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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 24, 2000

TIME: 9:00 a.m.

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

TRIAL

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Volume I

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ORIGINAL

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1
2 THE BAILIFF: All rise. Circuit Court
3 in and for Pinellas County is now in session with
4 the Honorable George W. Greer, circuit court
5 judge, presiding. Be seated.

6 THE COURT: Good morning. Is the
7 petitioner ready to proceed?

8 MR. FELOS: Yes, we are, Your Honor.

9 MS. CAMPBELL: Yes, Your Honor.

10 THE COURT: Introduce those at counsel
11 table.

12 MR. FELOS: George Felos, Felos and
13 Felos PA.

14 MS. FELOS: Constance Felos, from the
15 firm of Felos and Felos, PA. This is the
16 petitioner, Michael Schiavo.

17 MS. CAMPBELL: Pam Campbell here
18 representing Mr. and Mrs. Schindler, the parents
19 of Theresa Schiavo and respondent, Bob Schindler,
20 father. My legal assistant, Theresa, and Mrs.
21 Schindler, the mother.

22 THE COURT: Opening statements?

23 MR. FELOS: We do have an opening
24 statement. Before we proceed, I notice there are
25 a number of witnesses here. Does the Court want

1 to swear in witnesses now and invoke the rule of
2 witnesses?

3 THE COURT: I'll swear the witnesses in
4 as they take the stand. The Court does not invoke
5 the rule. Do you wish to invoke the rule?

6 MR. FELOS: We wish to invoke the rule.

7 THE COURT: Aside from the parties, is
8 there anyone present that is a witness or intends
9 to be a witness in this case?

10 MS. CAMPBELL: Yes, Your Honor.

11 THE COURT: Sir, the rule has been
12 invoked, which is a rule of sequestration. What
13 that means is that the only time you can be
14 present in court is when you are testifying. From
15 this point forward, you are not to discuss your
16 testimony with anybody or the facts of this case
17 with anyone other than the lawyers, Ms. Campbell
18 or Mr. Felos -- you can talk to them -- but other
19 than that, you are not to discuss the case with
20 anyone.

21 So the bailiff will show you where you
22 can stay, if you are called to testify. Counsel,
23 be so kind as to advise your other witnesses that
24 the rule has been invoked. Very well. Mr. Felos?

25 MR. FELOS: Thank you, Your Honor.

5
1 Your Honor, in this case there are no winners.
2 Whatever the outcome of this case, everyone has
3 lost. A little less than ten years ago, February
4 1990, a beautiful vivacious young woman's heart
5 stopped beating. Her brain was deprived of oxygen
6 and since that time she's existed in a permanent
7 vegetative state, whereas her parents have agreed
8 in the pleadings, it's an irreversible, profoundly
9 debilitating condition.

10 On that day close to ten years ago, my
11 client, Mr. Schiavo, lost the wife he knew. Her
12 parents lost their dreams and hopes of a full life
13 with their daughter and her siblings, and friends
14 lost a shining presence in their lives. So in
15 this case, there is no final judgment order,
16 decree, that can ever bring Theresa Schiavo back.

17 If this Court grants the petition and
18 permits Theresa Schiavo's artificial life support
19 to be removed, all the parties will have to suffer
20 the agony of watching a beloved one die, even
21 though it is my client's belief and wish that is
22 what his wife wanted. If this Court does not
23 grant the petition, Theresa Schiavo's body will be
24 maintained in this condition, perhaps for decades,
25 and there is no victory or win in that for anyone.

1 The evidence will show in this case that
2 Theresa had a conventional childhood. She was
3 brought up by her parents. They were practicing
4 Catholics at the time. She meets Michael in
5 community college in the Philadelphia area. They
6 fell in love. They married. They lived there
7 from, as a married couple, from 1984 to 1986.
8 They met in 1982. They had a family oriented life
9 in Philadelphia, both with Michael and Theresa's
10 family.

11 They moved to Florida in 1986. She
12 worked for Prudential Insurance and he worked in
13 food service management as a restaurant manager,
14 assistant restaurant manager, working nights. You
15 will also hear evidence that Theresa once had a
16 weight problem. Was heavy in her early adulthood
17 and lost a significant amount of weight. You will
18 hear evidence that Theresa wanted to become
19 pregnant. Wanted to have a family. Was under a
20 doctor's care to become pregnant, and while under
21 that doctor's care, developed a potassium
22 imbalance which caused her heart to stop beating,
23 which caused the incident in question.

24 You will hear much evidence as to how
25 Mr. Schiavo cared for his wife. Fought for his

1 wife. Fought to get experimental treatment for
2 his wife. Raised funds for his wife to go out to
3 California and have electrical implants to try to
4 stimulate her brain. Engaged in fund raisers.
5 How he stayed with her for day and night for
6 periods of years. How he has been termed, as he
7 has been termed, as a nursing home administrator's
8 worst nightmare. How he has gotten for Theresa a
9 level of care that most other patients would not
10 have received.

11 You will hear evidence how he hired a
12 private aide over a 2-year period to take Theresa
13 out to museums, hairdressers, beauty makeovers, to
14 try to stimulate her in some hope that she may
15 improve or may revive. You will also hear
16 evidence from physicians, Your Honor, that there
17 is no hope of recovery for Theresa. That she is
18 in a permanent vegetative condition.

19 You will also hear doctor's evidence
20 that the process of removal of a feeding tube and
21 the death process involved there takes seven to
22 ten days. That a patient does not starve to
23 death. A patient quickly develops an electrolyte
24 imbalance which causes death within a short time,
25 and that death as a result of this process is not

1 painful.

2 You will hear disputed evidence as to
3 the cognition of Theresa Schiavo. I am sure you
4 will hear evidence by the respondent that they
5 believe Theresa is aware of their presence.
6 However, it is important for the Court to remember
7 that that is really a non issue in this case. The
8 major issue in this case is what Terri's intent
9 was.

10 And we will present testimony from Mr.
11 Schiavo and his brother and sister-in-law as to
12 conversations Theresa Schiavo had with them in
13 which she stated that if she had to be dependent
14 on the care of others, she would not want to live
15 that way. She would rather die. Also, if she was
16 in that condition, she would not want to be kept
17 alive or maintained artificially. Her wishes were
18 not contingent upon being totally unconscious or
19 vegetative, but broadly expressed in that way. So
20 although there may be dispute in this case as to
21 whether Theresa has some awareness of her
22 surroundings, minimal awareness, it really is a
23 non issue in terms of her expression of intent.

24 There may be some evidence that while
25 Theresa was living with her parents, she may have

1 made comments about the Karen Ann Quinlan case.
2 We believe that the Court will not find that
3 evidence particularly credible, and certainly if
4 it is, contrary to her later statements, would
5 have been a change of position for Theresa.

6 You will also receive testimony, Your
7 Honor, from some experts. One will be an expert
8 witness testifying as to the doctrine and policies
9 of the Catholic church regarding artificial life
10 support. That testimony will show that the
11 request of the petitioner in this case is highly
12 consistent with the teachings of the Catholic
13 faith.

14 You will also hear evidence from an
15 expert in American's attitudes and expressions
16 concerning end of life care, who will also testify
17 that the manner of expression, the manner in which
18 Theresa expressed her wishes, is very consistent
19 with how Americans do that. That usually these
20 statements are made as a catalyst to a particular
21 event and illness of a relative; watching a movie
22 or television program where someone is impaired.
23 That is how these expressions are usually and
24 customarily made.

25 You will also hear in this trial

1 testimony regarding the relationship between the
2 parties, the petitioner and respondents, which was
3 a good relationship and a supportive relationship
4 until the malpractice award was given in this
5 case. You will hear evidence that in 1992 a
6 verdict was issued in a medical malpractice case
7 brought on Theresa's behalf and Theresa, the
8 guardianship estate, netted over \$700,000 and that
9 Mr. Schiavo netted approximately \$300,000 in a
10 loss of consortium award.

11 You will hear evidence -- you will hear
12 testimony from the respondents that there was an
13 alleged agreement between Mr. Schiavo and the
14 respondents that he would split his loss of
15 consortium award with them. You will hear
16 testimony from Mr. Schiavo that that was not the
17 case. You will hear testimony that the
18 respondents were in significant financial
19 difficulties at that time and were upset that they
20 didn't receive a portion of Mr. Schiavo's award.

21 You will hear testimony of basically an
22 unfortunate falling apart of that relationship and
23 also testimony that shortly after that falling
24 apart, the respondents filed a suit in this court
25 to remove Mr. Schiavo as Theresa's guardian

1 alleging that he was in a relationship with
2 another woman, that he was not caring for her
3 medically, and that he had a financial conflict of
4 interest. You will hear testimony that that suit
5 was dismissed with prejudice by the respondents.

6 There will be testimony that three years
7 after Theresa's incident, yes, Mr. Schiavo did
8 have a relationship and is in a relationship
9 currently. You will hear testimony that, yes, Mr.
10 Schiavo wants to have a family in the future. He
11 wants to be a father in the future. And you will
12 also hear that that doesn't mean that he doesn't
13 love Terri and will always love Terri and wants
14 what's best for her.

15 You will hear testimony that it's always
16 been the respondents' wish for Mr. Schiavo to move
17 on with his life, and Mr. and Mrs. Schindler take
18 over the guardianship and take over the care of
19 Terri. You will hear testimony regarding the
20 Schindlers' beliefs concerning medical treatment
21 and their wishes concerning Terri. Terri's
22 medical treatment. Some of that evidence, which
23 may be disturbing.

24 You will hear testimony that the
25 Schindlers, if in Terri's condition, would want

1 all possible medical treatment to keep them alive .
2 at all costs, even if they were permanently
3 unconscious. You will hear testimony that they
4 would choose chemotherapy. They would choose, if
5 they developed gangrene, they would choose to have
6 their limbs amputated to remain in a permanent
7 vegetative condition.

8 You will also hear testimony from
9 Theresa's father that if Terri needed open heart
10 surgery, he would choose to have open heart
11 surgery performed on her rather than have her die.
12 You will hear testimony from her father that if
13 Theresa developed gangrene and limbs needed to be
14 amputated, he would choose to have that for his
15 daughter. You will also hear testimony,
16 Your Honor, that those beliefs and intents have
17 nothing to do with being Catholic or part of the
18 Catholic faith.

19 You will hear -- I am sure you will hear
20 testimony in this case about the guardianship
21 estate, and yes, if Theresa Schiavo dies at this
22 time and the petition is granted, Mr. Schiavo will
23 inherit those funds of Theresa's Schiavo's
24 intestate. You will hear testimony that Mr. and
25 Mrs. Schindler also, if the petition is denied and

1 Mr. Schiavo does remarry, will be Theresa's
2 intestate heirs and will inherit.

3 At the end of the evidence, the Court I
4 believe will conclude that Mr. Schiavo is not
5 concerned with finances, with money, financial
6 gain, but always has been concerned with the best
7 interests of his wife. You will also hear
8 evidence regarding the time period that has
9 elapsed since Terri's incident and the request to
10 remove the feeding tube. It has been ten years,
11 and the argument has been made and was made by the
12 guardian ad litem's report that is in the file
13 that that somehow affects Mr. Schiavo's
14 credibility.

15 The Court will hear evidence for the
16 first four years or so that Mr. Schiavo
17 aggressively, aggressively treated or tried to
18 seek treatment for Terri in the hope of recovery.
19 Despite doctor's advice there was no hope, he did
20 not give up hope. And I believe the evidence will
21 show he can't be faulted for trying as hard as he
22 did to help his wife in the hope of recovery.

23 In 1994, at the suggestion of his
24 doctors, the Court will hear that Mr. Schiavo made
25 a decision not to treat an infection, which would

1 have resulted in Terri's death. In response to
2 that, Your Honor, the evidence will show that Mr.
3 and Mrs. Schindler amended their petition to
4 remove Mr. Schiavo as guardian, alleging he was
5 not treating the infection and alleging that
6 constituted an abuse of Terri.

7 The evidence will show that at that
8 time, my client was emotionally unable to proceed.
9 After making a decision not to treat an infection,
10 he was attacked for it and not emotionally able to
11 proceed with the removal of the feeding tube.
12 That about a year later, he started to take steps
13 to do that which has resulted in this petition.

14 The Court will, as part of the evidence
15 in this case, review the report of the guardian ad
16 litem and also the suggestion of bias filed in
17 response. The Court will also hear testimony that
18 the guardian ad litem at the time he issued his
19 report had one piece of evidence regarding Terri's
20 intent and that was the statements relayed to him
21 by Mr. Schiavo. You will hear the guardian ad
22 litem testify that had he known of the statements
23 of Mr. Schiavo's brother and sister-in-law, that
24 his conclusions may very well have been
25 different.

1 You will also hear testimony regarding
2 the guardian ad litem of his personal feelings
3 regarding removal of feeding tubes. The guardian
4 ad litem has been very candid, and the evidence
5 will show, personally, he has great difficulty
6 with placing removal of artificial provision of
7 sustenance as medical treatment, which is the law
8 in Florida.

9 You will hear testimony of the guardian
10 ad litem to the effect that he believes patients
11 should not have the right, although the Supreme
12 Court of Florida has given the patient the right
13 to cease food and water, in his belief that should
14 not be the case and the patient should not have
15 that right. We will argue to the Court that may
16 have affected the close call, and I use the words
17 of the guardian ad litem, the close call he made
18 in his report.

19 We believe at the conclusion of the case
20 the Court will find clear and convincing evidence
21 that Theresa Schiavo would not want to be kept
22 alive in this condition and would want the feeding
23 tube removed. Also, if it's necessary for the
24 Court's determination, we believe the Court will
25 find the removal of the feeding tube is in Theresa

1 Schiavo's best interest. I say, if necessary,
2 Your Honor.

3 Obviously, the primary question before
4 the Court is Theresa's intent. If the Court does
5 not find clear and convincing intent, which we
6 believe the Court will do, but if that should
7 occur, we intend to argue to the Court that the
8 Court does have the authority, absent clear and
9 convincing evidence of intent under a best
10 interest test, to grant the petition.

11 Your Honor, in closing here, while the
12 petitioner agrees that life is sacred and should
13 be preserved, he also believes, and we will
14 suggest to the Court, that neither the law, nor
15 Theresa's religion, or moral dictates would
16 require that life be artificially preserved at all
17 costs. Thank you.

18 THE COURT: Thank you, Mr. Felos.
19 Ms. Campbell.

20 MS. CAMPBELL: Mr. Felos has already
21 very eloquently and accurately set forth a lot of
22 the history in this case going over the dates and
23 times of the testimony dictated here in the next
24 week. Our differences where we come is as to what
25 the Court will find and also the credibility of

1 the witnesses.

2 Mr. Felos has his witnesses that will
3 tell what Ms. Terri Schiavo's wishes would be
4 regarding the feeding tube. You will also hear
5 from our side of it. On our side, you will hear
6 from a long childhood friend of Terri's. You will
7 also hear from a co-worker that was more closely
8 related to Terri close to the time of the incident
9 of the accident, which was February of 1990.

10 You will hear a lot of medical testimony
11 concerning the persistent vegetative state that
12 Theresa Schiavo currently exists in. We do not
13 doubt she's in a permanent vegetative state.
14 However, a lot goes to the cognitive activity and
15 brain activity of Theresa Schiavo. In reading
16 through some of the medical records, you will hear
17 testimony about her no recognition. However, you
18 will hear testimony from our side there is
19 recognition. She does recognize her mother.

20 There is a videotape we would like for
21 the Court to see, very brief, that is a videotape
22 capturing this relationship between Terri and her
23 mother that was recently taken. The guardian ad
24 litem, Richard Pearse, who was appointed in this
25 case, he will be testifying. The guardian ad

1 litem was appointed to investigate and make a
2 report to this Court, which he did, which the
3 court file contains a copy of his report.

4 Mr. Pearse thoroughly investigated the
5 whole case and interviewed various witnesses; met
6 with people at the nursing home staff; saw
7 different physicians; and came to the ultimate
8 conclusion that the feeding tube should be
9 maintained. It's our position here that the
10 guiding case for the court in setting precedence
11 is the Estele Browning case, which sets forth that
12 clear and convincing evidence should be
13 established of the patient's wishes, and that if
14 it's oral evidence, that the petitioner would bear
15 the burden of showing this was by clear and
16 convincing evidence.

17 We do not believe, as the guardian ad
18 litem also found, that the evidence you will hear
19 is credible. We have contradictory evidence that
20 will show in fact that it is not credible as to
21 what her wishes her. You will also hear from her
22 long time childhood friend that when the Karen Ann
23 Quinlan case was being discussed in conversations
24 between Terri Schiavo and this long childhood
25 friend regarding the Karen Ann Quinlan case, which

1 we believe ultimately sets forth Terri's beliefs,
2 it would be in the situation she is in one that
3 she would not ultimately choose to be in the
4 situation she is in, but the circumstances she
5 faces, that Theresa Schiavo would want to maintain
6 her feeding tube.

7 As a public policy statement, we also
8 believe the Court is firmly held to review the
9 conflict of interest of Michael Schiavo and the
10 financial situation that would rest in the
11 intestate estate. There is case law precedent to
12 that which we will be arguing in our closing
13 argument that we believe firmly sets forth this
14 conflict of interest. Thank you and good luck for
15 this week.

16 THE COURT: Call your first witness.

17 MR. FELOS: Thank you, Your Honor. Call
18 Mr. Schiavo.

19 THE COURT: Call your first witness.

20 MR. FELOS: Thank you, Your Honor. Call
21 Mr. Schiavo.

22 (THEREUPON, THE WITNESS WAS SWORN ON OATH BY
23 THE COURT.)
24
25

DIRECT EXAMINATION

BY MR. FELOS:

Q State your full name and current address
for the record, please. 1

A My name is Michael Schiavo. My address
is 2807 Marie Court, Clearwater, Florida.

Q What is your date of birth?

A 4-3-63.

Q Mr. Schiavo, how are you employed at
this time?

A I work for Morton Plant/Mease
Countryside Hospital as a respiratory therapist.

Q Please tell the Court what your
employment background is.

A I worked for Morton Plant/Mease ever
since I became a respiratory therapist five years
ago.

Q Before that?

A I worked for various amounts of
restaurants. Right before I got into medical, I
worked for Agostino's Restaurant.

Q Um-hmm.

A Prior to that, I worked for the
Columbia. And prior to that, I worked for the
Breckenridge Hotel.

1 Q Tell the Court, please, what your
2 educational background is.

3 A I went to community college for about a
4 year-and-a-half in the Philadelphia area. Bucks
5 County Community College, starting, I believe, in
6 1983. Don't hold me to the dates. I'm not good
7 with dates. I went to St. Pete Junior College. I
8 received a certificate for my EMT license.

9 Q What is that?

10 A Emergency Medical Technician. I went
11 back to school and received an AS degree in
12 respiratory therapy and back to back received my
13 SA in nursing. I just took my boards and passed
14 last week.

15 Q Where did you grow up, Mr. Schiavo?

16 A Levittown, Pennsylvania. Suburb of
17 Philadelphia.

18 Q Tell us about your family background.
19 Are your parents alive? Do you have brothers and
20 sisters?

21 A I have four older brothers. My mother
22 is deceased. It will be three years in July. My
23 father is still alive living here in Florida.

24 Q Did you have a relationship with any of
25 your grandparents?

1 A Yes. I did. All my grandparents.

2 Q Do you recall, were any of your
3 grandparents on life support?

4 A Yes. My father's mother.

5 Q How did that come about?

6 A She had a heart attack. Prior to that,
7 she had open heart ten years prior to that. She
8 had a heart attack. She ended up on a ventilator,
9 which was against her wishes. She had a living
10 will in place. A DNR in place.

11 The doctors did intubate her. My family
12 showed up. It was told to the doctor this was not
13 her wishes. Her living will and DNR was shown to
14 the doctor, I believe, and the ventilator was
15 removed.

