6 Q Um-hmm. Regarding, I think you were
7 testifying to your position of, the position of
8 the Catholic church based upon your
9 investigation. Is the person that you talked to a
10 Father Gerard Murphy?

11 A Yes. He is the person that I had the
12 most lengthy conversation with. I believe there
13 was one other person I spoke to at the office of
14 the diocese.

15 Q Okay. Father Murphy testified at this
16 trial. He would certainly be a better person to,
17 or more qualified person to tell us the position
18 of the Catholic church than you might be?

19 A Unquestionably.

20 Q Now as I understand it, did you not
21 mention I believe, you testified on direct that
22 you found that there was nothing in the doctrine
23 of the Catholic church which would preclude
24 removal of Theresa's life support?

25 A I was interested in whether there was

1 any Catholic doctrine which would morally and
2 ethically compel a practicing Roman Catholic to
3 choose one resolution or outcome in this case or
4 another. As a result of my investigation, I
5 concluded that the applicable doctrine does not
6 compel an outcome in either way.

7 Q So in essence of issues of Catholicism
8 in this case, it was a neutral point you felt did
9 not need mentioning?

10 A I believe that is what I testified to
11 earlier.

12 Q Why then in your report, though, did you
13 make the statement that the ward was raised as a
14 Roman Catholic, and according to the ward's
15 parents, continued to practice her religion, if
16 you felt the issue of religion was really a
17 neutral issue?

18 A What you are reading is a section about
19 Theresa. I was trying to convey some general
20 background information to the Court so that
21 whatever judge was going to ultimately make the
22 decision in this case would have the benefit of
23 some of the things that I knew about that may not
24 otherwise have come to his attention.

25 It was not intended to convey anything

1 other than a basic background fact about Theresa.
2 That was a religion that I had some indication
3 that she practiced.

4 Q You recall, though, that Mr. Schiavo, in
5 his interview, mentioned to you that since at
6 least his marriage to Terri that she was not a
7 practicing Catholic, that she did not attend mass,
8 did not receive communion. Do you recall that?

9 A Yes.

10 Q Is there any reason why in your report
11 you stated what the parent's beliefs as to Terri's
12 religious practices were and not the petitioner's?

13 A No conscious reason. I suspect, if you
14 pressed me to identify a reason, it would have
15 more to do with the fact that my wife was raised
16 as a practicing Roman Catholic. In spite of the
17 fact she attended services with me at our local
18 Episcopal church, she refers to herself as a
19 Catholic and indicated to me on a number of
20 occasions she will die a Catholic.

21 It's a matter of, I think, being raised
22 in the Catholic faith which is a matter, almost a
23 matter of culture as a matter of religion.

24 Q In your report, you refer to the report
25 of Dr. Karp, the neurologist?

1 A I believe so.

2 Q You received a copy of Dr. Karp's
3 report?

4 A I don't recall if I received a full copy
5 of the report. Certainly I recall it, but did not
6 see a full copy. I certainly saw pertinent
7 excerpts.

8 Q In your report of the guardian ad litem,
9 you refer to Dr. Karp's report, which indicates
10 that the ward is in a chronic vegetative state.
11 Also Dr. Karp's opinion that her chance of any
12 improvement to a functional level is essentially
13 zero. You mention in your report it appears that
14 Dr. Karp's opinion of the ward's condition and
15 prognosis is substantially shared among those
16 physicians who have recently been involved in her
17 treatment.

18 My question is this. I want to clarify
19 this. The word substantially, as I understand it,
20 means most, but not all. Did you find any doctor
21 who had a contrary opinion to Dr. Karp's?

22 A No. There was no doctor that had a
23 contrary opinion. The word substantially in that
24 context was intended to refer not to the various
25 doctors in terms of some, but not all, but rather

1 to the substance and quality of the opinion.

2 All of the doctors' reports that I
3 reviewed reached substantially the same results
4 and conclusions. Although they are not
5 necessarily identical they, in terms of repeating
6 the various factors verbatim, hence the word
7 substantially.

8 Q Before you mentioned that there was a
9 period of time of reflection for you in making
10 this report in coming to your final conclusion.
11 That in fact is one reason the status conference
12 was called. During that period of time, did you
13 have a conversation with attorney, Deborah
14 Bushnell, who was the attorney for the guardian of
15 the property, Mr. Schiavo, in which you mentioned
16 that you had a problem with Mr. Schiavo's
17 credibility because of the potential inheritance?
18 Do you recall a conversation like that?

19 A I did have a conversation with Deborah
20 Bushnell. It was a telephone conversation. She
21 had --

22 Q In that conversation, do you recall
23 there being a suggestion that if Mr. Schiavo made
24 a donation to charity of the inheritance, that
25 that would alleviate that credibility problem?

1 A The context of that conversation was one
2 of, I guess for lack of a better way to put it,
3 was lawyer to lawyer conversation, in which a
4 number of aspects of this case were discussed.
5 And I think Ms. Bushnell's intent was, and
6 certainly my intent was, to try to help me to
7 reach some resolution of the various issues that
8 were troubling me, including the financial issue.

9 Certainly the subject of alleviation of
10 that issue was discussed. I don't recall. I may
11 have mentioned, and I would not doubt at all that
12 I did mention, that one possible way for the
13 alleviation of the financial issue would be if Mr.
14 Schiavo were willing to forego the money.

15 Q Okay.

16 A Certainly we did discuss that. That was
17 a part of the conversation.

18 Q When you say forego the money, let me
19 read to you the sentence from paragraph five of
20 Deborah Bushnell's affidavit of February 2, 1999,
21 which is in evidence, which states: Richard
22 Pearse suggested to affiant that Mr. Schiavo agree
23 to donate to charity the inheritance he would
24 receive upon the ward's death.

25 Do you, upon hearing that, do you

1 necessarily disagree rather than use the word
2 forego, you actually might have suggested Mr.
3 Schiavo make a donation to charity?

4 A I probably did use the word donation as
5 a means of alleviating. I don't doubt that I used
6 the word donation. I will say that what you read
7 at least implies that I was making some sort of
8 offer to broker a settlement along those specific
9 lines. I don't think that implication is
10 correct.

11 My recollection of the conversation is
12 that we were simply discussing ideas about ways in
13 which some of the conflicts which were troubling
14 me might be resolved. That is one of the things
15 we talked about.

16 Q That conversation with Deborah Bushnell
17 was on October 13th. Also in evidence as part of
18 the suggestion of bias on the part of the guardian
19 ad litem, which is in evidence, is a October 21,
20 1998 letter I sent to Attorney Campbell which
21 outlines an offer of Mr. Schiavo to donate the
22 proceeds of the -- donate any estate of Theresa he
23 would inherit to charity if Mr. and Mrs. Schindler
24 dropped their objection to his petition. Did you
25 receive a copy of that offer?

1 A Yes.

2 Q Did you also receive a subsequent letter
3 informing you the respondents rejected that offer?

4 A Yes.

5 Q Did you mention in your report the offer
6 made by Mr. Schiavo?

7 A No.

8 Q I wanted to ask you as well, there is a
9 section of the report, in your report the ward's
10 husband, on Page 5, and your -- relaying to you
11 information you received from Mr. Schiavo
12 regarding the conversation he had with Terri
13 concerning the grandmother and uncle during a
14 train trip to Florida?

15 A That is the bottom of Page 4?

16 Q Yes.

17 A Uh-huh.

18 Q In your report, I'm reading from the
19 fourth line down, the last paragraph, he is
20 referring -- Mr. Schiavo indicates that she
21 related her feelings to an uncle of hers who was
22 severely injured in an automobile accident and was
23 comatose for a time. Does that section of your
24 report accurately reflect what Mr. Schiavo related
25 to you?

1 A I'm not sure it does. I'm not sure the
2 word "to" in that sentencing should not read
3 "about". Related her feelings about an uncle of
4 hers.

5 Q Okay.

6 A We had a discussion about this at my
7 deposition. Although my notes are not real clear
8 about it, I believe that the word "about" would
9 more accurately reflect what Mr. Schiavo told me.

10 Q In your report there is some information
11 which apparently was related to you by the
12 Schindlers to the effect they did not think
13 Terri's and Mike's marriage was going well prior
14 to the accident. Is there any reason that you did
15 not mention in your report that the ward was
16 seeking to have a child with Mr. Schiavo at the
17 time of the accident?

18 A I honestly don't -- I don't recall that
19 that information was imparted to me. If it was, I
20 don't recall it today. But no, there was no
21 particular reason. Mr. Schiavo may have indicated
22 that to me, but there was no -- I honestly don't
23 remember if that information was imparted to me as
24 I sit here today. Whether I had knowledge of that
25 at the time this report was written.

1 Q There is a reference in your report in
2 paragraph four which states until February 1993
3 the Schindlers were -- worked cooperatively with
4 Mr. Schiavo. In fact, he lived with them in their
5 home for a number of months following the ward's
6 accident. We have heard testimony that in fact
7 there were two residences that the petitioner and
8 respondents lived in together. And the first --
9 in the first, apparently they shared expenses and
10 rented together. In the second, it was a home
11 leased by Mr. Schiavo.

12 Is there any reason -- is there any
13 reason that your report did not reflect that
14 information that in fact the Schindlers were
15 living in the petitioner's home?

16 MS. CAMPBELL: I believe factually the
17 characterization is a little mistaken in the fact
18 that I believe the testimony was there were two
19 homes and they shared the expenses in both homes.

20 MR. FELOS: Correct.

21 THE COURT: What she is pointing out is
22 that both homes were leased in Mr. Schiavo's name;
23 is that correct?

24 MS. CAMPBELL: Yes. That part was fine.
25 I believe he said they shared the expenses in the

1 first home, not the second.

2 THE COURT: Thank you.

3 Q (By Mr. Felos) Is there any reason why
4 your report did not state that the Schindlers
5 lived in Mr. Schiavo's home, rather than what it
6 does say that Mr. Schiavo lived with the
7 Schindlers in their home?

8 A Well, I think the important concept of
9 the entire sentence was they were cooperating up
10 to that point. I intended to illustrate the
11 degree of cooperation pointing out they were
12 living together in the same household. I was
13 under the impression at the time that I wrote the
14 report that it was Mr. Schiavo living in the
15 Schindler's home. If I made a mistake, it is just
16 that.

17 But the main reason for the sentence, it
18 was to convey the cooperation and contrast of
19 relationship between these parties before and
20 after February 1993.

21 Q The impression that you said you
22 received that the parties were living in the
23 Schindler's home, did that come from Mr. and Mrs.
24 Schindler?

25 A I honestly don't remember. I did not

1 regard whose home it was as the most pertinent or
2 operative fact when I wrote that particular
3 sentence. I honestly, you know, I don't remember
4 who told me what regarding that particular living
5 arrangement. I believe I had information from
6 both Mr. Schiavo and from the Schindlers.

7 I tried to take notes during all these
8 interviews, but I find it difficult -- I guess
9 it's a matter of my own limitation. I find it
10 difficult to listen closely and take notes at the
11 same time, so my notes are not as complete as I
12 hope or wished they were.

13 Q You mentioned Mr. Schiavo's romantic
14 involvement in your report. Omitted from your
15 report is the fact that the petitioner's
16 involvement was with the approval and
17 encouragement of the respondents. Is there any
18 reason why that fact was not in the report?

19 A I'm not sure -- the answer is no. There
20 is no particular reason. I'm not sure it was ever
21 characterized for me in precisely the way you have
22 just done. My recollection is that the
23 relationships to which I alluded were known by all
24 the parties. I have the impression that it was a
25 matter that the Schindlers certainly understood

1 under all the circumstances. But I don't know
2 that anybody ever put it to me that they
3 encouraged the relationship beyond the knowledge
4 of it.

5 Q Do you believe that in a spousal
6 situation where one spouse has to make a decision
7 to remove life support from the other spouse that
8 there is always, that gives rise to the appearance
9 of a conflict of interest, assuming naturally that
10 one spouse is going to be the natural beneficiary
11 of the other spouse?

12 A I think there is always the appearance
13 of that conflict. However, I think that as part
14 of your juris prudence and part of indeed our
15 culture, we take it that spouses, that husbands
16 and wives don't allow financial motivation also to
17 overshadow decisions made out of love and concern,
18 which is to say that the appearance of a conflict
19 exists and is usually overridden by the
20 relationship, but not always.

21 Q You were asked by Attorney Campbell
22 about personal belief references. I wanted to
23 discuss that with you. From after taking your
24 deposition, I would like to recount to you what I
25 believe you have expressed to be your personal

1 beliefs regarding withdrawal of the cessation of
2 the artificial provision of nutrition and
3 hydration.

4 THE COURT: Mr. Felos, just ask -- the
5 deposition is not relevant at that point.

6 MR. FELOS: Okay. Thank you,
7 Your Honor.

8 Q (By Mr. Felos) Can you tell us what
9 your personal beliefs are? It's been a long day.
10 Can you tell us your personal beliefs regarding
11 the withdrawal of artificial nutrition, of
12 nutrition and hydration?

