

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 27, 2000

TIME: 11:05 a.m.

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

TRIAL

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THE COURT: Mr. Felos, are you prepared to proceed with your first rebuttal witness?

MS. FELOS: Yes, Your Honor. We would like to call Dr. Barnhill.

THE COURT: Very well. Doctor, you are still under oath. Have a seat up here as you were before. State your name for the record, please.

THE WITNESS: James H. Barnhill, MD.
(THEREUPON, THE WITNESS, PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:)

REBUTTAL EXAMINATION DIRECT

BY MS. FELOS:

Q Dr. Barnhill, you previously have testified. In the meanwhile, the respondents have introduce a video into evidence. I will ask you whether or not you have reviewed that videotape?

A Yes. I have.

Q That videotape is, by the respondent's mention, evidence of the cognizance of the patient, Theresa Schiavo.

THE COURT: How did he review the tape?

MS. FELOS: Your Honor, we can inquire, but we gave him a copy of the videotape provided us by counsel.

1 THE COURT: Okay.

2 MS. FELOS: Which I have in the machine
3 at this time in order to play it.

4 THE COURT: So he has looked at a copy
5 of Petitioner's Exhibit Number 1 -- excuse me --
6 Respondent's Number 1?

7 MS. FELOS: Yes, Your Honor. Ms.
8 Campbell provided us with a copy.

9 THE COURT: Is that an exact copy?

10 MS. CAMPBELL: To my knowledge. It is
11 not the original copy. It was done from one VCR
12 to another. So the accuracy of it, I can't tell
13 you that I have watched this copy to say that it's
14 exactly the same, as far as clarity.

15 THE COURT: I just don't want anything
16 in the record that would be, you know, an issue.
17 That we not have as an issue.

18 MS. CAMPBELL: Perhaps if they plan to
19 play the video again, they can use the original
20 one.

21 MS. FELOS: I don't know that there is
22 any difference. We received that video from
23 counsel and used it for Dr. Barnhill. If there is
24 any difference, counsel would be here to see it.
25 I can't imagine there will be.

1 THE COURT: So you intend to play the
2 copy as opposed to the --

3 MS. FELOS: I had intended that,
4 Your Honor. Yes. We would want to admit that
5 into evidence as well.

6 THE COURT: I don't want to watch two.
7 If the doctor is going to testify, he probably
8 needs, if there is a question about the genuineness
9 of the copy, then we need to use the original.

10 MS. CAMPBELL: There may be. I believe
11 that would simplify that and remedy the issue.

12 MS. FELOS: Do we want him to review the
13 the original then before the testimony, inasmuch
14 as he has reviewed this video that is right here?
15 Because that is what was provided to us.

16 THE COURT: Well, I don't know. Are you
17 intending to play the video as part of rebuttal?

18 MS. FELOS: Yes.

19 THE COURT: Then I suggest you play the
20 original.

21 MS. FELOS: All right. Yes, Your
22 Honor.

23 THE COURT: Or what is in evidence. I
24 don't know which is the chicken and which is the
25 egg.

1 MS. FELOS: It's the same chicken.

2 THE COURT: One came first. I don't
3 know which came first. So conceivably, the copy
4 could be the first. Okay. So what have we placed
5 into the machine?

6 MS. FELOS: Into the machine is the
7 Respondent's Number 1 which is admitted into
8 evidence.

9 THE COURT: Very well.

10 Q (By Ms. Felos) Dr. Barnhill, you did
11 review a video; is that correct?

12 A Yes.

13 Q That video was a copy of what is in this
14 machine at this time. I will make that statement.

15 A Okay.

16 Q Dr. Barnhill would not know that. In
17 reviewing that video, does it in any way change
18 your opinion, testimony, or testimony or diagnosis
19 with respect to Theresa Schiavo?

20 A No.

21 Q Please tell us why not.

22 A Well, the video that I reviewed,
23 assuming it's the same as the one that we see in a
24 minute --

25 THE COURT: Before he does that, why

1 don't we look and see the video. Then he can -- I
2 don't know. I don't want a bunch of assumptions.
3 Just play the video for the doctor.

4 Ms. Campbell, if you want to watch, you
5 are welcome to. Mr. Schiavo is welcome to. Your
6 clients are welcome to.

7 (THEREUPON, THE VIDEOTAPE WAS PLAYED.)

8 Q (By Ms. Felos) Dr. Barnhill, in
9 reviewing that video, is that the same video that
10 you reviewed previously?

11 A Yes.

12 Q Thank you.. All right. Let's go back to
13 the question. Does the review of this video
14 change your opinion, your testimony, or your
15 diagnosis of Theresa Schiavo?

16 A It does not.

17 Q Would you please tell us why?

18 A Basically, the video shows her behaving
19 in ways that I observed her to behave when I was
20 there. I reached my conclusion based on my
21 examination of that type of behavior.. This is
22 consistent with the vocalizations that are seen in
23 people with persistent vegetative states. I see
24 nothing on that tape that indicates an awareness
25 there for consciousness.

1 Q Can you explain to us then when we see a
2 number of behaviors on that tape, can you explain
3 to us how these behaviors would occur? Which I
4 believe you referred to previously in your
5 testimony as reflex or flexor spasms and other
6 terms like that. You will please, if you have to,
7 you know, use them again.

8 How is that, the flexor and other types
9 of reflex behavior, different from awareness and
10 consciousness where we see similar behavior such
11 as moaning, or laughing, or crying? It's kind of
12 a convoluted question, but I think you know what I
13 mean.

14 A I think that the construction of this is
15 to someone looking at that, what it appears or
16 what happens is the patient appears to be
17 expressing emotion. The patient is crying. There
18 is the beginning, there's a little something that
19 sounds like a laugh. It sounds like an emotional,
20 and in fact it is what we consider to be an
21 emotional behavior. There is behavior. The
22 behavior is moaning or laughing. That is
23 behavior.

24 I think that by everyone's personal
25 experience, when we see or exhibit or perform

1 those behaviors, we have a feeling associated with
2 it. That is normal human sociology.

3 Q So does Terri Schiavo have a feeling
4 associated with those behaviors?

5 A In my opinion, she does not because in
6 my opinion she lacks the ability, due to her brain
7 damage, to integrate stimulus data in such a way
8 that she has consciousness. Now this concept that
9 if there is a behavior, there may be a feeling, is
10 maybe difficult to swallow. It is not something
11 that most people have had any experience with.

12 But as a neurologist, and in the
13 literature of neurology, there are many cases of
14 people, people who have a disconnection between
15 emotion that is feeling and emotional behavior.
16 This is called pseudobulbar affect. Pathological
17 laughter. Pathological crying.

18 It is well known. The anatomy of this
19 is demonstrated. It's pretty well known that if
20 you have damage to tracks that suppress from the
21 cortex that suppresses lower centers, you can have
22 a patient for example that will cry, laugh, or
23 both. They are conscious because they have not
24 had severe generalized brain damage. They have
25 discreet lesions that have disinhibited natural

1 responses, such that a patient might laugh or
2 cry. It's reported in literature.

3 I have personally seen it. If you ask
4 them what do you feel, they will say I don't feel
5 anything. Or do you feel sad, when they are
6 crying. No. I don't feel sad. Do you feel happy
7 when they laugh. No.

8 Q So this is how science has done
9 experiments to determine whether or not the
10 emotions and feelings are connected and you found
11 that in these patients that lack certain cortical
12 function --

13 MS. CAMPBELL: I believe she's leading
14 the witness.

15 MS. FELOS: I'm trying to get clear
16 what he is saying.

17 THE COURT: Then ask it. You are
18 leading and setting it up. If you don't
19 understand what he said, ask him to rephrase it or
20 something.

21 Q (By Ms. Felos) In the pseudobulbar
22 testing, please clarify the point regarding the
23 integration of the circuits between feeling and
24 emotion.

25 A My point in discussing the pseudobulbar

1 state is to demonstrate it's well known. You can
2 in fact disassociate emotional behavior from
3 feeling. That is in people who are conscious and
4 can tell you what they are feeling.

5 Q Thank you.

6 A What we have in this patient's case is
7 severe brain damage. Among other things, it has
8 released or disinhibited these reflexes. It's
9 disinhibited other reflexes. I talked before
10 about a suck reflex. Root reflex. These are
11 reflexes that are not normally present in adults,
12 because the cortex, the higher brain, suppresses
13 them. They are present in babies and go away when
14 the brain develops. They come back after brain
15 damage.

16 Q Did you view that on the tape?

17 A I did not see -- there was sort of a
18 little bit of orientation, I think, to the
19 mother's hand that could be. It's not a classic
20 root reflex. A root reflex is more or less when
21 you stroke, there is a visible turning.

22 Q That is called a root reflex?

23 A Rooting for the nipple, which babies
24 will do. That reflex being present in an adult is
25 just a manifestation of the fact that there is

1 loss of inhibitory cortical input. It's
2 absolutely what you would expect, given her
3 overall appearance. Given the history of severe
4 anoxic injury.

5 Q You say anoxic injury meaning lack of
6 oxygen to her brain?

7 A And given the appearance of her CAT
8 scan, which shows severe damage.

9 Q Now do most people with, well, what's
10 called cognitive death or persistent vegetative
11 state show these reflex actions that you are
12 referring to?

13 A Most do. There is a spectrum, but
14 certainly well reported in the medical literature,
15 that persistent vegetative state patients will
16 moan, smile, cry, laugh, orient to stimuli. None
17 of these behaviors imply awareness. They all can
18 occur, we believe, on a reflex basis.

19 Q And the reflex basis occurs presently
20 where in the brain?

21 A Somewhere below that part of the brain
22 which is involved in generation of consciousness.
23 The anatomy is a little -- it basically is the
24 upper brain stem. If you have an intact upper
25 brain stem and everything below that and nothing

1 in fact above that, you will have these behaviors.

2 Q Does Theresa have the lower and upper
3 brain stem intact?

4 A Yes.

5 Q Does she have the cortical hemispheres
6 in tact?

7 A No.

8 Q I would like to go into, looking at the
9 tape again, you have been describing each of the
10 behaviors you see and give us your understanding
11 and your explanation of what those behaviors are
12 from a medical standpoint, if you are willing to
13 do that.

14 THE COURT: I think he has done that.

15 MS. FELOS: I would like him to look at
16 each behavior. We are talking about allegedly
17 smiling, crying, moaning. A number of things. I
18 believe that the tape will clearly show, on
19 explanation, why that is. How that is occurring.
20 Then I would like to also, after that, ask him
21 whether or not there is any responsiveness or
22 consciousness to those, which of course he has
23 already mentioned.

24 THE COURT: So why ask him again?

25 MS. FELOS: So he can see the tape as it

1 goes through the process.

2 THE COURT: He has seen the tape. He
3 says that does not change his diagnosis, opinion,
4 or anything else. Then he went through about
5 fifteen minutes of why he feels that way. So how
6 is seeing the tape again going to -- he has
7 already offered sur rebuttal testimony to the
8 tape. So what do we hope to accomplish by looking
9 at it again? I don't know if we even have a stop
10 action on the thing?

11 MR. FELOS: I believe there is a pause.

12 MS. FELOS: At the beginning of the tape
13 when Mrs. Schindler is not even near the patient
14 there is moaning on the tape.

15 THE COURT: He already talked about
16 that.

17 MS. FELOS: I had not recognized that he
18 talked about --

19 THE COURT: He mentioned it. Looked
20 like a bit of a smile and then there was a moan.

21 MS. FELOS: I'm not talking about that.
22 Maybe that is what -- in other words, also maybe
23 the question for example I would ask him is at the
24 beginning of the tape is this patient moaning
25 spontaneously or is there some stimulus that

1 appears to be causing the moan?

2 THE COURT: What difference does it
3 make?

4 MS. FELOS: "Because respondents are
5 claiming that the moaning is caused by the voice
6 of the respondent. One of the respondents.

7 THE COURT: He has seen the tape. Why
8 can't you just ask him the question?

9 MS. FELOS: It's a little easier to look
10 at it and respond, than it is to remember the tape
11 completely. I'll do that, if you prefer.

12 THE COURT: We are getting back into
13 this generalized discussion of his testimony and
14 we are not going to go there. If you think you
15 can make it that precise, go ahead. I don't want
16 to inhibit your ability to present your case, but
17 you are trying to convince the trier of fact, I
18 assume, and I don't know what else he can say to
19 rebut it except to say it again. But if you think
20 you can make that happen --

21 MS. FELOS: I can do it generally,
22 judge.

23 THE COURT: Okay.

24 Q (By Ms. Felos) Dr. Barnhill, referring
25 to a little bit about the tape, because we just

1 have looked at it again, at the beginning of the
2 tape, Mrs. Schindler is standing away from the
3 bedside. The patient is in the bed. Do you hear
4 moaning at that time?

5 A Yes.

6 Q How would you explain that with respect
7 to medical and scientific evidence?

8 A The patient moans. She moaned when I
9 was there. I read notes on the chart that she
10 moans. She moans. Why does she moan? Could be a
11 lot of different things in terms of possible
12 reflex behaviors. Moaning, if it's an indication
13 or reflex in response to a noxious stimulus, she
14 might have gas.

15 Q So there could be internal noxious
16 stimulus things like constipation, gas?

17 A Could be a variety of different things
18 such as that. It would be that you would never be
19 able to determine that, but clearly it's
20 spontaneous. At least as presented on that tape,
21 it is just an occurrence going on at that time.
22 Not an apparent response to external stimulus.

23 Q Thank you. Then the moaning seems to
24 stop on the tape. Would you agree with that?

25 A Yes.

1 Q Then the voice of the respondent starts.
2 Would you agree with that?

3 A Yes.

4 Q At that point then, Mrs. Schindler puts
5 her hand under the head of Terri Schindler. Do
6 you recall what happens then? If you need --

7 A No. I think the moaning stops because
8 the tape stops. Then the mother goes over there.
9 Starts to talk to the patient. Lifts her head up
10 and the moaning starts again. The moaning starts
11 again. Yes? That appears to be the case.

12 What does that mean? Well, it can mean
13 a lot of different things. But one thing that
14 happened when I examined this patient -- and I
15 tried to move her head, which is very stiff, and
16 held it up to the right -- is that she
17 moaned. That is presumably anoxic, or what you
18 would consider if you were conscious, a painful
19 stimulus.

20 To take a muscle that is frozen or
21 contractured in a position such as that and to
22 bend it is going to be -- generate a pain type
23 behavior. It would not surprise me that it did
24 that. I think that is probably what happened
25 there.

1 Q So what you said, only if she were
2 conscious, would it be pain? So if the patient is
3 not conscious, then it would be what?

4 A I call it a noxious stimulus. One that
5 the nervous system, on auto pilot, will recognize
6 as disagreeable and generate a reflex. A good
7 example is if you step on a nail. If you are
8 walking along and step on a nail, you will
9 immediately remove your foot from the nail without
10 thinking about it. It is a reflex. A split
11 second later, you will have awareness because you
12 are conscious of pain. But the stimulus will
13 still be noxious, and you don't have any control.
14 You don't have to think about moving your foot to
15 do that.

16 Q So that would be the reflex action.
17 That is what you are seeing on the lifting of the
18 head and therefore the moaning sound?

19 A I think that is a likely cause. I think
20 she could have spontaneously started moaning as
21 well. What I don't think there is is sufficient
22 indication from that tape, especially in light of
23 my having examined the patient and generated the
24 same responses, that it implies awareness of
25 anything to generate that response.

1 Q Thank you. What about what appears to
2 be a smile or movement of the mouth? How did you
3 perceive that?

4 A First of all, the camera angle was some
5 such a way that the patient appears to have almost
6 a smile throughout. I think there is a
7 perceptible change in the facial expression. I
8 know her facial reflex, facial muscle activity, is
9 intact. It looks more like a grimace than a
10 smile. There is some kind of facial movement.