16 Q Where were you and Terri living when
17 your grandmother died?

18 A Here in Florida. St. Pete Beach.

19 Q Did you attend the funeral?

20 A Yes. We did. We flew up.

21 Q Did Terri know or have a relationship
22 with your grandmother?

23 A She had a close relationship with my
24 grandmother.

25 Q Do you recall any conversations at the

1 funeral, the funeral luncheon after that,
2 regarding the issue of your grandmother's life
3 support?

4 A I vaguely remember a conversation that
5 happened, but my brother, Scott, had the
6 conversation. He would know better about the
7 conversation.

8 Q Is there anyone in your family that has
9 a particular reputation for having a good memory?

10 A My brother, Scott. We always tease him
11 about having the mind of an elephant.

12 Q Please tell me how you and Terri met?

13 A At Bucks County Community College in one
14 of our classes. I can't remember which class it
15 was.

16 Q Tell us a little about your courtship
17 with Terri.

18 A Terri and I dated approximately about a
19 year. We did the usual things. Family parties.
20 Movies. We went to dinner a lot. We were engaged
21 probably about a year into our relationship. We
22 were engaged for a year before we got married.

23 Q When did you and Terri marry?

24 A November 10, 1984.

25 Q Where did that occur?

1 A In Huntingdon Valley, PA.

2 Q Is that a suburb?

3 A Suburb of Philadelphia.

4 Q Describe for us Terri's personality.

5 A She was a very outspoken person. She
6 believed in what she believed in. But on the
7 other hand, she had a heart of gold. Somebody
8 that was sweet. Very personable. You would meet
9 her and just be charmed with her. Somebody -- to
10 me, she was everything.

11 Q Before you met -- when you met Terri,
12 what was her weight?

13 A Approximately 155 pounds.

14 Q Before you met Terri, had she been
15 heavier?

16 A Yes. She was in her early childhood.

17 Q Did she lose any weight during the
18 course of your marriage?

19 A Terri lost weight throughout the course
20 of our marriage. Yes. She did.

21 Q I would like to show you, Mr. Schiavo,
22 Petitioner's Exhibit Number One and Number Two
23 marked for identification and ask you if you can
24 identify what those are, please.

25 A This young lady right here is Terri.

1 That is her sister, Suzanne. This is when they
2 used to go away to -- I forget. They used to stay
3 at a hotel every year. This is Terri in Florida,
4 I believe. Actually on our honeymoon. This is
5 Terri and I. This is a good picture of her. This
6 is Terri right before we left for Florida. This
7 is Terri right here at her brother's graduation.

8 Q In Petitioner's Exhibit Number One, was
9 that the weight of Terri approximately at the time
10 you married her?

11 A The bottom picture? No.

12 Q The top picture?

13 A The top picture, yes.

14 Q In Petitioner's Exhibit Number Two, is
15 that Terri's approximate weight during your
16 marriage?

17 A Yes.

18 MR. FELOS: Your Honor, we move to
19 introduce these photos into evidence.

20 THE COURT: Is there an objection?

21 MS. CAMPBELL: No objection, Your Honor.

22 THE COURT: So received.

23 (THEREUPON, PETITIONER'S EXHIBITS NUMBERS 1 &
24 2 WERE RECEIVED IN EVIDENCE.)

25 Q (By Mr. Felos) Now that the Court has

1 had the benefit to see the photographs. I'd like
2 to bring your attention to Petitioner's Exhibit
3 One. If you can explain to the Court what those
4 two pictures are?

5 A The bottom picture here was Terri at a
6 younger age. This is on a family vacation. To
7 the right of her, far right, is her sister,
8 Suzanne. The top picture is, I believe is -- that
9 was our honeymoon.

10 Q Okay. Now Petitioner's Exhibit Number
11 Two, can you explain when approximately these
12 pictures were taken, and where, starting with the
13 upper left?

14 A The upper left, that is Terri and I
15 outside of our apartment at Thunder Bay. I don't
16 know the approximate year of that. Date. To the
17 right of that is a party thrown for us about a
18 week before we left for Florida. That is my
19 mother with her back toward you. My brother and
20 sister-in-law.

21 Down on the bottom on the left with the
22 truck leasing, that is her brother's graduation.
23 That is Terri in the white. That is her sister in
24 the black. To the right of that, that is a
25 picture at Disney World. I believe that is -- I

1 don't know the approximate date on that one.

2 The bottom, that is Terri bending down
3 with the blond hair to the right of Santa Claus in
4 the back with the red suit. That is approximately
5 about six or so months prior to her accident.

6 Q Did you notice that Terri was losing
7 weight during the course of the marriage?

8 A Yes. I did.

9 Q To your knowledge, while living with
10 Terri, did you know whether or not she ever had an
11 eating disorder such as anorexia or bulimia?

12 A I did not. No. There was speculation
13 made to that, but there was nothing ever proven in
14 court as to that diagnosis.

15 Q Once you were married, tell us the type
16 of things that Terri and you liked to do together.

17 A After we are were married, I did work a
18 lot. I worked a lot of nights. On the days off
19 that I did have, we would go to the movies. Spent
20 a lot of time with her parents. We would go out
21 to dinner a lot. Spend time at home.

22 Q Were you in love with your wife?

23 A I was deeply in love with my wife and I
24 still am.

25 Q How long did you live in Philadelphia

1 after your marriage in 1984?

2 A I believe -- don't hold me to dates. I
3 believe about a year-and-a-half. I'm sure we left
4 for Florida in 1986.

5 Q Did you and Terri socialize with any of
6 your family members?

7 A All the time. We went to frequent
8 birthday parties. We had a lot of little kids.
9 We went to adult parties. Kids' parties.
10 Holidays. We spent a lot of time with family.

11 Q Where did your parents and siblings live
12 at that time?

13 A I'm sorry?

14 Q Where did your parents and siblings live
15 at that time?

16 A My parents lived in Levittown,
17 Pennsylvania. My brother, one brother in Trevose,
18 Pennsylvania. One brother lived in Fairless
19 Hills. One brother lived in Philadelphia. One
20 brother was not married yet. Kind of lived with
21 my parents and had his own place for a while.

22 Q Was that all in the greater Philadelphia
23 area?

24 A Yes.

25 Q Was Terri particularly close to any of

1 your brothers or sister-in-laws?

2 A Terri was very close with my brothers.
3 Especially my sister-in-laws and especially my
4 sister-in-law, Joan. They were best friends.

5 Q At that time, how would you describe
6 your relationship with Terri's parents and family
7 while you were living in Philadelphia?

8 A I believe we had a close relationship.
9 She was very close with her brother, Bobby. She
10 was not so close with her sister, Suzanne.

11 Q Did Terri have any close friends in
12 particular in the Philadelphia area?

13 A She had a very close friend, Sue Cobb.
14 She had other acquaintances. Other friends.

15 Q Why is it that you and Terri decided to
16 move to Florida?

17 A We were over the cold. We wanted
18 something new.

19 Q After you and Terri were married, but
20 before you moved to Florida, did you ever take any
21 trips here?

22 A Yes. We did. I remember one
23 especially.

24 Q What was particularly special about that
25 trip?

1 A That is before we left her grandmother
2 was gravely ill.

3 Q Um-hmm. Did Terri have any concerns
4 about taking the trip to Florida given her
5 grandmother's condition?

6 A She was very concerned. She did not
7 want to leave her grandmother. She was pretty ill
8 at the time. She was in the hospital in intensive
9 care.

10 Q Do you know why she decided to take the
11 trip?

12 A Her mother told us to go.

13 Q Did the subject of Terri's grandmother
14 -- by the way, did you fly, drive, or take the
15 train?

16 A We took a train.

17 Q Did the subject of Terri's grandmother
18 come up at all during that train trip?

19 A Yes. It did. We were taking the train
20 trip. We are sitting there. Terri was reading a
21 book. She put the book down and looked at me.
22 She says, "I'm kind of concerned about leaving."
23 I told her, "Your mom said to go." She says,
24 "Well, I'm concerned about my grandmother. What
25 if she dies? Who is going to take care of my

1 uncle?" She says, "If I ever have to be a burden
2 to anybody, I don't want to live like that."

3 Q You made reference -- did you say
4 anything in response to that?

5 A I told her that -- I told her that she
6 should remember that for me, too.

7 Q Do you know why Terri made a reference
8 to her uncle in connection with her grandmother's
9 illness?

10 A Years prior, her uncle was in a severe
11 car accident. He was depressed because his wife
12 and child were killed in a car accident. They
13 were hit by a train coming home from the mall. He
14 became, as what Terri says, severely depressed.
15 Had a few drinks one night. Went out. On the
16 drive home, he hit a tree. He ended up in a comma
17 for a few weeks.

18 When he came out of his comma, he was
19 pretty much severely handicapped. Had a lot of
20 impediments. Had to live with his mother.

21 Q Did -- regarding Terri's uncle, did you
22 ever meet him?

23 A Yes. I did.

24 Q You observed his condition?

25 A Yes.

1 Q Did you observe any infirmities in the
2 uncle?

3 A Her uncle had paralyzed -- I believe his
4 right arm was paralyzed, I believe. He had a
5 severe limp. He used a cane. He had slurred
6 speech. Difficulty. He had to sit for long
7 periods. He could not get up and move around a
8 lot. Difficulty in thought processes, I believe.
9 That he could not process his thoughts quick
10 enough with his answers.

11 Q Again, why was Terri concerned about her
12 uncle because of her grandmother?

13 A Because he lived with the grandmother
14 and she basically helped take care of him.

15 Q After -- by the way, after the
16 conversation on the train, what happened to
17 Terri's grandmother?

18 A She died while we were here in Florida.

19 Q Michael, did you have any other
20 conversations at all with Terri about removal of
21 life support?

22 A Yes. I did.

23 Q Tell us about those, please.

24 A Terri and I would be home. We would be
25 watching TV. You know, a documentary would come

1 on. It would depict you know adults, children
2 that are being sustained and kept alive by parents
3 at home. People that had to be on ventilators.
4 People getting tube feedings. Medications
5 throughout. IVs.

6 She made the comment to me that she
7 would never want to be like that. Don't ever keep
8 her alive on anything artificial. She did not
9 want to live like that. I looked at her and I
10 said do the same for me.

11 Q Do you recall how many conversations
12 like that you had with Terri in response to a TV
13 program or documentary?

14 A It was two, two or three times.

15 Q When you moved to Florida, when you
16 first moved to Florida, where did you live?

17 A We lived in the Schindler's condominium.

18 Q How long did you live there?

19 A Approximately a year.

20 Q Did you pay rent?

21 A We paid rent when we could. The
22 Schindlers were gracious enough to let us slide
23 when we had to. Terri was not working at the
24 time.

25 Q Okay. Then after living in Mr. and Mrs.

1 Schindler's condo, where did you live?

2 A We moved to Thunder Bay apartments on
3 4th Street.

4 Q St. Petersburg?

5 A St. Petersburg.

6 Q Tell us a little bit about the logistics
7 of your life down here in terms of schedule. You
8 said Terri did not work initially. Did she
9 eventually find employment?

10 A Terri did not work initially. I started
11 work at Olga's Kitchen as a manager. Terri did
12 not work for a while. About four months. She
13 previously worked at Prudential up north, and she
14 went to Prudential here and they hired her on as a
15 transfer. That is where she stayed.

16 Q Was that Prudential Securities?
17 Prudential Insurance?

18 A Prudential Insurance.

19 Q Did Terri work days or nights?

20 A Days.

21 Q What were your hours?

22 A My hours usually were 4:00 to close.
23 3:00 to close.

24 Q Closing is?

25 A Sometimes midnight. Sometimes 11:00.

1 Sometimes I was home at 1:00 in the morning.

2 Q How did Terri feel about you working all
3 those nights?

4 A She was not particularly thrilled with
5 it, but she knew I had to do that.

6 Q Did the two of you -- did Terri have any
7 particularly close friends at Prudential?

8 A She had acquaintances. She had
9 friends. I would not say they were close.

10 Q Did the two of you have any close mutual
11 friends here in Florida?

12 A We did not have mutual friends. We had
13 acquaintances we both knew. We did not have any
14 close mutual friends.

15 Q Did Terri's parents move to Florida at
16 some time?

17 A I believe it was a year later after
18 Terri and I moved here.

19 Q After the Schindlers moved to Florida,
20 but before Terri's medical accident, how would you
21 describe the relationship you and Terri had with
22 Mr. and Mrs. Schindler?

23 A I'm sorry. Repeat that question.

24 Q Once the Schindlers moved to Florida,
25 how would you describe the relationship you and

1 Terri had with her parents down here? Did you see
2 each other often?

3 A Terri saw the Schindlers probably more
4 than I did. In my own opinion, I thought we were
5 pretty close.

6 Q Tell me a little bit about -- tell us a
7 little about Terri's religious practice from the
8 time you knew her. Well, do you know what faith
9 Terri was brought up?

10 A Terri was brought up Catholic.

11 Q During the time that you knew Terri or
12 let's say from the time you were married, how
13 often would Terri go to mass?

14 A I'm sorry. Repeat that for me, George.

15 Q How often would Terri go to mass?

16 A Not very often. Once every few months.

17 Q Did you go with her?

18 A Yes. I did.

19 Q Every time?

20 A Yes. I did.

21 Q Did Terri ever receive communion when
22 she attended mass?

23 A No. She did not.

24 Q Did Terri ever participate in the
25 sacrament of confession?

1 A No. She did not.

2 Q Did you and Terri ever consider having a
3 family?

4 A Yes. We did.

5 Q What was -- what were your feelings
6 about that and Terri's feelings?

7 A Terri adored children. She wanted
8 children desperately, as I did.

9 Q Was there a time when the two of you
10 actually decided to start a family?

11 A Yes. It was -- we decided to wait about
12 five years before we really wanted to start a
13 family. It was probably the beginning of 1989 we
14 started, I believe.

15 Q Did Terri ever became pregnant?

16 A No. She did not.

17 Q What was the difficulty?

18 A Terri was not receiving her period.

19 Q Did you or Terri ever seek medical
20 advice or treatment regarding your desire to have
21 children?

22 A Terri did. Yes. She was seeing a
23 family physician and a gynecologist.

24 Q Who was that?

25 A The gynecologist was Dr. Egel.

Q Did Dr. Egel --

A Egel. E-g-e-l.

Q What time period was Terri consulting with Dr. Egel in an effort to become pregnant?

A I believe starting in the beginning of 1989.

Q How long did her -- how long did she go to Dr. Egel?

A For a period of about a year.

Q Michael, tell me what occurred on February 25, 1990.

A I got home late from work that night. I came in the house. Terri woke up. She heard me. I gave her a kiss good night. She gave me a kiss good night. A few hours later, I was getting out of bed for some reason and I heard this thud. So I ran out into the hall and I found Terri on the floor. I knelt down next to her and I turned her over because she sort of fell on her face. On her stomach and face.

I turned her over going, "Terri, Terri. You okay?" She kind of had this gurgling noise. I laid her down and ran over and called 911. I was hysterical. I called 911. I called her brother, who lived in the same complex as we did.

1 I ran back to Terri. She was not moving. I held
2 her in my arms until her brother got there. I
3 rocked her. I didn't know what to do. I was
4 hysterical. It was a horrible moment.

5 Q Do you know how long it was before the
6 paramedics came?

7 A Had to be a good six minutes or so.

8 Q What happened when the paramedics came?

9 A I moved away. Her brother was sitting
10 in the kitchen around the corner. I moved away
11 and they started working on Terri. They put the
12 leads on. I heard them say she is flat line.
13 Start CPR. I am standing there going what is
14 happening here? Why is this happening? Why isn't
15 her heart beating? I was just a mess. I was
16 hysterical.

17 Q Where did the paramedics take her?

18 A To Humana Northside, St. Pete.

19 Q Did you ride with the paramedics?

20 A Yes. I did.

21 Q What is Terri's condition as a result of
22 the incident that occurred on February 25, 1990?

23 A She's in a chronic vegetative state
24 anoxic encephalopathy due to cardiac arrest.

25 Q For those of us who did not go to school

1 in medicine --

2 A Lack of oxygen because her heart was not
3 pumping to her brain.

4 Q Can Terri run?

5 A No.

6 Q Can Terri walk?

7 A No.

8 Q Can Terri stand on her own?

9 A No. She can't.

10 Q Sit on her own?

11 A No. She can't.

12 Q Can Terri turn over?

13 A No. She can't.

14 Q Does she talk?

15 A No.

16 Q Can she eat?

17 A No.

18 Q Can she drink?

19 A No. She can't.

20 Q Can she swallow?

21 A No.

22 Q Can she go the bathroom?

23 A No.

24 Q Can she brush her teeth?

25 A No.

1 Q Can Terri clip her fingernails?

2 A No.

3 Q Comb her hair?

4 A No.

5 Q Can Terri dress herself?

6 A No. She cannot.

7 Q How are all those activities done for
8 Terri?

9 A I have her in a nursing home. The
10 facility employees do all that for her. She has
11 to be intubated by one person. She wears a diaper
12 which has to be cleaned, and you know, whether she
13 has a BM, they have to change the diaper. Clean
14 her. She has her period, which is at times
15 extremely heavy and messy. They have to clean
16 her. They have to do her hair. Her teeth. They
17 have to do total care for Terri.

18 She can't turn. They have to come in
19 every two hours and turn her. They have to place
20 her in a chair. They have to put the side rails
21 up on the chair to hold her in place.

22 Q Is there a neck support on the chair?

23 A Concave headrest more of. Her head fits
24 into the support.

25 Q In addition to the total care Terri has

1 received, I would like you to tell the Court some-
2 of the additional medical problems Terri has had.

3 A Terri has had numerous, numerous urinary
4 tract infections. She has had her left little toe
5 removed due to osteomyelitis.

6 Q What is that?

7 A Bone infection that was caused by a
8 pressure sore.

9 Q Has Terri ever had to be hospitalized
10 because of the urinary tract infections?

11 A Yes, she has. Numerous amounts of time
12 for that.

13 Q For the removal of her toe?

14 A Yes.

15 Q Go on.

16 A She has kidney stones. She had her
17 gallbladder removed.

18 Q Did that require hospitalization?

19 A Yes. It did.

20 Q She had vaginitis. She had pelvic
21 inflammatory disease. She had I believe two D and
22 Cs.

23 Q Did the pelvic inflammatory disease, or
24 D and Cs, require hospitalization?

25 A Twenty-four hour admits.

1 Q Um-hmm.

2 A She has had respiratory problems. She
3 had dehydration.

4 Q What respiratory problems?

5 A Upper congestion. She can't control her
6 gag. When she fills up, she has to be constantly
7 suctioned down her nose or in the back of her
8 throat. She was put on some aerosol medications
9 that helped dry and relieve the congestion. She
10 has to be watched at those points because she
11 can't control her gag and she will choke.

12 Q Has Terri been hospitalized due to
13 respiratory infections?

14 A Yes.

15 Q Go on, please.

16 A I lost my train of thought.

17 Q Did Terri ever suffer seizures?

18 A Yes. She's suffered seizures. She
19 makes constant muscle twitching. She has severe
20 contractures of the hands, the elbows, the knees,
21 the feet. Her foot drop is to the point where --

22 Q What is a foot drop?

23 A Foot drop is where your foot drops and
24 sticks into a certain spot. Her feet are
25 basically lower than her leg, when she sticks it

1 out. She's had a couple cysts removed off her
2 neck. Numerous amounts of things. I'm trying to
3 think. She has a food tube that has been infected
4 a few times that she had to be taken to the doctor
5 to remove.

6 Q Gastropomy tube?

7 A Yes. Infection. Inflammation around
8 that. Due to contractures in elbows, now the skin
9 in between is starting to break down. She's had,
10 she has constant diarrhea which leads to
11 dehydration which leads to --

12 Q Has she ever been hospitalized for
13 dehydration or diarrhea?

14 A She has in the past. This previous
15 dehydration she stayed in the nursing home.

16 Q Michael, you have spent more time with
17 Terri and have seen Terri more often than anyone
18 since her incident. Have you ever seen any
19 voluntary or volitional response on her part in
20 all these years?