13 A It is my personal viewpoint that
14 although those measures are certainly included in
15 the concept of the artificial -- artificial means
16 of prolonging life, that they -- I personally
17 believe they have a different sort of a status
18 than would say a ventilator or some other more
19 intrusive means. I think there is a much less
20 clear cut line between artificial prolongation of
21 life and the provision of comfort and care which I
22 understand to be admitted by the law where food
23 and water are concerned.

24 Q So --

25 A That is my personal belief about it.

1 Q So in your, according to your own
2 personal belief system, artificial provision of
3 sustenance and hydration you consider to be
4 comfort care rather than medical treatment?

5 A I'm not sure I agree that there is --
6 that it is always one or the other. I don't think
7 there is -- I don't think it's a bright line. I
8 don't think there is a bright line test, you
9 know. I think that each case must be judged on
10 its own merits and circumstances. But I
11 certainly, as I said, I'm afraid I can't put it
12 any more artfully. I judge them to be in a
13 somewhat different category than other types of
14 artificial measures.

15 Q Do you believe that nasal gastric
16 feeding is a noninvasive medical treatment?

17 A It's my understanding the definition of
18 what is invasive, that it is not invasive. It
19 does not involve having to make any incisions in
20 order to put it in place.

21 Q I would like to read to you two
22 sentences from the Browning case that I am sure
23 you are familiar with. The trial court found that
24 death would occur within 49 days after removal of
25 the nasal gastric tube, therefore, Mrs. Browning

1 could only have been sustained beyond that time by
2 the administration of artificial, intrusive
3 medical measures. Would you agree that the
4 Supreme Court of Florida is of the opinion that
5 nasal gastric feeding is of an intrusive medical
6 measure?

7 A I think by what you read I would say
8 that Judge Penick, who was the trial court,
9 apparently thought so. Whether they do or not, I
10 don't know. But if they do, I disagree with their
11 characterization as intrusive by my understanding
12 from a medical point of view.

13 Q It's fair to say -- is it fair to say
14 you would think artificial provision of nutrition
15 and hydration are more in terms of comfort care
16 than you would medical treatment?

17 A That is a difficult question. As I said
18 before, it's very circumstantial.

19 Q In your deposition --

20 A I guess that I would have a tendency to
21 consider food and water to be closer to the
22 comfort care measures than other modalities such
23 as ventilators. Again, whether they are in every
24 circumstance depends on the circumstances.

25 Q In your deposition on Page 59, Line 6,

1 you said, but I have always had a difficult time
2 with the inclusion of nutrition and hydration as
3 artificial life support. I guess just from my own
4 personal point the view, food and water, you know,
5 I think are, you know, I think basic. I guess I
6 really have considered them over the years to be
7 more in terms of comfort than treatment, if you
8 will.

9 Do you believe that death from removal
10 of -- death from cessation of the artificial
11 provision of hydration and nutrition is painful?

12 A I do.

13 Q Now you are aware of course that the
14 Florida legislature in Chapter 765 has said that
15 individuals that the artificial provision of
16 hydration and nutrition is a medical treatment
17 which individuals have the right under the
18 circumstances of the statute to have withdrawn or
19 withheld?

20 A That is unquestionably the case, I
21 believe, under the current law.

22 Q Would you say that you disagree with
23 that legislative position?

24 A That individuals have the right to
25 choose to treat that -- those provisions as

1 artificial means of prolonging life? No. I don't
2 disagree with that.

3 Q Would you like to see that law changed?

4 A No. I really don't think I would like
5 to see the law changed. I'm very much an advocate
6 of the right of an individual to make individual
7 choices, but I think part and parcel of that law
8 is to be certain, or at least as certain as one
9 reasonably can be under a clear and convincing
10 standard, that those are in fact the choices of
11 the individual.

12 Q In your deposition I asked you that
13 question on Page 60, Line 19. Do you feel that
14 nutrition and hydration ought to be taken out of
15 the basket of choices that a patient has in
16 refusing medical treatment.

17 Answer. I would not be uncomfortable
18 with that concept. You know, I don't think food
19 and water is like medicine.

20 THE COURT: Your question?

21 MR. FELOS: Excuse me, Your Honor?

22 THE COURT: You don't just read
23 something from a deposition when the witness says
24 here -- what is the question?

25 Q (By Mr. Felos) I take it your answer

1 would be you would like the opportunity to explain
2 the, your answer at deposition and your answer
3 today at trial?

4 A Well, I don't think they are
5 inconsistent.

6 Q Okay.

7 A You asked me to state a personal view
8 when we had the deposition. I said that if the
9 legislature, in its wisdom, chose to take those
10 two measures out of the basket of choices that I
11 personally would not be uncomfortable with that
12 legislative decision. You also asked me today am
13 I uncomfortable with the current law which gives
14 an individual the right to choose.

15 Now if you are putting your question in
16 the context of what I would choose, then I would
17 feel free to state and to follow my own personal
18 beliefs, but if you are asking me -- I don't think
19 the two answers are inconsistent.

20 Q The question though was if the
21 legislature decided to take the food -- take out
22 of the statute the patient's ability to cease
23 artificial provision of food and water, would you
24 agree with it? That was not the question in the
25 deposition.

1 THE COURT: The question was did he
2 think the legislature ought to be amended. The
3 deposition said if it was removed from the
4 legislature would he be uncomfortable. He said
5 no. What is inconsistent?

6 MR. FELOS: That is not the deposition.
7 The deposition question is do you feel that
8 nutrition and hydration ought to be taken out of
9 the basket of choices that a patient has in
10 refusing medical treatment.

11 THE COURT: Wasn't his answer I would
12 not be uncomfortable with that?

13 MR. FELOS: That is right.

14 THE COURT: What is inconsistent? He
15 would not be uncomfortable if it came out.

16 MR. FELOS: I don't think the question
17 in the deposition had anything to do with the
18 legislature.

19 THE WITNESS: I'm sorry, Mr. Felos.
20 That is how I understood it.

21 Q (By Mr. Felos) Would you agree or
22 disagree that Theresa Schiavo falls under the
23 definition of a patient that I'm going to describe
24 to you. A person who is otherwise stable,
25 medically speaking, and breathing on their own and

1 free from other illness, who while receiving
2 artificial -- who receives food and water
3 artificially, is not in a situation of pain or
4 anxiety as a result of the administration of
5 hydration and nutrition?

6 A Based on my knowledge of Theresa, I
7 would agree.

8 Q You would agree. Is it true that you
9 have a problem with removing the artificial
10 provision of nutrition and hydration from a
11 patient such as that?

12 A I have a problem with removing nutrition
13 and hydration in the absence of clear and
14 convincing evidence that is what the patient would
15 want. To that extent I have a real serious
16 problem. That was the basis of my conclusion in
17 my report.

18 Q In your deposition on Line 1, on Page
19 61, Line 1, you were not talking about Theresa
20 Schiavo in particular, but your statement was but
21 I guess I have a problem. I guess my problem is
22 with the idea that a person who is otherwise
23 stable, medically speaking, and breathing on their
24 own and free from other illness should have food
25 and water withheld even if administered by

1 artificial means, if those means are creating a
2 situation of pain or anxiety in and of themselves.
3 That is my personal viewpoint on the subject
4 matter.

5 Is it fair to say that you have a
6 problem removing artificial provision of hydration
7 and nutrition from a patient such -- a patient who
8 is in such a condition?

9 A I am going to ask you if you would
10 clarify your question to this extent, and that is
11 to supply what knowledge I might have under the
12 circumstances of that person's intentions.

13 Q That I don't know.

14 A Well, then I have this answer. If I
15 felt that the person, if there was a living will
16 that directed their withdrawal, or clear and
17 convincing evidence that was that person's desire,
18 then I think that should control. But if you
19 simply ask me if there is a patient in that
20 situation, and we have no evidence one way or the
21 other of what that person's wish would be, I
22 believe to that extent, yes, my personal belief
23 would incline me to leave the tubes alone.

24 Q At any time while you were, after,
25 appointed as guardian ad litem or beforehand at

1 any time, did you inform the Court or notify the
2 Court of what your personal beliefs were regarding
3 removal of artificial provision of nutrition and
4 hydration?

5 A No.

6 MS. FELOS: I have no other questions.

7 THE COURT: Thank you. Redirect?

8 REDIRECT EXAMINATION

9 BY MS. CAMPBELL:

10 Q Mr. Pearse, with that last line of
11 questioning, let me repeat one more time then were
12 you able to set aside your personal beliefs in
13 making your report for Theresa Schiavo?

14 A I don't believe that my personal beliefs
15 had any bearing on the decision that I made. My
16 decision was based on my analysis as a guardian ad
17 litem, where I have legal training of the
18 available evidence and standard to be applied. I
19 think the law is such that a person has the right
20 to direct the withholding or withdrawal of these
21 measures.

22 But I think there is a converse right of
23 a person to have these measures sustained in the
24 absence of that kind of clear and convincing
25 evidence. In the final analysis, I just, I took

1 what information I had and I judged the sources
2 and I found, based on my own analysis, and in that
3 I felt the evidence did not meet the required
4 standard. That is the primary basis for my
5 opinion and recommendations.

6 Q Thank you. Mr. Felos has provided you
7 with some information concerning testimony by
8 Scott Schiavo and Joan Schiavo concerning
9 Theresa's intent as to the removal -- her views of
10 life support. Additionally, through that
11 testimony, it was learned that this information
12 only has come about through the litigation and
13 conversations that they have had with Mr. Felos.

14 Would you find it equally as important
15 in weighing the credibility of their testimony
16 whether or not they ever came forward during the
17 last nine years of this to state either to Michael
18 or to the Schindlers what Theresa's views would
19 have been?

20 A Certainly the circumstances whereby that
21 sort of information was imparted would bear on the
22 credibility of the person making the statements.
23 Obviously, there are a host of factors that would
24 have to be considered. Their knowledge of the
25 proceedings and the controversy. Obviously, if

1 they have knowledge of it and did not come forward
2 till late in the game, that might not reflect
3 positively.

4 On the other hand, if they did not know
5 about it and came forward as soon as they found
6 out, it may be neutral or have a positive effect
7 on credibility. There is a whole host of factors
8 that go into judging the credibility or
9 believability of a witness. I am at a
10 disadvantage when it comes to the statements made
11 by these individuals because I did not talk to
12 them and I have not talked to them.

13 I don't know the circumstances of the
14 impacting of this information, other than what has
15 been presented to me by you and Mr. Felos. I'm
16 simply not in a position to judge independently
17 the credibility of those two declarants in terms
18 of the information they have given. You know, if
19 I had the opportunity at the time of my
20 investigation and if I found it credible, it might
21 have changed my opinion. If I found it not
22 credible, it might not have. Except to -- other
23 than to say that, I really can't comment further.

24 Q In reviewing the records of Terri at the
25 nursing home or in your conversations with any of

1 the staff, did anyone relay or did you see notes
2 written to the effect of Theresa laughing at
3 jokes?

4 A Certainly it was related to me Theresa
5 expressed emotions. Well, Theresa had the outward
6 manifestation of expression of emotions at various
7 times and under various circumstances. She
8 sometimes laughs. Sometimes cries. Sometimes
9 makes sounds. She sometimes moves. When I spoke
10 to the Schindlers about that, they were quite
11 convinced that her responsiveness was as a result
12 of their presence. Their involvement. Those
13 kind of stimuli.

14 The staff that I spoke with at the
15 nursing home and the reports that I read which
16 alluded to this situation generally maintain that
17 these responses were random. Not associated with
18 any particular stimulus. Certainly I know that
19 the Schindlers indicated to me that they felt
20 Theresa responded to them. The nursing home folks
21 said that Theresa made responses, but not in a
22 manner that they could correlate.

23 I don't recall whether anybody ever told
24 me that she laughed at a joke, the implication
25 that she heard and understood something that made

1 her laugh. I don't recall ever hearing that from
2 anybody.

3 Q There has been testimony in this case
4 about at different times Terri and Michael living
5 in the Schindlers' condo, living in the
6 Schindlers' home in Pennsylvania, and testimony
7 concerning Michael living with the Schindlers in a
8 residence leased under Michael's name. Were any
9 of these details provided to you by either party
10 along your investigation?

11 A I suspect that some of the details were
12 provided during the course of my investigation
13 both by the Schindlers and by Mr. Schiavo. As I
14 indicated, unfortunately, my notes are a little
15 sketchier than I would like them to be in terms of
16 trying to recall the specifics of conversations,
17 you know, after that kind of time has passed since
18 they occurred.

19 I have the impression we talked
20 historically about Theresa's upbringing,
21 relationship with Michael, her marriage. The move
22 from Pennsylvania, I believe, to Florida. The
23 relationship of Theresa and Michael to her
24 parents. All of these matters were discussed at
25 some length both by the Schindlers and Michael

1 Schiavo. So I'm sure that some of the details you
2 are talking about were imparted to me. I don't
3 have detailed notes about them.

4 Q Is there any particular reason you did
5 not mention the offer that was made from Michael
6 Schiavo to my clients?

7 A Well, I guess that is probably some of
8 my training as a trial lawyer showing itself. It
9 has been practically ingrained in me from law
10 school that evidence of settlement negotiations
11 are generally a subject matter not appropriate to
12 place before in the consideration of the judge or
13 the jury who is going to ultimately determine the
14 facts or outcome of a case.