11 What does that mean? Same thing. If we
12 go back to what I talked about in terms of
13 pathological crying states, there is crying
14 behavior. A change in the facial expression that
15 looks sad in people who don't have any feeling in
16 being sad, it's not necessary to have awareness to
17 exhibit this behavior. Another way to put it is
18 exhibiting this behavior does not imply there is
19 awareness.

20 Q Are there any research papers or other
21 reports that you have referred to that have
22 augmented your opinion on this matter?

23 MS. CAMPBELL: Your honor, I object. I
24 believe this is going beyond the redirect.

25 THE COURT: Going beyond the cross.

1 Yes.

2 THE COURT: We talked about that.

3 Q (By Ms. Felos) Now did we talk about
4 laughing? You did not mention what appeared to be
5 a laugh. How would you relate to that?

6 MS. CAMPBELL: Your Honor, I don't
7 believe there is any testimony on this videotape
8 that there was laughing.

9 MS. FELOS: Okay.

10 THE COURT: I heard smiling. Crying.
11 Was there any testimony about laughing?

12 MS. FELOS: I thought I heard laughing.
13 I could be mistaken.

14 THE COURT: You heard laughing in
15 testimony, but with respect to the video --

16 MS. FELOS: Again, if the testimony did
17 say laughing, then we can refer to it.

18 THE COURT: Are we concluded with the
19 video?

20 MS. FELOS: No, Your Honor.

21 THE COURT: Okay.

22 Q (By Ms. Felos) Are there any other what
23 you would call emotional behaviors that you see in
24 this tape that you recall?

25 A Not really. I think the majority of

1 what that tape shows is moaning. Some, perhaps,
2 change in facial expression. Grimacing, which is
3 something that if you look at it, you think there
4 must be emotion there, given this is the behavior
5 scene. I don't see anything else on that tape.

6 Q All right. Okay. How long do you
7 believe this tape was? About three minutes?

8 A Three or four minutes.

9 Q How long did you spend with Theresa
10 Schiavo when you examined her?

11 THE COURT: There is nothing that that
12 question rebuts in direct testimony to
13 respondent's case-in-chief. Please use rebuttal
14 to rebut testimony, not to bolster his prior
15 testimony.

16 MS. FELOS: Thank you, judge.

17 THE COURT: Thank you.

18 Q (By Ms. Felos) There has been some
19 testimony, not the tape now, but there has been
20 some testimony regarding someone who woke up after
21 many years in a coma in New Mexico. Are you
22 familiar with that kind of situation?

23 A I read the newspaper that this had been
24 mentioned in this case. I have.

25 Q How might you explain that, if you can,

1 with respect to this matter?

2 A If I can take a minute and say it seems
3 to me that the issue is that allegedly a patient
4 in a prolonged vegetative state or persistent
5 vegetative state regained consciousness after a
6 long period of time. Sixteen years.

7 If that happened, I would have to,
8 without knowing any other information about it, I
9 would have to believe that patient had a different
10 type of condition. Did not have the same sort of
11 brain injury. Was not a victim of hypoxic brain
12 injury and did not have the type of severe brain
13 damage evident on the CAT scan..

14 There are cases where people have had
15 some sort of return to consciousness. As far as I
16 can tell in reviewing the literature up to, this
17 is reported in the medical literature, up to like
18 two years, those patients did not have severe
19 brain injuries on their CAT scans. They had other
20 types of injuries. So I would have to conclude,
21 if that happened, it was a different type of
22 injury or it's a miracle.

23 MS. FELOS: All right. Thank you. No
24 further questions of this witness..

25 THE COURT: Thank you. Cross?

REBUTTAL EXAMINATION CROSS

BY MS. CAMPBELL:

Q Isn't it true then that your theory on the lady in New Mexico is pure speculation?

A I don't have any other data to go on, so that is speculation.

Q You have not reviewed any of the medical information on the patient in New Mexico?

A Correct.

Q Isn't it true that your testimony here is based on your experience and scholarly academic scientific medical data? Right?

A Yes.

Q You don't know for sure exactly whether there is any emotion that comes out of Theresa; is that true?

A For sure with absolute certainty, I can't say.

Q You did testify there were ribbons of brain matter in her; correct?

A Yes.

MS. CAMPBELL: Thank you. No further questions.

THE COURT: Redirect?

MS. FELOS: A few questions.

REBUTTAL EXAMINATION REDIRECT

1
2 BY MS. FELOS:

3 Q Dr. Barnhill, your opinion is based on
4 your clinical examination of this patient; isn't
5 it?

6 A Yes.

7 Q Is there any reasonable medical
8 probability that Theresa Schiavo could wake up
9 without -- could wake up and become conscious?

10 MS. CAMPBELL: Objection, Your Honor. I
11 don't believe this goes to rebuttal.

12 THE COURT: It goes to the absolute
13 certainty. He can comment on that. Objection is
14 overruled.

15 Q (By Ms. Felos) Please answer the
16 question. Is there any reasonable medical
17 probability or any probability that this patient,
18 Theresa Schiavo, could wake up and become
19 conscious and aware of her surroundings or
20 herself?

21 A No.

22 Q These ribbons of neuro tissue that have
23 been mentioned, are they connected to anything?

24 THE COURT: They were not mentioned.

25 MS. FELOS: I believe they were

1 mentioned on redirect.

2 THE COURT: Did you?

3 MS. CAMPBELL: Yes. I did.

4 THE COURT: I'm sorry.

5 MS. CAMPBELL: I didn't use the word
6 neuro.

7 Q (By Ms. Felos) Ribbons in the brain
8 then. Ribbons of activity you mentioned I think
9 previously. Could those ribbons or whatever they
10 are in the brain create -- be the cause of Theresa
11 Schiavo having some awareness or consciousness?

12 A I don't believe so. I want to clarify
13 when you use the term ribbon, I'm not sure I said
14 that. The implication is that there are areas
15 where there is residual tissue within her skull.
16 I believe based on the entire appearance,
17 history, appearance of the CAT scan, were you to
18 look at that under a microscope, basically it
19 would consist of large areas of scar tissue with
20 occasional nerve cells embedded. In those kinds
21 of, that kind of situation is what somebody in a
22 persistent vegetative state has.

23 Q And those nerve cells, are they
24 connected to anything? Integrated in the skull
25 that ultimately could then become conscious?

1 A I don't think so. No.

2 MS. FELOS: Thank you.

3 THE COURT: Anything further of this
4 witness?

5 MS. CAMPBELL: No, Your Honor.

6 THE COURT: Thank you, doctor. You may
7 stand down.

8 THE COURT: Call your next witness.

9 MR. FELOS: Ellen Delancey.

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

12 REBUTTAL EXAMINATION DIRECT

13 BY MR. FELOS:

14 Q Good morning. State your full name,
15 please.

16 A Ellen Delancey.

17 Q Where do you live?

18 A Pinellas Park.

19 Q How are you employed, Ms. Delancey?

20 A Pardon me?

21 Q How are you employed?

22 A I'm a nurse at Palm Garden of Largo.

23 Q Can you tell us your educational
24 background?

25 A High school. Nursing school.

1 Q Are you a licensed nurse?

2 A Yes, sir.

3 Q How long have you worked at Palm Garden?

4 A Six-and-a-half years.

5 Q Do you know Theresa Schiavo?

6 A Yes. I do.

7 Q When did you have, first have occasion
8 to meet Theresa Schiavo?

9 A When she was first admitted there, I was
10 working the floor on C Wing.

11 Q What does that mean, working the floor?

12 A Nurse on the floor.

13 Q What do your duties consist of?

14 THE COURT: Excuse me. This is like
15 direct testimony. She is here to rebut something
16 that the respondents offered into evidence.

17 MR. FELOS: That is correct. I will ask
18 her those questions. The Court needs to know who
19 she is. A little bit about her qualifications in
20 order to evaluate her testimony.

21 THE COURT: As to the qualifications,
22 fine. I think you have established those. I
23 don't want a history of what she has done. She is
24 a nurse. She has been at Palm Garden
25 six-and-a-half years years. She has a nursing

1 degree.

2 Q (By Mr. Felos) Ms. Delancey, there has
3 been numerous, much testimony on the part of Mr.
4 and Mrs. Schindler, their children, friends of
5 Theresa Schiavo, that she is aware of their
6 presence. That she responds to jokes, laughs at
7 jokes. Knows that they are there. In other
8 words, has cognitive -- has cognition. When you
9 were a nurse on the floor, how often would you see
10 Theresa Schiavo?

11 A Daily.

12 Q Over what period of time were you a
13 nurse on the floor, on Theresa's floor?

14 A Approximately four years.

15 Q When did you stop being a nurse on the
16 floor?

17 A Approximately a year-and-a-half ago.

18 Q Since you stopped being a nurse on the
19 floor in the past year-and-a-half, how often do
20 you see Theresa?

21 A It depends on whether or not I have to
22 go down to C Wing to do something for other
23 residents or do paperwork on Theresa.

24 Q On the average, how often?

25 A I'm down there at least once a week.

1 Q In the six years that you have been at
2 Palm Garden as a floor nurse, and for your four
3 years with Theresa seeing her almost daily, now
4 once a week average, have you ever noticed any
5 cognitive behavior on the part of Theresa Schiavo?

6 A No.

7 Q Do you believe that Theresa Schiavo is
8 cognitive?

9 A No.

10 MR. FELOS: I have no other questions,
11 Your Honor.

12 THE COURT: Thank you.

13 MR. FELOS: I do have one other
14 question. Excuse me.

15 Q There has also been testimony that
16 Theresa Schiavo's condition has improved in the
17 past. In the recent past. In the past year or
18 so. Have you noticed, that is her mental
19 condition, have you noticed any improvements in
20 Theresa Schiavo's mental condition?

21 A No.

22 Q Ever?

23 A No.

24 MR. FELOS: Thank you.
25

REBUTTAL EXAMINATION CROSS

BY MS. CAMPBELL:

Q Hi, Ms. Defancey. I am Pam Campbell. I represent Mr and Mrs. Schindler.

A Hi.

Q Can you define what you mean when you say cognitive behavior?

A She cannot respond to a simple command.

Q Have you ever heard her laugh?

A No. As far as, well, I don't know what you mean by laugh. Have I heard her make noises? Yes. Is it a laugh? That I don't know.

Q Have you seen her smile?

A No.

Q Have you seen her look at you?

A Yes.

Q Have you seen her turn her head?

A No.

Q Have you ever been in the room or been present with Terri, either in the hall or in her room, when Mr. and Mrs. Schindler have been there?

A Yes. I have seen them there.

Q Have you been standing there with Terri when they are there?

A No. I don't stay there during their

1 meetings when they visit her.

2 Q So you never really witnessed whether
3 Terri reacts to them differently than she would
4 react to you?

5 A No.

6 Q Is there a note on the front of the
7 chart regarding whether you are allowed to talk to
8 Mr. and Mrs. Schindler?

9 MR. FELOS: Objection. That has nothing
10 to do with rebuttal.

11 MS. CAMPBELL: No further questions.

12 THE COURT: Any redirect?

13 REBUTTAL EXAMINATION REDIRECT

14 BY MR. FELOS:

15 Q Ms. Delancey, does Terri fix her gaze on
16 something or do her eyes move?

17 A As far as, you know, movement to follow
18 you?

19 Q Not to follow. Do her eyes move
20 randomly?

21 A I guess. I mean, they blink. I don't
22 quite understand the question.

23 Q Does Terri follow you with her eyes?

24 A No.

25 Q But you have been in the room when Mr.

1 and Mrs. Schindler have been there?

2 A I have seen them there.

3 Q Have you seen them enter the room?

4 A Yes.

5 Q As they enter the room, have you ever
6 seen any cognitive response of Theresa?

7 A No.

8 Q Now obviously you are a nurse and have a
9 clinical background. Do you care about your
10 patients?

11 A Yes.

12 MS. CAMPBELL: I believe at this point
13 he is bolstering the testimony.

14 THE COURT: I think so. Sustained.

15 MR. FELOS: Nothing further.

16 THE COURT: Thank you. Anything
17 further?

18 MS. CAMPBELL: No.

19 THE COURT: You may stand down, ma'am.
20 Thank you.

21 THE COURT: Do you have a witness of a
22 similar length?

23 MR. FELOS: Brian Schiavo.

24 MS. CAMPBELL: I object to Mr. Brian
25 Schiavo. He has been sitting in the room during

1 the trial this week, it's my information. He is
2 not listed on any witness list.

3 THE COURT: Don't have to be for
4 rebuttal.

5 MS. CAMPBELL: It's not permissible to
6 be sitting in the trial.

7 MR. FELOS: He is not in the courtroom.
8 As Your Honor -- as soon as the matter by which we
9 learned that he might have rebuttal testimony came
10 up, I instructed him out of the courtroom and he
11 has been out since that time.

12 THE COURT: Ms. Campbell?

13 MS. CAMPBELL: I'm not sure exactly when
14 he has been coming in and out of the courtroom.
15 It has been reported to me, because I do not know
16 Brian Schiavo, that he has been here throughout
17 the entire trial, in and out. I don't know what
18 testimony he has heard and what testimony he has
19 not heard.

20 MR. FELOS: Your Honor, I could not know
21 until I heard the respondent's case the matter by
22 -- I could not have known until that time that
23 Brian Schiavo would become, would have testimony
24 in the case at that exact moment. He was
25 instructed to leave the courtroom. He has not

1 been in the courtroom since then, to my
2 knowledge. Opposing counsel can question him.

3 THE COURT: He was here and heard the
4 testimony that he intends to rebut?

5 MR. FELOS: That I don't know.

6 THE COURT: Well now, you said when you
7 heard it, you instructed him to leave the
8 courtroom. So my guess is from that statement
9 that he was in the courtroom to hear what you
10 heard.

11 MR. FELOS: I believe my recollection
12 has been refreshed. Mr. Brian Schiavo was here
13 the first day on the petitioner's case, but was
14 not here --

15 MS. FELOS: He was not here, Your Honor,
16 the day that that evidence came out.

17 MR. FELOS: When that evidence came out,
18 Your Honor, we said we will need you as a witness,
19 and of course you can't attend the proceedings,
20 which he had not. Your Honor, you have given the
21 respondent's great latitude of introducing
22 evidence, introducing the video that was given to
23 us really the night before. The Court has given
24 great latitude in allowing hearsay testimony. The
25 independent beliefs of what witnesses believe.

1 I ask the Court to also. I don't
2 believe -- it is a matter of latitude to allow us
3 to call the witness.

4 THE COURT: Well, the concern is this
5 witness was not under the rule of sequestration,
6 which meant he could talk freely with his brother
7 or anyone else. Whether here or not, there was no
8 prohibition about it. Usually a rebuttal witness
9 is like this lady that just testified. You hear
10 something and send a subpoena to come for
11 rebuttal. No involvement. The whole purpose of a
12 trial is to have it done fairly.

13 Yes, I have allowed some things to come
14 in. Perhaps some judges, other judges, might be a
15 little more stringent, but I'm very concerned when
16 a potential witness -- and no, they don't have to
17 be listed. That is the law. But when he has an
18 opportunity to be schooled by persons other than
19 yourself --

20 MR. FELOS: I would say if that were the
21 case, that could be brought out on cross-
22 examination and would go to the weight of his
23 testimony.

24 THE COURT: No, sir. It excludes the
25 testimony. See, that is the problem. Mr. Felos,

1 if you put a witness on here that violated the
2 rule, that witness's testimony is gone. What you
3 are suggesting is that I reduce what I think of
4 the witness. They don't have the same effect.