21 A I have not.

22 Q Does Terri, does Terri emit any noises?
23 Does her face move? Her head?

24 A Terri will moan, but it's not to
25 anything. We could -- I could be sitting next to

1 her and she will start to moan. Her eyes will
2 blink. Her head will kind of twitch. It will
3 kind of move itself. She also has -- she goes
4 into this spasm where she will hyperflex her neck
5 and will make these noises.

6 She will move her, I shouldn't say --
7 her arms move to where it looks like it is
8 tightening up and she is almost sitting in like a
9 praying mantis position. I have never ever seen
10 Terri have any voluntary movement or follow
11 through with any commands.

12 Q Does Terri have tears at times?

13 A I have noticed she had a tear or two,
14 but to me it was after she would kind of take a
15 big deep breath. Almost looks like a yawn, and
16 her eyes would tear.

17 Q Have you ever seen Terri laugh or smile?

18 A I have not seen Terri laugh or smile.
19 She makes a moaning noise and her mouth opens up
20 kind of, but I would not call that a smile.

21 Q Do you know of any treatment method or
22 drug or thing that can be done which will improve
23 Terri's condition?

24 A No. I don't.

25 Q Has any doctor informed you there is any

1 treatment method, drug, or thing that can be done
2 to improve Terri's condition?

3 A No.

4 Q What steps, if any, did you take in
5 order to try to improve Terri's condition?

6 A When this first happened I, you know,
7 she was at Bayfront for rehab. And we found this
8 doctor in California that was doing experimental
9 surgeries on people that are in vegetative
10 states. He was placing a stimulator inside their
11 brain in hopes that that would stimulate the
12 dormant cells that were not actually dead yet. I
13 took her there.

14 The doctor was Hoshibushi (phonetic).
15 He was doing experimental surgery. The protocol
16 was one month. There was no improvement from
17 that. I brought Terri back. I hired a private
18 aide.

19 Q Let me backtrack. When was it that you
20 brought Terri to California? Do you recall?

21 A I believe '91. '92.

22 Q That was before the medical malpractice
23 award?

24 A Yes. It was.

25 Q How did you come by the funds in order

1 to send Terri to California?

2 A We were on the news. I sold hot dogs on-
3 St. Pete Beach. Sold pretzels. The association
4 where we lived got involved with us. Had a
5 Valentine's dance for her. They helped. We
6 raised some money to get her out there.

7 Q Did you go to California with Terri?

8 A Yes. I did.

9 Q You mentioned that stimulators were put
10 into Terri. Where were they put into Terri?

11 A Into her brain. Right on top of the
12 gray matter, which is the top part of your brain.

13 Q How were they -- were these electric
14 stimulators?

15 A It looked like your hand and had wires
16 that came out at a certain point of your brain.
17 It was electrodes in the back. I don't want to
18 say electrodes. I don't know what it was called.
19 Placed here that the wires ran off of. Ran down
20 the side of her neck and would go into her chest.
21 It looked like a pacemaker. They turn off and on
22 at that point.

23 Q An external device?

24 A Right.

25 Q You mentioned when you came back you

1 hired a private aide?

2 A Yes. I did.

3 Q Tell me why you did that.

4 A To continue to stimulate Terri. I
5 wanted to make sure she was dressed in everyday
6 clothes. I had Diane take her to museums. I had
7 Diane make sure when I was not there that she was
8 taken her for walks. I had Diane take her to
9 museums. To beauty makeovers. I made Terri's
10 hair done the way she did it. Makeup on.
11 Earrings. Necklaces.

12 Q Were any of these efforts successful,
13 Mike?

14 A No. They were not.

15 Q Have you ever received any opinion from
16 any doctor or physician to the effect that Terri
17 has any mental ability?

18 A No. I have not.

19 Q Any opinion from any doctor or physician
20 that she has any cognitive skill or cognitive
21 interaction with her environment?

22 A No. I have not.

23 Q I would like to outline with you Terri's
24 care after the accident. You mentioned that she
25 went to Humana Northside?

1 A Yes. She did.

2 Q How long was she in Humana Northside?

3 A Approximately two-and-a-half months.

4 Q Was she in the ICU?

5 A Yes. She was. I spent the first
6 sixteen days and nights there. Never left her.

7 Q Where did you sleep?

8 A Sometimes right next to her. Sometimes,
9 most of the times, out in the waiting room on the
10 chairs.

11 Q After those first sixteen days, did
12 you -- how often did you see Terri at Humana
13 Northside?

14 A I came every day.

15 Q Where did Terri go after Humana
16 Northside?

17 A She went to College Harbor.

18 Q What type of facility is that?

19 A Skilled nursing.

20 Q How long did you see Terri at College
21 Harbor?

22 A I saw Terri every day.

23 Q How much time did you spend?

24 A I went in the morning. Left in the
25 evening. Spent 8, 10, 12 hours a day.

1 Q After College Harbor, where did Terri
2 go?

3 A She went to Bayfront --

4 Q Um-hmm.

5 A -- Medical Center under the care of
6 Dr. Baras.

7 Q What was the purpose of Bayfront?

8 A She had 90 days of skilled rehab.

9 Q Was there any problem in getting the
10 insurance money for Bayfront?

11 A Yes. There was. I had to actually
12 fight the insurance company for that.

13 Q What type of rehabilitation was given to
14 Terri at Bayfront?

15 A Aggressive rehabilitation. They also
16 got to take the trach out. Remove the trach.

17 Q When you say rehabilitation, is that
18 physical therapy?

19 A Physical, occupational. Special
20 therapists worked with her.

21 Q Other than removing the trach, was
22 there any improvement in Terri's condition?

23 A No. There was not.

24 Q How often did you see Terri at Bayfront?

25 A I was there every day.

1 Q Where did Terri go after Rayfront?

2 A She went to my home.

3 Q How long was Terri at home?

4 A Approximately four months, I believe.

5 Q Who took care of her at your home?

6 A I did 98 percent of it. My
7 mother-in-law did help. My father-in-law
8 basically did not do much at all.

9 Q Were your in-laws living with you at
10 that time?

11 A Yes. They were.

12 Q Why is it you said she was home for
13 about four months? Why didn't she stay home
14 longer than that?

15 A Because Terri needs total care. It is a
16 lot of work. We could not afford nurses. I could
17 not do it by myself. My mother-in-law was afraid
18 to have her there. My father-in-law was concerned
19 about that.

20 Q Did your mother-in-law express why she
21 was afraid?

22 A In case something happened to Terri that
23 she didn't know how to do.

24 Q After Terri was at home, where did she
25 go?

1 A She went back to College Harbor.

2 Q How long was she there?

3 A She was there for a couple of weeks.

4 Q How often did you see her at College
5 Harbor?

6 A Every day.

7 Q And from College Harbor?

8 A She went to California.

9 Q Where were you in California for this
10 experimental treatment?

11 A We went to the University of California
12 at San Francisco Hospital.

13 Q How long were you there?

14 A At the hospital, itself, we were there
15 about a week. For the rehab portion, we were
16 there about a month. A little over a month and a
17 week.

18 Q How often did you see Terri in the
19 hospital in the rehab in California?

20 A At the hospital, I stayed in her room 24
21 hours a day. I slept in a cot next to her. At
22 the rehab center, I was there every day with her.
23 Morning, noon, and night.

24 Q When you came home from California,
25 where did Terri go?

1 A She came home with us, with me, for a
2 couple of weeks.

3 Q Who took care of her at home?

4 A I did, plus we were able to, since we
5 had the money from the fund raisers, we were able
6 to afford a couple of nurses to come in and help
7 us.

8 Q After Terri was at home a short time,
9 after that where did she go?

10 A Bradenton Medical Rehab.

11 Q What type of institution is Mediplex
12 (phonetic)?

13 A Mediplex deals mainly with brain
14 injury, strokes, anything that has to do with the
15 brain.

16 Q How long was Terri at Mediplex in
17 Bradenton?

18 A Approximately three months.

19 Q Why did Terri leave Mediplex?

20 A Because the doctors informed us there
21 was nothing more they can do for Terri and we had
22 to find a facility to put her in or take her home.

23 Q How often did you see Terri at Mediplex
24 in Bradenton?

25 A Every day.

1 Q Where did Terri go after Mediplex?

2 A Sabal Palms.

3 Q Where is that located?

4 A In Largo, I believe.

5 Q At Sabal Palms, did you have any
6 conflicts or disputes with the nursing home
7 regarding Terri's care?

8 A Yes. I did. I had many conflicts and
9 disputes. They had a lot of agency nurses on the
10 floor and they did not have enough staff. Terri
11 was getting the wrong medications. Terri was
12 laying in her dirty diaper for hours and hours on
13 end. Many grievances. She was not getting her
14 shower. Her teeth were not getting done. Her
15 medication to her mouth was not put on. When she
16 had the osteomyelitis, it was not cleaned properly
17 after the hospitalization.

18 They did not have enough CNAs on the
19 floor to care for the people and the amount of
20 care that was needed for certain people.

21 Q What did you do to make sure that those
22 deficiencies did not affect Terri's care?

23 A I went through the grievance policy that
24 they give to the family members when there is a
25 problem.

1 Q What were those?

2 A It was a form you filled out. The
3 grievance. You handed it in. The Director of
4 Nurses would read them and supposedly they would
5 fix them. And they would write you a little
6 letter back, and most of the time nothing was done
7 because they did not have enough staff to handle
8 the problems.

9 Q Were you a particularly popular person
10 with the nursing home administration?

11 A No. I was not.

12 Q At some point, did the nursing home take
13 some sort of legal action against you?

14 A Yes. They did.

15 Q Tell us about that, please.

16 A They basically tried to have me
17 restrained from the nursing home.

18 Q What was -- how did that play out,
19 Mr. Schiavo?

20 A It kind of coincided with the
21 Schindler's petition.

22 Q Was the nursing home successful?

23 A They were not.

24 Q Did the court appoint a guardian ad
25 litem to investigate the nursing home charges?

1 A Yes.

2 Q Did the guardian ad litem issue a
3 report?

4 A Yes. He did.

5 MR. FELOS: Your Honor, we, at the
6 status conference last week, agreed to take
7 judicial notice of the prior matters in the file,
8 but for convenience, I would like to introduce
9 into evidence Petitioner's Exhibit Number Three
10 which are certain pleadings and documents from
11 prior proceedings.

12 THE COURT: Is there an objection?

13 MS. CAMPBELL: No, Your Honor.

14 THE COURT: Thank you. They will be
15 received as Petitioner's Number Three.

16 (THEREUPON, PETITIONER'S EXHIBIT 3 WAS
17 RECEIVED IN EVIDENCE.)

18 Q (By Mr. Felos) Mr. Schiavo, I would
19 like you to read a paragraph from the report of
20 John Pacaric, (phonetic). Report of the guardian
21 ad litem. This is the paragraph that starts on
22 the bottom of Page 2 of the report and ends on top
23 of Page 3.

24 A The guardian of the person, Michael
25 Schiavo, is reported by everyone interviewed to be

1 attentive to the pleas of his wife. He is at the
2 nursing home on almost a daily basis. He is
3 constantly reviewing the ward's chart at the
4 nursing home and not hesitant to point out errors
5 and omissions in the care of his wife. There are
6 reported incidents of the guardian yelling and
7 screaming in the hallways, nurses in tears, and
8 intimidation of the staff by Mr. Schiavo.

9 Although I have concluded Mr. Schiavo is
10 a nursing home administrator's nightmare, I
11 believe that the ward gets care and attention from
12 the staff at Sabal Palms as a result of Mr.
13 Schiavo's advocacy and defending on her behalf. A
14 family member of another resident at Sabal Palms
15 reports that his relative receives less care as a
16 result of the staff spending so much time with
17 Mrs. Schiavo.

18 Q How often did you see Terri at Sabal
19 Palms?

20 A Every day at Sabal Palms.

21 Q How long was she there?

22 A Approximately two years, I want to say.

23 Q How long would you see her?

24 A Um, 8, 10 hours a day.

25 Q Did you have a dispute with Mr. and Mrs.

1 Schindler at Sabal Palms Nursing Home in February
2 of 1993?

3 A Yes. I did.

4 Q Describe, please, what happened at Sabal
5 Palms on February 14, 1993.

6 A February 14th I was in Theresa's room.
7 I had the door closed. I was studying for some
8 homework I had. The Schindlers came into the room
9 and they went over and said hello to Theresa. The
10 first words out of my father-in-law's mouth was
11 how much money he was going to get. I was, what
12 do you mean? Well, you owe me money.

13 I said to him to stop everything. I
14 said I did not receive any money. I gave it all
15 to Terri. He then, in turn, pointed at Terri and
16 said how much money is she going to give me. I
17 said to him you need to talk to the guardian of
18 the property. I'm not that person. With that, he
19 call me a few choice words, went out and slammed
20 the door.

21 With those words, I followed him and my
22 mother-in-law stepped in the way. She started
23 saying this is my daughter, our daughter, and we
24 deserve some of that money.

25 Q Mr. Schiavo, do you know what money

1 Mr. Schindler was talking about?

2 A He was talking about the award that I
3 received.

4 Q Approximately how much did you receive
5 net in your loss of consortium award?

6 A Approximately 300,000.

7 Q Was Mr. Schindler -- let me backtrack.
8 When did that case come to trial?

9 A The malpractice?

10 Q Yes.

11 A Um.

12 Q Does November '92 sound right to you?

13 A Yes.

14 Q How much in funds did Terri receive net?

15 A I think she netted 700,000.

16 Q Who was sued?

17 A The doctors were. Doctor Egel and
18 Power.

19 Q The gynecologist Terri was seeing to
20 become pregnant?

21 A Right. And the family doctor.

22 Q Was Mr. Schindler aware of the
23 malpractice proceeding?

24 A Yes.

25 Q He attended the trial?

1 A Yes.

2 Q Do you know whether or not he was there
3 the day the verdict was entered?

4 A Yes. He was there with pencil and
5 paper. He wrote the verdict amounts down to the
6 point that he was so upset that he thought the
7 judge did not calculate right. He could not go to
8 work the next day.

9 Q Did Mr. Schindler ever tell you why he
10 thought he was entitled to a portion of your loss
11 of consortium award?

12 A Because it was his daughter and he
13 deserved it.

14 Q Did you ever say to Mr. and Mrs.
15 Schindler that you would split with them your loss
16 of consortium award or pay them any portion of it?

17 A No. I did not.

18 Q I think you testified that you told
19 Mr. Schindler that you gave your money away?

20 A Yes. I did.

21 Q Was that a correct statement?

22 A No. It was not.

23 Q Why did you say this?

24 A Just basically to shut him up because he
25 was screaming.

1 Q At that time, in that dispute with
2 Mr. and Mrs. Schindler that day, was there any
3 discussion of lawsuits or lawyers?

4 A Yes. I got through. My mother-in-law
5 went outside. He was standing there. His fists
6 were clenched. He got in my face. Said he's
7 coming down on me. Going to get on this
8 guardianship and he was going to get a lawyer.

9 Q At any time have you told Mr. or Mrs.
10 Schindler that they could not come to the nursing
11 home or visit Terri?

12 A No. I did not.

13 Q Did you ever tell the nursing home not
14 to give the Schindlers information on Terri's
15 medical condition?

16 A At one point, yes.

17 Q Why did you do that?

18 A When Terri was in the hospital for, I
19 believe a urinary tract -- no. I forget what she
20 was in the hospital for. It was for some
21 hospitalization. And the Schindlers never showed
22 up or even called about her care.

23 Q Did you change your position about
24 giving the Schindlers access to medical
25 information?

1 A Yes. I did.

2 Q Looking back on it, was that a moment
3 that you are proud of?

4 A No. I was not. It was done. It was
5 emotions running. I was angry.

6 Q Back then in 1993, that was still three
7 years after Terri's incident, how were you doing
8 emotionally? How were you taking it?

9 A I'm sorry. Repeat that, George.

10 Q Back in 1993, how well were you coping
11 emotionally with what happened to Terri? How were
12 you doing?

13 A I don't know how I was doing it. I was
14 an emotional wreck. I was seeing a
15 psychiatrist. A psychologist, I should say. I
16 had a lot of unanswered questions of why.

17 Q Did you ever tell your in-laws that
18 Terri would be better off dead than coming out of
19 her coma?

20 A No. I did not, sir.

21 Q Did you ever have a conversation or make
22 a statement about her coming out of the coma?

23 A I made a mention to Mr. Schindler one
24 day out in the hall. I said, this was after
25 probably four or five years of Terri being in this

1 condition, I said to him maybe it was in Terri's
2 best interests. It was not feasible to come out
3 and find out you are going to be a quadraplegic
4 and you can't walk anymore.

5 Q On what basis did you believe she would
6 be a quadraplegic?

7 A The doctors have told me that in the
8 past.

9 Q How has her (sic) relationship been with
10 Mr. and Mrs. Schindler since the February '93
11 incident?

12 A How has my relationship been?

13 Q Yes.

14 A I have not spoken to them since, except
15 through trials or --

16 Q Have they spoken to you?

17 A No. They have not. I did, on one
18 occasion when Terri had her gallbladder removed, I
19 did on one occasion when the mother called the
20 nursing home, I tried to talk to her and she
21 refused to talk to me.

22 Q Did Mr. Schindler ever follow up on his
23 threat to get a lawyer?

24 A Yes. He did.

25 Q I believe a petition was filed in July

1 of 1993. Later that year. What were you sued
2 for, Mr. Schiavo? What was the Schindlers asking
3 the Court to do?

4 A That I was not taking care of Terri. I
5 was seeing other people. And that I was in
6 conflict due to her money that if Terri died I
7 would inherit it.

8 Q Mr. Schiavo, since Terri's incident, did
9 you have any intimate relations with another
10 woman?

11 A Yes. I did.

12 Q When did that occur?

13 A Approximately five years after the
14 incident. I don't know the exact dates.

15 Q How long did that relationship last?

16 A Approximately eight months.

17 Q Did Mr. and Mrs. Schindler know about
18 it?

19 A Yes. They did. Mr. Schindler wanted me
20 to do it. He condoned it, along with Mrs.
21 Schindler. They met the person I was seeing.

22 Q Do you currently have an intimate
23 relationship with a woman?

24 A Yes. I do.

25 Q How long have you known her?

1 A Five-and-a-half years.

2 Q Would you like to have a family
3 sometime?

4 A Very much so.

5 Q Because you're involved, because you
6 have a relationship with someone else, does that
7 mean you don't love Terri?

8 A I love Terri very deeply. I always
9 will.

10 Q Michael, does your petition have
11 anything to do with Terri's money at all?

12 A No. It does not.

13 Q How was the lawsuit the Schindler's
14 brought against you disposed of?

15 A They dismissed their case with prejudice
16 as long as I would not seek attorney's fees.

17 Q At some point in time, did you move
18 Terri from Sabal Palms Nursing Center?

19 A Yes. I did.

20 Q Where did Terri move to?

21 A Palm Garden, Largo.

22 Q Is that where she is currently staying?

23 A Yes. It is.

24 Q When did that occur?

25 A 1996, I believe.

1 Q How often did you -- how often do you
2 see Terri at Palm Garden in Largo?

3 A Currently?

4 Q Yes.

5 A Once or twice a week.

6 Q What do you do? How long do you stay?
7 What do you do when you see Terri?

8 A An hour-and-a-half, two hours. I
9 usually get there when Olga is bringing her out of
10 the shower. Help lift her. Get her dressed.
11 Usually blow dry her hair. Dry her hands off.
12 Put her pads in her hands. Usually check over her
13 skin. Make sure she does not have any tears or
14 whatever.

15 Q Do you still buy Terri's clothes for
16 her?

17 A Yes.

18 Q Do you still help dress Terri?

19 A Yes. Make sure she has her haircut
20 appointment. Do her wash. Make sure all her
21 needs are met.

22 Q By the way, Mr. Schiavo, all the times
23 that Terri has been hospitalized, how many times
24 would you say Terri has been hospitalized?