15 The bottom line about the offer and the
16 rejection of the offer and that whole scenario was
17 that the same financial conflict that existed at
18 the outset of all of that still existed after the
19 offer was made and rejected, so the conflict
20 itself remained unresolved and was not addressed
21 further by either party to my knowledge.

22 MS. CAMPBELL: Thank you. No further
23 questions.

24 THE COURT: Mr. Felos, anything
25 further?

RE-CROSS-EXAMINATION

BY MR. FELOS:

Q Yes. Well, we all remember, or hopefully remember, the Evidence Code from law school days. I'm sure if we looked, we could find a provision that says evidence of settlement negotiations are not admissible for most purposes at trial, but then again, you are not acting in your report in the capacity as a jury or a judge.

Isn't it a fact that there are many, many types of information in your report, listed in your report, that would not be admissible in court because they are hearsay or double hearsay? Isn't that true?

A I would say yes. It is true. Certainly there are many elements of what's in the report that would not be directly admissible over objection.

Q Yes. Wouldn't you also say that the offer made by Mr. Schiavo had some relevance to his credibility?

A Certainly it had relevance to his credibility.

MR. FELOS: Nothing else.

THE COURT: Ms. Campbell?

FURTHER REDIRECT EXAMINATION

BY MS. CAMPBELL:

Q Did the Schindlers give you any reason as to why the offer was made? Why they believed the offer was made?

MR. FELOS: I object to that. We are now on redirect, and what the Shindlers' beliefs may --

THE COURT: She gets to go last. This is her witness. You questioned whether or not the offer had relevance to credibility, so I'm sensing this question has a lot to do with your question. So I'll overrule your objection.

MS. CAMPBELL: Thank you.

A The response of the Schindlers as conveyed to me on the settlement offer was that first of all it was rejected. Moreover, they felt that Michael had reason to know that there was no circumstances under which they would accept his offer. So they conveyed to me I believe that they regarded the offer as throw away. Not one that was necessarily made in good faith or knowledge that there was any chance that it would be accepted.

Q If I may approach. I'm showing you what

1 is in evidence, a letter dated October 21st from
2 Mr. Felos to me. This is the letter that Mr.
3 Felos just questioned you about. Please take a
4 moment to look at those two pages. Do you see
5 contained within that letter, does it show a
6 carbon copy or xerox copy going to you?

7 A No. It does not indicate that a copy of
8 this was sent to me. However, there is a copy of
9 this letter in my file, so I did see this letter
10 at some point.

11 MS. CAMPBELL: Thank you. No further
12 questions.

13 THE COURT: Thank you.

14 MR. FELOS: I do, Your Honor.

15 THE COURT: Pardon me?

16 MR. FELOS: May I ask another question?

17 THE COURT: One question, Mr. Felos.

18 FURTHER RECROSS-EXAMINATION

19 BY MR. FELOS:

20 Q However the Schindlers may have
21 characterized to their counsel who then
22 characterized to you their impression of this
23 settlement offer, while that offer was made and
24 open, wasn't there a -- wasn't there a possibility
25 that if accepted or wasn't there an open

1 possibility that offer may have been accepted, and
2 if accepted, my client, would have not received a
3 substantial amount of money; isn't that correct?

4 A Sure. That is absolutely correct, if
5 they had accepted the offer. If the offer was
6 accepted, the case would have been settled at that
7 point. No doubt about that.

8 MR. FELOS: I have no other questions,
9 Your Honor.

10 THE COURT: Thank you.

11 MS. CAMPBELL: Nothing further.

12 THE COURT: I have a question. Mr.
13 Pearse, you spoke about things that troubled you.
14 What essentially troubled you were conflicts of
15 about, if you will, am I correct in assuming from
16 your report and testimony that the real focus of
17 inquiry is the intent of the patient. And that
18 had two days prior to your signing your report you
19 had been furnished with a copy or original of a
20 living will that you determined to be legitimate,
21 would all those troublesome things sort of have
22 vanished?

23 MR. PEARSE: Unquestionably..

24 THE COURT: Okay.

25 MR. PEARSE: If I had been furnished

1 with a living will or any credible writing. Even
2 that.

3 THE COURT: While I'm saying a living
4 will, you know what that document is?

5 MR. PEARSE: If Terri Schiavo had signed
6 a living will directing the withholding or
7 withdrawal of artificial life prolonging
8 procedures in the event of her being in this
9 conditioning, a terminal condition, persistent
10 vegetative state, I have would absolutely had no
11 problem at all with endorsing the removal of those
12 measures.

13 THE COURT: So the troublesome things
14 you spoke about are not a separate item of
15 consideration. They simply go to the quality of
16 the verbal testimony you had regarding her intent?

17 MR. PEARSE: The quality of the overall
18 evidence that I had regarding her intent.

19 THE COURT: Okay. Any questions based
20 upon the Court's inquiry?

21 MR. FELOS: No, Your Honor.

22 THE COURT: Thank you.

23 MR. PEARSE: May I be excused, Your
24 Honor?

25 THE COURT: Is he under subpoena?

1 MS. CAMPBELL: Yes.

2 THE COURT: Free from further testimony
3 as far as you are concerned?

4 MS. CAMPBELL: Yes.

5 THE COURT: Mr. Felos?

6 MR. FELOS: Yes.

7 THE COURT: Thank you. You are free.
8 Mr. Felos, I think you still have evidence. Ms.
9 Campbell, it's twenty to 6:00. Do you wish to put
10 on any additional witness this afternoon?

11 MS. CAMPBELL: There is one here. She
12 can come back tomorrow morning. I do have one
13 additional witness, hopefully, that has arrived at
14 the Tampa airport at this point in time. I
15 anticipate both witnesses to be relatively short.

16 THE COURT: So is there an objection to
17 hearing this additional witness? Does anybody
18 have commitments that would preclude them having
19 this last witness this evening?

20 THE COURT: Let's take ten minutes.

21 MR. FELOS: Excuse me. My co-counsel
22 has informed me we do have a meeting with
23 Dr. Barhnill this evening.

24 THE COURT: What time?

25 MS. CAMPBELL: To call him when we get

1 out of here around 6:00.

2 THE COURT: Do you have to call him at
3 6:00?

4 MS. FELOS: We are to call him and set
5 up a time which is shortly after 6:00 was the
6 idea.

7 THE COURT: Well, if that creates a
8 problem, I guess we probably should break now and
9 your witness can return tomorrow.

10 MS. CAMPBELL: Yes.

11 THE COURT: That means we have two
12 witnesses in the morning of yours, not to hold you
13 to the number. So we should be finished with your
14 testimony by 10:30, plus or minus?

15 MS. CAMPBELL: I imagine.

16 THE COURT: Then get to rebuttal, if
17 any. Then go to rebuttal and closings, if time.
18 If not, do closings on Friday. How many witnesses
19 in rebuttal do you anticipate?

20 MR. FELOS: At this time, four.

21 THE COURT: Okay. Hold you to it.
22 Questions and answers. I don't want to hear all
23 this testimony one more time. All right. Stand
24 in recess until 9:00 a.m. tomorrow morning by my
25 watch.

1 (THEREUPON, COURT RECESSED AT 5:45 ON 1-26-00
2 AND COMMENCED AGAIN ON 1-27-00 AT 9:00 A.M.)

3 THE BAILIFF: All rise. Circuit court
4 of Pinellas County is back in session.

5 THE COURT: Be seated, please.
6 Ms. Campbell, are you ready to proceed?

7 MS. CAMPBELL: Yes, Your Honor. I would
8 like to call Diane Meyer to the stand, please.

9 THE BAILIFF: Stand right here, please.
10 Face the judge. Raise your right hand to receive
11 the oath.

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

14 DIRECT EXAMINATION

15 BY MS. CAMPBELL:

16 Q Good morning.

17 A Good morning.

18 Q Please state your full name.

19 A Diane Christine Meyer.

20 Q Where do you live?

21 A I live in Doylestown, Pennsylvania.

22 Q Did you just fly in?

23 A Yes. Yesterday. Late.

24 Q How do you know Terri Schiavo?

25 A Terri and I grew up together. Our

1 parents were friends. Terri and I became
2 friends. We spent holidays and vacations
3 together. Our whole families were friends.

4 Q What is your educational background?

5 A I have a Bachelors Degree in psychology
6 from LaSalle University. I am a practicum short
7 of a Masters Degree in counseling/psychology.

8 Q What is your occupation?

9 A I'm a child welfare social worker.

10 Q Have you ever testified in court before?

11 A Yes.

12 Q What do you do as a child welfare social
13 worker?

14 A Abuse investigations. When a report of
15 abuse comes in to Bucks County, I am one of the
16 investigators that goes out and determines whether
17 it's indicated or unfounded and provides services
18 to families in need in the County of Bucks.
19 Whatever services the family might need.

20 Q How old are you?

21 A Thirty-six.

22 Q Do you know how old Terri Schiavo is?

23 A Thirty-six.

24 Q Can you please describe, when you say
25 you grew up together, describe the activities you

1 did.

2 A Our families would spend holidays
3 together. I remember going up to visit the
4 Schindler's home frequently when I was young. I
5 used to joke with Mrs. Schindler. I was kind of
6 hyperactive. She used to say that when I was
7 coming, hide all the breakables.

8 We would play. My brother, Steven, and
9 Bobby are the same age. They were friends. We
10 went on family vacations every summer together.
11 The Schindlers would go to Stone Harbor and we
12 would go down and visit. We would go to Cape May
13 and they would come and visit us. We took the
14 same weeks together and ended up taking two weeks
15 of summer together.

16 Q Approximately when did this friendship
17 or closeness of the families start?

18 A All growing up we were friends. Terri
19 and I became particularly close right after we
20 graduated high school. That summer.

21 Q Where did you go to high school?

22 A Villages of Marie.

23 Q Was that a Catholic school?

24 A Private Catholic.

25 Q Do you know where Terri went to school?

1 A Archbishop Wood.

2 Q Was that close in proximity to you?

3 A Yes.

4 Q Did you belong to the same church?

5 A No.

6 Q What is your religious preference?

7 A Roman Catholic.

8 Q Are you actively practicing?

9 A Yes.

10 Q Do you attend mass regularly?

11 A Yes.

12 Q Have you pretty much growing up your
13 whole childhood?

14 A I'm sorry?

15 Q Have you pretty much had the same
16 practices, religious-wise, growing up?

17 A Yes.

18 Q Did you ever work with Terri?

19 A Yes. We did. We held a couple of
20 summer jobs together. Facelifters Kitchens.
21 Telemarketing.

22 Q How often would you generally see
23 Terri, would you say, after high school?

24 A In the summers, it would be daily. We
25 saw each other every day. I know the summer after

1 high school graduation it was I would be at her
2 house one night and she at mine the next. We were
3 back and forth. Our parents must have split our
4 food bills because we were together so much.

5 Q How often would you speak to each other?

6 A Everyday during the summer. Then I went
7 away to college. I want to Scranton University in
8 September. She stayed home. So I would assume --
9 I came home in the beginning almost every
10 weekend -- I saw her whenever I was home. Then
11 we would talk on the phone, probably weekly, at
12 the very least while I was away. She would come
13 and visit me up in Scranton.

14 Q How would you describe Terri as a young
15 adult?

16 A Terri is one of those people that I
17 always say that you are lucky that you get to
18 know. She is just good. I used to say she was
19 the light side of life. I looked at somebody and
20 would say what an ugly dress. She looked at them
21 and would say, but it looks good on her. I never
22 ever heard her really say anything bad about
23 anyone. She was just good. Funny. Pretty.

24 Q Did you and Terri ever discuss any end
25 of life issues?

1 A There was an incident that happened one
2 summer where I told a poor joke about Karen Ann
3 Quinlan. I remember distinctly because Terri
4 never lost her temper with me. This time she did.
5 She told me that she did not find the joke funny.
6 She did not approve of what was going on or what
7 happened in the Karen Ann Quinlan case.

8 I remember one of the things she said is
9 how did they know she would want this. How did
10 they know she wouldn't want to go on. She was so
11 strong about it. Terri, to take that strong of a
12 stand and say something so strongly and come back
13 at me the way she did, it really embedded in my
14 memory.

15 Q Do you remember what the joke was?

16 A Yes. Do you want me to say it?

17 Q Yes.

18 A I apologize for the joke. It was, "What
19 is the state vegetable of New Jersey?" And the
20 punch line was Karen Ann Quinlan.

21 Q Do you recall when that was?

22 A In trying to go back through my memory,
23 the nearest I can track it was after we graduated
24 high school, I believe it was, because my parents
25 gave me a car and I remember us being in that car.

1 It was the summer of '82.

2 Q Do you recall when the Karen Ann Quinlan
3 case was being discussed in the news?

4 A Now I do. Now I remember it was in the
5 70s. At the time I did not remember, when we
6 originally talked. Now I know it was in the 70s.

7 Q Is there anything that has triggered
8 your memory as from timing as to why this is
9 coming about later?

10 A When I was asked those questions in
11 deposition, I kept saying I wonder why, what
12 brought that joke up. What I remembered was a
13 replay of the telemovie regarding her, Karen Ann
14 Quinlan. I remember watching it in Scranton in my
15 lounge where I was living that year. So it falls
16 in in the time frame, it must have been, that that
17 telemovie resurfaced the joke.