5 MR. FELOS: Your Honor, his testimony
6 does go to an important point in the matter.

7 THE COURT: What evidence submitted by
8 respondents do you intend to rebut?

9 MR. FELOS: Your Honor, the respondent
10 testified and made a point of it in their case
11 that Theresa Schiavo was in Philadelphia when her
12 grandmother died. That was a very important point
13 they were making because Mr. Schiavo has testified
14 that Theresa's statement about her intent came
15 about on a train trip that they took to Florida
16 and on that train trip when they got to Florida,
17 during that trip, Terri's grandmother died.

18 And they have introduced that evidence
19 that, no, Terri was not in Florida, to attack the
20 credibility of Mr. Schiavo's testimony as to
21 Terri's intent. And this witness will
22 specifically rebut. This is Brian Schiavo, who
23 took the trip with Mike and Terri, who will
24 specifically testify that, yes, Terri was in
25 Florida with Michael and Brian when Terri's

1 grandmother died.

2 THE COURT: How does he know when her
3 grandmother died?

4 MR. FELOS: He will testify he was in
5 the Schindler condo with Mike and Terri. That
6 Michael called the Schindlers. He was on the
7 telephone. That when he got off, when Michael got
8 off the phone, he walked into the room and told
9 Terri and Brian that Terri's grandmother died.

10 THE COURT: That is hearsay.

11 MS. CAMPBELL: Even so, Mr. Felos has
12 known this is a critical part of the trial from
13 all the depositions. . If this was such a good,
14 credible witness, I imagine he would have listed
15 him on the witness list in the first place.

16 MR. FELOS: I don't see anything in the
17 deposition testimony of either Mr. and Mrs.
18 Schindler that Terri was in Philadelphia at the
19 time her grandmother died. I can see the closing
20 argument. Well, how can we believe Mr. Schiavo's
21 rendition of Terri's intent on the train when he
22 says this happened on a trip when Terri's
23 grandmother died when Terri was in Philadelphia?

24 It is an important point that goes to
25 Terri's intent and credibility on his statement.

1 They brought it out many times in their case. I
2 believe it is important to rebut that.

3 THE COURT: Nowhere in the deposition of
4 anybody does it come out that this statement was
5 made and who was present?

6 MR. FELOS: I don't recall a statement
7 in the deposition by Mr. and Mrs. Schindler,
8 either one of them, that Terri was in Philadelphia
9 at the time of the grandmother's death. And
10 Your Honor, even if they had, even if they had
11 said that in the deposition, the fact is I did not
12 discover or find out about that witness until
13 later.

14 I mean, Your Honor, I made the same
15 argument about the videotape. That respondents
16 had two years in this case to ask the Court for
17 permission to do a videotape. I get sprung with a
18 copy of a videotape the day before trial. So the
19 fact that this -- that the case has been litigated
20 and depositions were taken is, you know, not the
21 point.

22 The point is I have found out about this
23 evidence. I found out about this evidence during
24 trial.

25 THE COURT: Now my notes do not reflect

1 where she made the statement.

2 MR. FELOS: Excuse me, Your Honor?

3 THE COURT: My notes do not reflect
4 where Terri Schiavo made these statements that he
5 attributes to her.

6 MR. FELOS: Your Honor, I believe the
7 testimony --

8 THE COURT: I don't care what the
9 testimony was. I'm telling you the notes this
10 case is going to be decided upon do not reflect.
11 I saw watching TV. Saw people on life support.
12 She told him she did not want to live like that.
13 That is a paragraph after he talked about her
14 grandmother.

15 MR. FELOS: Mr. Schiavo -- it may not be
16 in your notes, Your Honor. You are going to have
17 the testimony transcribed as to conversation.

18 THE COURT: Not of Mr. Schiavo.

19 MR. FELOS: Mr. Schiavo also testified
20 that he had a conversation with Terri on the train
21 to Florida in which Terri said, concerning her
22 uncle, I'm concerned about my uncle because who is
23 going to take care of him when grandma dies.

24 THE COURT: Okay.

25 MR. FELOS: The uncle was disabled and

1 she told Michael if I have to be cared for by
2 others, please don't let me live like that. I
3 believe that is what Mr. Schiavo testified to.

4 THE COURT: Does it matter where that
5 statement was made? Does it matter that the
6 grandmother was in the hospital for electrolytes
7 or whether grandmother was in the hospital for
8 pneumonia?

9 MR. FELOS: If the Court is saying, yes,
10 I believe the statement was made, I found that
11 credible, it makes no difference, but the
12 argument --

13 THE COURT: Mr. Felos, I'm not saying
14 anything other than the fact that where she was
15 when she made the statement or when she made the
16 statement does not appear to be as important as
17 you think it is. Now back to the original thing.
18 Is all he is going to testify to is that grandma
19 died in March and Michael and Terri were in St.
20 Petersburg at that time?

21 MR. FELOS: With them. That is correct,
22 Your Honor.

23 THE COURT: This case turns on that;
24 right?

25 MR. FELOS: Your Honor, I'm not the

1 trier of fact. I don't know in the Court's mind
2 what this case will turn on. I do expect to hear
3 in closing arguments, don't believe Michael about
4 the conversation on the train. He said this
5 happened when Terri's grandmother died and it did
6 not. If respondents wish to waive that position
7 or argument --

8 THE COURT: The issue is not what they
9 do. The issue is do you have a right to put a
10 witness on the stand that has been in the
11 courtroom during part of the trial. Do you have a
12 right to do that. That is the issue.
13 Secondly, how are you going to pass a hearsay
14 objection?

15 MR. FELOS: Well, number one, I don't
16 know if a hearsay objection will be raised.

17 THE COURT: I think it probably will
18 be. Wouldn't you raise it, Mr. Felos, if you were
19 in Ms. Campbell's position?

20 MR. FELOS: I would say, number one, it
21 falls under the, under a spontaneous statement or
22 also an excited utterance. Also, I'm not offering
23 the statement for the truth, but I --

24 THE COURT: Oh yes you are. For crying
25 out loud. The truth is grandma died that day when

1 they were in Florida. What else would you
2 possibly be offering that for? This testimony you
3 are intending to offer, I think, is just full of
4 problems. I think it's been a clean trial thus
5 far, and I don't want to mess it up at this
6 juncture. Brian Schiavo will not be permitted to
7 testify.

8 MR. FELOS: I would like, for the
9 record, to make a proffer of his testimony.

10 THE COURT: If you want to proffer when
11 I leave for lunch, you can do that.

12 MR. FELOS: I think it's sufficient for
13 me, Your Honor, just to make a formal proffer for
14 the record as to my --

15 THE COURT: Mr. Felos, I'm not sure I
16 need to hear anymore about what he might say. I
17 think I'm a little more sophisticated than a
18 jury. You try cases with me. I don't want to
19 look at documents until I'm ready. I'll leave the
20 courtroom. You may make your proffer, then break
21 for lunch, and come back at quarter after 1:00.
22 How is that?

23 MR. FELOS: All right.

24 THE BAILIFF: All rise. Court stands in
25 recess.

1 (THEREUPON, THE JUDGE LEFT THE COURTROOM AND
2 THE COURT REPORTER SWORE THE WITNESS ON OATH.)

3 PROFFER TESTIMONY DIRECT

4 BY MR. FELOS:

5 Q State your name, please.

6 A Brian Schiavo.

7 Q Where do you live?

8 A I'm sorry. I live in Sarasota.

9 Q Are you related to the petitioner in
10 this case, Michael Schiavo?

11 A Yes. He is my brother.

12 Q Did you have an occasion to take a train
13 trip with Michael Schiavo and Theresa Schiavo to
14 Florida?

15 A Yes. I did.

16 Q Do you recall when that was?

17 A It was approximately March of 1986.

18 Q And at that time, was there anything
19 particular about that time that you remembered
20 about the trip in terms of some sort of accident
21 or calamity?

22 A Yes. Unfortunately, on our way back
23 after our vacation, after on our way back to the
24 train station, we had a rental car. I
25 unfortunately totaled the rental car. So that

1 kind of delayed our trip home.

2 Q Where did you stay after the rental car
3 was totaled? Where did you stay that evening?

4 A We went back. The tow truck driver was
5 kind enough to give us a ride back to Mr. and Mrs.
6 Schindler's condo, at Isla Del Sol is where we
7 spent the week, and we spent the night there.

8 Q Okay. Do you recall any telephone
9 conversations made by either Mr. Schiavo or
10 Theresa Schiavo that evening?

11 A Yeah. When we got back, obviously we
12 were all shaken up. Concerned about how we were
13 going to get home. That kind of thing. But I
14 remember we called the Schindlers to let them know
15 we were going to be late. We had the accident.
16 We talked for a bit. At that time, we found out
17 that Terri's grandmother had passed away.

18 Q How did you find out?

19 A I think it was Michael who was on the
20 phone. Michael told Terri after he got off the
21 phone. He was talking to the Schindlers.

22 Q When did you all -- did you return to
23 the Philadelphia area after that?

24 A Yeah. The next morning. If I recall
25 correctly, I think it was Mr. Schindler's friend

1 that we called -- it was either a friend or cousin
2 of the Schindlers -- to give us a ride to the
3 train station over in Tampa. We did not have any
4 transportation. That is how we got that together.

5 Q Do you recall a funeral for Theresa's
6 grandmother?

7 A I don't recall the funeral. No.

8 Q Had you ever taken a trip with Michael
9 and Theresa to Florida before that occasion?

10 A Yes. It was about, I guess, about five
11 to seven months prior to that. We had such a good
12 time on that trip, we decided to make a second
13 trip.

14 Q The first trip, was that train or plane?

15 A Plane.

16 Q Do you know whether or not Mr. Schindler
17 was in Florida during the occasion of your first
18 trip?

19 A The first trip he was. Yes.

20 Q How do you know that?

21 A He picked us up from the airport. We
22 had a good time. A lot of fun. He also took us
23 back after.

24 MR. FELOS: I have no other questions.
25 Did you want to ask any?

1 MS. CAMPBELL: No. No questions.

2 (THEREUPON, COURT WAS IN RECESS FROM 12:10 - -
3 1:15 P.M.)

4 THE BAILIFF: All rise. Circuit court
5 is back in session.

6 THE COURT: Be seated, please. Okay.
7 Mr. Felos?

8 MR. FELOS: We call Joan Schiavo.

9 THE COURT: There is very little in this
10 proceeding, other than quite serious things, but
11 in June of '84, the newspaper things, Robert Shonz
12 was selling Hertz for \$3.88.

13 Brian Schiavo, he made the request, and
14 I would not talk to him outside, but if either of
15 you have a problem with him being in the
16 courtroom?

17 MS. CAMPBELL: I don't have a problem
18 with it.

19 THE COURT: Mr. Felos?

20 MR. FELOS: No objection.

21 THE COURT: Okay. Mr. Sheriff, advise
22 him. Brian Schiavo can be back in the courtroom,
23 since there is no objection.

24 (THEREUPON THE WITNESS, PREVIOUSLY SWORN,
25 TESTIFIED AS FOLLOWS:)

REBUTTAL EXAMINATION DIRECT

BY MR. FELOS:

Q State your name, please.

A Joan Schiavo.

THE COURT: Note you are still under oath.

Q (By Mr. Felos) There has been testimony raised in the respondent's case about the status of Terri and Michael's marriage before the incident in February 1990.

A Um-hmm.

Q As I recall, even after Terri moved to Florida, you two remained close friends?

A Yes. We did.

Q How often did you speak on the phone together?

A When she moved to Florida, I would say out of seven days, maybe five.

Q In that relationship, after she moved to Florida, you still confided in each other?

A Yes. We did.

Q Did Terri ever mention anything to you about wanting to divorce Michael?

A Not at all. Never mentioned it one time.

1 Q Describe to us, please, from your
2 talking with Terri during that time period, how
3 the relationship with Michael was.

4 A She didn't see Michael a lot because he
5 worked a lot. His hours were crazy at the time.
6 She missed him, but she kept herself busy. And
7 she wanted to be around him. She loved him.

8 Q Did she ever say I don't love Michael
9 any more?

10 A No.

11 Q I want a divorce?

12 A No.

13 Q He is too controlling?

14 A Not at all.

15 Q He yelled at me because I got my hair
16 colored?

17 A Not at all.

18 MR. FELOS: No other questions.

19 THE COURT: Thank you. Cross-
20 examination?

21 MS. CAMPBELL: No, Your Honor.

22 THE COURT: Okay, ma'am. You may step
23 down.

24 THE WITNESS: Okay. Thank you.

25 MR. FELOS: May the witness stay in the

1 courtroom?

2 THE COURT: Is there a problem with
3 that?

4 MS. CAMPBELL: No, Your Honor.

5 THE COURT: Thank you. Ma'am, the rule
6 is still invoked. Don't talk to anybody other
7 than the lawyers about your testimony, or the
8 case, until all the testimony is concluded.

9 THE WITNESS: Thank you.

10 MR. FELOS: Diane Gomes.

11 THE BAILIFF: Stand right here. Face
12 the judge. Raise your right hand to receive the
13 oath.

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

16 THE COURT: Thank you, ma'am. Have a
17 seat in the witness chair, if you would, please.

18 'REBUTTAL EXAMINATION DIRECT

19 BY MR. FELOS:

20 Q State your full name, please.

21 A Diane Gomes.

22 Q Where do you live?

23 A Largo, Florida.

24 Q Ms. Gomes, do you know a Theresa

25 Schiavo?

1 A Yes. I do.

2 Q Tell me when you first met Theresa.

3 A It was back, in 1984.

4 Q Um-hmm.

5 A At Sabal Palms Nursing Home.

6 Q Would that have been 1994?

7 A '94. I'm sorry.

8 Q In what capacity did you meet or see

9 Theresa Schiavo?

10 A I was a care giver for her.

11 Q Who were you hired by?

12 A Her husband.

13 Q Could you briefly describe how often you

14 saw Theresa and the nature of your duties?

15 A I saw her probably five or six times a

16 week. It was up to eight hours a day.

17 Q Um-hmm.

18 A I would go in and care for her. Do her

19 private needs. Everything. Try, you know, to get

20 her up. Then we walked around the nursing home.

21 Stuff like that.

22 Q And you stopped that in 1996?

23 A Yes, sir.

24 Q Have you seen Theresa since then?

25 A Yes. I have, sir.

1 Q Why is that?

2 A She just became a friend to me.

3 Q How often have you seen her since 1996?

4 A Oh, a bunch of times. Like every three
5 or four months I go in there.

6 Q Is it fair to say you are fond of
7 Theresa?

8 A Yes, sir.

9 Q In all the times that you have been with
10 Theresa, working with Theresa, seeing her five or
11 six times a week, visiting her afterwards, have
12 you ever noticed any cognition or awareness on the
13 part of Theresa?

14 A No, sir.

15 Q Did you work -- was one of the days you
16 worked Sundays?

17 A Sometimes. - Yes, sir.

18 Q How often -- did you ever see Mr. and
19 Mrs. Schindler visit Theresa?

20 A Not very often.

21 Q Could you explain what that means in
22 terms of time? Once a week? Month? Once a year?

23 A Maybe once a month.

24 Q How often would Michael see Theresa?

25 A Michael was there almost every day

1 unless he had to go to class.

2 Q How much time would he spend there when
3 he came?

4 A Lots of time.

5 Q More than an hour?

6 A Oh, yeah.

7 MS. CAMPBELL: I object to this line of
8 questioning. I don't believe it's in the nature
9 of rebuttal. I don't know if there has been
10 testimony or controversy that we have presented
11 Michael as not spending time there.

12 MR. FELOS: There is evidence in the
13 guardian ad litem's report. He makes reference.
14 I believe he also made, not in his testimony, but
15 makes reference in his report to the effect that
16 Mr. Schiavo's interest in Theresa waned after the
17 malpractice award or after he realized that there
18 was no hope of recovery. It would go to rebut
19 that.