25 A Hospitalized?

1 Q For the various medical problems you
2 testified to before.

3 A Twenty times.

4 Q Has she ever been in the hospital one
5 day when you were not there?

6 A No. She has not.

7 Q How many times has Terri gone to the
8 doctor?

9 A Over a hundred, 130.

10 Q What is the logistics, mechanism of
11 getting Terri to the doctor?

12 A Depending on what the problem is, prior
13 we used to have to put her in SunStar ambulance.
14 Now she basically is transported by wheelchair
15 transport.

16 Q In those hundred or so doctor visits,
17 has there ever been a doctor visit for Terri where
18 you have not been there with her?

19 A No. There has not. I was there for
20 every one of them.

21 Q Was there a point in Terri's care where
22 you came to the decision that she should not be
23 medically treated for an infection?

24 A Yes. There was.

25 Q When did that occur?

1 A I believe it was in '94. '93, '94.

2 Q When did -- tell me how that came about?

3 A I took Terri to the doctors for a
4 bladder infection. The doctor recommended that we
5 don't treat the infection and that Terri should
6 have a "Do Not Resuscitate" order in place.

7 Q How did you feel about that when you
8 heard that?

9 A I was emotional, but I felt it was what
10 Terri would want.

11 Q Did you bring up the subject of the DNR
12 order, not treating the infection, first?

13 A No. The doctor did.

14 Q Did you make a decision to implement,
15 institute, a Do Not Resuscitate order and Do Not
16 Treat The Infection?

17 A Yes. I did.

18 Q What would have been the medical
19 consequences of not treating that infection?

20 A Terri -- the infection would basically
21 turn into a septic-type infection throughout her
22 body. It would naturally shut down her organs.
23 A painless process.

24 Q Was that decision implemented?

25 A Yes. It was.

1 Q Did the nursing home react to it at all?

2 A Yes. They did. They started getting
3 all upset. Telling me it was against the law to
4 do something like that.

5 Q How did -- did Mr. and Mrs. Schindler do
6 anything in response to your decision not to treat
7 the infection?

8 A They amended their original petition
9 and brought the new amended petition against me
10 that I was not treating the infection.

11 Q Didn't they accuse you of abusing Terri
12 by not treating the infection?

13 A Yes. They did.

14 Q Did you back off of the decision at
15 that time?

16 A Yes. I did. I had the nursing home, I
17 had the petition, and my emotions were running.
18 So I backed way off.

19 Q Back then in, I believe it was March of
20 1994, the Schindler's amended their petition in
21 regarding the decision not to treat. At that
22 time, why didn't you pursue removal of the feeding
23 tube?

24 A Because at that time my emotions were
25 running. I couldn't -- I was ready to do the

1 natural thing. I was not ready to pull the
2 feeding tube at that time.

3 Q Even though you knew Terri wanted it?

4 A Yes.

5 Q Why were you not able?

6 A It was -- I was not ready for that yet.

7 Q The Schindlers dismissed their petition
8 with prejudice in September of 1995 and this
9 petition was filed in 19 -- your current petition
10 to remove artificial life support was filed in May
11 of 1988 (sic). Why did you wait two-and-a-half
12 years to file the petition?

13 A I did not wait. I met you in the
14 beginning of 1996, I believe. I was talking to
15 another attorney.

16 Q Well, okay. I have to caution you not
17 to testify as to any communication you might have
18 with your attorney because of attorney/client
19 privilege. Let me ask it this way. Did you seek
20 to put into motion your decision to remove the
21 feeding tube before the petition was filed in May
22 of 1988 (sic)?

23 THE COURT: You keep saying '88.

24 MR. FELOS: '98. Thank you,

25 Your Honor.

1 Q (By Mr. Felos) When did you make the
2 decision and start putting it in motion?

3 A In 1995. End of 1995.

4 Q Mr. Schiavo, I would like to show you
5 Petitioner's Exhibit Number Four for
6 identification and ask you if you can identify
7 what those are.

8 A This is an affidavit from Dr. Gambone.
9 I believe it explains Terri's condition.

10 Q Affidavit of Dr. Gambone and affidavit
11 of --

12 A I'm sorry. James Barnhill.

13 Q And?

14 A Dr. Kamp.

15 MR. FELOS: Your Honor, I move to
16 introduce these into evidence as Petitioner's
17 Exhibit Number Four.

18 THE COURT: Is there an objection?

19 MS. CAMPBELL: No objection.

20 THE COURT: Thank you. They will be so
21 received.

22 (THEREUPON, PETITIONER'S EXHIBIT 4 WAS
23 RECEIVED IN EVIDENCE.)

24 Q (By Mr. Felos) Mr. Schiavo, you
25 mentioned that your mother passed away. When did

1 that occur?

2 A 1997. July.

3 Q Did that experience at all affect your
4 decision to bring this petition?

5 A My mother gave me a gift when she was
6 dying. We stopped her feeding because that is
7 what she wanted, and her medications. She gave me
8 that gift that it was okay to die.

9 Q Mr. Schiavo, why have you filed this
10 petition? Why are you asking the Court for
11 permission to remove Terri's feeding tube?

12 A Because that is what Terri wanted, and
13 it's my responsibility because I love her so much
14 to follow out what she wanted.

15 MR. FELOS: Thank you. No further
16 questions.

17 THE COURT: Why don't we take a short
18 break. Five minutes ought to be enough to stretch
19 and use the facilities and get back.

20 THE BAILIFF: All rise. Court stands in
21 recess.

22 (THEREUPON, A RECESS WAS HAD FROM 10:40 -
23 10:50 A.M.)

24 MR. FELOS: Your Honor, may I step out
25 and find co-counsel?

1 THE COURT: Yes, sir.

2 THE BAILIFF: Circuit court is back in
3 session.

4 THE COURT: Thank you.

5 MR. FELOS: May we approach a moment?

6 (THEREUPON, THE FOLLOWING PROCEEDINGS WERE
7 HAD AT THE BENCH.)

8 MR. FELOS: Your Honor, my client
9 requests that the proceedings not be recorded by
10 the media, and he believes that it would impair
11 the privacy rights of the ward and we make that
12 request.

13 THE COURT: What is the legal basis for
14 that? Is there any authority for keeping the
15 media out of here?

16 MR. FELOS: I have not researched the
17 issue, Your Honor. I have no case to present.

18 THE COURT: The bases are juvenile
19 proceedings are private and they cannot be in
20 those, but they can be outside the court. It's
21 interesting they can take --

22 MR. FELOS: There is some precedent in
23 the guardianship statute. There is a provision
24 for the court to be closed in incompetency
25 proceedings.

1 THE COURT: Incompetency proceedings.

2 And I have so ruled the media had no right to
3 those files or proceedings. This is different.
4 Do you know of any authority?

5 MS. CAMPBELL: I don't know of any.
6 While I'd like to see it agreed to, I don't know
7 of any legal authority that we could, because I
8 don't think there is anything under Chapter 119.

9 THE COURT: Absent authority, I don't
10 know how I can ask them to leave. If you would
11 like to take an additional recess and see if you
12 can prevail upon them, I'm willing to do that, but
13 I don't know of any legal authority for them to
14 not be here.

15 MR. FELOS: Then I say let's proceed, if
16 that is the ruling of the Court.

17 THE COURT: Thank you.

18 CROSS-EXAMINATION.

19 BY MS. CAMPBELL:

20 Q Good morning, Mr. Schiavo. As you
21 recall, I am Pam Campbell. I represent Mr. and
22 Mrs. Schindler.

23 A Good morning.

24 Q The relationship that you currently
25 have, the lady's name, is it Jody Sintonsay

1 (phonetic)?

2 A Yes.

3 Q Could you describe that relationship for
4 me?

5 A We are boyfriend/girlfriend. We live
6 together.

7 Q Would you consider her your fiancée?

8 A I would consider her -- yes. Yes.

9 Q Has she ever been so noticed as anything
10 in writing in the newspaper as your fiancée?

11 A Yes.

12 Q You and she own a house together; is
13 that correct?

14 A Yes.

15 Q Can you recall going on the train tip
16 incident that you referred to with Mr. Felos, can
17 can you recall the time frame when you and Terri
18 were coming on the train to Florida?

19 A What do you mean the time frame?

20 Q When was that?

21 A I believe it was in '86.

22 Q 1986?

23 A Yeah. '86. I'm not good with dates and
24 times, like I told you before.

25 Q Wasn't it in October of 1985?

1 A I don't recall the month. It was the
2 month that her grandmother passed away.

3 Q You were married November of '84?

4 A November 10th. Yes.

5 Q You came to the Schindlers' condominium
6 in St. Petersburg for a honeymoon right after
7 that?

8 A Correct.

9 Q Then in '85, the spring of '85, did you
10 come back to St. Petersburg for a vacation?

11 A Did we come back?

12 Q A plane trip?

13 A I don't believe so. I don't recall
14 that.

15 Q After Terri's accident, which was
16 February 1990, were you employed at that time?

17 A After Terri's accident? Yes. I was.

18 Q Shortly after the accident, didn't you
19 stop working at Agostino's?

20 A Yes.

21 Q When did you then become reemployed?

22 A I went back to Agostino's for a month or
23 so. I worked part-time for them. They were under
24 new ownership so -- and that went belly up. Then
25 I just -- I didn't work. I went back to school in

1 '93, I believe.

2 Q And you began your employment with
3 Morton Plant in 1996?

4 A Correct.

5 Q So basically from the beginning of 1990
6 until 1996 you were unemployed; is that correct?

7 A Yes.

8 Q You were talking about some of the fund
9 raisers that you testified to previously. Can you
10 tell me about some of the details of the fund
11 raisers?

12 A We sold hot dogs, or I sold hot dogs on
13 St. Petersburg Beach. We sold pretzels at the
14 Publix. We had a Valentine's Day dance for her
15 with the association. The association I believe,
16 around Christmas, they put a luminary -- you buy
17 the bag in Terri's name. They did that on St.
18 Pete Beach to help raise money.

19 Q Where were all those funds that you were
20 raising, where were they being maintained?

21 A At First Union Bank.

22 Q Did she work for Prudential at the time?

23 A Yes.

24 Q Did the Prudential employees get
25 together and have a fund rasier?

1 A I don't recall. I don't remember that.

2 Q Was there a fund raiser promoted by the
3 St. Petersburg Times, Channel 10 and Channel 8?

4 A Yes. I said I was on the news.

5 Q About how much money did all those
6 different fund raisers raise?

7 A Probably close to about 20,000. I'm not
8 sure. You would have to check on the old
9 records.

10 Q Did you also receive a payment, pay-out,
11 from Prudential from insurance proceeds that Terri
12 was entitled to?

13 A It was her life insurance, yes, that she
14 was entitled to.

15 Q How much was that?

16 A 10,000.

17 Q Did you also receive Terri's social
18 security checks during that time frame?

19 A No. Terri could not get social security
20 because she was still receiving her payment from
21 work.

22 Q Did you receive any SSI from Terri?

23 A No.

24 Q Did you move to Florida from
25 Philadelphia in April 1986?

1 A That sounds correct.

2 Q And you lived in the Schindlers' condo?

3 A Yes. We did.

4 Q How much rent were you paying at the
5 time?

6 A I don't recall.

7 Q About \$400 a month?

8 A Sounds correct. Yeah.

9 Q Now you testified previously that
10 afterwards you moved to Thunder Bay. Isn't it
11 true that you moved to McGregor Place?

12 A Yes. Yes. I'm sorry. I forgot about
13 that one.

14 Q You moved to McGregor Place in September
15 1989; is that correct?

16 A I don't remember the date.

17 Q If you could bear with me and listen to
18 the time frame. I believe you testified that you
19 moved into the Schindlers' condo in April of '86
20 and then moved to McGregor Place, I'm asking you,
21 in 1989? Was it previously to --

22 A I don't recall the dates, ma'am.

23 Q Was it right prior to Terri's accident,
24 which would have been in February 1990?

25 A I don't recall the dates that we moved

1 in there and moved around. The accident happened
2 at Thunder Bay.

3 Q How long did you live in McGregor Place?

4 A I just remembered it. I don't
5 remember.

6 Q Months?

7 A It was a few months. Yeah.

8 Q How long did you live in Thunder Bay
9 prior to Terri's accident?

10 A Eight months, I believe. I'm not sure.

11 Q During that entire time that you were
12 living in the Schindlers' condo, from '86 until
13 sometime in '89, were you paying rent consistently
14 during that time?

15 A No. We were not.

16 MR. FELOS: Objection. I believe that
17 is a mischaracterization of his testimony. He
18 didn't testify that he lived in the Schindler's
19 condo from '86 to 1989.

20 THE COURT: I'll overrule the
21 objection. I think there is enough in there to
22 allow that kind of question.

23 THE WITNESS: I'm sorry. Repeat the
24 question.

25 Q (By Ms. Campbell) Did you pay rent to

1 the Schindlers then during that entire time you
2 were living in the Schindler's condo?

3 A No. They were gracious and let us slide
4 a couple months when we could not afford it.

5 Q Just a few months?

6 A I don't remember how many months, ma'am.

7 Q Did the Schindlers assist you in moving
8 from Philadelphia to St. Petersburg?

9 A No. I don't recall.

10 Q Did they contribute \$900 for your moving
11 expenses?

12 A I don't recall that.

13 Q When you moved from the Schindlers'
14 condo, is it your testimony then that you moved
15 from the Schindlers' condo to McGregor Place?

16 A That would have to be. Yeah.

17 Q When you moved from the condo to
18 McGregor Place, did the Schindlers loan you money
19 at that time to secure a new apartment?

20 A I don't recall.

21 Q Right after Terri's accident, wasn't
22 Mrs. Schindler right there by your side helping
23 with Terri each step of the way?

24 A Not all the time. No.

25 Q Would you describe your relationship as

1 close in trying to assist Terri?

2 A My mother-in-law and I were close. Yes.

3 Q In February of 1991, a year after the
4 accident, didn't you, the three of you, live
5 together?

6 A Yes.

7 Q You and Mr. and Mrs. Schindler?

8 A Yes.

9 Q With the hopes that Terri would then
10 ultimately come home and live there with you?

11 A Yes.

12 Q At that time, were you sharing in the
13 expenses, you and the Schindlers?

14 A Which home are you speaking of?

15 Q Hemosita in Del Mar?

16 A That home was in my name. I was paying
17 half the rent. Mr. and Mrs. Schindler and their
18 daughter were paying the other half.

19 Q Other expenses that you shared, Florida
20 Power, telephone bill, they were shared as well?

21 A Yes.

22 Q You were in the larger home with hopes
23 that Terri would be able to come and live there
24 with you?

25 A We were in the larger home, but it was

1 not with the hopes that Terri could live with us.
2 Because we only rented the place.

3 Q Was there a reason why it was, in, the
4 lease was in your name as opposed to
5 Mr. Schindler's name?

6 A Because Mr. and Mrs. Schindler went
7 bankrupt and they could not get credit.

8 Q But you all shared the home equally?

9 A Mr. and Mrs. Schindler and Suzanne and
10 myself.

11 Q Was there a time then in that you moved
12 from that house to another house with the
13 Schindlers?

14 A No.

15 Q When you were describing the different
16 places where Terri went, from Northside to
17 Bayfront and to the Mediplex, College Harbor,
18 would Mrs. Schindler go with you to those
19 individual facilities to visit Terri?

20 A She went. Yes. But not all the time.

21 Q The time Terri was home living in the
22 home with you, Mrs. Schindler lived there, too?*

23 A Yes.

24 Q Did she assist you in taking care of
25 Terri during that time frame?

1 A Yes. She did.

2 Q The incident then that happened, the
3 disagreement in Terri's room in February of 1993
4 between you and Mr. and Mrs. Schindler, to that
5 time frame, was it shortly thereafter that you
6 decided to withhold medical information from the
7 Schindlers?

8 A I don't know the exact time frame, but I
9 believe it was.

10 Q Do you recall then how long it was then
11 until you started allowing the Schindlers to learn
12 more about the medical condition of their
13 daughter?

14 A I don't recall the time frame.

15 Q Do you recall in 1996 your attorney,
16 Deborah Bushnell, sending a letter to the
17 Schindlers allowing them to now be able to get
18 information about their daughter?

19 A Yes. I remember that.

20 Q Prior to that kind of communication
21 going in 1996 -- so from '93 to 1996, did you
22 allow the nursing home to talk to Mr. and Mrs.
23 Schindler about their daughter's medical
24 condition?

25 A Yeah. Um-hmm.

1 Q It's your testimony here today that the
2 nursing home was permitted, from 1993 to 1996, to
3 discuss Terri's medical condition with the
4 Schindlers?

5 A I believe after I left I told them not
6 to -- to disregard or whatever, that other order.
7 Yeah. I'm not sure of the exact time frame.

8 Q Would it surprise you to know that the
9 nursing home was not giving out information during
10 that time frame to Mr. and Mrs. Schindler?

11 MR. FELOS: Objection. Lack of
12 foundation.

13 THE COURT: Overruled.

14 A I'm sorry. Repeat your question.

15 Q (By Ms. Campbell) Would it surprise you
16 to know that the nursing home was not giving out
17 information to Mr. and Mrs. Schindler from '93 to
18 '96?

19 A The way Sabal Palms went, it would not
20 surprise me. But I know they get information.

21 Q I'm sorry. What was the last point?

22 A I know they did get information.

23 Q Who do you believe they received
24 information from?

25 A Elaine Nelson. The social worker.

1 Q From Sabal Palms?

2 A Yes.

3 Q And the different facilities that you
4 would take Terri to, for example when she would go
5 to Largo Medical Center for hospitalization, were
6 you ever requested as the guardian as to whether
7 or not there were any advanced directives from
8 Theresa Schiavo?

9 A From the hospital?

10 Q Yes.

11 A I don't remember any of those.

12 Q On any of the hospital admission dates,
13 do you recall anyone from admissions going over
14 paperwork with you?

15 A Yeah.

16 Q Do you recall them asking you whether or
17 not Theresa Schiavo had any advanced directives
18 such as a living will?

19 A I don't recall them asking that.

20 Q What do you believe that your testimony
21 would have been to that? What do you think your
22 answer would have been?

23 A If they would have asked me at that time
24 frame that she was --

25 Q The question is whether or not she had a

1 living will?

2 A My answer would be no. She does not
3 have a living will.

4 Q Did you ever seek legal assistance or
5 authorize an attorney to demand payment
6 reimbursement to you of the Schindlers for some
7 money for a credit card debt?

8 A This -- I don't recall that.

9 Q In 1993, do you recall an attorney Jan
10 Piper?

11 A Yes. I do.

12 Q Do you recall Mr. Piper sending a letter
13 to Mr. and Mrs. Schindler on your behalf demanding
14 payment of, a refund of some credit card debt?

15 A I remember him sending a letter. I
16 don't know if it was about a credit card.

17 Q What was your recollection of what was
18 the dispute between you and Mr. and Mrs.
19 Schindler?

20 A I don't remember, but I don't think it
21 was a credit card.

22 Q You do recall Mr. Piper sending a letter
23 on your behalf to the Schindlers? A demand
24 letter?

25 A I do recall that. Yes.

1 Q Is it your testimony here today that
2 you never agreed with Mr. and Mrs. Schindler to
3 reimburse them for any of the expenses that they
4 had advanced to you and Terri in the way of moving
5 expenses?

6 A I never agreed with them.

7 Q You never agreed to reimburse them?

8 A I never agreed. They never even brought
9 it up.

10 Q So your testimony is today that you and
11 the Schindlers never discussed repayment of any of
12 the loans made to you?

13 A No. We have never discussed that.

14 MR. FELOS: Your Honor, objection. The
15 question is improper because the witness has
16 denied that there were any loans. The question
17 is --

18 THE COURT: The question is did you ever
19 agree to reimburse. I don't know how you
20 categorize it. We can get real technical. I
21 think the Court understands the nature of the
22 question. I will allow it.

23 MS. CAMPBELL: The question went to a
24 discussion between he and the Schindlers, and I
25 believe the answer was no. There was no other

1 discussions. No further questions.

2 THE COURT: Thank you. Redirect?

3 REDIRECT EXAMINATION

4 BY MR. FELOS:

5 Q Just to clarify a couple of things, Mr.
6 Schiavo, there was some testimony about life
7 insurance. Was in fact the payments that Terri
8 received disability payments from Prudential?