18 Q Do you remember who was featured in the
19 telemovie movie?

20 A I think Brian Keith. She was the
21 daughter of the guy from the Untouchables. I
22 can't remember her name. I remember it was the
23 daughter of the guy from the Untouchables was in
24 it.

25 Q Was this a long period of time of a

1 discussion between you and Terri?

2 A It was -- probably there was not much of
3 a discussion because I did not have much to come
4 back for obviously. Obviously, I was very wrong
5 at telling that joke. In retrospect, it's not a
6 very funny joke. I don't know if it was a
7 discussion. It was more of a dialogue or
8 soliloquy on the part of Terri.

9 Q Did she hold any grudge against you?

10 A No. No. She spoke her mind. That was
11 it. I'm sure we were probably laughing shortly
12 thereafter.

13 Q When was the last time you talked to
14 Terri?

15 A I'm not sure of the year. Let me go
16 back. I think I can go back in memory. Probably
17 in '85 or '86.

18 Q Do you recall what the discussion was
19 about?

20 A Terri and I had met in the parking lot
21 of her church, Our Lady of Good Counsel, to talk
22 about difficulties we were having in our
23 friendship. The discussion was about -- she laid
24 out these things that I had apparently said or
25 done that had hurt her. And again, it was not

1 much of a dialogue because she laid out her
2 husband said I did this or her husband said I was
3 not a good friend for this reason.

4 I had nothing to come back from.
5 Basically, if you are going to believe what is
6 happening, there is nothing I can say.

7 Q Did you ever have any concern about
8 issues for Terri around that time frame?

9 A Yes. I did.

10 Q What were those concerns?

11 A Her eating habits or lack of eating
12 habits. I had stayed with Terri, I guess about a
13 week. A Monday through Friday kind of thing while
14 her husband had gone to training school. I think
15 it was called Ronald McDonald College. I stayed
16 with her.

17 During that period of time that week --
18 they were living in a townhouse or condo they had
19 rented. She had not eaten much at all. As a
20 matter of fact, Friday night Terri and I liked to
21 go to eat Chinese and pig out on Buddha's Delight.

22 I think it was the American Music Awards
23 were on because her mother called during it to
24 sing while Stevie Wonder was singing "I Just
25 Called to Say I love You". Her mother had done

1 that. That is why I remember that. I forced
2 Terri -- was prompting her to eat.

3 When her husband had returned I had,
4 within that week of returning, mentioned to him
5 that I was concerned about her eating. He had
6 said everything was okay. Then time had passed.
7 I'm not sure how much time. And I approached him
8 again, because she still was not eating, and I was
9 told she was fine and to mind my own business.

10 Q Did Terri ever have a weight problem?

11 A Yes. She did growing up. She lost a
12 lot of weight in her senior year in high school
13 through Nurti-System.

14 Q Was she thin at the time you are talking
15 about?

16 A Yes.

17 Q Is there any other insight you can tell
18 the Court, insight to help the Court as to Terri's
19 wishes as to withdrawal of feeding tubes?

20 A I just go back to that conversation that
21 she, for her to express such strong feelings, it
22 just was not her. To come back at me that way as
23 strongly as she did. And I have to believe that
24 she felt very strongly about that.

25 Q Did your -- was Terri close to your

1 grandmother?

2 A My Grandmother Cuter? I think she was.
3 Yeah. She liked my grandmother.

4 Q Did your grandmother also live in the
5 Philadelphia area?

6 A Yes.

7 Q Did she pass away during the time of
8 your and Terri's friendship?

9 A Yes. She did.

10 Q Do you recall Terri ever making any
11 comment to you regarding the circumstances of her
12 death one way or the other?

13 A Not right now.

14 Q What do you believe, you personally
15 believe, are the Catholic beliefs in the
16 withdrawal of life support issues?

17 MR. FELOS: Your Honor, I object, number
18 one, as to relevance as to what this witness
19 believes the Catholic church's position is, and
20 the other as to the competency of the witness to
21 testify as to what the beliefs of the church are.

22 THE COURT: Well, she's a practicing
23 Catholic, so as to the second objection, I'm not
24 sure that is valid. What earthly relevance is her
25 beliefs?

1 MS. CAMPBELL: We've heard testimony
2 before from a priest's level as to what the
3 Catholic beliefs are. There was some discussion
4 in that as to what actual practicing Catholics
5 would believe circumstances would hold. What the
6 church's beliefs would be. I think it would be
7 relevant for this witness as to someone in the
8 same area.

9 THE COURT: Different church, different
10 priest.

11 MS. CAMPBELL: Same religious beliefs.
12 Close friends. I think what her personal beliefs
13 are and what the church's beliefs are are
14 relevant. Not from an academic level, but from
15 her personal level as a practicing Catholic.

16 MR. FELOS: Whatever this witness may
17 believe that the doctrine of the Catholic church
18 is is hers. It would be sheer speculation to
19 infer from that what somebody else may have
20 believed.

21 THE COURT: Well, you know, if you would
22 have asked her, I would have probably allowed it
23 to show possible bias. I'll allow it. We don't
24 have a jury. Please proceed.

25 Q (By Ms. Campbell) Thank you. You may

1 answer the question.

2 A Actually, can you ask it again? I'm not
3 sure.

4 Q What do you believe are the Catholic
5 beliefs in the withdrawal of life support issues?

6 A My understanding of what the Catholic
7 church says is that life is to be protected as
8 long as there is life. That withdrawal of life
9 support is not along the lines of Catholic
10 doctrine.

11 Q Why did you want to come and testify in
12 this trial?

13 A Because it's right. Because it was the
14 right thing to do. And I wanted to speak to what
15 my conversation was with Terri and let the Court
16 hear it.

17 MS. CAMPBELL: Thank you. I have no
18 further questions at this point.

19 THE COURT: Cross-examination?

20 CROSS-EXAMINATION

21 BY MR. FELOS:

22 Q Is it Miss Meyer or Mrs. Meyer? Are
23 you married?

24 A Miss Meyer.

25 Q Are you married, ma'am?

1 A No. I am not.

2 Q Have you ever been married?

3 A No, sir.

4 Q I'm George Felos, attorney for Mr.

5 Schiavo. As I understand your testimony, the
6 thing that strikes you the most about the
7 conversation with Terri about the Karen Ann
8 Quinlan case was her strong reaction?

9 A Um-hmm. Yes, sir.

10 Q Okay. I think you said it's the first
11 time she ever got angry at you?

12 A Yes, sir.

13 Q That is really the primary thing that
14 sticks in your mind? My gosh, what a reaction
15 from Terri when I told that joke?

16 A Yes, sir.

17 Q As I understand it, Terri was a very
18 compassionate person?

19 A Yes, sir.

20 Q Very loving person?

21 A Yes, sir.

22 Q Never wanted to look down on somebody.

23 In fact, you gave an example if you said, hey,
24 it's black, she'd say it's white because she was
25 that type of person and did not want to look at

1 the bad side?

2 A Correct.

3 Q Would you agree that the joke you told
4 is offensive?

5 A Yes, sir.

6 Q Would you agree that even the average
7 person may find that joke offensive?

8 A Yes, sir.

9 Q Would you agree that Terri in
10 particular, being who she was, would find it
11 particularly offensive?

12 A Yes.

13 Q Now would you agree that the joke is
14 offensive whatever one's beliefs may be about
15 withdrawal of life support?

16 A Yes, sir.

17 Q So the fact that an individual, any
18 individual, and especially Terri, would have a
19 strong and hostile reaction to that joke just for
20 the fact that it's being told would not surprise
21 you; would it?

22 A No.

23 Q Now I believe that you mentioned that
24 your -- that Terri's comment was she didn't
25 approve of what the parents are doing?

1 A She did not approve of what happened.
2 What the parents are doing.

3 Q What the parents are doing. Would you
4 agree that in the Karen Ann Quinlan case that what
5 the parents were doing or doing was trying to
6 remove or seeking permission to remove the
7 respirator from Karen Ann Quinlan?

8 A Yes sir.

9 Q Wouldn't you agree that the statement "I
10 don't agree with what the parents are doing,"
11 would make no sense if the parents had already
12 done the act?

13 A I see what you're saying there, but what
14 I'm saying is what I believe Terri was talking
15 about is it was ongoing. That they had removed --
16 they had fought to have it removed by that point,
17 but what you know you are doing, we are doing,
18 it's semantics. It was their position I think she
19 was objecting to.

20 Q Could you repeat that answer again? I
21 didn't quite understand that.

22 A Sure. What I'm saying is what you are
23 talking about is one word. "Are" as opposed to
24 "were". I'm saying, in the course of memory, it
25 is semantics. It was the opinion. What was

1 important to me, is what she was expressing in
2 terms to her objection to what their intent was.

3 Q Do you recall that I took your
4 deposition? I didn't, but Mrs. Felos took your
5 deposition?

6 A Yes, sir.

7 Q That was, my gosh, this month. Just a
8 couple weeks ago. January 10, 2000?

9 A Yes, sir.

10 Q You were asked, on Page 37, Line 19,
11 Question. Okay. Let me go back to that
12 one conversation then again. If you can recall.

13 Answer. Um-hmm.

14 Question. And can we assume that the
15 Karen Ann Quinlan case was fairly prominent in the
16 news at that time when you told the joke?

17 Answer. I would assume so. Otherwise
18 the joke by now is old hat. I mean, so I assume
19 it was prominent at that time.

20 Wouldn't it seem logical to you that --

21 A If you read further --

22 Q -- that the case was in the news and
23 prominent at that time?

24 A That was only a part of the deposition,
25 I believe. By the way, I did not receive a copy

1 to, I asked to stipulate to, and I had not
2 received a copy to sign off on. So I'm not sure I
3 can say that, you know, it's accurate.

4 But my memory of the deposition was that
5 I was asked that question on several occasions.
6 On several occasions I answered similarly to that.
7 That I could not state for sure it was in the news
8 at that time, but something had obviously prompted
9 a resurface of the joke.

10 Q Ma'am, I don't believe you said in your
11 deposition something prompted a resurface of the
12 joke, but let's go back to your deposition. I
13 asked on Page 25:

14 Question. I guess the Supreme Court,
15 the court, it was still in the court at that point
16 is your understanding?

17 Answer. I honestly don't remember at
18 that time. I assume by remembering her statement
19 it was or just had recently been.

20 After your deposition two weeks ago,
21 from that, from the time of your deposition to
22 your testimony today --

23 A Um-hmm.

24 Q -- have you spoken with anyone about
25 your testimony or about this case?

1 A Yes, sir.

2 Q Okay. Who have you spoken with?

3 A I have spoken with -- I'm sorry. Ms.
4 Campbell. And I have spoken with my father.
5 That's pretty much it.

6 Q Um-hmm.

7 A I told work about why I was coming, but
8 not what the content was.

9 Q Did you speak with any of the
10 Schindlers?

11 A I have spoken with the Schindlers, but
12 not directly about testimony.

13 Q Well, has someone told you, between the
14 date of the deposition and the date of your
15 testimony today, you know, gee, the Karen Ann
16 Quinlan case occurred in 1975 and 1976?

17 A No, sir. The deposition prompted me
18 because I was pressed within it and was not able
19 to answer it, prompted me to go back and look.

20 Q When did you talk to Ms. Campbell?

21 A I talked with her -- I talked with her
22 several times this week because --

23 Q Is it your testimony that Ms. Campbell
24 didn't mention to you anything about the fact that
25 we had newspaper articles about the Karen Ann

1 Quinlan case which showed the dates were in 1975
2 or 1976?

3 A No, sir. She did not.

4 Q And --

5 A I mentioned to Ms. Campbell that in my
6 deposition I had difficulty remembering when the
7 Karen Ann Quinlan situation was. I felt you were
8 going for that in the deposition, to be perfectly
9 honest. So I went back, and it was in going back
10 that I realized what had probably prompted it was
11 I remembered seeing the telemovie.

12 Q I'm not saying there is anything wrong
13 with Ms. Campbell telling you about this.

14 A I'm saying it did not happen.

15 Q It's a little hard for -- please. It's
16 a little hard for me to believe that as good an
17 attorney as she is she would not say to a witness
18 we have some evidence now showing when the case
19 was, does that jog your recollection. Did that
20 help you understand the dates. I mean, Ms.
21 Campbell never mentioned anything like that to
22 you?

23 A I had talked to her about it prior to
24 that.

25 Q What did you tell Ms. Campbell about it?

1 A I told Ms. Campbell that, as I said to
2 you in the deposition, when we were talking in the
3 deposition -- actually, I was talking to I assume
4 your wife -- that I felt that they were
5 questioning very strongly on the dates. I was
6 weak on that because I didn't know it.

7 So I went back to find out when the
8 Karen Ann Quinlan thing had happened and
9 remembered seeing -- because I could not remember
10 what prompted the joke -- and remembered seeing
11 the telemovie.

12 Q The statement of Terri was she didn't
13 approve of what Karen Ann Quinlan's parents were
14 doing? Not had done, but were doing?