20 THE COURT: He said his interest waned
21 in pursuing medical extraordinary care. I don't
22 think he mentioned, and I have not read his
23 report, Mr. Felos, but I don't think he mentioned
24 anything about he quit going or slacked off seeing
25 her. Do you want to take a minute and look at his

1 report so you can point that out to me?

2 MR. FELOS: Yes. Let me take a look at
3 his report.

4 THE COURT: I think we are on Page 5.
5 Nothing there about his being there or not being
6 there. It talks in terms of treatment. Did you
7 have something else?

8 MR. FELOS: He does -- no. I don't see
9 a specific reference. You are right, Your Honor.
10 I don't see a specific reference on that.

11 THE COURT: Therefore, objection will be
12 sustained.

13 Q (By Mr. Felos) Ms. Gomes, did you ever
14 see Theresa moan?

15 A Yes, sir.

16 Q Um-hmm. Did you ever see Theresa make
17 other sounds?

18 A Not really. Couple of groans or
19 something during her female time.

20 Q Have you noticed any improvement in
21 Theresa's mental condition over the period you
22 were with her?

23 A No, sir.

24 Q In the time you visited with her
25 afterwards?

1 A No, sir.

2 MR. FELOS: I have no other questions.

3 REBUTTAL EXAMINATION CROSS

4 BY MS. CAMPBELL:

5 Q Good afternoon. My name is Pam
6 Campbell, attorney for Mrs. and Mrs. Schindler.
7 Ms. Gomes, have you seen Theresa in the last year?

8 A Yes.

9 Q Have you been there in the last year
10 when Mr. and Mrs. Schindler were present?

11 A No. I just dropped in to visit her.

12 MS. CAMPBELL: Okay. No further
13 questions.

14 THE COURT: Thank you. Any redirect?
15 Thank you, Ms. Gomes. You may step down.

16 MR. FELOS: Call Mr. Schiavo.

17 THE BAILIFF: You are still under oath.

18 (THEREUPON, THE WITNESS, PREVIOUSLY SWORN,
19 TESTIFIED AS FOLLOWS:)

20 REBUTTAL EXAMINATION DIRECT

21 BY MR. FELOS:

22 Q Mr. Schiavo, you heard the respondent's
23 evidence regarding what they believe to be
24 Theresa's awareness. You have seen the
25 videotape. Does that in any way alter or change

1 your testimony regarding Theresa's mental status?

2 A No. It does not.

3 Q Have you witnessed Theresa moan or have
4 the similar type of physical responses she did in
5 this videotape?

6 A Many times. Yes.

7 Q Can you tell the Court, for instance,
8 what was occurring on those times?

9 A Terri moans a lot when she is in a
10 laying position and you sit her up to place her in
11 a chair. She will moan. Terri will moan when you
12 turn her over. Terri will moan when you pull her
13 arms straight out.

14 Q There was some testimony about
15 discussions or plans, if the malpractice case was
16 successful, to have Terri brought home to live in
17 a home setting. After the malpractice award, was
18 Terri ever brought into a home setting?

19 A She was brought home with me. Yes.

20 Q How long did that last?

21 A First time approximately four months.

22 Q After the malpractice suit?

23 A Oh, after the malpractice suit?

24 Q Yes.

25 A Um, brought her home -- I'm trying to

1 remember every place she's been. She went to
2 College Harbor. Bayfront. Approximately about
3 four months after the malpractice suit.

4 Q As guardian of her person, why haven't
5 you decided to bring Terri to be cared for in your
6 home or a home setting?

7 A Terri is very difficult to take care
8 of. She needs a lot of care. A lot of attention.

9 Q Um-hmm.

10 A It's very difficult to do in a home
11 setting.

12 Q Diane Meyer testified that she believed
13 Terri was not eating her food and she said she
14 told you about that. Did Diane ever tell you
15 anything about an eating problem with Terri?

16 A Absolutely not.

17 Q Did you do anything whatsoever to poison
18 the relationship, friendship, between Terri and
19 Diane Meyer?

20 A Absolutely not.

21 Q We have heard testimony from many
22 witnesses -- or from Jackie Rhodes. Did you ever
23 monitor your wife's mileage on her car?

24 A Of course not. Why would I want to
25 monitor her mileage? She was free to go as she

1 pleased.

2 Q Did you yell at your wife because she
3 had her hair colored? .

4 A Of course not.

5 Q Did you ever -- how would you describe
6 the status of your marriage before the incident?

7 A Terri and I had a very loving marriage.
8 We had our problems, just like every other
9 marriage does. Terri never ever mentioned to me
10 about divorce.

11 Q Did she ever say I don't love you
12 anymore, Mike?

13 A Not at all. The night before it
14 happened, she told me she loved me.

15 Q Where was Terri when she had gallbladder
16 surgery? The surgery to have her gallbladder
17 removed? What facility was she in?

18 A Palm Garden, Largo.

19 Q Not Sabal Palms, as testified to by
20 Mrs. Schindler?

21 A No.

22 Q Where was Terri when her paternal
23 grandmother died?

24 A Terri was here with me in Florida.

25 Q How do you remember that? How do you

1 know that?

2 A Because we took the train down here,
3 and when we got down here, before leaving, we got
4 into a car accident.

5 Q Um-hmm.

6 A And when we got back, the driver of the
7 tow truck took us, graciously, back to the
8 condominium.

9 Q Um-hmm.

10 A I called and talked to Mrs. Schindler
11 personally. Told her we were going to be late.
12 We were in the car accident. She gave us the
13 number -- I don't know if it was a cousin or
14 friend -- who came and picked us up the next day
15 and took us to the train. But during that
16 conversation, Mrs. Schindler told me that Terri's
17 grandmother passed away.

18 I specifically remember asking Mrs.
19 Schindler why didn't you call us during the week.
20 She said what are you going to do. There is
21 nothing you could have done here. I hung up the
22 phone with Mrs. Schindler. I went into the living
23 room and told Terri her grandmother had died.

24 Q You were on that Florida trip also with
25 your brother, Brian?

1 A Yes.

2 Q That is the trip you went to Florida on
3 the train?

4 A Yes.

5 Q Had you and Terri and Brian taken any
6 other trips to Florida together?

7 A I believe it was October of '85.

8 Q Do you know where Mr. Schindler was?

9 A Mr. Schindler was here on vacation.

10 Q I believe Mrs. Schindler testified that
11 she got hope from a Dr. Yinghling, who had come
12 from California, about a year after the implants.
13 Were you here with Dr. Yinghling?

14 A Yes. I was.

15 Q Was there anything hopeful that occurred
16 as a result of Dr. Yinghling's visit?

17 A No. There was not.

18 Q To your knowledge, is there any
19 treatment at Shands Hospital that can help Terri?

20 A No. There is not.

21 Q Are you aware of any treatment anywhere
22 that can help Terri?

23 A There is no treatment anywhere that can
24 help Terri. No.

25 Q If there were, what would you do?

1 A I would be there in a heartbeat.

2 Q Are you indebted to Mr. Schindler?

3 A No. I'm not.

4 Q Does he owe you any money?

5 A Yes. He does.

6 Q For what?

7 A He bought my vehicle from me and he also
8 used my credit card.

9 Q Did he, was there any agreement for him
10 to pay you for this vehicle?

11 A Yes. A verbal agreement.

12 Q How much?

13 A \$2000.

14 Q Did you transfer title to Mr. Schindler?

15 A Yes. I did.

16 Q Did he pay you any money?

17 A One dollar.

18 Q When you say he used your credit card,
19 that was a credit card for what store?

20 A Montgomery Wards.

21 Q Do you know what Mr. Schindler used the
22 credit card for?

23 MS. CAMPBELL: Objection, Your Honor. I
24 believe there was testimony on cross with Mr.
25 Schiavo on Monday regarding, since we don't have

1 the transcript it's hard for me to say, but that
2 he didn't recall any charges on anything, charge
3 card, any money that Mr. Schindler owed him.

4 MR. FELOS: I don't recall that, but you
5 can certainly cross-examine about that.

6 MS. CAMPBELL: I think the testimony now
7 is different from what it was on Monday.

8 THE COURT: I don't recall that either.

9 MS. CAMPBELL: I believe it was toward
10 the end of my cross-examination there was a
11 discussion regarding -- would you like me to --

12 THE COURT: I recall the lawyer sending
13 the Schindlers a demand letter in '93, plus or
14 minus, but I'm not sure why.

15 MS. CAMPBELL: I believe the follow up
16 question was was it for any credit card charges.
17 I thought his testimony was he didn't know or no.

18 THE COURT: That would have to do with
19 the demand note. It may or may not have had to do
20 with -- if you have a copy of the letter.

21 Q (By Mr. Felos) Mr. Schiavo, do you
22 know what Mr. Schindler used your Ward's credit
23 card for?

24 A A lounge chair. I believe a tubie.

25 Q Was there any agreement as to repayment

1 of those funds?

2 A Yes.

3 Q What was that?

4 A That he would pay it back.

5 Q Did he?

6 A No. He did not.

7 Q Robert Schindler, Jr. was asked what he
8 believed Terri would want in these circumstances
9 if she were aware of what was occurring. I will
10 ask you the same question. What do you believe
11 your wife would want, if she knew what was
12 happening to her now?

13 MS. CAMPBELL: I object. I don't
14 believe that is proper for rebuttal. I believe
15 Mr. Schiavo already testified to that on direct.

16 MR. FELOS: I never asked him that
17 question, Your Honor.

18 THE COURT: It does not matter. His
19 opinion does not rebut someone else's opinion. So
20 we are in rebuttal. You are asking him to rebut
21 Robert Schindler Jr.'s with his own opinion. That
22 is not rebuttable. He has not challenged his
23 opinion, his belief. His belief is not based on
24 facts that he can rebut, so I'm going to sustain
25 the objection.

1 MR. FELOS: I have no other questions.

2 THE COURT: Thank you. Cross?

3 MS. CAMPBELL: No questions, Your Honor.

4 THE COURT: Thank you. You may step
5 down.

6 THE COURT: Further witnesses?

7 MR. FELOS: We only have Mr. Sheehan.
8 We have discussed this before. I have spoken with
9 him. He advised me that he would be available to
10 testify at 9:00 a.m. tomorrow morning.

11 THE COURT: So if we have -- do you have
12 any sur rebuttal?

13 MS. CAMPBELL: No, Your Honor.

14 THE COURT: So I guess what we do now,
15 unless you want to do closings before you get done
16 with your witnesses, I guess we will stand in
17 recess until 9:00 a.m.

18 MS. CAMPBELL: Would it be the Court's
19 plan to go directly into closings at the
20 conclusion?

21 THE COURT: I offered you attorneys an
22 either/or. I'll still stand behind that. If you
23 want to start at 9:00 and go directly to closings,
24 that is fine. If you want to start at 1:30 and go
25 directly to closings, that is likewise fine. I am

1 at your disposal.

2 MR. FELOS: I would prefer to go into
3 closing arguments directly after Mr. Sheehan's
4 brief testimony.

5 THE COURT: That is what I intend, but
6 if both, you all wanted to spend the morning
7 preparing closings, I can live with that.

8 MS. CAMPBELL: That is perfectly fine
9 with me to just go into closings after
10 Mr. Sheehan.

11 THE COURT: That is fine. We will be in
12 recess until 9:00 a.m. tomorrow morning by the
13 courtroom watch.

14 THE BAILIFF: All rise. Court stands in
15 recess.

16 (THEREUPON, COURT RECESSED AT 2:00 P.M. AND
17 RECONVENED AT 9:00 A.M. ON 1-28-00.)

18 THE BAILIFF: All rise. Circuit Court is
19 back in session. Be seated, please.

20 THE COURT: Mr. Felos, ready to proceed?

21 MR. FELOS: Yes, Your Honor.

22 THE COURT: Ms. Campbell, are the
23 respondents ready?

24 MS. CAMPBELL: Yes, Your Honor.

25 THE COURT: Call Mr. Sheehan, I guess.

1 MS. CAMPBELL: I, at this time, I would
2 also like to renew my objections to Mr. Sheehan on
3 the grounds of relevancy and attorney/client
4 privilege as we discussed previously.

5 THE COURT: Let's get that out on the
6 table and see what it looks like. Let's take the
7 relevancy first, since I've wrestled with that
8 since last week. What, other than impeachment,
9 what does his testimony have to do with what I
10 need to decide in this case?

11 MR. FELOS: Your Honor, I think the
12 motivations of the parties are very relevant to
13 reaching the truth of this matter. We have heard
14 from the respondents what their motivation in the
15 case is.

16 Mr. Schindler has stated he would do
17 anything to keep his daughter alive, yet he
18 dismissed with prejudice a suit in which he
19 alleged my client was found to give medical
20 treatment. The same matter which he is opposed to
21 in this action, he dismissed with prejudice. His
22 explanation for that is I didn't know. I think
23 it's relevant to show his answer was untruthful.

24 THE COURT: Mr. Felos, even if to
25 convict of perjury would be material, I then get

1 back to the relevance. What issue in this case
2 does the quality of the dismissal of that earlier
3 action touch upon?

4 MR. FELOS: Mr. Schindler also
5 testified as to a conversation he had with his
6 daughter surrounding the placement of a respirator
7 on his mother, which I assume was offered to show
8 some intent about his daughter. That his daughter
9 agreed with the decision concerning artificial
10 life support regarding his mother. Placement of
11 the respirator.

12 That specific testimony, I gather, was
13 offered on the part of the respondents to show
14 something about Theresa Schiavo's intent. Whether
15 this man is truthful, whether the rendition of his
16 testimony is truthful, is very relevant to the
17 Court to be able to test the validity of that
18 particular relevant statement and to the extent we
19 can show on rebuttal that his testimony was for
20 the truth, this is relevant.

21 THE COURT: Ms. Campbell?

22 MS. CAMPBELL: I have no response.

23 THE COURT: So if you ask a witness was
24 the sun shining the day before the accident and
25 they said no, you would want to bring in a

1 meteorologist to show it was cloudy that day, even
2 though it had nothing to do with the accident?

3 MR. FELOS: Your Honor, this is not a
4 question about the sun shining. I may not want
5 for call a meteorologist and say the sun was
6 shining.

7 THE COURT: It is the same thing. I
8 think you have to concede, because you have not
9 met it, swear that the quality of the dismissal in
10 1994, I think, has nothing to do with anything I
11 need to decide in this trial. It is totally
12 collateral. It is totally peripheral, hanging out
13 there.

14 MR. FELOS: By the same token, Your
15 Honor, what did the status of Mr. and Mrs.
16 Schiavo's marriage have to do with the specific
17 matter of intent? I objected at the time and that
18 whole area that the respondents were allowed to
19 bring in was allowed. We would have had a trial,
20 I suppose, in a half a day, just having three
21 witnesses, and the only questions would have been
22 what did Theresa Schiavo say.

23 But that was not how this trial was
24 conducted and there were many, many collateral
25 matters. And I think the Court, for good reason

1 on many occasions, said, yes, there are additional
2 matters which may bear on this case and the
3 credibility of witnesses and what happened here.
4 Such as the status of the marriage, which was
5 brought in.

6 Certainly the prior litigation was well
7 discussed and was well -- was a major matter
8 before the Court. And to have this man say he
9 wants to save his daughter's life, yet he
10 dismisses a legal action which he supposedly could
11 do that --

12 THE COURT: Whether it was dismissed
13 with prejudice or without prejudice, it was
14 dismissed. You have the same argument either way,
15 don't you?

16 MR. FELOS: No. This is the
17 distinction.

18 THE COURT: I know what the legal
19 distinction is, Mr. Felos. My guess is the
20 statute might have run. It is six years old now,
21 those allegations. Be that as it may, the
22 argument is that he dismissed it and I don't know
23 what prejudice has to do with anything.