9 A Yes.

10 Q Not life insurance benefits?

11 A Yes.

12 Q You also testified about social security
13 benefits. I recall you saying that Terri did not
14 receive social security benefits. Was that during
15 the time she was receiving disability from
16 Prudential?

17 A Say it again to me.

18 Q Did Terri ever -- did Terri ever receive
19 any social security benefits while she was
20 receiving disability payments from Prudential?

21 A No.

22 Q Did she receive social security payments
23 after that?

24 A Yes.

25 Q In fact, are you aware of any written

1 advanced directive by Terri regarding removal of
2 life support and medical treatment? Are you aware
3 of any living will executed by Terri?

4 A No. I'm not.

5 Q I believe you mentioned you were
6 engaged. How long have you been engaged?

7 A Four years.

8 Q Do you have a wedding date?

9 A We have no wedding date set.

10 MR. FELOS: I have no other questions.

11 THE COURT: Thank you. You can stand
12 down, Mr. Schiavo.

13 THE WITNESS: Thank you.

14 THE COURT: Call your next witness.

15 MR. FELOS: We call Scott Schiavo.

16 THE COURT: Raise your right hand for
17 me, please.

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

20 THE COURT: Thank you, sir. Have a
21 seat there, please.

22 DIRECT EXAMINATION

23 BY MS. FELOS:

24 Q Good morning. State your full name for
25 the record, please.

1 A Scott Schiavo.

2 Q Mr. Schiavo, where do you live?

3 A In Carmel, Indiana.

4 Q How long have you been there?

5 A A little over three years.

6 Q Where did you live before then?

7 A In Trevoise, Pennsylvania.

8 Q Approximately where is that located?

9 A It's, I guess close to northeast
10 Philadelphia.

11 Q Thank you. Have you lived in the
12 Philadelphia area most of your life?

13 A The suburbs of Philadelphia. Yes. All
14 my life.

15 Q Mr. Schiavo, what is your educational
16 background?

17 A I graduated high school. I graduated
18 from Philadelphia School of Offset Printing.

19 Q Are you currently employed?

20 A Yes. I am.

21 Q What do you do?

22 A I'm a landscaper.

23 Q What do you do in your work?

24 A I install irrigation systems.

25 Q Are you related to Mike Schiavo?

1 A Yes.

2 Q How?

3 A He is my younger brother.

4 Q Tell us about your general family
5 background. Are your parents still living?

6 A My father is. Yes.

7 Q Your mother?

8 A She passed away.

9 Q Approximately when was that?

10 A What year is it? It's going to be three
11 years this July.

12 Q What about your grandparents, are they
13 still alive?

14 A No. They have passed away.

15 Q You have brothers?

16 A Yes. I do. Four.

17 Q How many?

18 A Four.

19 Q Any sisters?

20 A No. I don't.

21 Q Are all the brothers living?

22 A Yes. They are.

23 Q What about are they married?

24 A Yes. They are.

25 Q So you have how many sister-in-laws?

1 A I have four.

2 Q So Theresa Schiavo, Michael's wife, is
3 your sister-in-law; is that correct?

4 A Yes. She is.

5 Q When did you meet her?

6 A I believe it was around October. I
7 believe it was of 1983.

8 Q How did you meet her?

9 A At a family gathering at my brother's
10 house.

11 Q What kind of gathering was this?

12 A If I remember correctly, it was my
13 brother's birthday.

14 Q Was this a date or something that Mike
15 had with her?

16 A Yes.

17 Q They were not married yet?

18 A No. He brought her there on a date to
19 meet the family.

20 Q Did you then see Theresa after that
21 period of time when you first met her that
22 evening?

23 A On other occasions?

24 Q Um-hmm.

25 A Yes. Many.

1 Q In what way? When did you have occasion
2 to see her again?

3 A Typically, family gatherings. There was
4 times that Mike and Terri would stop into my house
5 or -- but it was mainly family gatherings.

6 Q So they just would pop in or --

7 A Yeah. That is the way we were. You did
8 not need an invite to come to any of our houses.
9 If you were around the corner, you stopped in. It
10 was pretty much an open door family type of deal.
11 You did not have to call somebody up and invite
12 them over to visit or whatever. They just stopped
13 in.

14 Q So how often would you say you saw
15 Terri?

16 A On average I would say one to two times
17 a week depending on the holiday season. Because
18 we had several birthdays or a couple each month or
19 whatever.

20 Q Were you married then?

21 A Yes. I was.

22 Q Any children?

23 A I have one. I had one at the time.

24 Q What is the child's name?

25 A Her name is Aileen.

1 Q When was she born?

2 A In February of 1983.

3 Q Okay. Probably you might have met Terri
4 before then?

5 A Yes. Before the baby was born.

6 Q I think you said '83.

7 A I'm sorry. The baby was born -- let me
8 get the dates right here. She was born in
9 February of '93 (sic).

10 Q '83?

11 A The baby was born before Terri.
12 Because we met Terri in October of 1983.

13 Q Did Terri take any special interest in
14 Aileen?

15 A My daughter, five weeks old, had
16 developed SIDS. She was taken to Children's
17 Hospital of Philadelphia.

18 Q Um-hmm.

19 A Terri would call us. When we came home,
20 of course all my family would come to see us.
21 This and that. See the baby. But Terri, she had
22 brought her a little stuffed puppy that my
23 daughter still has to this day.

24 Q And how old is she now?

25 A Seventeen in February.

1 Q What was Terri like when you were seeing
2 so much of her?

3 A As in?

4 Q What kind of personality did she have?

5 A A beautiful person. Terri was
6 outgoing. The first we met her, I guess at any
7 date your first time coming to a family she was
8 kind of uncomfortable, not knowing everybody when
9 she came in. But after, boy, an hour or so, she
10 just lightened up. By the end of the night, she
11 was having a great time when she knew everybody.

12 My brother is kind of a crazy guy.
13 Likes to have a good time. She loosened up real
14 nice. I have never seen Terri uncomfortable
15 around my family or any event since then.

16 Q So she was friendly?

17 A Yes.

18 Q What about a sense of humor? Did she
19 have a sense of humor?

20 A Yes. In fact, I still to this day have
21 a card she sent my wife on a postcard from Florida
22 of some gentlemen with their back sides bared and
23 a little letter saying to my wife, "Geez, Karen,
24 these are my four new boyfriends. Do you want to
25 come over?"

1 Q She was joking around?

2 A Yes. She was joking around. She just
3 had that type of sense of humor. Like my whole
4 family. She sort of like built into it.

5 Q Did you ever see Terri without Mike?

6 A Yes. I have. There is times when Mike
7 -- Mike was a manager for McDonald's and he also
8 -- at the time. And she would, if there was a
9 family get together, whatever, Terri would show
10 up. Terri didn't -- she was -- she sort of
11 blended in with us.

12 Same thing, she stopped at our house
13 before on a night that Mike was working because
14 they only lived around the corner from where we
15 lived. She would show up. Sit down and watch TV
16 with us. Talk to my wife about things. You know
17 how girls get together and chat. She would do
18 stuff like that.

19 Q What kind of relationship did you have
20 with Terri?

21 A Um, I would say more as a sister than a
22 sister-in-law. That goes for all of us. My
23 mother always said that she never had any
24 daughters, but she had her four girls.

25 Q It's okay. Are you okay?

1 A Yeah. It's a tough thing.

2 Q Let's kind of go back for a little bit
3 of recollection.

4 A No. She would -- our family is -- we
5 have sister-in-laws, brother-in-laws, whatever.
6 They became more of a sister or brother, it was,
7 and was not treated as inlaws.

8 Q Okay. Thank you. Have you seen Terri
9 since the medical accident that she had?

10 A Yes.

11 Q When would that have been? You saw her
12 down here, I presume?

13 A Yes. It was. I came out here in --
14 I'm trying to think of the date.

15 Q That's okay. We can come back to it. I
16 can see you need to relax a little bit.

17 A I believe it was in 1990 --
18 approximately six years ago.

19 Q So '94? Something like that?

20 A Yeah.

21 Q Okay. That is the only time you have
22 been in Florida in the last 10 years or so?

23 A Yeah.

24 Q Something -- did you do any recording or
25 something for Terri when her accident first

1 occurred?

2 A Yes. When Terri -- when this first
3 happened to Terri, we were all told Mike was
4 trying to do whatever he could for Terri. They
5 had said to stimulate Terri's listening skills I
6 guess, and her brain, that if she heard familiar
7 voices and everything else -- so we all had met at
8 my mother and father's house when they are living
9 back in Lovelton, Pennsylvania.

10 We took turns and went into my parent's
11 bedroom and we each made our own little recording
12 on the tape to talk to Terri. We then sent it to
13 Mike where he had purchased a Sony walkman tape
14 for her to listen to.

15 Q Besides Terri, have you ever had a
16 relative maintained on artificial life support?

17 A Yes. My grandmother.

18 Q Tell us a little bit about how that
19 happened.

20 A Well, she had -- it was a touchy
21 situation because she had signed a living will, a
22 DNR, but the doctor at the time did not have it in
23 his hand. When she had taken a turn for the
24 worse, they performed I guess CPR and put her on
25 the life support system.

1 Q Then what happened?

2 A Well, it was totally against her will
3 and there was nothing we could do because they
4 said once you're on it, you can't just turn it
5 off.

6 Q So that is what they told you?

7 A Yes. And her doctor mentioned there
8 are ways they can work with the medication or,
9 whatever because at the time she was only being
10 kept alive by a machine. She was pretty much
11 gone. It upset us all because it was not the way
12 she wanted to be kept alive. To see her like
13 that, it was not the memory that we all wanted.

14 Q When you say "we all", who was there?

15 A At the time it was my mother and father,
16 my two aunts, two uncles, my three older brothers,
17 and two of my sister-in-laws because at the time
18 my one brother was not married. Myself. My wife
19 was home with my kids because we had an infant at
20 the time.

21 I got a phone call that Saturday morning
22 that she was not doing well. So my one brother
23 picked me up on the way to the hospital.

24 Q So it sounds like the whole family was
25 there except for --

1 A Yes. Well, Mike was not. Mike was
2 living here in Florida.

3 Q When did your grandmother die?

4 A She passed on that same day, later on.

5 Q Did Mike and Terri come up for the
6 funeral?

7 A Yes. They came for the funeral at that
8 time.

9 Q Were there any conversations at the
10 funeral or after regarding your grandmother?

11 A Yes. There was. At a luncheon that we
12 had, you know, my family, friends and stuff.

13 Q Kind of describe that for us.

14 A We went to a, it's called a country club
15 but we went there for a luncheon afterwards.
16 There was family, friends, relatives. We were
17 sitting around. At the time, it was pretty much
18 all the brothers and sisters sitting around the
19 table.

20 And we were discussing, talking about my
21 grandmother, because she was a great woman. We
22 were kind of upset about the way that she left the
23 world. It was not her wish the way she wanted to
24 live.

25 Q So where were you sitting?

1 A We were sitting around somewhat of a
2 round table. We were all sitting around it at the
3 time. My wife was to my right and it was pretty
4 much boy/girl all the way around. We came out.
5 Terri was sitting on my left-hand side.

6 I was really upset because they did this
7 to my grandmother. We were all like "it stinks".
8 The only reason why they put you on these things
9 is to raise more money for the hospital.
10 Basically that is the way I felt.

11 If somebody is gone, why keep them on a
12 machine? If -- they are great machines if you are
13 going to save somebody's life or open heart
14 surgery, this and that, but when somebody is gone
15 that means God intends for them to go, and if they
16 are going to be kept alive on a machine, they are
17 not really living.

18 And Terri made mention at that
19 conversation that, "If I ever go like that, just
20 let me go. Don't leave me there. I don't want to
21 be kept alive on a machine." Pretty much
22 everybody at that table that was in the discussion
23 had made the same comment. No way I want to be
24 kept alive on a machine.

25 Q What do you mean by machine?

1 A Artificially. It is something that is
2 breathing for you. It is not really your own
3 heart pumping air into your blood and oxygen to
4 your brain and everything else. It is an
5 artificial way of being kept alive.

6 Q Does that mean anything else? Anything
7 to do with tubes or other kind of artificial life
8 support?

9 A There is also the case that -- my
10 sister-in-law, for one. She passed away. The
11 reason why I was out here for and I saw Terri is
12 that my sister-in-law was diagnosed with
13 inoperable brain cancer. This is my wife's
14 sister. Her last wish was for my wife's whole
15 family to go to Disney World. When we came out
16 here, my wife's grandmother had lived in
17 Clearwater, so we stayed here a couple of days.

18 That is when I saw Terri for the first
19 time after the incident. But when we went home,
20 it was within six months that my sister-in-law had
21 to be put on a feeding tube because she could not
22 eat or swallow. She lost all ability to swallow
23 her food and everything else.

24 Q So what happened?

25 A So they put her on a feeding tube.

1 Q Did they take it out?

2 A Yes. Because it was doing -- she could
3 not have a bowel movement. She started to
4 actually throw up her own feces because it was
5 backing up in her system.

6 Q When you are referring to, as you have,
7 to a number of situations such as the grandmother
8 and sister, you talk about artificial life support
9 and machines, you are looking at the whole
10 artificial life support system?

11 A Yes. Artificial life support, to me
12 it's all well and great if it is going to help
13 somebody live for a period that, you know, there
14 is a new heart coming in and you know they are
15 waiting for that and it's going to keep them alive
16 until that heart is transplanted or whatever. But
17 if there is nothing there, why prolong that
18 person's agony?

19 Q So in your understanding, at the time
20 you were at your grandmother's funeral luncheon
21 and the conversation was between all the brothers
22 and sister-in-laws --

23 A Yes.

24 Q -- Terri shared that opinion?

25 A Yes. She did.

1 Q If Terri did not share that opinion, do
2 you think she would have spoken up?

3 A If she didn't?

4 Q Right.

5 A I feel if she did not share that
6 opinion, she would not have said anything. The
7 only reason she said it is because she shared the
8 same opinion as us. If -- I guess is what I'm
9 trying to say --

10 Q Well, we don't need to guess.

11 A Well, I think if she didn't want it, I
12 think she would have --

13 Q You mentioned what she said at the time.

14 A Yes.

15 Q Now were there any other occasions where
16 an issue on artificial life support came up that
17 you had between you and Terri? Any other
18 conversations about artificial life support?

19 A I believe it was basically that, you
20 know, because we had talked about it at the table.

21 Q So that was the only time it ever came
22 up?

23 A Yes.

24 Q When did you first mention this
25 recollection of that event?

1 A When did I?

2 Q How did that come about?

3 A How did I?

4 Q How did you -- how did it come about
5 that you mentioned that you remembered this event
6 at your grandmother's funeral?

7 A It was something that -- we all talked
8 about it that day. It was like we all went home,
9 grieved, and had to pretty much go on with our
10 lives. Never in my wildest dreams did I ever see
11 this happening to Terri, but when this was all
12 coming about --

13 Q When you say this was all coming about,
14 like when? The last couple of years or --

15 A No. No. It came up when I spoke to
16 Mike's lawyer about if I had ever heard Terri
17 mention this or that. If she ever came to me, sat
18 down and talked to me about something. This and
19 that. I had mentioned that on this date that at
20 my grandmother's funeral we talked about this as a
21 family. As all the kids in the family.

22 And Terri was sitting with us and Terri
23 made the mention that she would never want to be
24 kept alive like that. You know, if it is her time
25 to go, it's her time to go.

1 Q Do you remember approximately when that
2 was when you talked to -- it was Mr. Felos, I
3 presume?

4 A He called me on a Sunday morning.

5 Q Within the last year?

6 A Yes. It was either September or
7 October.

8 Q Okay.

9 A I work seven days a week.

10 Q Of '99?

11 A Yes.

12 Q Okay. I don't have any -- maybe I do.
13 Excuse me. With respect to the last question when
14 you spoke to Mr. Felos sometime in September/
15 October of '99, did you tell Mike about this
16 before that time or after you spoke with
17 Mr. Felos?

18 A It was after. It was after Mike.
19 Because Mike had -- I talked to Mike. Told him I
20 spoke to his lawyer. He asked me how it went. I
21 told him "Everything I knew, Mike." He had said
22 what was that? I said, "Do you remember
23 grandmom's funeral at the dinner?" He said I
24 didn't think about that.

25 I said my mother used to kid me saying

1 that if you want to know something, call Scott
2 because he knows it. I seem to remember stuff for
3 some reason.

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

6 THE COURT: Thank you. Cross-
7 examination?

8 CROSS-EXAMINATION

9 BY MS. CAMPBELL:

10 Q Mr. Schiavo, my name is Pam Campbell. I
11 am the attorney for Mr. and Mrs. Schindler,
12 Theresa's parents. What year did your grandmother
13 die?

14 A She passed away in February of 1986 --
15 '88.

16 Q Do you recall when Terri and Mike moved
17 to Florida?

18 A They moved to Florida, I believe in the
19 spring of, let's see. I believe the spring of '85
20 or '86. '86, I believe.

21 Q Did you see Terri or Mike very much
22 after they moved to Florida?

23 A Just when they came back. In fact, they
24 surprised me one night. I had called my father's
25 house from work. Mike answered the phone. You

1 know, it was like Mike. "No. You've got the
2 wrong number." I hung up. I called back. My dad
3 answered. I said, "Was that Mike?" He said no.
4 No.

5 Later on that night -- I had lived in a
6 mobile home. I was putting up new skirting. As I
7 came back in the house, there was Mike and Terri.
8 I said, "You son of a gun. I knew you were
9 there." When they came back, they would stop in
10 and see us.

11 Q Was that prior to your grandmother's
12 death?

13 A Yes.

14 Q Do you have any advance directives such
15 as a living will?

16 A Myself?

17 Q Yes.

18 A Yes. I do.

19 Q What would your personal wishes be?

20 A My personal wishes are if I'm in a
21 situation that I cannot be saved, I just want to
22 go.

23 Q Would you want artificial nutrition and
24 hydration withdrawn or withheld?

25 A No (sic). Not if it was not going to

1 save me within a week or two. If I was waiting
2 for a new heart or something, yes. But if there
3 was no outlook in my life, I would not want to
4 live like this. No.

5 Q How long of a time frame would you
6 expect somebody to wait for the artificial heart
7 in the hypothetical?

8 A I would say a week. Two weeks at the
9 most.

10 Q At this luncheon where your grandmother
11 was discussed, did your brother share in your
12 anger? You testified you were angry and upset
13 about what happened to your grandmother. Did your
14 brother share in that?

15 MS. FELOS: Objection. He never said
16 anger. He did say upset.

17 Q (By Ms. Campbell) Excuse me. Did your
18 brother share in the upset?

19 A Sure. We all were. It was something
20 that, you know, knowing my grandmother, it was
21 upsetting to see, to walk in to say goodbye to
22 your grandmother and the machine has her lifting
23 off the bed for air. Her chest pumping up. When
24 you go to talk to her, she stared at the ceiling.

25 This was not my grandmother living

1 there. As far as I was concerned, her spirit had
2 already gone to Heaven.

3 Q How long was your grandmother on the
4 ventilator?

5 A From the early morning hours till mid
6 afternoon of the same day.

7 Q So it was on that same day that you saw
8 your grandmother in that condition?

9 A Yes.

10 Q At this luncheon, how many people were
11 at the luncheon?

12 A I could not give you an absolute honest
13 figure. Several people were there. A lot of
14 relatives. Some friends of hers.

15 Q Was Michael Schiavo there?

16 A Yes.

17 Q Approximately how large was the table?

18 A I believe it sat, I think a seating of
19 twelve.

20 Q Was it just one table of family members
21 and friends?

22 A No. No. In fact, we had some cousins
23 there. Two of my cousins that were not married
24 where sitting with us, too.

25 Q So did your family occupy several tables

1 within this country club setting?