15 A I remember her saying were doing or are
16 doing.

17 Q You remember her saying what the parents
18 are doing?

19 A Um-hmm.

20 Q Did she elaborate anymore about what it
21 was particularly that she had a problem with?

22 A What she had talked about was that, and
23 what I remember specifically was her talking about
24 how did they know what she feels. How did they
25 know. And saying, you know, going on and on about

1 what she felt, meaning Karen Ann, how her parents
2 could make that choice for her.

3 Q In your deposition on Page 23 --

4 A Um-hmm.

5 Q -- you made the statement -- these were
6 your words about what Terri said to you about why
7 she didn't approve of what the parents were
8 doing.

9 How do they know that she wants this?
10 She may be there and want to continue living.

11 A Um-hmm.

12 Q Well, let's take a look at it. Is that
13 your testimony now as to what Terri told you?

14 A Yes. That is what I remember.

15 Q How do her parents know that she wants
16 this, would you agree that that's a question of
17 Karen Ann Quinlan's intent?

18 A Yes, sir.

19 Q So Terri, is it fair to say Terri was
20 saying, well, maybe it's not good for the parents
21 to do this if they don't know what Terri -- if
22 they don't know what Karen Ann Quinlan wants? If
23 they don't know what her intent is?

24 A Correct. But the second statement --

25 Q Well, let me --

1 A Um-hmm.

2 Q So couldn't one reasonably conclude in
3 that statement that if Terri was aware or knew
4 that Karen Ann Quinlan's parents knew that this is
5 what their daughter wanted she may have had a
6 different reaction?

7 A Possibly. That's me making an
8 assumption as to what she would have done.

9 Q But you do agree that one question, that
10 area of concern that Terri had was, gee, do the
11 parents know what Karen Ann Quinlan wanted? How
12 do they know what she wants?

13 A Yes.

14 Q Okay. Because that is what you said she
15 said. How do they know what she wants.

16 A Um-hmm.

17 Q There is a second part to what you said
18 Terri told you. She may be there and want to
19 continue living.

20 A Um-hmm.

21 Q Well, the second part, she may want to
22 continue living, also goes to the question of what
23 Karen Ann Quinlan's intent was; wouldn't you
24 agree?

25 A Yes.

1 Q Terri seems to be sharing that if it's
2 Karen Ann Quinlan's intent to want to remain alive
3 that she thinks that Karen Ann Quinlan should
4 remain alive; is that a fair statement?

5 A Yes.

6 Q The statement that you claim Terri made
7 "she may be there" --

8 A Um-hmm.

9 Q -- what did you take that to mean?
10 Anything in particular?

11 A It meant that there may have been some
12 -- at the time I believe, and in retrospect what I
13 interpreted that to mean is Karen's apparent will
14 to live, whatever it is that makes a person a
15 person, was there.

16 Q Would you agree with me when Terri
17 allegedly said "she may be there" is that she is
18 saying, gee, if Karen Ann Quinlan has
19 consciousness, awareness, she may want to live?

20 A Yes. Well --

21 Q Can we equally assume from that that if
22 in fact Karen Ann Quinlan had no consciousness and
23 was truly unconscious that Terri may not have had
24 an objection or reaction?

25 A No. Because what I took the

1 consciousness to mean was not that. Not
2 consciousness in terms of that there was something
3 there. That Karen was there and that we couldn't
4 make that judgment as to whether or not --

5 Q Terri does not say that. She just
6 said --

7 A You are asking me for what I assume
8 Terri meant. That is what I assumed Terri meant.

9 Q But she said she may be there --

10 A Right. And you asked me --

11 Q -- and want to continue living?

12 A Correct.

13 Q If someone has no consciousness, can
14 they form an intent as to what they want?

15 A I don't know the answer to that. I
16 don't know that anybody truly does. Especially in
17 these states.

18 Q Explain to me, please, how if there is
19 no consciousness or awareness how someone can take
20 the volitional act of making a decision as to what
21 they want?

22 A What I'm saying and what you have been
23 asking me is to assume what Terri was intending by
24 her statement.

25 Q That is not my question. My question

was explain to me how someone without consciousness can take the volitional act as to making a decision as to what they want?

A I don't know.

Q Would you agree that that can't be done?

A I don't know. Because I don't know enough about level of consciousness.

Q Now your parents, especially your father, is a really good friend of Mr. Schindler's; isn't he?

A Yes.

Q They had a close relationship while they were living in Philadelphia?

A Yes.

Q You testified that the families are very close together?

A Yes.

Q You're close -- in fact, your father came with you on this trip; didn't he?

A Yes, sir.

Q Your friendship with Terri really jelled your senior year of high school; didn't it?

A Toward the end. Yes.

Q In fact, Terri was probably your closest friend?

A Yes.

Q And would you say she was your closest friend until the breakup of the relationship in 1986?

A Yes.

Q That relationship was very important to you?

A Yes.

Q And can I assume that it must have been a really harsh or bad breakup because you did not talk to her since 1986?

A It was not harsh. It was painful.

Q It was painful to you?

A Um-hmm.

Q And is it true that you blame Mr. Schiavo --

A No. It's not true.

Q -- for the breakup of that relationship?

A No. It is not true.

Q You don't blame him?

A No. Terri was an adult. Terri made her own choices.

Q Well, you related to us that the supposed reasons that Terri was giving you for breaking up the relationship were lies about you

1 that Michael told her?

2 A That is what Terri relayed to me. Yes.
3 Well, the things that she had said were statements
4 her husband had told her. Yes.

5 Q Did you believe Terri was telling you
6 the truth?

7 A Yes. I did.

8 Q So in essence you believed at the time
9 that Mr. Schiavo had lied to Terri about things
10 that you did?

11 A Yes.

12 Q You believed at the time that that was
13 the cause for Terri turning on you or ending the
14 relationship?

15 A I wouldn't say the cause. I would say
16 that is what prompted Terri to make her choices.
17 But Terri made her own choices. She was an adult
18 and she made her own choices.

19 Q You didn't go to the same school as
20 Terri?

21 A No, sir.

22 Q You talked about being with Terri while
23 Michael was training at McDonald's.

24 A Um-hmm.

25 Q Is it fair to say that you were

1 disturbed by Terri's eating habits?

2 A Yes, sir. May I have a glass of water?

3 (THEREUPON, THERE WAS A BRIEF PAUSE IN THE
4 TESTIMONY.)

5 Q (By Mr. Felos) I think we were talking
6 about Terri's eating habits.

7 A Yes.

8 Q When your friendship jelled in high
9 school, were the two of you about the same weight?

10 A No. Terri had actually probably just
11 lost a lot of the weight. I was overweight, but
12 Terri was thin.

13 Q At the time of Terri's marriage, would
14 you say she was -- what would you say Terri
15 weighed at the time of her marriage?

16 A I have no idea, but I think she might
17 have been -- I go by size. I think probably
18 around a size 10, 12.

19 Q Would you say the two of you were about
20 the same weight at the time she was married?

21 A No. No. I was much heavier.

22 Q So Terri, as time went on, continued to
23 lose more weight?

24 A Yes, sir.

25 Q She was becoming thinner. By the way,

1 how soon after the time you noticed that you
2 believed that Terri had some sort of eating
3 problem, how soon afterward was the breakup of the
4 relationship?

5 A To be honest with you, I'm not sure. I
6 first, like I said, the first time that it became,
7 I became aware of it is when I stayed with her for
8 that week. That was, I believe they were married
9 a short period of time at that point.

10 I'm not sure, but they were still living
11 in the condo or the townhouse. Then they had
12 moved. So there was a period of time. Because
13 they had moved to her parent's basement and were
14 living there before our relationship ended.

15 Q Are you angry at Mr. Schiavo now?

16 A As I said in my deposition, yes, for
17 what I believed he knew and took no action on.

18 Q Okay. So to this day. So you last
19 spoke with Terri in 1986?

20 A Yes.

21 Q Sometime before you spent some time and
22 you noticed that she was not eating the way you
23 thought she should?

24 A No. I noticed she was not eating --

25 Q -- and decades later you are still angry

1 at Mr. Schiavo?

2 A Yes. I'm also angry at myself.

3 MR. FELOS: Just one moment more,

4 Your Honor.

5 THE COURT: Yes sir.

6 Q (By Mr. Felos) Does the loss of your
7 friendship with Terri still cause you pain or
8 grief?

9 A I wouldn't say grief. The loss of
10 Terri's friendship is a sad part of my life, but I
11 have gone on and made other friends and I still
12 remember Terri very fondly.

13 MR. FELOS: I have no other questions.

14 THE COURT: Redirect?

15 REDIRECT EXAMINATION

16 BY MS. CAMPBELL:

17 Q Were you in Michael and Terri's
18 wedding?

19 A Yes.

20 Q How would you describe the closeness of
21 your relationship at the time of the wedding?

22 A Very close. We spent a lot of time
23 together. We actually, the morning of her
24 wedding, her sister, myself, and Terri all went to
25 the hairdresser together. Terri and I had the

1 same hairdresser the way young girls had the same
2 of everything. We spent that morning together. I
3 was very close to Terri at the time of her
4 wedding.

5 Q When you testified that this was the
6 right thing to do --

7 A Yes.

8 Q -- to come here to the trial, what do
9 you mean by that?

10 A I mean that it would have been wrong
11 for --

12 MR. FELOS: I object. This is
13 redirect. I didn't ask on cross about the right
14 thing to do.

15 THE COURT: I think he is right.
16 Sustained.

17 Q (By Ms. Campbell) When you testified
18 that you were angry at Michael, is there anyone
19 else that you are angry at, besides yourself, you
20 say?

21 A Yes.

22 Q Who is that?

23 A Mr. and Mrs. Schindler.

24 Q Why is that?

25 A Because they knew that this was wrong,

1 what was going on with Terri, too. They knew that
2 in terms of our friendship. They knew me my whole
3 life and they knew that -- I'm sorry -- that I
4 would never hurt Terri, and they let it happen
5 too.

6 Q What do you mean when you say they let
7 it happen too? What are you referring to?

8 A I remember at the time that Terri and I
9 were having difficulty that they seemed to support
10 the breakup of the friendship. I remember in
11 particular I was at Christmas and Terri openly
12 ignored me. Did not speak to me. We always had
13 Christmas dinner together. I left the house in
14 tears and nobody said anything.

15 Q Do you think when you said that Terri
16 was making choices, do you -- explain to me what
17 the choices were you believed Terri was making.

18 A Terri made the choice to believe what
19 she was told. When I say I'm not angry at
20 Michael, I'm not. Because he really doesn't carry
21 any importance in my life. Never did and does not
22 to this day, except as the husband of Terri. The
23 Schindlers did and still do carry importance in my
24 life, and it was hurtful. As hurt as I was by
25 Terri's choice, I was that hurt by their choice.

1 Q So are you here today for either Michael
2 or for the Schindlers?

3 A Absolutely not.

4 MS. CAMPBELL: Thank you. I have no
5 further questions.

6 THE COURT: Mr. Felos, anything further?

7 MR. FELOS: Yes, Your Honor.

8 RECROSS-EXAMINATION

9 BY MR. FELOS:

10 Q You mentioned at the time of your (sic)
11 wedding, at the time of Terri's wedding, that she
12 was your closest friend?

13 A Yes.

14 Q Did you believe Terri regarded you as
15 her closest friend?

16 A I could not tell you. I knew we were
17 close.

18 Q Did you know Sue Cobb?

19 A Yes.

20 Q Would you agree that she was Terri's
21 best friend at the time?

22 A I know Sue -- Sue and Terri were not
23 spending a lot of time together after Terri and I
24 started spending time together. I know Sue and
25 Terri were really good friends in high school and

1 before. Terri and I did not get really close
2 until right after high school.

3 Q So as I understand it, you are angry at
4 the Schindlers and Michael because you believe
5 they ignored a eating disorder that Terri had?

6 A I didn't know if the Schindlers knew or
7 did not know. I never approached them. I
8 approached Michael. I can't say I thought it was
9 an eating disorder. I didn't have the ability to
10 say that.

11 Q Why are you angry at the Schindlers?

12 A I'm angry at the Schindlers regarding
13 the breakup of my friendship, not so much the
14 breakup of my friendship with the Schindlers or
15 with Terri, but for their position at the time.

16 Q Okay. You just stated that you don't
17 know whether Terri had any eating disorder. Then
18 why are you angry at Mr. Schiavo?

19 A At the time I didn't know. What I
20 believe now was an eating disorder, at the time I
21 didn't know what it was. At the time I just saw a
22 problem and tried to point it out to her husband
23 on two occasions.

24 Q What was that problem?

25 A That she was not eating. Literally was

1 not eating. In the week I spent with her, I saw
2 her eat one bagel until I got the Chinese food and
3 said "come on".

4 Q Are you saying that you were with Terri
5 24 hours a day for a week and saw her eat one
6 bagel during that period of time?

7 A No. She went to work.

8 Q And --

9 A And I went to school.

10 Q She could have eaten at work; couldn't
11 she?

12 A She could have.

13 Q Had lunch at work?

14 A She could have.

15 Q But she did not eat much during the
16 evening?

17 A As I said, the one bagel was broken up
18 for the week. That was, she cut it up for the
19 week and it was breakfast and it was dinner until
20 Friday. That would have been -- I think I
21 probably stayed with her Monday. I don't remember
22 exactly. I remember leaving from there to go to
23 school and her going to work.