24 Are you suggesting that he can never
25 bring up a removal action against Mr. Schiavo

1 based on neglect?

2 MR. FELOS: Not on the same grounds.

3 THE COURT: Note solely on the same
4 grounds.

5 MR. FELOS: That is the distinction.

6 THE COURT: But he is not attempting to
7 do that.

8 MR. FELOS: Your Honor, I have no wish
9 to argue with the Court.

10 THE COURT: Well, attorney/client
11 privilege might solve that problem. I know he
12 testified what his attorney did or did not say. I
13 think clearly an attorney can testify as to
14 whether or not he was his attorney; could he not?

15 MS. CAMPBELL: Yes, Your Honor.

16 THE COURT: That is one area that may
17 not be barred under any extent.

18 MR. FELOS: He has also specifically,
19 has testified as to discussions with Mr. Sheehan
20 and we have the relevant portions of his -- the
21 relevant portions of his deposition in which he
22 said, he was asked, "Mr. Sheehan dismissed your
23 claim with prejudice without explaining to you
24 what that meant?" Answer. "Yes. I had a brief
25 discussion with him, but it was never explained to

1 us the ramifications of dismissing this charge
2 with prejudice."

3 THE COURT: , I'm not sure what the
4 ramifications are. The text book definition of
5 what prejudice is.

6 MR. FELOS: I cited that to point out
7 not only did Mr. Schindler say he didn't know what
8 dismissal with prejudice was, that was based upon
9 a conversation where he said I had a discussion
10 with Mr. Sheehan on the question of waiver. When
11 you testify as to your discussion with your
12 attorney, the law on a subject, that acts as a
13 waiver.

14 THE COURT: He certainly did testify.

15 MS. CAMPBELL: Your Honor, candidly, I
16 believe this part of the argument is not as strong
17 as the other part. I believe there has been
18 potentially some waiver.

19 THE COURT: I guess I'll hear from Mr.
20 Sheehan. Again, I still don't think that this has
21 any great impact on what I need to consider, but
22 I'll allow it. But be very precise with your
23 questions.

24 MR. FELOS: I will, Your Honor.

25 THE COURT: Thank you.

1 THE BAILIFF: Stand right here. Face
2 the judge. Receive the oath.

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

5 THE BAILIFF: Step up to the witness
6 box and be seated.

7 REBUTTAL EXAMINATION DIRECT

8 BY MR. FELOS:

9 Q State your full name, please.

10 A James Sheehan.

11 Q How are you employed, sir?

12 A I'm an attorney.

13 Q Were you an attorney in 1993?

14 A Yes.

15 Q Did you have an occasion to represent a
16 Mr. and Mrs. Robert Schindler?

17 A Yes. I did.

18 Q Was that in an action regarding a
19 petition they filed to remove Mr. Schiavo as
20 guardian of Theresa Schiavo?

21 A That is correct.

22 Q Sir, that petition you filed on behalf
23 of Mr. and Mrs. Schindler was dismissed with
24 prejudice; is that correct?

25 A Yes.

1 Q I believe there is a notice of
2 dismissal?

3 A Let me clarify. There was a voluntary
4 dismissal with prejudice.

5 Q Am I correct that there was a notice of
6 voluntary dismissal with prejudice signed by you
7 filed with the Court?

8 A Yes.

9 Q Mr. Schindler has claimed at the time
10 that occurred, and I'll read you his words, "he
11 had at that time removed himself as our attorney
12 and was not our attorney." Is that true? Did you
13 file that dismissal, notice of voluntary dismissal
14 with prejudice, when you were no longer the
15 Schindler's attorney?

16 A No. Just to clarify my answer, no. No,
17 that is not true. I was still attorney of record.

18 Q Had they discharged you when you filed
19 that document?

20 A If I -- I don't know if that really can
21 be answered in a yes or no answer. I'd like to
22 explain a little of the circumstances, if I could,
23 Your Honor:

24 THE COURT: Yes, sir.

25 A About a year prior to my filing that

1 notice, I had spoken with my clients. Once again,
2 judge, this is an area of privilege that I don't
3 know if the Court has ruled on or not.

4 THE COURT: It has been waived. Pretty
5 much conceded that.

6 A I had had a conversation with my clients
7 and I had expressed an interest to withdraw, and
8 they had asked me not to withdraw until they had
9 time to obtain another attorney. So I said fine.
10 For a year I did not do anything on the file, and
11 nothing was done on the file, and the only reason
12 that the voluntary dismissal was filed is because
13 after the end of a year we were coming up on
14 dismissal for lack of any activity in the record.

15 That is when I contacted my clients and
16 that decision was made, but I think it would be
17 reasonable for a non-lawyer to assume that I was
18 no longer representing them because we had had
19 that discussion, and a year had passed and I had
20 not done anything in the case.

21 Q (By Mr. Felos) Was the dismissal with
22 prejudice that you filed done with the consent of
23 your clients?

24 A Yes.

25 Q With their knowledge?

1 A Yes.

2 Q Mr. Schindler stated, he was asked a
3 question, "Mr. Sheehan dismissed your claim with
4 prejudice without explaining to you what that
5 meant?" Answer. Yes. Did you dismiss the
6 Schindler's claim with prejudice without
7 explaining to them what prejudice meant?

8 A I don't know if I talked to Bob
9 directly. I know I spoke with Mary. I know that
10 I wrote them a letter explaining what it meant.

11 Q Did you do that before the dismissal was
12 filed?

13 A Yes.

14 MR. FELOS: I have no other questions.

15 THE COURT: Cross?

16 REBUTTAL EXAMINATION CROSS

17 BY MS. CAMPBELL:

18 Q Good morning. In that issue that you
19 were assisting them with as far as the petition to
20 remove Mr. Schiavo as the guardian, was the
21 removal of a feeding tube ever an issue in that
22 action?

23 MR. FELOS: I believe that is way beyond
24 the scope of this examination. This was merely
25 rebuttal on one issue. She's raising new issues.

1 THE COURT: Overruled.

2 A No.

3 Q (By Ms. Campbell) Did you ever tell Mr.
4 and Mrs. Schindler they would never be able to
5 have Mr. Schiavo removed as guardian in the
6 future?

7 A No. I'll tell you exactly what I told
8 them. My statement to them was if you file a
9 voluntary dismissal -- and once again this was not
10 a statement to Bob Schiavo; I discussed it with
11 Mary and I did write them a letter -- but in my
12 letter I explained to them a dismissal with
13 prejudice meant you could not litigate any of the
14 issues in the specific factual issues that were
15 litigated in this case.

16 If something arose in the future, some
17 new facts that caused you to file another
18 petition based on new grounds, that that would not
19 be covered by the dismissal.

20 Q As part of that dismissal, was there an
21 agreement as to the payment of the opposing side's
22 fees and costs?

23 A The reason, and this is just from my
24 memory, the reason we entered into the dismissal
25 basically was so that both sides would handle

1 their own fees and costs. That was kind of the
2 reason that we decided to do that. Because if the
3 case were dismissed as it stood, my clients might
4 be responsible for fees and costs, and I wanted to
5 make sure that did not happen.

6 Q Was Mr. Schiavo -- or Mr. Nilsson, the
7 attorney representing him at the time, was there a
8 discussion as to the Schindler's request to pay
9 for their fees and costs? The Schindlers to pay
10 for Mr. Schiavo's fees and costs?

11 A I don't know that the issue was about
12 fees at that point in time, but normally costs are
13 awarded to the prevailing party. Since the
14 petition was filed by the Schindlers, if the case
15 was ultimately dismissed for whatever reason,
16 Michael Schiavo would have automatically been
17 entitled to costs. That was something that was a
18 given.

19 I don't have a present recollection of
20 doing it, but I'm sure I talked to Mr. Nilsson and
21 that's the deal we worked out. There would not be
22 any claims for fees and costs, and then we just
23 dismissed.

24 MS. CAMPBELL: Thank you. I have no
25 further questions.

1 THE COURT: Redirect?

2 REBUTTAL EXAMINATION REDIRECT

3 BY MR. FELOS:

4 Q Is it fair to say, Mr. Sheehan,
5 regarding the issue of fees and costs, that it was
6 much more your client's concern about having costs
7 assessed against them than Mr. Schiavo?

8 A I would say that would be a fair
9 statement.

10 MR. FELOS: No other questions.

11 MS. CAMPBELL: No further questions.

12 THE COURT: Are you under subpoena?

13 THE WITNESS: Yes, Your Honor.

14 THE COURT: You are excused from your
15 subpoena.

16 THE COURT: Anything further?

17 MR. FELOS: The only other matter I
18 wanted to bring up to the Court, before closing
19 arguments, was the request the respondents made at
20 the status conference for the Court to view the
21 ward.

22 THE COURT: They have not made a request
23 as yet. They have not renewed that request as
24 yet.

25 MR. FELOS: If I can speak to one matter

1 on that, Your Honor.

2 THE COURT: It's not before the Court,
3 Mr. Felos.

4 MR. FELOS: At this time, Your Honor,
5 the petitioner makes an oral motion to the same
6 effect. That if the Court found it needed and
7 advisable to visit the ward and see the ward, that
8 the petitioner has no objection to that
9 whatsoever, and actually encourages the Court to
10 do that, for an extended period of time.

11 And speaking on that further,
12 Your Honor, it was the petitioner's concern that
13 the only actual opportunity for the Court to view
14 Theresa Schiavo was a very brief three minute
15 video, and petitioner feels that for the Court to
16 have a real opportunity to assess the condition of
17 the ward firsthand, that three minutes really is
18 not fair and not adequate.

19 And so the petitioner orally requests
20 the Court, that if the Court feels that it is
21 advisable in any way or helpful to the Court in
22 any way to see Theresa Schiavo, that is certainly
23 with the encouragement of petitioner.

24 THE COURT: Thank you. Do you now rest
25 your rebuttal?

1 MR. FELOS: Yes.

2 THE COURT: Is there any sur-rebuttal?

3 MS. CAMPBELL: No, Your Honor.

4 THE COURT: Ready to go into closings or
5 do you need a few minutes?

6 MR. FELOS: Ready, Your Honor.

7 THE COURT: From a time prospective,
8 not that I will cut you off, but how much time,
9 Mr. Felos, do you feel you will need? Just in
10 round numbers.

11 MR. FELOS: I would say an hour.

12 THE COURT: Does that include your
13 rebuttal?

14 MR. FELOS: It may not. I request an
15 hour and 15 minutes.

16 THE COURT: Do you want me to let you
17 know when an hour is past?

18 MR. FELOS: Yes.

19 THE COURT: Is an hour and 15 minutes
20 sufficient?

21 MS. CAMPBELL: Yes, sir.

22 THE COURT: Tell me if it is not.

23 MS. CAMPBELL: That's sufficient.

24 THE COURT: Okay. We may break after
25 Mr. Felos, so we can regroup. Mr. Felos.

1 MR. FELOS: Obviously, Your Honor, this
2 has been a difficult case. I think it's
3 important at the outside to open the door to
4 common sense because in any determination by the
5 Court, the Court hears the evidence, the Court
6 reviews the evidence, but in our proceedings
7 common sense is not abandoned. It's welcomed.
8 The trier of fact is reminded of that.

9 What's the common sense in this case?
10 The common sense is if that video of Theresa
11 Schiavo, which is respondent's evidence of the
12 best that they allege she can be, was viewed by
13 500 people, how many people would say, sure, keep
14 me alive? I'd like to remain in that condition
15 for the next ten years, twenty years, thirty years
16 on artificial life support.

17 Out of 500 people we know, we all know,
18 maybe one would say that, maybe another would say
19 that, but the overwhelming majority of people
20 would say of course not. That's not living. What
21 is it that is left of life to be lying incontinent
22 and paralyzed, contractured, having your body
23 invaded by tubes? Having a toe amputated,
24 gallbladder removed, hospitalization for this and
25 that. How many people would say, sure, let's

1 continue the invasion of personal dignity to be
2 kept alive in that condition?

3 We know that that is common sense.
4 That is no surprise, and it's actually in
5 evidence. In Beverly Tylor's report, we had focus
6 groups with hundreds of people, 386 people.
7 Continued research is that the overwhelming
8 sentiment, desire, of a person is that, sure,
9 medical technology is great if there is a
10 possibility that we can recover. Yeah, I want to
11 try it for a while. But if there is no hope of
12 recovery, who in their right mind would want to
13 have their existence perpetuated in that manner?
14 That's common sense. We all know that.

15 We all want to die with dignity.
16 Naturally. The testimony of Father Murphy where
17 he said see how the old priests and nuns are cared
18 for. They don't have feeding tubes. They don't
19 have surgeries. They don't have their body parts
20 amputated. They are treated with love.
21 Compassion. Ice chips are put in their mouth.
22 They are given comfort care. They die naturally.
23 The same for the people he worked with in the AIDS
24 hospice. That's how we feel about end of life.
25 That is what, as Beverly Tylor said, death with

1 some dignity means.

2 So the question that keeps going through
3 my mind is why are we here ten years after we lost
4 Theresa Schiavo? Why are we here ten years later
5 arguing about whether her feeding tube should be
6 removed? Why has her body been perpetuated for
7 ten years? Under common sense, it doesn't make.
8 It doesn't make common sense.

9 What is obvious in this case is that
10 there are many emotional components on both
11 sides. They are complex, and being in the nature
12 of emotion, they are also nonlinear. Two plus two
13 equals four rationally, but in the emotional realm
14 where rational thoughts are not predominant, two
15 plus two does not equal four many times. So there
16 is an important question, Your Honor, and that is
17 what is happening here? What is the truth here?

18 And this is not just an academic
19 question I'm raising. It's essential for justice
20 to be done. The Court is not empowered to be a
21 philosopher, a theologian, and make moral
22 pronouncements. The Court is here to make a
23 decision and render justice on this petition, but
24 the foundation of your decision, the foundation of
25 justice being done, is a recognition of the

1 truth.

2 First from Mr. and Mrs. Schindler. Why
3 do they want to perpetuate their daughter in this
4 condition by artificial life support? It's a
5 legitimate, important question for the Court to
6 consider and it's a difficult question to answer.
7 One reason it's difficult is that it's hard to
8 figure out in this trial what the Schindlers
9 really mean.

10 In their examination and cross-
11 examination I must have read half their
12 depositions to the Court. Their stories shifted,
13 changed, moved. They were modified so many times
14 that we spent half this trial saying, "Didn't you
15 say this? Didn't you say that?" It was different
16 now and it was different before. It is difficult
17 to pin them down and difficult to answer that
18 question..

19 One answer is that we have had a lot of
20 testimony about their beliefs presented to this
21 Court as pro life. What we have heard the last
22 week, Your Honor, is not pro life. It is
23 something highly disturbing and extreme. I might
24 even use the word bizarre. To hear testimony that
25 my daughter's intent doesn't matter. Even if she

1 didn't want this, it does not matter. She's going
2 to be treated.

3 To hear testimony that a patient should
4 be treated against their will and the daughter, me
5 too, I would want to be treated against my will.
6 All possible medical care for a permanently
7 unconscious patient. The amputations. It's
8 shocking, and I would suggest to the Court, that
9 that testimony is so extreme, and again not by my
10 opinion.

11 Beverly Tylor, who has interviewed
12 hundreds and hundreds; Father Murphy, who has
13 counseled families in this situation, hundreds of
14 families; both said they had never heard anything
15 this extreme. Not only that, but all four of the
16 Schindlers tracked the same line. It's hard to
17 believe, Your Honor, that this testimony as to the
18 belief system is that is what they believe they
19 would want for themselves and let's do it for
20 Theresa, too, it's hard to believe that that
21 testimony is not contrived.