2 A Yes.

3 Q Was Michael sitting on the other side of
4 Terri?

5 A Yes. He was.

6 Q Did you specifically hear Terri make the
7 comment?

8 A Yes. I did. With my own ears. She was
9 sitting to my left.

10 Q She was not just sharing the opinion
11 that was expressed at the table?

12 A No. She had made a statement that if I
13 was in this predicament, let me go. If it is my
14 time, it is my time.

15 Q Are you aware of what kind of feeding
16 tube or ventilator, any kind of life support
17 system that Terri is on currently?

18 A Am I aware of them?

19 Q Um-hmm.

20 A I'm aware she is on a feeding tube.

21 Yes.

22 Q Is Terri on a ventilator?

23 A No. She's not.

24 Q Have you seen Terri this visit?

25 A No. I just got in last night. I got up

1 this morning and came here, but I do expect to go
2 see her before I leave.

3 Q You testified the prior time for you to
4 see Terri was about six years ago?

5 A Yes. Approximately. It was in -- yeah.
6 Approximately six years ago.

7 Q In that six year time frame, have you
8 made any other tapes or any other kind of
9 communication for Terri to listen to?

10 A No. I did not.

11 Q Did you ever talk with Michael Schiavo,
12 prior to your talking with his attorney, about
13 Terri's conversation at the grandmother's funeral
14 luncheon?

15 A No. I did not. Like I said, we left
16 there that day. We did see each other before Mike
17 and Terri had left again to come back to Florida,
18 but I mean, it was all a statement that we were
19 talking about because it was fresh in our mind.

20 We had just buried our grandmother. It
21 is not the way she would want to leave the world
22 the way she was left. We were all -- so pretty
23 much like a conversation at dinner. It's not
24 something you bring up everyday because you just
25 don't think about it. You go on with your life.

1 When I was approached and asked if I
2 ever heard this or Terri make a statement of this
3 matter, yes. I did hear, with my own ears, Terri
4 make a statement.

5 Q When Terri's accident occurred in
6 February 1990, did you come to Florida then?

7 A No. I did not. But my brother, Brian,
8 called me and told me about this incident. And
9 the first thing I was doing was going for my
10 credit card to call. My wife said to me, "Look,
11 Scott. If they need you there, I know they will
12 call you." I was like, "I've got to be there for
13 them." Talking to my brother, Brian, he said
14 "Mom, dad, and I are going. You've got kids. A
15 job. We will keep you informed and everything
16 else."

17 So that is basically what we did. It
18 was not going to do Terri any good to have us, all
19 five of us, clamoring around.

20 Q From the time of the accident then until
21 six years ago when you came to see Terri, were you
22 with Terri during that time frame?

23 A No. I was not. I could not afford it.
24 Like I said, it was -- the first -- my first
25 instinct was get a ticket and be there for Terri.

1 When I calmed down and stopped -- at the time, I
2 had three children. An infant. It was
3 financially impossible for me to do this.

4 Q When you came down six years ago, were
5 you surprised to learn that Terri was on a feeding
6 tube?

7 A No. I was -- at the time, I was told
8 she was on it.

9 Q Did you see a feeding tube?

10 A No. She was not being fed at the time.

11 Q Did you remind Michael, at the time, of
12 Terri's comments about not wanting to live like
13 that?

14 A No. Because that day, it was a very
15 tough year for myself. My son was diagnosed with
16 juvenile diabetes February 1st of that year, and
17 on April 6th of that year my sister-in-law was
18 diagnosed with brain cancer. Everything was
19 snowballing. I had a lot on my plate at the time.
20 Then when I went to see Terri, it was a very tough
21 afternoon. It just didn't click or anything.

22 Q When you saw Terri, on that day was it?
23 Just one day?

24 A Yes.

25 Q Did she make any response or reaction to

1 you?

2 A Absolutely none.

3 Q Were her eyes open or closed?

4 A She just stared at the ceiling.

5 Q Did her head turn toward you when you
6 talked to her?

7 A I don't believe so. No.

8 Q Do you know whether Mr. Felos spoke
9 with any other of your brothers?

10 A To be honest with you, I don't believe
11 so. I personally don't know if he talked to any
12 of them.

13 Q Why do you think he specifically spoke
14 then to you?

15 A Because I told Mike that if he needed me
16 for anything, I'm there for you. That is
17 basically why.

18 Q Are you and Mike still real close?

19 A We are all close, my brothers. Any one
20 of us would be there for him. I mean, we were.

21 Q When your mother passed away, was that
22 here in Pinellas County?

23 A No. It was not.

24 - Q Where did she pass away?

25 A She passed away in Langhorne,

1 Pennsylvania.

2 Q Was her funeral held there?

3 A Yes.

4 MS. CAMPBELL: No further questions.

5 THE COURT: Thank you. Redirect?

6 REDIRECT EXAMINATION

7 BY MS. FELOS:

8 Q Mr. Schiavo, you wanted your
9 grandmother's wishes honored; didn't you?

10 A Yes.

11 Q You would want your wishes honored?

12 A Yes. I would.

13 Q You would want anybody's wishes honored;
14 isn't that correct?

15 A I believe that.

16 Q Whatever the person wished, you
17 would want to go along with that?

18 A Yes. That is what they wished.

19 Q Have you ever been in Florida in the
20 last ten years where you did not see Terri?

21 A No.

22 Q When you were in her nursing home room,
23 what other things did you observe? Ms. Campbell
24 mentioned a few things. What other things did you
25 observe about her?

1 A It was very uneasy for me to see her
2 arms and legs, which were curled up, twisted. It
3 was -- it was just like it was not Terri. It was
4 like an old beat up car. Just mangled up. It was
5 sickening.

6 Q You don't know personally who Mr. Felos
7 spoke to; do you?

8 A No. Not personally.

9 Q You don't have that information; is that
10 correct?

11 A No. I don't know.

12 MS. FELOS: Thank you. No further
13 questions.

14 THE COURT: Anything further?

15 MS. CAMPBELL: No, Your Honor.

16 THE COURT: Thank you. You may stand
17 down. Why don't we break for lunch now. Be back
18 at 1:15 by my watch. I have about 12 to 12:00.

19 THE BAILIFF: All rise. Court stands in
20 recess.

21 (THEREUPON, COURT RESUMED AT 1:15 P.M.)

22 THE BAILIFF: All rise. Circuit court
23 is back in session.

24 THE COURT: Are you ready to proceed?

25 MS. FELOS: Yes, judge. We are having

1 some technical difficulties. If you would bear
2 with us for one moment.

3 THE COURT: Very well.

4 MR. FELOS: Your Honor, at this time, I
5 wanted to read a portion of the depositions of
6 Robert and Mary Schindler.

7 THE COURT: Mr. Felos, do you want to do
8 that a little slower than normal?

9 MR. FELOS: This is from the deposition
10 of Robert Schindler taken August 12, 1999
11 starting on Page 67, Line 24.

12 Question. Hypothetically, if Terri told
13 Michael I don't want to be kept alive artificially,
14 would that change your position in this case?

15 Answer. No.

16 Next from the deposition of Mary
17 Schindler taken August 12, 1999 starting on Page
18 62.

19 Question. And Mr. Schiavo then says
20 that Theresa told him that if anything happened to
21 her where she had to be cared for by others, open
22 quotation, please don't let me live like that,
23 close quotation. Does that seem to be unusual or
24 out of character for Theresa?

25 Answer. I don't know. I don't know

1 that.

2 Moving to Page 63, Line 7. Now
3 hypothetically, this is a hypothetical question,
4 I want you just to assume for purposes of this
5 question that Theresa really did say that. Would
6 that change your position as to whether her life
7 support should be removed in this case?

8 Answer. No.

9 Page 63, Line 23. Again, a hypothetical
10 question. Assuming, just for purposes of this
11 question, that in response to watching those
12 television news shows or programs that with people
13 on life support that Theresa in fact did say that
14 she would not want her life maintained by
15 artificial means, would that change your position
16 as to the removal of her feeding tube?

17 Answer. No.

18 THE COURT: Ms. Campbell, do you wish to
19 have other portions of those depositions read at
20 this time?

21 MS. CAMPBELL: No, Your Honor. Not at
22 this time. Thank you.

23 MR. FELOS: Your Honor, we call our next
24 witness, Dr. James Barnhill.

25 THE BAILIFF: Would you stand right

1 here, face the judge, and raise your right hand.

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

4 THE COURT: Thank you, sir.

5 THE BAILIFF: Be seated right in this
6 box.

7 DIRECT EXAMINATION

8 BY MS. FELOS:

9 Q Good afternoon. Would you state your
10 name for the record, please?

11 A James Barnhill.

12 Q And you are a medical doctor?

13 A Yes. I am.

14 Q I'm going to ask you a few questions
15 about your credentials. Where did you receive
16 your medical degree?

17 A University of Florida.

18 Q When was that?

19 A 1978.

20 Q Have you done an internship, and if so,
21 where?

22 A Yes. I also did an internship at the
23 University of Florida. That was followed by a
24 residency at the University of Florida. A
25 residency in neurology.

1 Q Have you done any other type of study,
2 internship, or residency other than that?

3 A No.

4 Q How long have you been practicing
5 medicine?

6 A I graduated medical school in 1978. I
7 guess since 1978.

8 Q Thank you. Do you have any board
9 certifications?

10 A Yes. I am certified by the American
11 Board of Psychiatry and Neurology in neurology.

12 Q Are you in private practice?

13 A Yes. I am.

14 Q Do you also act as a consulting
15 physician for other physician's patients?

16 A That is the majority of the type of work
17 I do. Yes.

18 Q I see. Do you often render opinions
19 with respect to neurologic disorders?

20 A On a daily basis. Yes.

21 Q Have you ever testified in a court case
22 before?

23 A Yes. I have.

24 Q What case might that be?

25 A I have testified in a number of

1 different types of cases. Personal injury cases.
2 Malpractice cases. Another case involving a
3 feeding tube in a patient with a persistent
4 vegetative state.

5 Q So you have testified in a case
6 specifically with regard to removal of artificial
7 life support; is that correct?

8 A Yes.

9 Q Do you recall the name of the case?

10 A Browning.

11 Q Thank you. How many cases would you say
12 you have testified about neurological orders?

13 A You mean in court or deposition?

14 Q In court.

15 A Half a dozen perhaps over the past
16 sixteen years.

17 Q So you have been accepted and approved
18 by courts for expert testimony; is that correct?

19 A Yes.

20 MS. FELOS: Thank you. Your Honor, we
21 would like to tender this witness as an expert
22 witness and ask if opposing counsel wants to voir
23 dire.

24 MS. CAMPBELL: I have no objection to
25 Dr. Barnhill.

1 THE COURT: Thank you very much.

2 Q (By Ms. Felos) Thank you, judge. Now
3 with respect to this matter, this is an adversary
4 proceeding where Mr. Michael Schiavo, who is
5 Theresa Schiavo's husband and guardian of the
6 person, seeks to have a feeding tube removed from
7 Theresa Schiavo, which I will refer to possibly as
8 the ward or patient or by her name. Her name is
9 Theresa Marie Schiavo. Have you examined this
10 patient?

11 A Yes. I have.

12 Q Would you tell us when you have -- how
13 many times and when that might be that you
14 examined the patient?

15 A I examined her twice. The first time
16 was in March, of 1998. The second time was last
17 week, January 19th, to be precise.

18 Q Of year 2000? This year?

19 A Right. Yes..

20 Q Thank you. Where did you examine the
21 patient?

22 A At Palm Garden Nursing Home in Largo.

23 Q Thank you. Have you reviewed any
24 records of Mrs. Schiavo?

25 A Yes. I have.

1 Q Can you identify what records they would
2 be?

3 A On both occasions, when I went down to
4 the nursing home, I reviewed the chart that is
5 kept there on her. It is a pretty large chart.
6 And I have reviewed a CAT scan of her brain and an
7 EEG.

8 Q Have you formed an opinion with respect
9 to whether Mrs. Schiavo is competent to make
10 medical treatment decisions for herself?

11 A I have.

12 Q And what is that opinion?

13 A She is not competent to do that.

14 Q Is there any reasonable medical
15 probability that Mrs. Schiavo will regain capacity
16 to make medical treatment decisions on her own?

17 A No.

18 Q Have you reviewed the definitions of
19 persistent vegetative state set forth in the
20 Florida Statutes?

21 A Yes. I have.

22 Q Have you reviewed the definitions of the
23 word "terminal" as set forth in the Florida
24 Statutes?

25 A Yes. I have.

1 Q Have you formed an opinion as to whether
2 Mrs. Schiavo is in a persistent vegetative state
3 as set forth in the statute?

4 A I have and she is.

5 Q Would you tell us how you reached that
6 conclusion with respect to her vegetative state as
7 it pertains to the Florida Statutes that you,
8 reviewed.

9 A Basically, a persistent vegetative state
10 is a diagnosis and I formed that diagnosis based
11 on the usual procedure which is to obtain history,
12 examine the patient, and review laboratory data.
13 In this case, the history is based on the chart.
14 The patient can't provide any history. Then I
15 performed a physical examination. Then I reviewed
16 the CAT scan and EEG.

17 Q Thank you. Have you found Mrs.
18 Schiavo's condition to be permanent?

19 A Yes.

20 Q Have you found that condition to be
21 irreversible?

22 A Yes.

23 Q Is it your opinion that Mrs. Schiavo is
24 unconscious?

25 A Yes.

1 Q Would you also say that Mrs. Schiavo has
2 an absence of voluntary action or cognitive
3 behavior of any kind?

4 A I would.

5 Q Does Mrs. Schiavo have the inability to
6 communicate or interact purposefully with the
7 environment?

8 A She does.

9 MS. FELOS: Thank you.

10 MS. CAMPBELL: Excuse me. What was that
11 answer?

12 THE WITNESS: Yes.

13 Q (By Ms. Felos) You have provided an
14 affidavit for this proceeding, I believe, and I
15 believe it's also in evidence, Your Honor. It has
16 already been admitted into evidence previously.
17 In that affidavit, you make the statement that
18 Mrs. Schiavo is in a terminal condition. What do
19 you mean by that?

20 A She has an irreversible medical
21 condition for which there is no treatment or cure
22 and which, from which she will die if she does not
23 continue to receive supportive measures,
24 specifically the feeding tube.

25 Q Let's talk a little bit about persistent

1 vegetative state. Now the Florida Statutes sets
2 forth the definition that you have reviewed and we
3 have mentioned here in court today. Are there any
4 other guidelines that you consider when you are
5 determining whether or not a patient is in a
6 persistent vegetative state?

7 A The American Academy of Neurology has a
8 physician paper. The American Academy of
9 Neurology is an authoritative body that has
10 positions on various topics related to the
11 specialty of neurology, and their paper outlines
12 criteria that permit this diagnosis which are
13 similar to those in the Florida Statute.

14 They add the qualifier of time and they
15 basically say that there needs to be three months
16 pass between the initial insult, whatever it might
17 be, and being able to make this diagnosis as
18 permanent or persistent. They have other aspects
19 that they propose that you should find. One is
20 the presence of sleep/wake cycles.

21 Virtually all patients who have severe
22 brain injuries that initially result in coma and
23 subsequently result in a persistent vegetative
24 state will at some point pass from an appearance
25 of being in a coma or a sleep to an appearance of

1 having cycles of apparent wakefulness and apparent
2 sleep. They also emphasize repeated examination.

3 The rest of the criteria, more or less,
4 amounts to the same things that are set forth in
5 the statute regarding the absence of cognitive
6 behavior, voluntary action, and an inability to
7 communicate or interact in some way that would
8 imply awareness.

9 Q Thank you. So if I understand this
10 correctly then, the guidelines that you are using
11 to determine whether a patient is in a persistent
12 vegetative state also includes what we would say
13 more definitive or stringent criteria than even
14 the Florida Statute does, one of which would be a
15 time period that the patient would have had to
16 have been in this state, which would be a period
17 of three months, and also a description of sleep/
18 wake cycles which would differentiate between what
19 might be a comma versus a vegetative state. Would
20 that be a fair description?

21 A I would agree. I think the academy
22 guidelines are more stringent. I think the state
23 statute guidelines, lacking a time criteria, you
24 could have a problem if you evaluated someone at
25 one week and used those criteria.

1 Q Thank you. You know, we hear about a
2 patient -- I think there was something in the news
3 somewhere out West where a patient was supposedly
4 in a comma and woke up and was perfectly normal.
5 Obviously, that is not an evidentiary thing.
6 Nobody has taken that beyond a newspaper article,
7 but how would you explain something like that or
8 can you?

9 A Well, I can think of a couple possible
10 explanations. The first is a miracle, which is by
11 definition, not something I or anybody else can
12 explain. It's a devine act. I don't rule that
13 out, but that is more or less what that would
14 require, if that were to in fact happen. Unless
15 in fact that patient was not in a comma because of
16 structural brain damage.

17 There are people who appear to be in
18 vegetative states or comatose type states that
19 perhaps are catatonic, which is a psychiatric
20 condition. There are case reports in the medical
21 literature where people have been in prolonged
22 comas and regained some level of function. I have
23 never seen that. I do not know from personal
24 experience that that's possible, so short of a
25 miracle or not having severe structural brain

1 damage.

2 Q Thank you. So what is the probability
3 that Theresa Schiavo could become conscious again?

4 A Zero.

5 Q Are there medical tests that support
6 your opinion other than clinical examination and
7 diagnosis?

8 A I think her CAT scan is extremely
9 telling in that regard because it shows severe
10 structural brain damage. And I might say that
11 consciousness, which can be defined in various
12 ways, can most simply be put as an awareness of
13 self or environment. We believe it requires a
14 structural integrity of the brain. The higher
15 brain. What we call the cerebral cortex. That
16 part of the brain that is different in man than in
17 lower animals. That part of the brain is a very
18 complex network, integrated network of functions.

19 When you have overwhelming, severe brain
20 damage destroying large portions of the brain and
21 connections between different areas of the brain,
22 you are no longer capable of having consciousness
23 defined as awareness of self and environment.
24 That does not mean that you are brain dead. It
25 does not mean that reflex activity that is

1 generated in the lower brain areas will be
2 absent. In fact, it usually is present.

3 One of the phenomena that exists is a
4 phenomena called release phenomena and that is
5 part of what the higher brain -- the cerebral
6 cortex, the cerebral hemisphere -- does is to
7 suppress primitive reflex behavior.

8 A good example is that a baby does not
9 have to be taught or does not have to be aware or
10 think about anything in order to suck. If you put
11 a bottle or nipple in a baby's mouth, it will suck
12 unless there is something wrong with it. That is
13 a primitive reflex. As you get older and your
14 cerebral hemispheres develop and in fact make
15 connections down, you suppress that. So in a
16 normal adult, you will not see that behavior. The
17 sucking reflex disappears.

18 There are a number of reflexes like
19 that. If you put your hand or fingers in a baby's
20 hand, the baby will reflexively grab your hand.
21 The baby is not thinking about it. It does not
22 mean anything to the baby. I'm talking about a
23 1-day-old baby. As time goes by, the cerebral
24 cortex develops. A process called myelination
25 ensues and this reflex behavior becomes inhibited.

1 So in normal adults, you will not see,
2 if you put your fingers if a patient's hand and
3 the brain is normal, they will not grab your hand
4 reflexively. In fact, when you see that sort of
5 thing, when you see a suck reflex come back or a
6 grasp reflex, or any of a number of other
7 reflexes, what you can know is there is brain
8 damage here because the cortex, which is supposed
9 to suppress this reflex, is not doing it.

10 Q I see. You mention the CAT scan and how
11 you reviewed Theresa Schiavo's CAT scan. Let me
12 show you what's been -- we have marked this as
13 Petitioner's Exhibit Number Four for
14 identification, and I'll ask you if you recognize
15 it?

16 A Yes. This is the CAT scan of Theresa
17 Schiavo dated May 9, 1996 done at Northside
18 Hospital.

19 MS. FELOS: Thank you. Ms. Campbell, I
20 don't have copies of this. Your Honor, if I might
21 offer this into evidence and we will use it.