24 Q And you told Mr. Schiavo about that?

25 A Yes, sir.

1 Q You believe that you saw Terri for
2 dinner cut up a bagel and eat a portion of it
3 during the week. You told Mr. Schiavo about that
4 and you are still angry at him to this day?

5 A Yes. As myself.

6 MR. FELOS: No other questions,
7 Your Honor.

8 THE COURT: Anything further?

9 MS. CAMPBELL: Nothing further.

10 THE COURT: Ma'am, let me ask you a
11 question, if I might. When you made your joke,
12 had you and Theresa Schiavo watched this movie
13 together?

14 THE WITNESS: No, sir.

15 THE COURT: So some seven years or six
16 years after the event, you were triggered because
17 she was angry because you made the joke?

18 THE WITNESS: I assume yes. I don't
19 know if she saw the show or not. The TV movie.

20 THE COURT: Thank you. Any questions
21 based upon the Court's inquiry?

22 MR. FELOS: No, Your Honor..

23 MS. CAMPBELL: No, Your Honor.

24 THE COURT: You may step down.

25 MS. CAMPBELL: Is it permissible for Ms.

1 Meyer to remain in the courtroom?

2 THE COURT: Obviously, you don't intend
3 to call her for rebuttal, Mr. Felos?

4 MR. FELOS: I can't see why I would call
5 her as a rebuttal witness.

6 THE COURT: Ma'am, the rule is invoked.
7 I'm sure Ms. Campbell has explained that to you.
8 Even though you are no longer going to be a
9 witness, you should not discuss your testimony
10 with anyone until the testimony phase of the trial
11 is over. Thank you.

12 THE COURT: Please call your next
13 witness.

14 MS. CAMPBELL: Thank you. I would like
15 to call Jackie Rhodes.

16 THE BAILIFF: Stand here. Face the
17 judge. Raise your right hand to receive the
18 oath.

19 (THE WITNESS WAS SWORN ON OATH BY THE COURT.)

20 THE COURT: Have a seat up in the
21 chair, please.

22 DIRECT EXAMINATION

23 BY MS. CAMPBELL:

24 Q Good morning.

25 A Good morning.

1 Q Please state your full name.

2 A Jacquelyn Rhodes, but you may call me
3 Jackie.

4 Q Where are you from?

5 A Akron, Ohio.

6 Q Did you fly here for the trial just?

7 A No. I have friends. I was visiting
8 friends.

9 Q What is your occupation?

10 A I am a management assistant for
11 Prudential Insurance.

12 Q How long have you been with Prudential?

13 A Since April of 1985.

14 Q Was there ever a time you worked for
15 Prudential in Florida?

16 A Yes. I worked in Florida from May of
17 1988 until December of 1996.

18 Q How do you know Theresa Schiavò?

19 A Theresa and I worked together at St.
20 Pete Prudential Insurance office.

21 Q When did you meet Terri?

22 A In May of '88.

23 Q Was Terri already working there?

24 A Yes.

25 Q Describe what you did for Prudential.

1 A At the time I transferred to the St.
2 Petersburg, Florida office, I worked at the public
3 counter assisting the clients coming into the
4 office to make premium payments or beneficiary
5 changes. Any type of service work. And I did
6 other functions in the office.

7 Q What did Terri do for Prudential?

8 A Terri sat right beside me at that time.
9 She also waited on the clients that came into the
10 office and she had other responsibilities as well.

11 Q Did you socialize together?

12 A Yes. We did.

13 Q What kind of activities would you do
14 together?

15 A Michael worked evenings and weekends. I
16 know he worked on Saturday. We used to go
17 shopping. I used to go and pick her up, as
18 Michael monitored the amount of miles she put on
19 the car, so I usually drove. We would go
20 shopping, run errands, or go see her grandmother.

21 Q Was this the grandmother at Majestic
22 Towers?

23 A Yes. It was.

24 Q How much time did you spend together in
25 a given month on weekends?

1 A We probably spent a couple Saturdays
2 together a month depending what she had going on
3 in her life and what I had going on in my life.

4 Q Did you also socialize during week
5 nights?

6 A On occasion, yes, we did, but not
7 usually.

8 Q How would you describe your friendship
9 during that time frame?

10 A Theresa and I are the same age. We had
11 a lot of things in common. When I came to work
12 for Prudential, I think Michael had just left one
13 employer or was unemployed or recently gained
14 employment and they were having some financial
15 problems living on one income. And my husband,
16 shortly after, in the fall of 1988, he lost his
17 job as well. So we had different things we could
18 relate to.

19 Q Would you confide in each other about
20 these difficulties?

21 A Yes. She was upset that she could not
22 go anywhere. Mostly in the evening she stayed
23 home. That is why on Saturdays we would go
24 shopping. Not necessarily to buy anything, just
25 for both of us to get out of the house. We would

1 have lunch usually somewhere and visit her
2 grandmother.

3 Q Tell me about the visits to her
4 grandmother.

5 A I don't know why her grandmother was in
6 the nursing home, but she was very, you know, she
7 usually was in bed when we were there. I don't
8 recall her not being in bed. And she was fine.
9 We talked to her. Theresa would talk to her about
10 different things that was going on in her life or
11 with the family. It was just idle conversation.
12 You know, sometimes we spent an hour there.
13 Sometimes more. Sometimes less. Depending on
14 what other things we had to do during that day.

15 Q Did you see other residents at Majestic
16 Towers?

17 A Yes. Her grandmother's room was in the
18 nursing home quite a bit. I mean, you know, not
19 right at the door, so we had to pass other rooms.
20 And there were other people in her grandmother's
21 room.

22 Q Could you describe the people you would
23 pass by on the way to the grandmother's room
24 visually?

25 A Some people were in wheel chairs. Some

1 people in their room. There was people that would
2 moan. Some of the other people in her
3 grandmother's room did not communicate with us and
4 maybe they were sleeping. I don't know. Some
5 people were -- never saw do anything but lay
6 there. So I don't know what their situation was.

7 Q Did you see any patients on ventilators
8 or respirators?

9 MR. FELOS: Leading question, Your
10 Honor.

11 THE COURT: Overruled.

12 A I don't recall seeing people on
13 ventilators and I don't recall seeing people on
14 feeding tubes, but at that time I really didn't
15 know what a feeding tube was.

16 Q (By Ms. Campbell) Were there any
17 patients you saw with tubes in their nose?

18 A It's been so long ago, I honestly really
19 concentrated on Theresa's grandmother and not on
20 the other patients.

21 Q Were you aware of Theresa's medical
22 health in 1988, 1989 time frame?

23 A Yes. As a matter of fact, we both went
24 to the same gynecologist. Usually it seemed our
25 appointments were right near each other. So she

1 would share, I have a doctor's appointment, and
2 usually mine was like right around there.

3 I know she was having problems with her
4 period. She said that is -- she had never gotten
5 pregnant during her and Michael's marriage and she
6 had never been on any form of birth control. That
7 was something that she was talking to the doctor
8 about.

9 After one of the visits, I know they
10 were going to start performing tests to find out
11 if the problem lied with her or Michael. They
12 wanted to start with the tests on Michael, as I
13 guess there was only one test that he needed to
14 do, and then otherwise they would start doing
15 several tests on Theresa. As far as I know, she
16 told me that Michael did not want to do the test
17 as he had to provide a semen sample.

18 Q To your knowledge, did Terri become
19 pregnant during that time frame?

20 A No. Not to my knowledge.

21 Q Did Terri ever indicate she was trying
22 to have children?

23 A She never indicated that she wanted
24 children. She just indicated that she had never
25 gotten pregnant and they were looking into

1 medically why that had not happened.

2 Q Were you ever around Terri and Michael
3 together?

4 A There was a few occasions. A Saturday
5 where I would pick Theresa up and I was around
6 Theresa and Michael. There were, you know, they
7 seemed like any normal couple. I remember one
8 time. She had rather thin legs. Michael was
9 laying on the floor looking at Theresa. We were
10 both standing there getting ready to walk out the
11 door. He told her her legs were skinny.

12 Q To your knowledge, did Terri have a
13 weight problem?

14 A No. The time I knew her she was very
15 thin. She had shared with me at one time she was
16 very heavy and she had lost a lot of the weight
17 and she was very proud of her accomplishment and
18 the weight loss.

19 Q When was the last time that you spoke to
20 Terri?

21 A The last time I spoke to Terri was
22 February 24th of 1990. It had been a big joke
23 that week at work because she was going for a hair
24 appointment on Saturday and she had dyed her hair
25 blond. Her hair was normally blond, although she

1 naturally had very dark hair. She had to decide
2 whether or not she wanted to stay a blond or if
3 she was going to go back to her natural color.

4 So I called her Saturday afternoon and
5 asked her, well, are we a blond or brunette? She
6 said I'm still a blond. But she was very, very
7 upset when I was talking to her. It sounded like
8 she had been crying. I asked her if she was
9 okay. She said she had a fight with Michael.
10 That he was extremely upset with her because she
11 had spent, I think she told me \$80, on her hair
12 that day to stay blond.

13 So I asked her if she wanted me to come
14 over. She didn't seem like her normal, jovial
15 self. She said that's okay. I'm going over to
16 Bobby's. I said are you sure. She was very
17 upset. She said I'm going to Bobby's. I already
18 talked to him and am going to go over as soon as
19 we get off the phone.

20 Q How long of a time frame were the two of
21 you in this close friendship there?

22 A I'd say I started there in May of '88.
23 It takes a little time to form a friendship. I'd
24 say for a good year we were pretty good -- very
25 close friends. We shared different things about

1 our lives.

2 Q When did you first hear then about
3 Terri's incident?

4 A I received a phone call on, early Sunday
5 morning, February 25th, from Murial Westrom, a
6 lady we worked with. She informed me Theresa
7 collapsed at her home and she was at the hospital
8 and she had to be taken by paramedics to the
9 hospital and that she wasn't doing very well. And
10 she told me which hospital it was. I'm sorry, but
11 I don't recall. I don't know if I went over that
12 day or the next day.

13 Q What happened when you went to the
14 hospital?

15 A There were quite a few people there.
16 Family members. Michael. Michael's family, I
17 believe were there. The Schiavos. The
18 Schindlers. People from work. Theresa was well
19 liked. There were several of us sitting there. I
20 was trying to understand what had transpired.
21 Michael had, I guess, found her on the floor in
22 the bathroom.

23 I knew that he was a restaurant manager
24 and figured he knew CPR. I asked him, I said,
25 well, do you know CPR? He said yes. I said did

1 you perform it on Theresa? He said no. He had
2 panicked.

3 Q How often did you visit Terri in those
4 early days?

5 A In the early days, I was there for the
6 first month or two every evening after work.

7 Q Did you continue to visit Terri
8 frequently?

9 A Yes. I did. There was a period that I,
10 you know, did not go quite as often. For the
11 first month or two, I was there every day. After
12 that, it may have been like a couple of times a
13 week.

14 Q Were you aware of any fund raising to
15 help with Terri's expenses?

16 A Yes. Things going on in the county. I
17 don't recall but I know there were different
18 things going on, maybe like a carwash. But
19 Prudential, we were so upset by what happened, we
20 sent letters out to all the other Prudential
21 offices requesting assistance for one of our
22 fellow employees. And we got in trouble for that,
23 but we did it anyway. I don't know how much money
24 was raised. I think it went to a bank, but I
25 don't know the amount that was raised.

1 Q Did you attend the trial in this case?
2 The malpractice trial?

3 A Yes. I attended the malpractice trial.
4 A few other people from work also attended to tell
5 what kind of person Theresa was, and she was a
6 loss to the company, and you know, to her family
7 and friends.

8 One thing that did occur during that
9 trial, my husband was in the hospital having a
10 heart cauterization and I had to go down there as
11 soon as I left the courtroom, as soon as I
12 testified, and the malpractice attorney followed
13 me down to the pay phone and said to me, you know,
14 it wouldn't help the case at all if I told them
15 that Theresa and Michael were talking about
16 getting a divorce. I turned to him and I said if
17 I'm asked that question and that is the correct
18 answer, that is the answer I'm going to give.

19 Q Did you believe that Michael and Terri
20 were getting a divorce?

21 A There had been several times throughout
22 Theresa's and my friendship that she was extremely
23 mad at Michael. That there was a lot of mental
24 abuse.

25 MR. FELOS: Your Honor, objection. That

1 is a conclusion on the part of the witness.

2 THE COURT: Yeah, it is, coming up at an
3 odd time in her testimony. She is in '92 now.
4 Now all of a sudden she's getting back because of
5 a, of something a lawyer said. I'm going to
6 sustain the objection.

7 A Okay. I'm sorry. Could you repeat the
8 question?

9 Q (By Ms. Campbell) Okay. Was there,
10 when you are saying that -- tell the Court if
11 there were any specific examples of instances with
12 you and Terri concerning an issue of concern
13 between the marriage.

14 A When Theresa and I worked together, we
15 sat side by side. There were days that if Michael
16 were to call into the office, she did not want to
17 take his phone call because they were fighting
18 about a -- specifically, there was a period of
19 time where Michael was not employed and they were
20 living at the Schindlers' condo.