22 Another thing about the beliefs. It is
23 very disturbing to have respondents take ~~out~~ the
24 trumpet and banner of religion. You know, the
25 justification is the Catholic church: It's God's

1 will. Father Murphy was morified, mortified on
2 the stand to have to be here to say this has
3 nothing to do with the Catholic church. These
4 beliefs have nothing to do with church
5 teachings. So is it based upon the Schindlers'
6 beliefs, their own personal beliefs that they want
7 to keep Theresa alive? I mean, no one knows for
8 sure, but I would say the evidence is unlikely or
9 the likelihood is slim.

10 What other reasons are there that the
11 Schindlers may want to keep their daughter alive
12 in this condition? I think Father Murphy was kind
13 and compassionate toward the respondents. When I
14 asked him can you attribute -- what might you
15 attribute these beliefs to, and this behavior, he
16 said an abnormal grief process. And he told the
17 story about his mom and how he wore his mother's
18 ring that she wore in the casket for about a
19 year-and-a-half, and one day he took it off and
20 put it away and his grief had completed.

21 We have all had situations when we have
22 had to grieve. And my own situation, Your Honor.
23 I have had a parent die. For three years I could
24 not look at his picture because it disturbed me
25 too much, and after three years I looked at it one

1 day and it did not disturb me anymore. It was
2 okay. The pain and grief were gone and there was
3 love there.

4 That is what Father Murphy described in
5 his testimony. A normal grieving process. And
6 charitably to the Schindlers he said that this is
7 what may be going on here. Maybe they just can't
8 let go of their daughter.

9 The time in this trial, out of all the
10 time we have seen Mrs. Schindler testify, the one
11 time that I can say that what was happening with
12 her was real and truthful is when I asked her
13 about this video. On cross-examination,
14 Your Honor, before we ran the video I asked her,
15 "When you came to your daughter's bedside and
16 started talking to her, is that when she started
17 moaning or responding with sound?" And she said
18 yes. I said, "Are you sure it was your voice?"
19 She said I'm sure.

20 We saw the video and that's not how that
21 occurred. Mrs. Schindler talked to her daughter.
22 Then, when she lifted her head -- and her daughter
23 made no sound or reaction -- but when she lifted
24 her head she started making the sounds. When I
25 showed her the video, she said it was not. Her

1 voice was it. She got extremely angry. She
2 became animated. That was real.

3 What was it about that? It must have
4 been very difficult for Mrs. Schindler to have
5 pointed out to her that, no, these are not
6 voluntary reactions. These are not cognitive
7 reactions. You are not seeing what you think you
8 are seeing. And anyone can have compassion. I
9 have compassion for Mrs. Schindler. It's a hard
10 thing to have an attorney in a trial and somebody
11 push in your face and say, no, this is not
12 happening. Your daughter is not responding to
13 you. Your daughter is not getting better. Those
14 are hard words. So, yes, there may be an abnormal
15 grief process going on here with Mr. and Mrs.
16 Schindler.

17 Mr. Schindler's testimony when I was
18 asking him about, "Do you know of any medical
19 treatment?" "No." But he said, "If you look hard
20 enough for anything, you will eventually find
21 it." The unfortunate reality and truth here is
22 that no matter how hard we look for something to
23 help Theresa Schiavo, we are not going to find it.

24 We have the opinion of how many
25 doctors? Dr. Barnhill. Dr. Gambone. Dr. Karp,

1 whose report Mr. Pearse alluded to. Dr. DeSousa.
2 She's in a permanent, vegetative condition. No
3 cognition. Ellen Delancey, who was the nurse on
4 her floor, saw her five days a week for four
5 years. Sees her once a week the last
6 year-and-a-half.

7 Now Diane Gomes, the aid, it was brief
8 but important testimony, Your Honor. Diane Gomes
9 cared for her daily. That was her full-time job,
10 caring for Theresa, for the two-year period from
11 '94 to '96. She said, "Theresa is my friend."
12 She loves her. She goes and visits her. She goes
13 and visits her after she stopped working. Why?
14 Because of that emotional attachment that she has
15 to Theresa.

16 Does Theresa have any awareness? No.
17 No matter how much the Schindlers want to believe
18 it, it is just not so. And of course, the
19 respondents had the opportunity in this litigation
20 to have an independent medical examination. Of
21 course, the Court would have authorized them to
22 have their own doctors. What can we assume from
23 that? They know, they know that any physician,
24 any reputable physician they find to examine
25 Theresa, would say the same thing. So is that the

1 reason, is that the reason that Mr. and Mrs.
2 Schindler want to keep their daughter in this
3 condition is because they can't let go? That is
4 maybe possible. That may be a component, Your
5 Honor.

6 Then there's another excellent possible
7 explanation, which is the financial component,
8 which is ugly in this case as it's been thrown
9 back and forth during the trial. It is
10 sickening. For anyone, for anyone to have the
11 financial motivation in whether this -- in whether
12 Theresa Schiavo remains alive or not is
13 sickening. It's distasteful. Is it a part of
14 this case? Unfortunately, yes, it is.

15 What is the financial, possible
16 financial motive of Mr. and Mrs. Schindler? Well,
17 my client has admitted he has never tried to hide
18 that he has been engaged for four years. I might
19 say that I would like to meet that woman. She
20 must be a very exceptional woman to be engaged to
21 a man who has this situation in his life. Does
22 Mr. Schiavo want to have children? Want to have a
23 family? Of course he does. Anyone in his
24 situation would.

25 And Mr. and Mrs. Schindler know that if

1 this petition is denied, probably, I mean we don't
2 know for a certainty, but probably sometime in the
3 future Mr. Schiavo would go on with his life and
4 they would become the heirs at law, which they
5 have admitted, and they have then the potential to
6 gain a significant amount of money. Well -- and
7 they would become responsible for Theresa's care.

8 We have heard testimony that there is
9 approximately \$700,000 in this guardianship
10 account. I think it started at \$760,000. I think
11 we can assume that it is substantial. Most of
12 Theresa's medical bills are paid for from the
13 interest or income which is preserving the capital
14 there.

15 Now we have also heard testimony from
16 Mr. Schindler that basically he is broke. It's
17 difficult, it's difficult in approaching the
18 retirement years, especially after being
19 financially well off, as Mr. Schindler was, to
20 have to face them without resources. Is there a
21 financial motive there? I suppose there is an
22 appearance. Is that the reason they want to keep
23 Theresa alive? I don't know. I don't know.

24 I will say this, though. That should
25 the petition be denied and Mr. and Mrs. Schindler

1 become the guardian of Theresa, what is to prevent
2 them from removing her feeding tube in the
3 future? Who is there to object? Who has
4 standing? Mr. Schiavo would not have standing
5 anymore. Would they even -- they would not even
6 have to come to court to remove Theresa's feeding
7 tube.

8 Then there is another possible
9 explanation. That is the animus in this case,
10 which is even more distasteful than greed. It is
11 not hard to see that Mr. Schindler has intense
12 dislike of Mr. Schiavo. Is it possible or
13 probable that Mr. Schindler would pursue the
14 defense of this action out of spite to Mr. Schiavo
15 because it burns him up, the thought that Mr.
16 Schiavo would inherit Theresa's estate if the
17 petition is granted? Perhaps.

18 Mr. Schindler's testimony was telling on
19 this point. He retired from Philadelphia with a
20 substantial amount of money. He lost it in a
21 business venture, and by his own words, that was a
22 tough, tough blow. I mean, not only financially,
23 but to his pride. Then what things did he have to
24 do? He could not even put his name on a lease.
25 He had to have his young son-in-law sign a lease

1 because he had declared bankruptcy. He had to use
2 his son-in-law's credit card to buy furniture. It
3 was a very tough blow in his life.

4 Then the horrible, horrible blow of what
5 happened to his daughter. I mean, this man has
6 suffered, Mr. Schindler, some very tough blows and
7 here he believes he is going to obtain \$150,000 or
8 he says he is going to obtain \$150,000 from Mr.
9 Schiavo and he's told, no, you are not getting any
10 money and this relationship falls apart. From
11 what we have seen in this trial, is there enough
12 animus on the part of Mr. Schindler to pursue or
13 to fight this petition because of that? Perhaps.

14 How about Mr. Schiavo? He says that I
15 want to remove the feeding tube to carry out my
16 wife's wishes. As the guardian ad litem said on
17 the stand, "Well, gee. Why did you wait eight
18 years to file a petition?" I think it's very
19 important for this Court to look at the
20 progression. Not just strictly from a mental
21 point of view, but also from an emotional point of
22 view.

23 Is it hard to understand why Mr.
24 Schiavo, in the initial few years of his wife's
25 condition, would not want to proceed to remove her

1 life support?. Especially when seeking
2 experimental treatment, when hiring people to
3 stimulate her? I don't think it's illogical and I
4 don't think Mr. Pearse did either. He said,
5 "Really, I don't have a problem with that."

6 What was the problem? Was there any
7 problem filing a malpractice action two years
8 after the incident, while experimental treatment
9 is being sought while there is still hopes of
10 recovery? I don't believe so. I mean, if the
11 Schindlers have not let go, if there is abnormal
12 grief and they have not let go after ten years, is
13 it fair to say to my client, no, you should have
14 known in a year? Why didn't you do this a year or
15 two years later? That is not fair. That is not
16 reasonable.

17 What's the first evidence we have? A
18 decision in late '93, early '94, to remove life
19 support. Not to treat an infection. What is the
20 undisputed testimony in that regard? That Mr.
21 Schiavo met with Terri's doctors and they brought
22 up the subject to him saying, "Gee, you know,
23 Mike, it's been four years now." Obviously, I'm
24 paraphrasing, but the gist of that from the
25 medical profession is isn't it time to maybe let

1 go? Start looking at realty? Start hearing what
2 we have been telling you for a long time now that
3 Theresa is not getting better?

4 And he said okay. I won't treat that
5 infection. And what happens to him? The nursing
6 home says "can't do it". You can't do that. His
7 in-laws say you're are abusing her. We heard the
8 same thing back then. You're killing my daughter.
9 How can you not treat her? Well, here is a young
10 man who has suffered a tremendous distress and
11 trauma, who is under psychiatric, or the care of a
12 psychologist, barraged with that type of
13 resistance and emotion and so he backs off and
14 says okay. I'm not going to do that. Let me step
15 back a couple of steps.

16 That is not unreasonable under the
17 circumstances. And when I said that emotions are
18 not linear, it was Diane Gomes who testified --
19 who is the one who took Terri to museums, beauty
20 makeovers at Michael's request; worked from '94 to
21 '96 -- and you might ask the question, "Gee, if he
22 does not want to treat Terri's infection because
23 he thinks he has no hope, why is he trying to
24 stimulate her by hiring somebody to do that?"

25 Because emotionally we are this way and

1 that way. We are up and down. We believe we feel
2 something. We believe something else. I'm sure
3 at that time there was still a part of Mr. Schiavo
4 that said maybe there is a miracle. Maybe she
5 will come out of it. I want my wife back. I
6 don't want to lose her. Then, by his testimony,
7 sometime a year or so later, the end of 1995,
8 1996, he starts to come to the decision, well, I
9 have to carry out Terri's intent. He consults his
10 lawyer, guardianship lawyer, about it. The case
11 is eventually referred to me.

12 The case is filed in May of 1988 (sic)
13 and it took a while, and the case took a while for
14 preparation. But there is one part of his
15 testimony that I hope you remember, Your Honor.
16 It is when he discussed the death of his mother
17 who died in July of 1997. Mr. Schiavo said his
18 mother gave him a gift. His mother, who had a
19 feeding tube, chose to have it removed and said
20 it's okay to die. This is okay. And that is when
21 my client became emotionally capable to do this.
22 Not before.

23 Are we going to fault him to say why
24 didn't you do it earlier? This is probably the
25 toughest decision he has ever had to make and will

1 make in his entire life. It is something that the
2 Schindlers emotionally have not come to yet. Here
3 he did, and it happened for him on the death of
4 his mother in July of 1997 and here we are.

5 I will say for Mr. Schiavo that he has
6 been a credible witness. I didn't hear his
7 testimony impeached once. I didn't see Ms.
8 Campbell here with his deposition saying "Didn't
9 you say something else, Mr. Schiavo?" Not once.
10 Not once in this trial.

11 Well, they can say he is in it for the
12 money, but this young man was with his wife
13 everyday, for what? For the first three or four
14 years after her incident. My God, that is
15 incredible. Who could? It's astounding. What
16 dedication to his wife. Every day. Sixteen days
17 sleeping in the Intensive Care Unit. Every day in
18 the hospital. Every day driving to Bradenton
19 MedPlex. Every day in California. Every day at
20 College Harbor Nursing Home. Going in the
21 morning. Coming back in the evening. Every day
22 for the first few years. Then when he started
23 school, he would go three or four times a week and
24 spend eight or ten hours a day.

25 He took care of her at home. What does

1 that mean? What a euphemism, "take care". What
2 it means is that he changed her diapers. He
3 cleaned the feces from her body. He suctioned the
4 mucus out of her throat and out of her mouth. He
5 intubated her. He dressed her.

6 Now, even now, ten years after the fact,
7 he sees her twice a week. He buys her clothes.
8 He insists that Theresa, for her, since she's
9 still here, for her personal dignity, she's not
10 going to wear a smock or robe in the nursing
11 home. She's going to have the clothes that she
12 wore before. And he buys those clothes and he
13 dresses her. And he combs her hair. He brushes
14 her hair. For ten years.

15 Can anyone say how much money is there
16 in the world that you can pay anyone to do that
17 for ten years? There is not. There is not enough
18 money, and Mr. Schiavo didn't file this petition
19 because he wants to inherit his wife's money.

20 The legal standards in this case,
21 Your Honor, as I mentioned to the Court before
22 under the Browning standard, the prime concern of
23 the Court is the intent of the patient. I'll cite
24 a number of cases to the Court, and I have copies
25 of the cases for the Court and for opposing

1 counsel.

2 The pertinent portion of Browning -- and
3 let me just backtrack a little bit. Under the
4 Browning standard, by the way, the right of an
5 individual to refuse or forego medical treatment
6 concerns every type of medical treatment.
7 Browning does away with the distinction
8 extraordinary, ordinary. Invasive. Non-
9 invasive. All types of medical treatment.

10 And in the words of the court,
11 regardless of his or her medical condition, under
12 Browning the prognosis of the patient and the type
13 of treatment are irrelevant. The basic theory of
14 the case is that we have a right of privacy. A
15 constitutional right. That right of privacy means
16 we control our own bodies and if we don't want
17 medical treatment, no matter what it is and what
18 our condition is, we have a right to refuse it.

19 Under Browning, one need not be
20 terminally ill to refuse medical treatment. One
21 need not have -- one need not be in an
22 irreversible condition to refuse medical
23 treatment. Quoting from Browning, "The
24 constitutional right to choose or refuse medical
25 treatment extends to all relevant decisions

1 concerning one's health." The court also does
2 away with the distinction between provision of
3 artificial hydration -- artificial provision of
4 sustenance and hydration -- saying there is no
5 legal distinction between that and any other type
6 of medical treatment. "It is medical treatment
7 that can be refused.

8 The Browning case also has a specific
9 manner or procedure in which to enforce a decision
10 to refuse medical treatment. I want to point out
11 to the Court that that is different from Chapter
12 765, which is the statutory framework. For
13 instance, under Chapter 765, one must be in a
14 terminal condition or in a vegetative state in
15 order for have life support removed.

16 So although the definitions of terminal
17 condition are very broad under the statute, there
18 may be some medical conditions which a patient may
19 not have access to 765 because they may not be
20 terminal and 765 may not permit a withdrawal of
21 life support or medical decision to be made which
22 are permitted under the Browning constitutional
23 right. I just wanted to point that out to the
24 Court under the Browning standard.