22 THE COURT: Is there an objection?

23 MS. CAMPBELL: No.

24 THE COURT: Now your series of
25 affidavits was admitted as Exhibit Number Four.

1 Do you want me to remark this as five?

2 MS. FELOS: As Exhibit Number Five.

3 Thank you, judge.

4 (THEREUPON, PETITIONER'S EXHIBIT 5 WAS
5 RECEIVED IN EVIDENCE.)

6 THE COURT: This goes in here, so I can
7 mark the outside?

8 MS. FELOS: Yes. I put stickers on
9 both, so as not to get confused.

10 Q (By Ms. Felos) Dr. Barnhill, we have
11 some audiovisual, attempt at least to look at this
12 under, with the use of this audiovisual
13 equipment. So I will ask, if you would like to
14 come down here and take a look at this. Begin at
15 least to look at this. And if you could explain a
16 little bit about this and then -- actually, judge,
17 we probably ought to also offer this.

18 THE COURT: Can you see?

19 MS. CAMPBELL: Yes.

20 MS. FELOS: Judge, we also have another
21 CAT scan. This CAT scan is Dr. Barnhill's CAT
22 scan.

23 Q (By Ms. Felos) Dr. Barnhill, I'll show
24 you what is marked as Petitioner's Exhibit Number
25 Six, and this is A, B, and C, and ask you if you

1 recognize it.

2 A That is my CAT scan, CAT scan of my
3 brain, done in March of 1988. It's presumably
4 normal.

5 MS. FELOS: I'll show it to opposing
6 counsel.

7 MS. CAMPBELL: Thank you.

8 MS. FELOS: Do you have the envelope?

9 THE COURT: Is there an objection to
10 coming in as Petitioner's Six?

11 MS. CAMPBELL: No, Your Honor.

12 MS. FELOS: I marked them A, B, and C to
13 try to make sense out of them.

14 THE COURT: Since the reporter is not
15 doing this with a camera, I am assuming the one on
16 the left, is that yours?

17 THE WITNESS: This one on my left -- on
18 your left is the patient, Ms. Schiavo.

19 THE COURT: The one on the right is you?

20 THE WITNESS: The one on the right is
21 me.

22 THE COURT: So let us, when we are
23 referencing one or the other, let's say left or
24 right and that way the transcript will pick up *
25 exactly what you are talking about.

1 THE WITNESS: Yes sir.

2 THE COURT: Thank you.

3 (THEREUPON, PETITIONER'S EXHIBIT 6 WAS
4 RECEIVED IN EVIDENCE.)

5 Q (By Ms. Pelos) Dr. Barnhill, we have
6 two screens set up here. The one on the left is
7 the CAT scan of Theresa Schiavo; is that correct?

8 A Yes.

9 Q That was done in May of 1996?

10 A Right. '96.

11 Q The one on the right is a CAT scan of
12 your brain and you stated that you believe that is
13 a CAT scan of a normal brain?

14 A Yes.

15 Q I also note here, and it is a little
16 difficult to see, so it may be helpful if you can
17 point out the areas that don't show up extremely
18 well on the screen.

19 A Can I just --

20 Q Please. If you would.

21 A What I'm trying to show is my normal CAT
22 scan which is just, for people that are not used
23 to looking at these, what you would expect to
24 see. The way these images are taken is a machine,
25 a computer, basically takes slices through the

1 head which are as if you were to cut the head, say
2 front to back, look inside, and then take a series
3 of slices up and down.

4 So on my CAT scan, this one is higher
5 than this one, and this is only part of the study
6 of mine. There is three separate pieces of film
7 that go from above to below. On the patient, the
8 one on the left, all of the images are on the same
9 piece of film, but the same principle applies.
10 I'm trying to communicate that you have to look at
11 the same comparable slice to get some idea what
12 structures you are looking at.

13 This one in the center, right here, of
14 mine on the right shows basically a white circle,
15 which is my skull. In the very center of this is
16 a black, almost looks like a butterfly. Those are
17 called the ventricles. Those are normal fluid
18 filled spaces inside the brain. There is a little
19 white dot in the middle, which is a little calcium
20 deposit in my pineal gland. That occurs in normal
21 people. It serves as a reference, a landmark, so
22 you kind of know where you are. It should be in
23 the middle. It should be right about there.

24 What is notable about this normal is
25 that these, this little butterfly area, is small.

1 It does not take up very much of this space inside
2 my skull. And the rest of the inside of my skull
3 is filled with tissue, which is brain.

4 This is an old CAT scan. We have better
5 ones now, but even in an old CAT scan you can
6 appreciate that there is a lot of tissue between
7 the butterfly and the edge of the skull. So there
8 is a lot of brain tissue in there, which is the
9 way it should be.

10 I'm going to pick a comparable level, if
11 I can find her pineal gland. I'm looking at the
12 patient's scan on the left. Her pineal gland was
13 not calcified, but roughly on the same level, I'm
14 now pointing at on the lower left of this screen
15 you can again see a butterfly, but it is a huge
16 butterfly. What that is, the ventricles, which
17 are these normal fluid filled spaces, have become
18 very large. And you see next to the butterfly,
19 you see some kind of grayish white stuff. Then
20 you see a lot black on either side. That black
21 area is spinal fluid where there used to be brain.

22 The reason that the butterfly, the
23 ventricle, is so large and there is so much black
24 stuff on the edges underneath the surface of the
25 skull is that area used to be occupied by brain

1 and no longer is. It is now occupied by spinal
2 fluid because the brain tissue died at the time of
3 the cardiac arrest and lack of oxygen that
4 occurred at that time back in 1990.

5 There is very little inside this skull
6 other than spinal fluid. There is spinal fluid in
7 the center on the ventricles. There is spinal
8 fluid on the edges where the cortex, where the
9 brain matter has been damaged, and there are sort
10 of ribbons of brain tissue between there. That
11 brain tissue that's in there is undoubtedly
12 scarred and damaged and does not work, based on
13 the clinical examination; based on the presence,
14 for example, of these release reflexes is not
15 working normal.

16 In fact, in my opinion, you could not
17 have this scan, this appearance of a scan, and
18 have anything other than a persistent vegetative
19 state. Now you don't make that diagnosis on the
20 scan alone. You make it in conjunction with the
21 history and the physical findings and you have to
22 put all three together. This scan supports the
23 clinical findings of a patient who has only reflex
24 behavior and no awareness, therefore, no
25 consciousness.

1 Q Thank you. I am having a difficult time
2 seeing the ventricles in this one here. Can we
3 just switch this? If I can't see it, I doubt the
4 judge can.

5 A The projector on the left now has my
6 brain, which is a better projector, I guess. One
7 of the reasons you have trouble seeing it is
8 because there is not very much of the black in the
9 center, the butterfly, and that's the way it
10 should be.

11 Q Maybe you can outline what the normal
12 brain would look like with respect to the
13 ventricles.

14 A These little areas here. Then on the
15 sides, there would be little tiny extensions. At
16 a higher level, you might get this level, you can
17 see that there is a pattern where there is fluid
18 in here. That is comparable to -- the patient's
19 scan, angled the way the cuts were taken, was
20 different, so I don't have exactly a comparable
21 one, but I think you can see that this one is
22 close.

23 Q So this is approximately the same angle
24 as we see in --

25 A It's a different angle, but it's about

1 the same level. The angle would be if you cut
2 this way versus this way, you would get different
3 things. But there is a tremendous -- I mean, my
4 ventricles are 10 percent the size of her
5 ventricles.

6 Q You are saying that the significance of
7 that -- say that again.

8 A My ventricles are about a tenth of the
9 size of her's.

10 Q So the ventricles of the normal brain
11 are approximately a tenth of the size of the
12 ventricles in this CAT scan, which is Theresa
13 Schiavo's?

14 A I think that would be a rough estimate.
15 Yes.

16 Q And the significance of that is the
17 ventricles are filled with fluid or the area where
18 the ventricles used to occupy? Could you explain
19 that?

20 A The significance of it is that before
21 what happened to her, there was brain tissue
22 there. The brain tissue died. Nature will not
23 permit a vacuum in that area where brain used to
24 be and it died and is now filled up with spinal
25 fluid.

1 Q The result of that filling up with
2 spinal fluid is, the result of that in the
3 clinical examination of the patient, is what?

4 A It's not really a result. This is the
5 effect. The effect of severe brain damage is that
6 spinal fluid has accumulated and made these
7 ventricles so large. The significance of having
8 spinal fluid in there is simply that is the
9 physiological response. When you have a space, it
10 has to be filled with something.

11 The significance of showing this CAT
12 scan patient's versus mine is there is almost no
13 brain tissue in here. In her's. What is in the
14 skull, there is tissue inside the skull, and there
15 are content tissues. The contents in her skull
16 are mostly spinal fluid.

17 Q What did you say about scar tissue
18 again?

19 A What is known from survivors, well, from
20 autopsy cases of people who have had cardiac
21 arrests and survived for a period of time and then
22 died, if you look at the residual brain tissue
23 that's inside, what you basically see are a few
24 scattered areas and a few nerve cells amidst
25 fields of scar tissue. The nerve cells, some may

1 be there, but they are trapped in scar. They
2 can't talk to their neighbors. They can't
3 communicate with other parts of the brain, which
4 is part of this immigration process that is
5 necessary, it is believed, to generate
6 consciousness.

7 Q So in other words, what cells are there,
8 this is what you meant by connectedness? You
9 mentioned the term connected. Connected to what?
10 It sounds like that's what you are explaining.

11 A They are disconnected. There are cells
12 in there, I have no doubt, but I think the cells
13 in there are not connected to each other in a way
14 they can integrate data, which is what the brain
15 does to generate consciousness.

16 Q All right. Is there anything else you
17 want to show us with respect to this, the
18 comparison of these CAT scans, that would be
19 helpful?

20 A I would answer questions.

21 Q All right. Dr. Barnhill, these tests on
22 Theresa Schiavo were done about 3-and-a-half, 4
23 years ago. Do you think it would be necessary to
24 have them done again? To review them again?

25 A No.

1 Q Why do you say that?

2 A They can't get better. This is
3 irreversible. It is known that this type of
4 injury never gets better. You really would not
5 learn anything by doing these scans. There might
6 be circumstances wherein a patient like this, you
7 would want to do another scan if they fell and hit
8 their head and you would now want to find out if
9 bleeding occurred in there.

10 But there really would be no, on a
11 routine, assuming nothing like that happened, on a
12 routine basis there would be nothing you would
13 learn.

14 Q So brain tissue does not regenerate?

15 A Not when it's damaged to this degree.

16 Q Now in your affidavit of May 1st you
17 stated that Theresa Schiavo's condition is
18 terminal. You examined her on, I believe the 19th
19 of January. Has your opinion regarding her
20 terminal condition changed?

21 A No. It has not.

22 Q Now how did you arrive at your opinion?
23 Again, I might have asked you this before, but how
24 did you arrive at your opinion that she's
25 terminal?

1 A She has a medical condition arising from
2 illness or injury which is irreversible and will
3 lead to her death. Treatment is not contingent
4 and the only treatment being provided is, I'm not
5 sure it's the only treatment, but the life
6 sustaining treatment being provided here is a
7 feeding tube.

8 Q So but for the feeding tube, Theresa
9 Schiavo would die?

10 A Yes.

11 Q Is there any treatment whatsoever,
12 whether it be medical, surgical, anything that can
13 reverse the brain damage that Theresa has
14 sustained?

15 A No.

16 Q Is there anything that would allow her
17 to be not in a vegetative, persistent vegetative
18 state or terminal?

19 A I understand they tried some
20 experimental stimulator that they put in there a
21 couple of years afterwards. I can understand that
22 is a grasping at straws thing and that did not
23 work. There is nothing known to science that will
24 help this.

25 Q Thank you. Now, you have a considerable

1 amount of experience with removal of feeding tubes
2 in vegetative or comatose patients; don't you?

3 A Probably more with not putting them in
4 in the first place, but also some removing them.

5 Q Can you tell us a little bit about
6 this? Your experience with respect to this?

7 A During the course of my practice as a
8 general neurologist in a community hospital, I
9 probably see several times a month, at least in
10 the winter when it is really busy, patients who
11 have severe strokes; cerebral hemorrhages;
12 ruptured aneurysms; sometimes head injuries;
13 sometimes they have Alzheimer's disease and then
14 have some other thing happen to them and they are
15 in a position where they are unable to swallow.
16 They are unable to maintain, be maintained without
17 resorting to artificial nutrition and hydration.

18 So very commonly, once a week at least,
19 I'm in a situation where that decision comes up.
20 What we basically go on is the guideline from the
21 family hopefully conveying to us what the patient
22 would want under those circumstances. So the
23 decision that is discussed is whether or not it
24 would be advisable to sustain the patient with a
25 feeding tube.

1 And this is in the acute phase, but you
2 can tell in the acute phase largely based on the
3 clinical history, what happens in the first few
4 days, and what the scan shows that the outcome is
5 likely to be a persistent vegetative state.

6 Q With respect to, go into what happens
7 when the feeding tube, say, is removed or
8 artificial feeding is not induced and the patient
9 is dying. Do you have some experience with that
10 dying process?

11 A I do.

12 Q How does it happen?

13 A I used to see this more. Current
14 restrictions on being in a hospital, and this
15 happens mostly at nursing homes now. Patients are
16 not allowed to die in hospitals. Not considered
17 sick enough. But the ones I have been involved
18 with, where the patient was under my direct care
19 and supervision during the hospitalization, and
20 there have been several, the usual scenario is the
21 patient is either in a comma or a situation where
22 they are starting to become sort of this
23 sleep/wake cycle return. Some periods of apparent
24 alertness, or arousal, or wakefulness but without
25 evidence of awareness.

1 Basically it is a process that takes a
2 week or two weeks sometimes. My observation has
3 been that the patient just sort of slips away.
4 Just sort of eases out. There has not, I have
5 never seen descriptions of an agony type of a
6 process. What tends to happen physiologically is
7 that the dehydration, lack of water, produces a
8 concentration of sodium, which as that goes up,
9 and also other chemicals in the blood, the patient
10 becomes more and more sleepy or unconscious. If
11 they are unconscious already, it's kind of hard to
12 tell that. If there were brief periods of
13 apparent wakefulness, those become less. Go away.

14 Ultimately, in most cases probably what
15 happens is, the potassium level in the blood goes
16 high enough that the heart stops. The heart will
17 stop in response to a high a potassium. I
18 hesitate to say it is a peaceful death, but I will
19 say that it is pretty unremarkable.

20 Q All right. Thank you. Now you have
21 reviewed the records of the nursing home. You
22 have your opinion, and your opinion is that
23 Theresa Schiavo has a complete lack of cognition.
24 And have you found that opinion is consistent with
25 other neurologists' opinions that you have

1 reviewed, if you have?

2 A I have found that. On the chart this
3 last visit last week that I made, there was an
4 assessment by Dr. Karp, who is a neurologist, who
5 essentially reported the same thing. There was
6 also another neurologist, Dr. DeSousa, who had
7 seen her, I believe in '96, who concluded the same
8 thing.

9 From a documentation standpoint, the
10 chart lists among diagnoses chronic vegetative
11 state. That is basically what is all over the
12 chart from the medical providers.

13 Q Thank you. You said you also reviewed
14 the EEG?

15 A Yes. I did.

16 Q And those findings were consistent with
17 your diagnosis? Anything remarkable there?

18 A The EEG, let me just say, is a
19 sensitive, but not specific test. What it
20 measures is electrical activity originating within
21 the first few centimeters underneath the skull.
22 This EEG is very abnormal. The EEG shows low
23 amplitude or small waves that are very slow. This
24 is the kind of pattern you would expect to see in
25 severe brain damage.

1 The EEG was probably done, and was
2 useful primarily, in that it did not show seizure
3 activity. Seizure activity is something you would
4 want to put the patient on medication for. Also,
5 if someone is having seizure activity, on the EEG
6 you can't really judge the consciousness of that
7 patient because the seizure activity itself may be
8 the cause of lack of awareness or lack of
9 consciousness.

10 Q And you did not find that here on this
11 EEG?

12 A No. There was no seizure.

13 Q Low amplitude and slow waves --

14 A Right.

15 Q Which is consistent with the brain
16 damage that you found on the CAT scan and clinical
17 examination; is that correct?

18 A Yes.

19 Q Now there have been, through the
20 depositions actually in this case and some of the
21 other things that have been already mentioned
22 here, that Theresa Schiavo moves her head, arms,
23 and legs. How would you equate that, that kind of
24 movement, with the diagnosis you made here in your
25 opinion?

1 A She has reflex behaviors. Reflex
2 actions that imply her spinal cord and lower brain
3 stem are intact. Breathing is a good example.
4 She breathes. If she had damage to her brain
5 stem, lower brain stem, she would not breathe.
6 Breathing is a reflex activity. Normal people
7 have conscious control, to some extent, over it.
8 It happens whether or not you think about it.

9 Everything that I saw in my examination
10 of her, everything that I have seen described on
11 the chart, is consistent with reflex activity.
12 Activity that occurs without awareness of it
13 occurring.

14 Q I remember Mike Schiavo mentioned that
15 sometimes Theresa moans or has a sound like
16 moaning. How would you rectify that? How would
17 that fit with your diagnosis?

18 A Reflex activity. The generators for
19 moaning basically are the vocal cords and upper
20 airway. Those structures are innervated through
21 the lower brain stem. Moaning is a manifestation
22 of the fact that those structures are intact.
23 That is all. It does not mean anything else.

24 Q What about things like shifts in facial
25 expressions? You can call them whatever you

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1 want. Smiling. I don't know that you have to
2 call it that, but shifts in movement of the face?

3 A Same thing. One of the tests I do on a
4 comatose patient to assess structural integrity of
5 the brain stem is I will inflict pain to see if
6 there is movement of the facial muscles. It is
7 called a grimace response. That when a patient is
8 in a comma and they are clearly unconscious by
9 anybody's criteria, yet they move their face in
10 response to stimulation.

11 Q What is that?

12 A It is a reflex. Just as if I tap on the
13 knee and the leg moves. If you apply a stimulus,
14 then you will get some sort of response. The way
15 reflexes work is the stimulus is conveyed into
16 part of the brain processed at, I'll say in the
17 spinal cord or brain stem, and it generates a
18 response by another nerve. All of that happens
19 below the level of awareness.

20 Q What about response to sound? Someone
21 might say that Theresa may turn her head. Is
22 there a reflex with respect to, with respect to
23 sound?

24 A There is.

25 Q Tell us about that.

1 A It is called orientation reflex. Again,
2 sound, whether it be a human voice or whatever,
3 the origin of the sound is transduced into the
4 brain stem via the eardrum. The auditory nerve
5 into the brain stem where there is processing.
6 Depending on the nature of the sound, various
7 pathways go up or down to trigger various
8 reflexes.

9 Everybody here undoubtedly, at some
10 point or another, has been startled by a loud
11 sound. You are aware after you were startled and
12 you jerked, but you were not aware of it at the
13 time you were startled. The awareness comes on
14 afterwards. So the point being is a reflex can be
15 triggered by sound and you have no awareness of
16 that happening until it has happened.

17 Q Did you find that in Theresa Schiavo?

18 A She did startle. So she has in fact
19 sound processing circuitry in her brain stem.
20 That was an important thing, too, when you examine
21 someone and you go in and talk to them to make
22 sure they are not deaf.

23 So that is one of the first things I do
24 when I examine somebody is make sure that the
25 hearing mechanism works. And the way to do that

1 is look for a startle reflex.

2 Q I see. So that is called a startle
3 reflex?

4 A Right.

5 Q What about eyes? Seeing? Can Theresa
6 Schiavo see?

7 A I have got two different results on
8 that. I don't think that she sees with
9 comprehension. I think she has intact reflexes.
10 The pupils will react. When I saw her last week,
11 she no longer was blinking to threat, which means
12 you give a visual threat. What I do is I flick my
13 fingers in front of the patient's eye. Look for a
14 blink.

15 She did do that when I saw her the first
16 time. I am not sure what it means. It's probably
17 not good, in terms of level of function, to not
18 blink to threat as compared to blinking to threat,
19 but it really does not make much difference. If
20 she blinks to threat, is it again a reflex
21 activity which is processed.