21 Theresa told me that if it had not been
22 for her parents and their condo, she didn't know
23 where they would live because they could not
24 afford to pay rent right now. And Michael, when
25 he was employed, and I don't recall which employer

1 it was, but he was very upset with the employer
2 and things that were going on there, and he
3 constantly would call her and threaten to quit his
4 job. And Theresa was begging him to just look for
5 something else and then quit when he had something
6 else. And he did not do that because he quit that
7 employer. He was no longer employed.

8 Q Do you know whether or not Terri
9 specifically was seeking to get a divorce?

10 A She had talked about it on several
11 occasions. As a matter of fact, we had talked
12 about living together, as my husband was very
13 controlling to me and he asked for, my husband
14 asked for a divorce also.

15 Q So you went through a divorce?

16 A Yes.

17 Q Was that after Terri's accident?

18 A Yes. It was.

19 Q When did you move away from Florida?

20 A December of 1996.

21 Q How frequently did you see Terri prior
22 to you leaving?

23 A I probably -- during 1996, I probably
24 only saw her a few times. It was not as
25 frequently as it had been in the beginning.

1 Q What were your observations of Terri
2 then?

3 A Terri always responded when I went to
4 see her. I would come in and say Terri, it's
5 Jackie. How are you? I would startle her and I
6 learned not to do that. She would just jump a
7 little bit. Then I would talk to her if I was
8 standing by her bed.

9 And in talking to her, her eyes would
10 always look at me. There would be times that she
11 seemed to be a little tense with her arms up like
12 this. And when I would talk to her and tell her
13 who I was, it seemed as though her arms would
14 relax and move down during our visit.

15 Q Did you notice any other specific
16 reactions or changes in her facial expressions?

17 A Sometimes it was she would make sounds
18 depending on maybe what I would said to her.
19 Maybe, my opinion, as if to communicate with me.
20 There were times, too, that I would try to get a
21 reaction out of her to see if I felt that she was
22 really, you know, understanding that I was there.

23 Whether she was -- well, before she
24 would joke around that when Michael was not
25 working that she was supporting him. Now that she

1 was in the hospital, because of her years of
2 service with the company, she would still continue
3 for a period of time to receive her paycheck.
4 Actually, Michael would have received it. I used
5 to say things to her like, Theresa, you're still
6 supporting Michael.

7 It was as if she tensed up. I would do
8 things like that to see if she was really
9 responding to something I was saying.

10 Q Did you believe she was understanding
11 what you were saying?

12 A Yes. It was my impression.

13 Q Did you think she was aware of your
14 presence?

15 A I definitely believe she was aware of my
16 presence. There were times, too, that another
17 person I worked with might go with me to the
18 nursing home. One of us would stand on one side
19 of the bed sometimes and the other stand on the
20 other. It was as if she followed us. If I was
21 talking to her on this side, she would be turning
22 this way, and the other person would talk and she
23 would, as if she turned her head the other way to
24 acknowledge both our presence.

25 Q When was the last time you saw Terri?

1 A I went to see her Monday night.

2 Q Did you notice any difference from
3 before in '96? I guess I should ask, have you
4 seen Terri from '96 until now?

5 A No.

6 Q Did you notice any differences from the
7 last time in '96 that you saw her versus now?

8 A She still responded to me. I did not
9 notice any change. She still looked at me. When
10 I got there, she had been, one of the people had
11 been cleaning her up they said. I had to wait a
12 few minutes to get in there. Her arms were up
13 like this. I went in.

14 I said, hey Terri, it's Jackie. I know
15 it's been a while, but I'm here to visit and see
16 how you're doing.. I was rubbing her leg. Her
17 arms went down as I was rubbing her leg. Her arms
18 went down and she pulled the blankets off her. I
19 covered her up. She seemed to be more relaxed
20 when I was there.

21 Q Did you notice any change in her facial
22 expression on this visit?

23 A She still looked at me when I talked to
24 her. She did look away when I stopped talking.
25 But I didn't -- you know, that is what I noticed

1 before.

2 Q On this past Monday, did she make any
3 sounds to you one way or the other?

4 A Before I went into the room, while the
5 person was cleaning her up and getting her
6 dressed, she was very loud. Making a lot of
7 sound. Noises. When I went in there, there was a
8 couple of times when I would say, you know, that I
9 have talked to Robbie or mentioned somebody that
10 we worked with, that she had made sounds as if to
11 acknowledge the person that I was talking about.

12 Q Did you ever discuss any thoughts Terri
13 had on end of life issues?

14 A That never was discussed between Terri
15 and myself. I know that when we were in the
16 nursing home, there were so many people in there
17 in various stages of condition that I truly feel
18 that --

19 MR. FELOS: Your Honor, I object. She
20 said she never discussed it with Theresa and she
21 is making conclusions of what Theresa may have
22 thought because Theresa was in a nursing home.
23 That is sheer guessing and speculation.

24 THE COURT: I think that is probably
25 true.

1 Q (By Ms. Campbell) When you were in the
2 nursing home, did Terri make any comments to you
3 in any manner about the residents that were there?

4 A Theresa never said during our visits
5 that she would not want to live like this.

6 Q Did she ever make any comments that --
7 regarding the specific conditions that you
8 witnessed together?

9 A No.

10 MS. CAMPBELL: I have no further
11 questions at this point.

12 THE COURT: Thank you. Cross-
13 examination?

14 MR. FELOS: Yes, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. FELOS:

17 Q Is it Ms. Rhodes?

18 A Yes.

19 Q You have not remarried?

20 A No. Not yet.

21 Q How are you feeling right now?

22 A I'm fine.

23 Q My impression is that your voice sounds
24 a little agitated to me. Are you feeling a little
25 agitated right now?

1 A No,

2 Q Theresa never said when she was in the
3 nursing home that she did not want to live like
4 this; correct?

5 A Correct.

6 Q Did Theresa ever say I want to live like
7 this?

8 A No. She did not.

9 Q As I understand it, you did not come
10 down here for the trial. I think that was the
11 first thing you were asked. But you happened to
12 be here visiting friends?

13 A Yes.

14 Q Why did Pam Campbell agree to reimburse
15 you for airfare if you just happened to be down
16 here visiting friends?

17 A I have friends down here. I had
18 intentions of coming down here, and when I found
19 out this trial was going on, I was coming down
20 here. I decided to come down earlier, rather than
21 later in the year.

22 Q So you decided to have Pam Campbell pay
23 for it?

24 A Actually, I paid for it.

25 Q And you have an agreement with Ms.

1 Campbell that you be reimbursed; is that correct?

2 A It has been mentioned to me that I will
3 be reimbursed for it, but I have not asked for the
4 reimbursement.

5 Q I asked you, in your deposition on Page
6 15, Line 2, do you have an agreement with anyone
7 to be reimbursed for your expenses?

8 Answer. Pam Campbell did state to me
9 they will reimburse me for my flight.

10 A Yes. That is correct. I did say that.

11 Q Let's get at it. You came here to
12 testify at this trial; didn't you?

13 A That was one of the reasons why I came.

14 Q Okay. It's not that you were happening
15 to visit friends and you were down here?

16 A No.

17 Q We heard a litany in your testimony
18 about Michael did this, Michael did that, and
19 Terri told me about the hair and Michael was angry
20 at this. We were both going to get a divorce and
21 talking about living together. One after another,
22 after another, after another. Do you have an axe
23 to grind against Mr. Schiavo?

24 A No. I do not. Michael was always very
25 nice to me whenever I had any --

1 Q You were having marital difficulties at
2 the time; were you not?

3 A I was going through counseling. Yes.

4 Q I recall in your deposition, and we can
5 find it, didn't you describe your husband as
6 antisocial?

7 A Yes. He only liked to do things with
8 his friends. He didn't like to do things with my
9 friends.

10 Q Is it possible you may be projecting
11 some of your own marital difficulties at the time
12 on Terri's and Mike's marriage?

13 A No.

14 Q Do you have a current recollection of
15 these events that you testified to today?

16 A Yes. I do.

17 Q Is it a firm recollection?

18 A Yes. It is.

19 Q What I don't understand is this. I took
20 your deposition --

21 A On January 12th.

22 Q Yeah. I guess your recollection is very
23 good. A couple of weeks ago. I was very specific
24 in asking you what things you talked to Terri
25 about and what you two confided about. I'll read

1 from your deposition rather extensively. It's
2 important here.

3 On Page 15, Line 14, you mentioned that
4 you would each share things that were going on in
5 your life. You mentioned one of the things that
6 Terri shared was that she was bored in the evening
7 because her husband worked evenings.

8 Answer: Um-hmm.

9 Question: Any other things that you can
10 recall that Terri shared with you about her life?
11 Things that were happening in her life?

12 Answer. They were talking about having,
13 she was going to the same gynecologist that I was
14 and she did -- she had not gotten pregnant and I
15 guess they were going to try to have a child.

16 You talk on Page 16 about the
17 gynecology. The pregnancy. The children. Then I
18 go on right after that on Page 16, Line 21,

19 Question. Are there any other subjects
20 that you can recall Terri talked to you about
21 besides the one you mentioned?

22 Answer. There would be times that
23 Michael would call her at work and you know be
24 upset and want to quit his job and she would
25 become upset. So I would talk to her about that,

1 as my husband would do the same thing to me. So
2 we could relate.

3 MS. CAMPBELL: Objection to this line of
4 questioning. So far the testimony he is reading
5 is the same testimony she gave this morning.

6 THE COURT: With one exception. My
7 notes say Michael called constantly. What he just
8 read, the quote I wrote down is at times.

9 MR. FELOS: It's the next question, Your
10 Honor. After the one about conversations about
11 the job.

12 Q Question. Anything else you can think
13 of as far as things that Terri, things happening
14 in Terri's life that she discussed with you?

15 Answer. I really can't remember. It's
16 been so long.

17 Can you tell me why two weeks ago I
18 asked you specifically to tell me the things that
19 Terri told you about in her life and you told me
20 about Mike calling up, being upset about his job.
21 You told me about the gynecologist. You told me
22 she was upset about his working evenings, and that
23 was it. You could not recall anything else.

24 Now, two weeks later, you come in here
25 and have a long time to think Michael has done

1 this and that. Terri told me about a divorce. We
2 were going to live together. Have an apartment.
3 How is it you recall all these things, but you did
4 not tell me that two weeks ago?

5 A When I had the deposition, if you
6 recall, I was subpoenaed to give my deposition on
7 I believe it was Friday, January 7th. I could
8 not, as I had a very important business meeting
9 that I had to attend, and for several weeks prior
10 to my deposition I was working several hours a
11 day.

12 By the time -- I work an hour away from
13 where I live. By the time I get home, it was 9
14 o'clock. Basically, I would go to bed. This
15 happened for several weeks. Probably a month. I
16 did not have time to think about anything but my
17 project I was doing at work.

18 After my deposition, I sat down to
19 myself and I thought what else do I remember about
20 my friendship and times I spent with Theresa.

21 Q Well, a marriage dissolving and Terri
22 maybe living with you is something you did not
23 recall, it was something you did not recall at
24 your deposition?

25 A No.

1 Q Are you saying at the time of your
2 deposition that was not in your memory?

3 A Like I said, I was very concentrated on
4 my work. I did not have an opportunity to really
5 think back and recall every instance and every
6 situation that Terri and I talked about.

7 Q Now we had some testimony about going to
8 the nursing home. I think you were asked the
9 condition of the other people in the room of
10 Terri's grandmother?

11 A Um-hmm.

12 Q What was your answer about that? You
13 described some conditions?

14 A That they were, the other people were in
15 bed. I don't recall ever talking about the other
16 people. I don't recall if anyone was on a feeding
17 tube or life support of any sort.

18 Q So you don't recall the condition of the
19 other patients in Terri's grandmother's room; is
20 that correct?

21 A There were three other people in Terri's
22 grandmother's room. I don't recall. I know some
23 people just laid there and we never saw them out
24 of bed. But I don't recall if they were on any,
25 you know, oxygen or feeding tube or anything.

1 Q Is it fair to say that you don't recall
2 the condition of the other patients in Terri's
3 grandmother's room?

4 A Yes.

5 Q Let's talk about Terri's condition. As
6 I understand it, you believe that -- well, repeat
7 it for me. Why do you believe that Terri has
8 cognizance, awareness?

9 A Because when I speak to her, she looks
10 at me. She seems to relax. When I am in the room
11 talking to her, she remembers me.

12 Q Hold on. What do you observe that leads
13 you to the conclusion that Terri remembers you?

14 A She relaxes. When I go -- as in Monday
15 night when I went into the room she was like this
16 (indicates). I started talking to her and her
17 arms, it was as if her body relaxed. Her face was
18 just calm. She seemed to be somewhat agitated
19 when I got into the room after the gentleman was
20 fussing, cleaning her up. Probably moving her
21 around. She seemed to be very tense.

22 Then when I went in there and started
23 talking to her, her arms fell down to lower, like
24 around her waist. She looked at me. Her mouth
25 moved. She made some noises and she looked at me

1 when I was talking. When I stopped talking, she
2 did look away.