25 Under the constitutional framework, a

1 surrogate must take great care in exercising the
2 patient's right of privacy and must be able to
3 support that decision with clear and convincing
4 evidence. The entire -- the decision to withdraw,
5 taken in its entirety, must be supported by clear
6 and convincing evidence. The court lists three
7 specific things that the surrogate must, the proxy
8 must satisfy.

9 In other words, the court says for there
10 to be clear and convincing evidence you need to do
11 one, two, and three, and this is set forth on 568
12 So.2d Page 15, Your Honor, of Browning. The first
13 thing the surrogate has to do is be satisfied, if
14 there were a living will, the surrogate has to be
15 satisfied there was no undue influence. That the
16 living will was not revoked. That it was entered
17 knowingly and willingly. That does not apply in
18 this case because there is no written directive.

19 The second part of the series of things
20 the surrogate must do is if the evidence of intent
21 is oral, the surrogate must be satisfied that the
22 evidence of the patient's oral declarations is
23 reliable. So the question for the Court to answer
24 here is is the evidence of Theresa's intent
25 reliable? Are those declarations reliable.

1 The second factor is that the surrogate
2 must be assured that the patient does not have a
3 reasonable probability of recovering competency so
4 that the patient can make the decision themselves.
5 Your Honor, the evidence is crystal clear and
6 undisputed that she has no competency to make
7 decisions and she's not going to recover
8 competency to make decisions.

9 The third factor is if there were any
10 limitations expressed by the patient, orally or in
11 writing, that those should be satisfied. For
12 instance, a patient may say I only want to refuse
13 life support if my death is imminent. If that
14 were the case, that would be something the
15 surrogate has to be assured, that death is
16 imminent. Or somebody may say I want to remove --
17 I don't want life support if there is no chance of
18 recovery. So that would be something, a
19 limitation expressed by the patient that the
20 surrogate would have to be assured of.

21 Now let's look at the statements that
22 Theresa made. Were there any limitations on them
23 that apply in this case? Are they reliable?
24 First, the testimony of petitioner. Her
25 grandmother is dying in Philadelphia. They take a

1 train trip with the brother, Brian, to Florida.
2 The son of the grandmother, the uncle, we know had
3 been in an accident. According to Mr. Schiavo, he
4 had speech problems, paralysis. He was impaired.
5 According to the Schindlers, he did recover, but
6 he had paralysis on one side. There was some
7 testimony, I think Mr. Schindler said the hand.
8 Mrs. Schindler said the arm. Mr. Schindler said
9 he dragged his leg behind him. They also said
10 that he was a very good looking, robust man
11 beforehand.

12 And one of the things that Theresa said,
13 as relayed by Mr. Schiavo, is "What a shame my
14 uncle was brought down to that." So she said,
15 "What about my uncle when grandma dies?" It
16 triggered something. She said, "Look, if I have
17 to be cared for by others, don't let me live like
18 that." Is that a condition that has been
19 testified to? The evidence is there. All the
20 evidence shows, obviously, that Theresa Schiavo
21 has to be cared for by others.

22 Then you have the television programs a
23 couple of times where Terri Schiavo said in some
24 extreme condition I don't want to be kept alive
25 artificially. Were there any limitations in that

1 expression that apply to this case? No. She's
2 being kept alive artificially.

3 Scott Schiavo, in response to the
4 grandmother dying, the Schiavo grandmother
5 dying -- and Mike and Terri attending the
6 funeral -- who was put on a respirator against her
7 will, it was a very spontaneous conversation.
8 "Look what they did to grandma? It's a shame. It
9 should not have happened." And Terri says,
10 sitting next to Scott, "That's not for me. I
11 don't want that. No machines for me. I would not
12 want that to happen to me."

13 What did she mean, "I would not want
14 that to happen to me."? I wouldn't want to be
15 treated against my will? Possibly. Probably.
16 And I don't want to be kept alive on machines.
17 Then her statements to Joan about the friend's
18 baby who was on life support. Life support was
19 taken away and Terri said on numerous occasions
20 that she agreed with that decision.

21 I can see that there are probably two
22 theories in looking at Terri's statements. One of
23 the statements that she made about herself when
24 she says, "I would not want this for me," I think
25 obviously would have much more weight to the Court

1 than a statement that says -- concerning somebody
2 else's, you know, I agree for that child that life
3 support should be removed. I agree with the
4 decision of the parents.

5 I think the statements are important,
6 but as to the weight the Court should give,
7 obviously the ones that apply personally to Terri
8 are more important. Then in response to the movie
9 about somebody diving and being injured she says,
10 "I would never want to be kept alive like that."
11 I think my recollection is she also used the word
12 machine -- she didn't want to be hooked up to
13 machines -- to Joan.

14 And both Joan and Scott testified that
15 they, the first time that they relayed this
16 information was to me last September when I called
17 them. When you are asking -- I suppose if you are
18 not asked, does somebody think of calling up
19 somebody and saying, yeah, I had a conversation
20 ten years ago? Do they know what status of
21 litigation this was in? Who knows? I think they
22 did what was natural when somebody called them up
23 and asked them and they said, yeah, I have
24 information. Here is the information.

25 Now about the reliability, because the

1 Court is going to have to make a determination
2 were these expressions of Theresa's intent
3 reliable, Your Honor, I strongly urge the Court to
4 carefully examine and go through the testimony of
5 Beverly Tylor of Georgia Health Decisions who
6 wrote that report because that evidence goes to
7 the crux, I think, of the reliability of the
8 expression for many reasons.

9 The first reason is the part of the
10 report that she read, those who have had
11 conversations with a loved one appeared to have
12 not really had a conversation at all, but rather
13 to have made spontaneous observations about
14 something they do not want to happen to them.
15 They told of vague references of being hooked up
16 to machines or seeing a television program and
17 having said don't let that happen to me.

18 This is how people express their wishes
19 about this subject. Only 14 percent of the adults
20 in this country have living wills, according to
21 Beverly Tylor, and the percentage of someone at
22 the age of Terri, 25 years old, what did she say?
23 Two or three percent. Minimal. We just wouldn't
24 expect a 25 year old to have a recollection -- I
25 mean, a 25 year old to have a living will.

1 We really might not even think a 25 year
2 old would make such expressions. Some do. I
3 guess more and more people do. So this is exactly
4 what Theresa said, and how her expressions came
5 about are exactly the way we would expect them to
6 be made, which means they are highly reliable.

7 And let's also talk about what Terri
8 meant, and there again, Beverly Tylor's report and
9 testimony is very important. People don't know,
10 the average person, average 25 year old, does not
11 know what a feeding tube is. They don't know
12 whether it is a machine -- they don't know how
13 it's hooked up. They don't know how people are
14 intubated for respiration.

15 Machine, being hooked up to a machine,
16 is a metaphor. A catch phrase. It is something
17 people say to express a wish. The question is
18 what does it mean? What wish, intent, does it
19 express? Beverly Tylor told us what that metaphor
20 expresses is we want to die with dignity. We want
21 a quality of life. If there is no hope of
22 recovery, we don't want medical technology to keep
23 us alive ad infinitum.

24 What's important to us is to have
25 control over our lives. Control over our

1 destiny. That the thought of people being subject
2 to the intensive personal care that Terri's body
3 requires now is repugnant to them. That is what
4 that research showed. That is what hooked up to a
5 machine means. People don't want to be kept
6 artificially alive. Maybe for a short time,
7 period of time, if they can recover, but if they
8 can't, they don't want this. That is what her
9 evidence showed.

10 So her testimony is extremely important
11 for this Court to look at as to whether Theresa's
12 statements are reliable. To say the implication
13 of saying it as to content or not, they are too
14 vague, Terri didn't say I don't want a gastric
15 tube, or Terri didn't say if I'm in a vegetative
16 condition I want this, or if I'm marginally
17 conscious, I want that. Your Honor, that is not
18 how people talk. That is not how the real world
19 works.

20 To have a legal standard which says that
21 people must express intent with that type of
22 precision orally would basically cut off the right
23 to refuse medical treatment as it's necessary
24 because that is not how people talk and express
25 themselves, and the law does not require that.

1 Let's also look at the evidence of
2 intent provided by the respondents. The first is
3 the statement by Mrs. Schindler in response to the
4 Karen Ann Quinlan case. She said that I talked to
5 my daughter about the Karen Ann Quinlan case and
6 she told me "Let her live." In her deposition she
7 said I can't remember. I can't remember
8 specifically what anyone said.

9 We talked about the case. "Mrs.
10 Schindler, how old was Terri when you had those
11 conversations?" Eighteen. Nineteen. Well, when
12 she is showed the articles from 1975, "How old was
13 Terri?" She was eleven. All of a sudden she says
14 Terri was eleven. It's totally incredible.

15 Diane Meyer. One remarkable thing about
16 her testimony is that fourteen years after her
17 breakup of the relationship with Terri, she still
18 harbors anger at Mr. Schiavo. That is quite a
19 motivation. By her own -- in looking at her
20 testimony, Your Honor, something just does not add
21 up and does not make sense. That is, why would
22 Terri say she doesn't agree -- in response to the
23 joke; I don't agree with what the parents are
24 doing -- if the case has been concluded for years
25 and what was done was done, why wouldn't she say I

1 didn't agree with what the parents did?

2 But Diane Meyer did not say that, and in
3 her deposition she assumed. I asked her in her
4 deposition "Wouldn't you assume from the nature of
5 the answer that this occurred while the case was
6 going on?" She said yeah. I have to assume that.
7 "Wouldn't you assume this occurred while the case
8 was in the news?". Yeah. I have to assume that by
9 the nature of the answer. Well, we know it could
10 not have happened when the case was occurring,
11 which certainly shed a lot of question on her
12 testimony.

13 She also admitted that Terri's upset,
14 that this whole incident of the joke sticks out in
15 her mind, the thing that sticks out the most is
16 Terri being upset. And Diane Meyer agreed on the
17 stand that any reasonable person might be upset by
18 the joke, no matter what their beliefs were about
19 removal of life support. And certainly Terri,
20 given what Diane told us about Terri's
21 personality, it's easy to understand if this joke
22 was even said if this incident occurred, why Terri
23 would act angrily toward it.

24 Now taking for a second as true what
25 Diane Meyer relays -- Your Honor, my watch is

1 slow. I thought I had ten minutes. Even taking
2 what she says to be true, Terri said "I don't
3 agree with what the parents are doing. I don't
4 agree with what the parents are doing. How do
5 they know what Karen Ann Quinlan wants?"

6 Well, one may reasonably infer from that
7 that Terri Schiavo, she said her concern was that
8 removing life support without knowing someone's
9 intent bothered her. Maybe it was not the removal
10 of life support, but the fact she believed the
11 parents did not know what the intent of Karen Ann
12 Quinlan was.

13 And the second point was, she said, "How
14 do we know that Karen Ann Quinlan is not there?"
15 Maybe Terri was saying, look, if there is a
16 question as to whether if Karen Ann Quinlan is
17 conscious and has awareness, maybe her life
18 support should not be removed. There are
19 alternative explanations to those statements, even
20 if we accept what Diane Meyer says. What we do
21 know is Diane Meyer's predominant impression was
22 was that Terri Schiavo was offended at a bad
23 joke.

24 The guardian ad litem's report,
25 Your Honor. Of course, Mr. Pearse does not inject

1 overt bias into this. Of course, Mr. Pearse
2 didn't say I have an agenda, so I'm going to alter
3 a report. No one is saying that. What we are
4 suggesting is that Mr. Pearse's, the guardian ad
5 litem's personal beliefs as to withdrawal of life
6 support may have created -- it is a bias. That
7 his personal preference may have been consciously
8 infiltrated into his decision.

9 That, Your Honor, is not just a personal
10 belief that perhaps he's against removal of
11 artificial provision of nutrition and sustenance
12 and his belief as well -- and I know he qualified
13 on the stand and explained his deposition
14 testimony that what he said in his deposition was
15 if people were taken, if people were taken away
16 the right that they now have to be able to refuse
17 artificial provision of sustenance how would that
18 be with you -- he said I'm not uncomfortable with
19 that.

20 It is one thing to say this is what I
21 believe. It is another thing to say I don't think
22 other people should have the choice as well. To
23 be asked should other people have the right to do
24 this or should their right be taken away, and he
25 said I am not uncomfortable with it, is a very

1 strong personal preference, and I respect his
2 preference, but frankly, Your Honor, if a judge
3 called me and said would you like to be a guardian
4 ad litem in this case, it's about removal of
5 artificial provision of nutrition and sustenance,
6 I at least would say to the judge that I have a
7 personal feeling about that. I know it's legal,
8 but I don't think it should be and I'm against
9 it.

10 Now Your Honor, if a judge heard that,
11 my guess would be, at least to avoid the
12 appearance of a bias and to make sure that the
13 investigation and report were fair, the judge
14 would say "Thank you, Mr. Felos. I respect your
15 opinion, but in this case I think it might be
16 better to have somebody else." And Mr. Pearse was
17 asked did you do that. Did you ever inform the
18 Court of that? No. Did you list it in your
19 report? No.

20 Another thing I asked Mr. Pearse was did
21 you include -- did you include something -- you
22 know, you said this about Mr. -- what Mr. and Mrs.
23 Schindler told you. But why didn't you put in
24 what Mr. Schiavo told you? Why didn't you put in
25 what Father Murphy told you? And his answer was,

1 on two occasions, no conscious reason. Of course
2 he had. There is no conscious reason. He didn't
3 decide I'm not going to put it in because I have
4 an agenda.

5 What I'm saying is, in looking at Mr.
6 Pearse's report -- and please. I'm sure the Court
7 will read the suggestion of bias in detail which
8 shows that there were numerous parts of his report
9 that contained omissions, which I believe is
10 evidence of the possibility that his personal
11 feelings were injected into this, not knowingly,
12 but the major one of which is about Mr. Schiavo.

13 If he donates the money to charity, that
14 would take care of the credibility problem. There
15 was Deborah Bushnell's affidavit about that and
16 it's not even mentioned in the report. But if
17 there is one thing to remember from Mr. Pearse's
18 testimony it is, "Had I known what I know now
19 about what Joan Schiavo said and what Scott
20 Schiavo said, my conclusion may have been
21 different."

22 That, even under all the circumstances,
23 it was a close call. He said it was a close
24 call. And he didn't say he did not believe Mr.
25 Schiavo. What he said was, well, I just, for me,

1 didn't reach the clear and convincing standard.

2 Now Your Honor, I also wanted to mention
3 to you, and I guess I have to do this very
4 briefly, and I ask for the Court's indulgence
5 because it is very important, we have alleged in
6 our pleadings and in opening argument and we have
7 informed the Court later that we believe that
8 there is a body of law which supports the
9 proposition that even if there is not reliable
10 evidence of Theresa's intent, that the Court has
11 the authority to grant the petition under the best
12 interest tests. I will give you, after my
13 arguments, I have copies of the cases.

14 The first case is the Guardianship of
15 Barry, which is a Second District case from 1984
16 which involved an infant on life support and in a
17 vegetative condition. Judge Sheb (phonetic) on
18 the Second District was talking about how you make
19 a decision. -- talking about substituted judgment.

20 Under this doctrine, the court
21 substituted its judgment for what, if you find the
22 patient is competent, would have done. The
23 doctrine has been helpful in the case of adults,
24 but it is difficult to apply to children or young
25 adults.

1 The widely quoted case of Quinlan, a
2 21-one year old comatose woman being kept alive by
3 life support systems, there the court held that
4 evidence of Karen's previous conversations with
5 friends on questions concerning prolongation of
6 life by artificial means, the court however found
7 such views inconclusive and concluded the only
8 practical way of permitting Karen to exercise her
9 right of privacy was to permit her family to
10 exercise its best judgment as to what she would
11 want under the circumstances.