22 The anatomy is pretty well worked out.
23 It is processed well, well below the level of
24 brain structures not to be necessary for
25 consciousness.

1 Q So there may be further deterioration
2 that has occurred in the last few years and would
3 that be in the brain stem or is that just
4 insignificant?

5 A I think it is probably more incidental
6 and not really significant to me.

7 Q So is Theresa Schiavo blind in that
8 case?

9 A Well, if I went back three times over
10 the course of a week, and maybe for some reason I
11 got a blink to threat one time and not another,
12 but I could convince myself there was a blink to
13 threat, is she blind? Well, yes and no. I will
14 give you an example. There is a known syndrome
15 where people have strokes which involve both
16 occipital lobes where visual processing occurs.
17 They can see, but they are blind.

18 Everything works, but once the
19 information goes back there -- and she has the
20 same kind of damage -- it can't be processed. But
21 there are people who have strictly that. Who can
22 walk around things without seeing them. If you
23 ask them what they see, they don't see anything
24 but they walk around the post. It's in the brain
25 stem.

1 Are they blind in the sense they can't
2 tell you anything? Yes. Can they act in the
3 environment purposefully? Are they blind in that
4 sense? No. She is not able to process any visual
5 information, based on lack of any other evidence
6 that she can and based on the appearance of the
7 CAT scan, except at a reflex level.

8 Q Could she follow something with her
9 eyes?

10 A She did not.

11 Q Did not?

12 A Right.

13 Q Now what about something like laughing
14 or crying? Is there anything that might explain
15 something like that?

16 A Yes. There is. It is again -- and I
17 sound like a broken record -- reflex behavior.
18 There are many well documented cases of
19 disassociation between emotional behavior and
20 emotional feeling in people with brain damage. It
21 kind of goes like this. There are states called
22 pathologic laughter or crying, which generally are
23 seen in people who had disconnections between
24 parts of the brain that process consciously and
25 parts of the brain that generate activities such

1 as laughing or crying.

2 Those activities are generated again at
3 low brain stem or upper brain stem levels. So a
4 person in this state who might be fully conscious
5 and can talk to you might cry or laugh and you ask
6 them if -- are you sad? Are you happy? Do you
7 feel the way you are behaving? And they will say
8 no. I'm crying, but I don't feel sad. I feel
9 absolutely fine.

10 I have seen it. This is unquestionably
11 something that happens. The implication in this
12 case is any activity that is seen in this case has
13 to be disconnected from any feeling based on the
14 appearance of all the other exams, the presence of
15 the release phenomena, the appearance of the CAT
16 scan, and such severe damage.

17 Q Now if it were reported that Theresa
18 Schiavo changed her facial expression in response
19 to say a comment by someone about a TV program or
20 something like that, let's say a relative, someone
21 in her family, what would you -- how would you
22 respond to something like that?

23 A Well --

24 Q In your experience with many of these
25 cases.

1 A I think my experience has been in many
2 cases that people tend to see or interpret things
3 based on their own expectations and beliefs and
4 wants. If you want to see it, you are more likely
5 to see it. I don't think this is conscious. I
6 think it is perhaps some sort of defense mechanism
7 to help deal with the reality of the situation.

8 I see this all the time in the Intensive
9 Care Unit when someone has an acute massive brain
10 injury and the spouse, the children, somebody will
11 say you know, they mumbled. Or I said their name
12 and they answered. I'll do an exam on that
13 patient and that patient is in a deep comma.

14 Or they will misinterpret things. Such
15 as, I put my hand in his hand and he squeezed my
16 hand because I told him I'm here. Well, that is a
17 release reflex. That is a phenomena that would
18 occur no matter what. You could put a stick in
19 the hand, anybody's hand, and that will happen.
20 So it is not -- I think it is a perceptual
21 phenomena. I don't think that is what's
22 happening. I think it's related to the perception
23 of the viewer.

24 Q So you would say that Theresa Schiavo is
25 not aware of the presence of others, nor does she

1 act in any voluntary way, or have cognitive
2 behavior? Would that be a correct statement?

3 A Yes.

4 MS. FELOS: I have no further questions
5 at this time, Your Honor.

6 THE COURT: Ms. Campbell.

7 CROSS-EXAMINATION

8 BY MS. CAMPBELL:

9 Q Good afternoon, Dr. Barnhill. My name
10 is Pam Campbell. I am an attorney representing
11 Mr. And Mrs. Schindler in this case. Have you had
12 the opportunity to meet Mr. and Mrs. Schindler,
13 the parents of Theresa Schiavo?

14 A I have not.

15 Q You were talking about the general
16 statistics of the patients that you primarily deal
17 with. How old are those patients generally?

18 A The average patient is probably in their
19 seventies, but in terms of this type of thing, I
20 see patients anywhere probably from about 20 to
21 100.

22 Q You said that you considered the wishes
23 that you believed to be the patient's. What has
24 been explained to you would be the wishes of
25 Theresa Schiavo?

1 A I don't think that has been explained to
2 me at all. .

3 Q Are you familiar with what the parents
4 have expressed their wishes that they believe
5 Theresa's wishes are?

6 A I don't think explicitly. I conclude,
7 since we are having this trial, that they probably
8 want the tube continued.

9 Q But you have not been explained that one
10 way or the other?

11 A Not explicitly.

12 Q When you say that you reviewed the
13 different records, the chart of Theresa Schiavo,
14 did you review the different nursing records?
15 Notes, specifically?

16 A I always look at nursing notes. That is
17 your main source of information. Yes.

18 Q How far back would you have gone in
19 reviewing the nursing notes?

20 A I'm not sure if I wrote it down. When
21 the patient has been in a facility for many years,
22 they tend to thin these out and put them somewhere
23 else and there is a certain current amount. I did
24 review a minimal data set dated February 11,
25 1998. I can't tell you how far back. I'm

1 guessing those notes go back six months to a year,
2 if that.

3 Q On the note of February 11, 1998, were
4 you referring to the DNR order? That specific
5 notation in the note?

6 A I don't have that written down. I think
7 what I noted was the MDS, which is a form
8 completed by the nursing staff that sort of
9 outlines the functional status of the patient.
10 That was, I believe dated February 11, 1998, that
11 she was described as comatose and totally
12 dependent.

13 Q Have you ever seen Theresa Schiavo with
14 her mother, Mrs. Schindler?

15 A No.

16 Q In reviewing some of the nursing notes,
17 if I can read a couple of them to you and get your
18 reaction. A nursing note dated February 26,
19 1997. Some staff believes that she --

20 MR. FELOS: Your Honor, if she is
21 referring to a specific document, I would like to
22 have a copy. I don't know if you intend to
23 introduce them into evidence. I know they are not
24 on your document list.

25 MS. CAMPBELL: No. I do not intend to

1 admit them into evidence. These are records that
2 Mr. Felos provided to me. I am asking for his
3 reaction based on these notes.

4 MR. FELOS: Your Honor, if counsel is
5 going to read from the nursing notes and they are
6 not going into evidence, I would object on that
7 basis.

8 THE COURT: Well, I think an expert can
9 rely on matters that are not in evidence, but the
10 fact that he might rely on them does not make them
11 admissible. So we either need to have them
12 identified, marked, or -- you can't admit them on
13 cross, obviously. I don't think you can just read
14 from something and have them be admitted.

15 MR. FELOS: Thank you, Your Honor.

16 Q (By Ms. Campbell) If routinely in the
17 nursing notes it referred to the patient laughing,
18 for example in response to someone telling a joke,
19 how would you consider that with your previous
20 testimony?

21 A Well, again, laughter can occur as a
22 reflex activity. My belief would be, unless I saw
23 consistently with my own eyes that that was, that
24 the laughter occurred, but if in fact it occurred
25 in response to that stimulus that would imply a

1 degree of cortical integration, that I don't
2 believe this patient has.

3 If I can demonstrate that for myself, I
4 would not be able to say that she met the criteria
5 for persistent vegetative state. Would I accept
6 that observation from someone else? No. Because
7 there is so much other evidence and I have seen
8 for myself what this patient looks like. It has
9 to be borne in mind that there is reflex activity.

10 There are actually people in vegetative
11 states that are capable of intermittent what we
12 believe to be cortically brain based functions,
13 such as saying words. Higher brain based. How
14 can a person say a word being in a vegetative
15 state? The answer appears to be there is a little
16 island of cells that can do that. Trigger a
17 mechanism to say a word. Can that imply awareness
18 in the framework to imply awareness? The answer
19 is no. There is too much damage in that patient.

20 So, I mean, you are kind of asking me
21 what do I think if she laughs in response to a
22 joke, if that is true, she's apparently aware and
23 therefore conscious. Do I believe that is true?
24 No.

25 Q Did you tell Mrs. Schiavo a joke?

1 A I did not.

2 Q Did you talk to her in any meaningful
3 way? Calling out her name, asking for or seeking
4 any kind of response from her?

5 A I did.

6 Q Were her eyes open when you called her
7 name?

8 A Yes.

9 Q Did she appear to look at you?

10 A No.

11 Q If you heard testimony that a particular
12 person, her mother, came on a regular basis and
13 she would routinely laugh and/or cry in response
14 to the mother's voice, how would you square that
15 with your previous testimony?

16 A Again behavior, laughter behavior,
17 crying behavior, is observable behavior which I
18 believe is a reflex that is induced by a
19 stimulus. The stimulus might be the mother's
20 voice. It might not be. Exhibiting the behavior
21 does not imply there is awareness of the behavior
22 in a patient who is quadraplegic, whose arms are
23 drawn up, who is in a state of total inability to
24 communicate. Does not respond in any way to
25 directed questions. Can't hear anything.

1 It is inconsistent. It has to be a
2 reflex behavior. I do not believe that type of
3 behavior constitutes proof that there is
4 awareness, I guess is my response.

5 Q If you witnessed that as a pattern on a
6 regular basis, weekly basis, the same voices
7 providing the stimulus for the laughter, and add
8 to that relaxed, hand relaxes, what would your
9 reaction be to that?

10 A If I witnessed it. If there is some
11 kind of consciousness present.

12 Q Thank you. Now in your prior testimony
13 you talked about the definition of terminal which
14 the definition in the statute says under Chapter
15 765 paren 15. Terminal condition means a
16 condition caused by injury, disease, or illness
17 from which there is no reasonable probability of
18 recovery and which without treatment can be
19 expected to cause death. Are you defining without
20 treatment the removal of the feeding tube?

21 A Yes.

22 Q Are you aware of any other kind of
23 treatment that is being provided to Mrs. Schiavo
24 that would expect death or cause death to occur?

25 A The time I saw her last week she was on

1 some various medications, but these are more
2 comfort measures. They are not life sustaining
3 kind of measures. I think that, and I'm not
4 positive about this, that she has been on
5 antibiotics periodically for infections, and if
6 those treatments were stopped -- in other words,
7 if she got pneumonia and was not given
8 antibiotics, that would be life threatening.

9 Q Why do you consider feeding, the
10 artificial nutrition and hydration, treatment
11 instead of care and comfort?

12 MR. FELOS: Your Honor, I object. That
13 is a legal matter determined by the Florida
14 Supreme Court to be medical treatment, therefore
15 the question is irrelevant.

16 THE COURT: Counsel?

17 MS. CAMPBELL: I believe he has
18 testified earlier about the guidelines from
19 his, The American -- I don't know the exact
20 name -- but the American guidelines he was
21 referring to previously that they were more
22 stringent than the Florida Statutes. I can reword
23 my question to say from his particular guidelines,
24 if there were any medical reason.

25 THE COURT: Well, the courts have

1 already ruled that the feeding tube is a medical
2 treatment. I'm not sure what his agreeing with
3 the court or disagreeing with the court would have
4 to do with deciding. How would it be relevant?

5 MS. CAMPBELL: Because he stated his
6 opinion as a medical physician. So if -- and
7 his -- in his statement of consulting physician he
8 has said that she is terminal, which in going over
9 the definition of terminal, it refers to what I
10 just said as far as without treatment.

11 THE COURT: In that treatment I'll
12 allow.

13 MS. CAMPBELL: Thank you.

14 Q (By Ms. Campbell) Dr. Barnhill, let me
15 rephrase the question. In your experience as a
16 physician, and referring back to the guidelines,
17 is it the belief of the American Board of
18 Psychiatry and Neurology that, and they are the
19 ones that issue the guidelines, are there
20 guidelines specifically pertaining to artificial
21 nutrition or hydration being considered care
22 and/or treatment or comfort?

23 A I think you are referring to the
24 American Academy of Neurology?

25 Q Yes.

1 A In this particular position paper I have
2 with me, here is what they say. I'll quote them.
3 Physicians and the family must determine
4 appropriate levels of treatment relative to the
5 administration or withdrawal of, number one,
6 medications. Number two, supplemental oxygen,
7 antibiotics. Three, complex organ sustaining
8 treatment such as dialysis. Four, administration
9 of blood products. Five, artificial hydration and
10 nutrition.

11 Once persistent vegetative state is
12 considered permanent, a "do not resuscitate" order
13 is appropriate. What they basically are saying is
14 it is a treatment and its provision or withholding
15 of is a decision that has to be made by the
16 physicians and family. I'm not sure I answered
17 your question.

18 Q So they combine feeding and nutrition,
19 hydration and nutrition, with all the other life
20 support type measures?

21 A Yes. They do.

22 Q Are you familiar with Dr. Hoshibushi
23 (phonetic) and his treatment of Theresa Schiavo?
24 A physician from the University of California in
25 San Francisco that implanted the electrodes?

1 A The only thing I know is that it was
2 done, or I can see on the scan there is a thing in
3 there, some kind of metal, that is presumably the
4 result of that procedure.

5 Q So you can see them on the CAT scan?
6 That was the next question.

7 A Yes.

8 Q The CAT scan that you reviewed was from
9 1996. Did you review prior CAT scans?

10 A I did not.

11 Q Doctor, are you aware of any prior CAT
12 scans?

13 A I remember reading in the records that
14 there had been, but I never saw them or I don't
15 think I saw reports either. It would not change
16 anything.

17 Q It would not change anything meaning
18 your opinion of how she is currently?

19 A It would not change anything in the way
20 she is currently.

21 Q Do you know one way or the other
22 whether the implants that were implanted into
23 Theresa Schiavo, whether they were beneficial one
24 way or the other from any tests or reports that
25 you reviewed in her medical records?

1 A There is nothing in the records, but I'm
2 not sure what the goal of that treatment was. But
3 I have seen her twice, and if the goal was to make
4 her in some way conscious, it did not work.

5 Q Would you consider Theresa Schiavo to be
6 brain dead?

7 A No.

8 Q Why not?

9 A Brain death is a medical/legal term,
10 more legal than medical, that implies irreversible
11 loss of brain function, including the brain stem.
12 And she has multiple brain stem functions intact.

13 Q You testified earlier regarding the
14 disconnect from the feeling versus the emotional
15 level in response to laughter. How would you know
16 for certain that there was a complete disconnect
17 of the feeling versus the emotional level, for
18 example, in laughter?

19 A I can't know for certain.

20 Q So it would be possible that she would
21 have some feeling level there if there was
22 demonstrated a pattern of repeated laughter of a
23 specific stimulus?

24 A It's possible.

25 MS. CAMPBELL: No further questions.

1 Thank you.

2 THE COURT: Redirect?

3 REDIRECT EXAMINATION

4 BY MS. FELOS:

5 Q Dr. Barnhill, tell us about the tests
6 that you performed in a clinical examination of
7 Theresa Schiavo and other patients who are in
8 persistent vegetative states.

9 A I can sort of go through what I did.
10 It's pretty much the same both times. First part,
11 you know, I go in the room. I look. I see before
12 me and make certain observations visually. The
13 patient was lying in bed. Head and eyes up to the
14 right. Head is extended back. Her limbs, her
15 upper limbs were in flexion. Contractures,
16 meaning they are drawn up against her chest and
17 her hands are pulled down. Her legs are stiff and
18 extended. Her feet are pushed, like the toes are
19 pushed down. That is a typical posture for
20 someone who has had a severe brain -- upper motor
21 neuron posture.

22 Q Say that again?

23 A Upper motor neuron posture. It is the
24 typical pattern of muscle tone that develops after
25 severe brain injury. Sometimes in spinal cord,

1 high spinal cord as well, but central nervous
2 system injury. Then I perceived this patient
3 appeared to be aware: Not aware. Alert, Awake:
4 Not aware. Eyes are open. Then I called her
5 name. No response. I then made a loud hand clap
6 to assure myself that hearing was intact. There
7 was a startle reflex.

8 Q What kind of startle reflex was it? A
9 blinking of the eye?

10 A I think a blink, and it might have been
11 a visible startle. I can't remember exactly. But
12 there was clearly, in my mind, a response to a
13 loud noise. I then tested to see if there was any
14 response to visual threat or tracking. I flicked
15 my fingers in front of the eyes to see if there
16 was anything there. Moved my hand around. I take
17 a penlight out of my pocket and move it around to
18 see if there was tracking. There was not. Her
19 eyes would move about seemingly at random. Those
20 are called roving extra ocular movements.

21 Q Say that again?

22 A Roving extra ocular movements. People's
23 eyes just sort of roll around. I could not get
24 myself to -- upon asking or telling the patient
25 move your eyes to the right, left, up -- get

1 anything that was a response to that.

2 There was some moaning both times. I
3 think actually the first time I saw her she was
4 sitting up in her chair. I don't know what that
5 has to do with it, but I just flashed on that
6 visual image.

7 In response to my attempting to turn the
8 head out of this contractured position to the
9 right to see if I could get her eyes to move in a
10 certain way, that is all I got from there. She
11 had release phenomena. Release reflexes as I
12 talked about. She had a suck reflex. If you
13 put -- what I used was a cotton tip applicator
14 against her lips and they would purse out. She
15 would try to suck that.

16 She had a root reflex, which is the same
17 thing a baby will do if you stroke the cheek. It
18 orients as if seeking the nipple. She had no
19 reflexes to tapping on tendons. A manifestation
20 of being contractured into this position for so
21 many years. I spent a lot of time throughout the
22 course of checking, say limb reflexes, talking to
23 her. Trying to get her to orient to me, respond
24 to me in some way. Stick out your tongue. Move
25 your eyes. Show me your teeth. Turn your head.

1 There was no response.

2 Q Did you try to put your -- you mentioned
3 before about putting your finger in her hand?

4 A I tried. Her hands are so tightly
5 contracted that to open them up, to do that
6 would be painful, if she can perceive pain. But I
7 can pretty well tell you that if you have seen
8 anybody with a stroke whose arms looked like that
9 and I tried to do it, it hurts. So I did not get
10 my fingers in there. Her hands were already
11 grasping.

12 Q A lot of what has been mentioned here
13 has to do with patterns of behavior. I think I
14 heard you say, well, if there is a specific
15 pattern of behavior in response to specific
16 stimuli, then you would consider there could be
17 consciousness. Let me read to you from a
18 deposition. This is a deposition taken of Mary
19 Schindler on August 12, 1999. Page 41, Line 8.
20 And this is a question about some sort of action
21 on behalf of Theresa. Her response is: Sometimes
22 she'll turn her head and look right at me.

23 Now here she says "sometimes", which
24 would indicate this is not a pattern of behavior.
25 Would her statement of "sometimes she'll turn her

1 head" be consistent with your current opinion and
2 diagnosis?

3 A Sure. Sure. She will turn her head
4 sometimes.

5 Q Now if Mary Schindler were to say she
6 looked right at me sometimes, would that be
7 consistent with your opinion? •

8 A Sure. The eyes move. The head moves.
9 At some point they are going to settle on some
10 particular place.

11 MS. FELOS: I have no further questions.

12 THE COURT: Anything further?

13 MS. CAMPBELL: Nothing further.

14 THE COURT: Is this witness under
15 subpoena?

16 MS. FELOS: Yes.

17 THE COURT: Has he completed his
18 testimony or do we need to retain him?

19 MS. FELOS: I don't think we do.

20 MS. CAMPBELL: No.

21 THE COURT: Thank you very much, doctor.
22 You are released from your subpoena.
23
24
25