3 Q When you said she looked, do you mean
4 her eyes moved?

5 A Yes.

6 Q Not her head?

7 A She was laying on her side, so it was
8 not probably as easy for her to move her head.

9 Q Okay. So a change in facial expression?

10 A Right.

11 Q Sounds?

12 A Yes.

13 Q Eyes moving?

14 A Yes.

15 Q Head turning?

16 A No head turning. And change in
17 body movement.

18 Q In all your visits besides the ones you
19 describe, are there any things that Terri does
20 that leads you to believe that she is aware of
21 your presence?

22 A I believe all those things make me
23 believe she is aware of my presence.

24 Q Is there anything else you have seen on
25 other visits?

1 A No. Not that I can recall.

2 Q Tell me the things about the blanket
3 again. I didn't quite get that on your direct
4 examination.

5 A On Monday night when I went in to see
6 her, she had her hands up like this (indicates)
7 and her blanket, I believe a sheet and flannel
8 type sheet, were up around her neck like this.
9 When she moved her hands down like this
10 (indicates), her blanket also came down.

11 Q Okay.

12 A That was due to the movement of her
13 hands.

14 Q Before your last visit to Terri, how
15 often would you visit her when you lived in
16 Florida, of course?

17 A The Sabal Palms was fairly close to my
18 home. I would stop in there probably less than
19 once a month, but I would stop in, you know, on
20 occasion.

21 Q How about when Terri's first -- the
22 incident first happened, did you see her more
23 often?

24 A I was there for the first month or two,
25 I was there every evening. After that, it was

1 probably a few times a week.

2 Q Okay. ' Now you can't say that for every
3 visit you believe Terri has been aware of your
4 presence; can you?

5 A There was some type of reaction. Yes.
6 Each visit that I saw her.

7 Q So in the month or two after the
8 incident, you believe Terri was aware of your
9 presence because she exhibited these reactions?

10 A Yes.

11 Q And there has been no visit where you
12 have not observed the reactions?

13 A It may not have been all of them, but
14 there were some of them. Yes.

15 Q Well, we have had testimony in this
16 trial, I have to say in some rare unanimity, we
17 have had no dispute from Mr. Schindler, from Mrs.
18 Schindler, from Mr. Schiavo, that in the first few
19 months of Terri's incident that she was
20 unresponsive. Mrs. Schindler said no response.
21 No awareness for Terri. Mr. Schindler, no
22 response. No awareness. She was on a respirator.
23 It was only afterwards that they
24 noticed, her own parents noticed a response. Some
25 response. But your testimony is that you visited

1 her right after the accident, daily initially, and
2 you saw responses of Terri that made you believe
3 that she was aware of your presence. Is that your
4 testimony?

5 A Yes. But in the beginning, we were not
6 all allowed in to see Terri. I may not have seen
7 her every visit that I was down there.

8 Q Okay. But the visits at the hospital
9 where you did see Terri?

10 A Um-hmm --

11 Q -- in the month or two after her
12 accident, according to your testimony, she made
13 these responses and you believe she was aware of
14 your presence?

15 A Yes.

16 Q Do you have any suggestion or
17 explanation why her own parents did not get any
18 response from Terri or see anything like that in
19 the first couple of months after the accident?

20 A I was not always in the room with, you
21 know -- sometimes I was in there by myself. I
22 don't know what other people saw.

23 Q Okay. You mentioned the comments that
24 again, Terri in the nursing home, never said I
25 don't want to live like that. Will you agree that

1 there is nothing about the nursing home visits to
2 Terri's grandmother which would shed light on
3 Terri's intent?

4 A Would I agree?

5 Q Yes.

6 A No. I think if she would not want to
7 live like that she would have said this, you know,
8 is a terrible life. I don't want to live like
9 this.

10 Q Do you remember your deposition again?
11 Page 31, Line 15, I asked you, so there is nothing
12 about the nursing home visits which would shed
13 light on Terri's intent?

14 Answer. No.

15 So the answer is no? There's no --
16 there is no question, so the answer is no, there
17 is nothing?

18 Answer. Right. No. There is nothing.
19 I have no other questions, Your Honor.

20 THE COURT: Redirect?

21 REDIRECT EXAMINATION

22 BY MS. CAMPBELL:

23 Q When did you first arrive here for this
24 visit to Florida?

25 A On Saturday afternoon, January 22nd.

1 Q What have you been doing since Saturday
2 till now?

3 A I have spent time with my friends, Scott
4 and Molly Jones, and two little girls.

5 Q So you have been vacationing?

6 A Yeah.

7 Q You are not working on any specific work
8 project?

9 A No.

10 Q Has coming back to the Tampa Bay area
11 reminded you of your days when you were here with
12 Terri?

13 A Yes.

14 Q So you have had time to think about you
15 and Terri's relationship?

16 A Since not working and not stressed from
17 work, yes.

18 Q You talked about when Terri looks at you
19 that she looks at you. Her eyes look at you. Can
20 you describe that look?

21 A She looks at me and she just, her eyes
22 stay focused on me, and in my opinion, it is that
23 she really remembers me. It seems as though
24 Monday night she tried to communicate with me.

25 Q Would you describe it as a blank stare?

1 A No.

2 Q Have you ever been to visit Terri,
3 either this past Monday night or in the '96/'95
4 time frame, gone with Mr. and Mrs. Schindler to
5 visit Terri?

6 A No.

7 Q Have you ever seen the reaction then
8 that Terri has with other people on a regular
9 day-to-day basis that take care of Terri, like
10 Mrs. Schindler?

11 A No.

12 MS. CAMPBELL: I have no further
13 questions.

14 THE COURT: Anything further?

15 MR. FELOS: Nothing, Your Honor.

16 THE COURT: Thank you, ma'am. You may
17 stand down.

18 MS. CAMPBELL: Is it permissible for
19 this witness to remain in the courtroom?

20 THE COURT: Any need of this witness to
21 be excluded? Ma'am, you may stay in the
22 courtroom, but the rule is invoked. You are not
23 to discuss your testimony with other witnesses
24 with regard to this case until all the testimony
25 has been concluded.

1 THE WITNESS: Okay.

2 THE COURT: You are free to talk to the
3 lawyers, but that is all.

4 MS. CAMPBELL: I have no further
5 witnesses. We rest at this time.

6 THE COURT: Thank you.

7 THE COURT: Mr. Felos, you still intend
8 to proceed with rebuttal?

9 MR. FELOS: Yes. Before that, I would
10 like to introduce into evidence the Quinlan
11 newspaper articles, which have been already marked
12 as Petitioner's Exhibit 8 for identification.

13 THE COURT: Is there an objection?

14 MS. CAMPBELL: No. I thought that had
15 already been done.

16 MR. FELOS: They were marked during your
17 case, but I could not introduce them during your
18 case.

19 MS. CAMPBELL: Okay.

20 (THEREUPON, PETITIONER'S EXHIBIT 8 WAS
21 RECEIVED IN EVIDENCE.)

22 THE COURT: Let's take about 10 minutes
23 and then start on Mr. Felos's cross.

24 THE BAILIFF: All rise. Circuit court
25 is in recess for ten minutes.

1 (THEREUPON, A 10 MINUTE RECESS WAS HAD AT
2 10:40 A.M. AND THE FOLLOWING PROCEEDINGS WERE HAD
3 AT THE BENCH.)

4 THE COURT: Let's get the ground rules
5 for rebuttal in place. It's my understanding in
6 rebuttal that you go after a specific statement.
7 Witness X said the light was green. Witness, what
8 color was the light? The light was red. We are
9 not going back into a narrative. As I understand
10 rebuttal, we don't take off and testify to a
11 series of events. Is that -- is your
12 understanding differently?

13 MR. FELOS: A little different, Your
14 Honor. The testimony that we have had in the
15 respondent's case is so broad. Especially on the
16 question of the ward's awareness. We have had how
17 many people say she is aware of my presence. We
18 have the videotape shown as evidence of her
19 awareness. The testimony with Dr. Barnhill, I
20 would say, would be a little bit more extensive.

21 THE COURT: I will not let Dr. Barnhill
22 recapitulate what he said the other day. That is
23 rebuttal; isn't it? He can testify as to what has
24 come up on respondent's case in chief. I have
25 extensive notes from him. If he gets back into

1 what he testified to before, I'll cut you off.

2 I am telling you this because I don't
3 want to embarrass you. That is why we are at the
4 bench and not in front of your client. Because
5 Mrs. Schindler said this is in response to my
6 voice, he can testify that is a reflex action;
7 that is not. It's in response but in a cognitive
8 response hypothetically. I don't know what you
9 intend to do.

10 If Mr. Schindler had said she tied my
11 shoes, he can say that is -- however he wants to
12 address that. She could not tie his shoes. But
13 he is not going to -- you are not going to lead
14 him through that direct again.

15 MR. FELOS: Do you -- we don't want to
16 hear that again.

17 THE COURT: We are not.

18 MR. FELOS: Certainly, I think it's
19 proper to ask the question, since this tape of the
20 ward has been introduced in evidence, for the
21 conclusion that the ward has awareness, have you
22 viewed the tape and can you please comment on this
23 tape to rebut that assumption.

24 THE COURT: That limited area is
25 probably appropriate, but I will not let him go

1 back and talk about what her brain cavity looks
2 like and this sort of stuff.

3 MR. FELOS: I understand that.

4 THE COURT: And sur rebuttal is the
5 same. Your witnesses commenting on what the
6 rebuttal witnesses said.

7 MS. CAMPBELL: Yes.

8 MR. FELOS: Dr. Barnhill is the only
9 witness I can think of where his testimony might
10 be long. Every other witness they said that is
11 true. This witness on respondent's case said
12 that -- is that true. Which will be very brief.

13 THE COURT: Okay. We can hopefully get
14 done at a reasonable hour today.

15 MR. FELOS: I believe the Court is on --
16 I saw a note of where Mr. Sheehan is one of the
17 rebuttal witnesses.

18 THE COURT: I don't read your mail. I
19 saw it, but I don't read your mail.

20 MR. FELOS: He stated he is in
21 Brooksville and he could be here late afternoon.

22 THE COURT: I still don't understand
23 what his dismissal with prejudice has to do with
24 what I need to decide today.

25 MR. FELOS: At a minimum, Your Honor, it

1 goes to rebut the testimony of Mr. Schindler.

2 THE COURT: Well, if he said he was
3 wearing a blue suit on Sunday and really was
4 wearing a green suit on Sunday that is not going
5 to affect the outcome of this case.

6 MR. FELOS: It is not just credibility,
7 Your Honor. This is at the point of additional
8 substance. I mean --

9 THE COURT: All right. If you think it
10 has some real merit, fine. I am just telling you
11 what I need to decide is the intent of this young
12 lady and has it been established by clear and
13 convincing evidence. Whether he gets 780,000 or
14 whether they get 700,000, I am not sure what that
15 has to do -- I'll focus in and I'll ask your
16 reporter to give me a transcript of the three
17 witnesses who testified to discussions with
18 her, so I have those when I am making my decision,
19 but I don't know where all this other stuff plays
20 in.

21 MR. FELOS: Your Honor, I did want to
22 make a comment. The standard as to the
23 conversations is one of reliability. The overall
24 evidence is a clear and convincing evidence
25 standard.

1 THE COURT: Yes, sir.

2 MR. FELOS: That the Court need only
3 find the conversations as to intent reliable.
4 That would be our legal argument.

5 THE COURT: I either believe a witness
6 or I don't. I mean, that is the standard.

7 MR. FELOS: The other thing, Your Honor,
8 is if the Court, and we don't believe it is the
9 case obviously, but if the Court did not find
10 evidence of intent, it has been our argument in
11 the pleadings and opening statement that the Court
12 also has the authority to grant the petition, if
13 it rules it's in the best interests of the ward.

14 THE COURT: I'm going to need to see
15 some law on that, Mr. Felos.

16 MR. FELOS: We intend to present some.
17 I can have -- Mrs. Felos will be doing the
18 rebuttal testimony of Dr. Barnhill. If I can have
19 a moment to impart the Court's discussion to her,
20 I'd appreciate it.

21 THE COURT: Absolutely.

22 MS. CAMPBELL: Is it your belief you
23 will finish with rebuttal today?

24 MR. FELOS: No question about that.

25 MS. CAMPBELL: Thank you. Start on

1 closings tomorrow?

2 THE COURT: If that is what you prefer
3 to do, come tomorrow morning and do closings, no
4 matter what time we shut down today? I need to be
5 out at 5:00 today.

6 MS. CAMPBELL: Or as long as he is
7 finishing his rebuttal, that is my preference, to
8 come back tomorrow morning and do closings.

9 MR. FELOS: If Mr. Sheehan can't be here
10 until late afternoon, I obviously can't look to
11 have his testimony completed today.

12 THE COURT: We can do the same for you
13 as those witnesses. We can do him tomorrow, but
14 before we leave here today, we have locked in
15 place a schedule that you all can live with and we
16 will know. If it's better to come tomorrow and do
17 closings, we can do that. If you need the morning
18 to prepare, I have you guys blocked out on my
19 calendar for all week. However your schedules fit
20 into that, you work with that.

21 (THEREUPON, THE BENCH CONFERENCE ENDED AT
22 11:05 A.M.)
23
24
25