12 As the trial court noted in the present
13 case, it's proper for the Court to exercise its
14 substituted judgment even absent evidence of
15 intention of the incompetent person. And what
16 Barry is saying is, look, for minors, for young
17 adults, if we are always held to the intent
18 standard, the right of privacy can't be
19 effectuated because in that group of people we
20 would not expect them to express intent.

21 In the John W. Kennedy Hospital v.
22 Bludworth case, which is the Florida Supreme
23 Court, this was decided after Barry, this again
24 involved a vegetative patient. And although there
25 was a living will in this case, the court says the

1 focal point of such decisions should be whether
2 there is a reasonable, medical expectation of the
3 patient's return to a cognitive life as
4 distinguished from the forced continuance of a
5 vegetative existence.

6 The court says if you have evidence,
7 good, but there is certainly no preclusion of
8 exercising substituted judgment without evidence
9 of intent.

10 Then there is the Corbett case from
11 1986, Your Honor. A Second District case in which
12 the patient is in a vegetative condition and kept
13 alive by a feeding tube. Apparently, there is no
14 evidence of intent and the court grants the
15 petition for removal of the feeding tube. The
16 court says whether therefore it may be determined
17 by the reason of the advanced scientific and
18 medical technologies of this day that life has
19 through causes beyond our control reached the
20 unconscious and vegetative state where all that
21 remains is the forced function of the body's vital
22 functions, including the artificial sustenance of
23 the body itself, then we recognize the right to
24 allow the natural consequence of the removal of
25 those artificial life sustaining measures.

1 Your Honor, there is no doubt that
2 Browning talks about intent. But the focus of
3 Browning was the legal standard for a non-
4 vegetative patient. I'm also going to give the
5 Court the cases from other jurisdictions. Supreme
6 Court of Arizona, the Rasmussen case, and the
7 Supreme Court of Washington, the Grant case, in
8 which the court talks about the necessity of
9 adopting a best interest standard when there is no
10 evidence of intent.

11 What I am suggesting to the Court is
12 that when you have a patient in a vegetative
13 condition and unconscious position, there is
14 almost a societal consciousness. That is how I
15 started off this argument. A common sense notion
16 that says we can almost presume for that patient
17 that they would not want to be kept alive that way
18 because we all know we would not want to be kept
19 alive in an unconscious manner.

20 And the Florida legislature has recently
21 amended the living will law to incorporate that
22 concept. They added 765.404, which is a specific
23 section on patients in persistent vegetative
24 states. That in that case it says when you have a
25 patient and you have no evidence of intent and

1 there are also no family members available, then
2 life support -- then life support can be removed,
3 even without absence of intent, and they go
4 through the procedure you have to follow.

5 I think it's a legislative consensus,
6 Your Honor, that if you have an 18 year old
7 driving his car down the street and he hits a tree
8 and ends up in a vegetative condition and no one
9 knows what the heck he would have wanted, which is
10 natural, that the law does not require him to be
11 perpetuated artificially for the next sixty
12 years. That is what the best interest test does
13 and allows the Court to do.

14 So what we would ask the Court, what we
15 would ask the Court is, and we don't believe the
16 Court is going to obviously reach that place
17 because we believe there's reliable evidence of
18 Theresa's intent, but what we are saying is if the
19 Court does not reach this conclusion, that in
20 order to effectuate Theresa's constitutional
21 rights of privacy the only way to do that is adopt
22 the best interest test.

23 So, Your Honor, thank you. I will turn
24 the podium over to my colleague.

25 THE COURT: Not just yet. Let's take a

1 little break.' I will get your cases at the end of
2 your rebuttal. 'Let's stand in recess for ten
3 minutes and then get going.

4 (THEREUPON, A RECESS WAS HAD FROM 10:40 -
5 10:50 A.M.)

6 THE BAILIFF: All rise. Court stands in
7 recess.

8 THE COURT: Ms. Campbell, are you ready
9 for closing argument?

10 MS. CAMPBELL: Yes, Your Honor. First
11 of all, Your Honor, I would like to thank you for
12 your attention during this trial. It's been
13 difficult, filled with emotions from both sides of
14 the parties, and a difficult issue to decide.
15 Regardless of the decision you render in this
16 case, we do believe it's been a fair trial and we
17 appreciate the kindness you have shown during this
18 trial.

19 During this week, you have heard from
20 the four people that know Theresa Schiavo better
21 than anybody else. You heard from her family,
22 from her parents, who have known her for 36
23 years. All her life. From her brother. From her
24 sister. These people have known her longer than
25 anyone. Have known more about her than anybody

1 else.

2 While, no, you did not hear specific,
3 direct testimony about her wishes in this given
4 situation, they know Terri instinctively. You
5 heard from all the witnesses that have known Terri
6 before this accident. What a loving, outgoing,
7 friendly, personal, generous person that she is.

8 As Diane Meyer put it, she's a real good
9 soul. She took the time to talk to friends and
10 family, daily, just to check in to see how things
11 were going. A beautiful, upbeat person who never
12 said anything bad about anyone. Someone generous
13 with their time, to visit regularly family in a
14 nursing home.

15 Because individual's attitudes on death
16 are built on great part upon their behavior about
17 what makes life meaningful, it's hard to imagine
18 the question upon death that there are diverse,
19 that there are more diverse individual's attitudes
20 than this.

21 We heard from Beverly Tylor about a
22 study another organization conducted using 385
23 participants in focus groups around the country.
24 While her testimony was interesting, especially
25 concerning how many people do not express their

1 wishes on end of life decisions, in Beverly's
2 percentage 13 to 15 percent of people have living
3 wills and most people trust their family members
4 to do the right thing.

5 Unfortunately, she never had an
6 opportunity to meet Terri. To meet Mr. and Mrs.
7 Schindler, or her sister and brother, or know the
8 close-knit family that she was raised in. So she
9 really could not give us much insight as to
10 specifically what Terri would want under these
11 circumstances.

12 It's difficult to prove a negative.
13 Because she did not sign a living will or tell
14 those closest to her about her specific intent
15 under these circumstances pertaining to the
16 withdrawal of a feeding tube that she, given the
17 choice, would want the feeding tube maintained,
18 you have to look at the heart of Terri. The
19 giving person that always looked out for the other
20 person.

21 Of course, no one would choose to live
22 like she does now if the choice were a healthy,
23 vibrant body like she used to have or the one she
24 currently occupies, but the choice we are asking
25 her to make is her current body or death.

1 The Schindlers have testified that they
2 believe firmly that she would choose her current
3 medically stable life over death. That she
4 believed in the preservation of life and that was
5 the way she was raised. Now the Schindlers were
6 given some visually graphic, horrible, disgusting
7 conditions as extreme hypotheticals and asked if
8 they would allow their daughter, Terri, to be in
9 those circumstances beyond their imagination over
10 death. However, Terri does not have cancer. She
11 does not have gangrene. She does not have
12 amputated limbs. She is not facing open heart
13 surgery.

14 Mr. Schindler testified that he would
15 need to gather all the medical information needed
16 to make such decisions. That those decisions
17 would have to be based on the variables given at
18 the time. Dr. Gambone testified that Terri is
19 medically stable. She has a regular menstrual
20 period. She could get pregnant.

21 Over the last ten years, she has had
22 hospitalizations. Most of them were in the
23 primary time frame of right after this incident,
24 as well as she had one female related
25 hospitalization. Whose to know if Terri would not

1 have had those kind of complications anyway?

2 Jackie Rhodes testified, as well as her
3 sister, Sue, and her mother that she regularly had
4 female problems prior to this incident. The
5 myriad of problems is not pertinent to this
6 Court's decision, though.

7 We believe the case that provides the
8 most guidance to this Court is the Guardianship of
9 Estel Browning, 567 So.2d 4, decided in 1990.
10 The Supreme Court states on Page 13, we emphasize
11 and caution that when the patient has left,
12 instructions regarding life sustaining treatment,
13 the surrogate must make the medical choice that
14 the patient, if competent, would have made and not
15 the one that the surrogate might make for himself
16 or herself and that the surrogate might think is
17 in the patient's best interests. It continues to
18 say, it is important for the surrogate decision
19 maker to fully appreciate that he or she makes the
20 decision which the patient would personally
21 choose.

22 In this state, we have adopted a consent
23 of substituted judgment. One does not exercise
24 another's right of self-determination or forestall
25 that person's right of privacy by making a

1 decision which the state or family or public
2 opinion would prefer. On Page 15 it goes on to
3 state that a surrogate must take great care in
4 exercising the patient's right of privacy and you
5 must be able to support the decision with clear
6 and convincing evidence. On Page 16, the
7 surrogate would bear the burden of proof if a
8 decision based on purely oral evidence is
9 challenged, which is what we have in this case.

10 In the case of Slumwitz v. Walker
11 (phonetic) found at 429 So.2d, which is a Fourth
12 District Court of Appeals case in '83, this
13 provides us with a definition of clear, and
14 convincing evidence. On Page 18 it states that a
15 workable definition of clear and convincing
16 evidence must contain both qualitative and
17 quantatative standards. We therefore hold that
18 clear and convincing evidence requires that the
19 evidence must be found to be credible. The facts
20 to which the witnesses testify must be distinctly
21 remembered, the testimony must be precise and
22 explicit, and the witnesses must be lacking in
23 confusion as to facts and issue. Evidence must be
24 of such weight that it produces in the mind of the
25 tryer of fact a firm belief or conviction without

hesitancy as to the truth of the allegations sought to be established.

We do not believe that the testimony provided as to Terri's wishes to not be allowed to live like that are credible and do not meet the standard that the Browning court has set forth. Joan Schiavo said that they were best friends. They saw each other five days a week. Spoke to each other on the phone five to six times a week.

But then after the incident, she never even came to see Terri. She relied on getting reports from other people. She relied on the reports about Terri's condition from her very close brother-in-law, Michael. But they were so close that never during that time frame did she ever tell Michael or did she ever tell anyone trying to take care of Terri that Terri would not want to live like that. She referred to these different statements years ago. She never came forward to say that. In fact, she only came forward to tell the attorney involved in the litigation after the trial was scheduled.

Scott Schiavo testified about his grandmother, who after executing a living will, was still placed on life support. How after the

1 funeral, Terri was part of a discussion at a
2 luncheon held at the country club where the table
3 mates were expressing similar views that they
4 would not want to live like that, and Terri
5 agreed.

6 He has seen Terri in her current
7 condition when he came to visit six years ago.
8 Still, after seeing Terri, he never told Michael
9 or anyone else related to her care that she would
10 not want to live like that. She told me so. Once
11 again, he only recently came forward to tell the
12 attorney.

13 Michael Schiavo testified that his
14 discussions with Terri concerning her wishes to
15 not live like that was an incident involving
16 comments made while watching a television
17 documentary, as well as on a train trip to
18 Florida. Well, Mr. Schiavo combines the facts
19 surrounding the train tip he vividly remembers to
20 the death of Terri's grandmother, Mrs. Schindler.
21 However, other testimony revealed that Terri's
22 grandmother died five months after that train trip
23 and that Terri was in Philadelphia when her
24 grandmother died that she was very close to.

25 Additional concerns as to Michael

1 Schiavo's credibility as expressed by Richard
2 Pearse, who was our court appointed guardian ad
3 litem in this case, are an element of existing
4 conflict of interest of Terri's estate that he
5 stands to inherit if successful in his plan for
6 discontinuing Terri's feeding tube. While Mr.
7 Pearse knew of Michael's involvement with another
8 woman, Michael also added information to this
9 Court that he is currently engaged. Has been
10 engaged to someone else for four years.

11 While Michael also expresses his love
12 for Terri, his wife, it's difficult to imagine
13 how he can have her best interests, his own best
14 interests, and his fiancée's best interests all at
15 the same time without a conflict of interest.

16 The Court has heard testimony from many
17 witnesses concerning the state of Terri and
18 Michael's marriage prior to the February 1990
19 incident. While it may not be totally relevant to
20 the decision of Terri's intent as to the
21 withdrawal of a feeding tube, it adds to the
22 weight of, the weight certainly as to Michael's
23 possible motivations or explanations for planning
24 his wife's impending death. All the various
25 issues pertaining to the disputes between Mr. and

1 Mrs. Schindler and Michael Schiavo since this
2 horrible incident happened to both their families
3 only serve to add to the explanation as to why we
4 are here today.

5 Mr. Schiavo and Mr. and Mrs. Schindler
6 clearly have such a wide wedge of hard and painful
7 feelings between them. There are differences in
8 their memories as to the moneys that have been
9 borrowed and owed between them, but the major
10 differences are in the priorities as to what is in
11 the best interests for Terri.

12 Since '93, Michael Schiavo has deprived
13 the very essence of motherhood to Mary Schindler,
14 which is the ability to take care of your own
15 child. However, that bond between mother and
16 daughter, especially that bond which is between
17 Mary and Terri has never been impeded.

18 Mr. Felos has agruged that this case
19 could also be ruled with the best interest test
20 as to what is in the best interest of Terri, and I
21 imagine he means as decided by the current
22 guardian. Well, but that is not the law. There
23 is some language contained within the John W.
24 Kennedy Memorial Hospital v. Bludworth case, 452
25 So.2d 921, which was decided in 1984, pertaining

1 to substituted judgment wherein close family
2 members or legal guardians substitute their
3 judgment for what they believe the terminally ill
4 incompetent patient would want, if competent.
5 However, the opinion still stresses the exclusion
6 of a living will as persuasive evidence of what
7 that incompetent person's intent would be.

8 I especially appreciated the Fourth
9 District Court's opinion in the same case that
10 stated one need not go so far back in history as
11 Cain and Able to recognize the interest of various
12 families members are not always synonymous or
13 harmonious as argument for judicial assistance in
14 making decisions which is the purpose of why we
15 are here today.

16 There is In-Re: Barry, 445 So.2d 365,
17 which is a Second District Court of Appeal case in
18 '84. This case permitted the parents and
19 guardians of a terminally ill 10-month-old baby
20 who had been on life support system all its life
21 to go ahead and discontinue the life support
22 system. Here this baby was reported to be in a
23 permanent vegetative state, lacking cognitive
24 brain function. Completely unaware of his
25 surroundings with no hope of development, of any

1 awareness. That the condition was permanent and
2 irreversible.

3 Well, other than the age, that medical
4 diagnosis sounds very similar to the testimony of
5 Doctors Barnhill and Gambone. However, in the
6 Barry case, it was the parents that were making
7 the decision. Everyone in that case agreed,
8 except the State, that that was what was in the
9 best interests of the child. But we don't have
10 that case here.

11 Here there are three affidavits from
12 doctors, in addition to the additional testimony
13 by two of those doctors that have based their
14 opinions on the rigid, scientific, cold data
15 determining Terri's fate. There was no testimony
16 from any of them that they ever joked with Terri,
17 heard her laughing, or they ever witnessed the
18 loving expression as exchanged between Terri and
19 her mother.

20 No one here contests the fact she is
21 clearly incapacitated. She's not able to make her
22 own needs known. But there is something in
23 between brain death and the legal test for
24 cognitive function and persistent vegetative
25 state. Maybe it's not ribbons of brain tissue

1 that allow some people to see signs of life and a
2 real person inside the body of Terri Schiavo. At
3 least it appears she still maintains that
4 protective element that we all have that only
5 let's certain people share our inner space. It
6 appears she only reveals the laughter, tears, and
7 other scenes of life to certain special
8 individuals, like her mother.

9 Even Dr. Barnhill stated that he could
10 not know for absolute certainty as to that kind of
11 connection. Mr. Felos also refers to the Corbett
12 case. This case involved a 75-year-old patient
13 which died before the decision was even rendered.
14 We believe the testimony in this case does not
15 meet the clear and convincing standard as required
16 for oral evidence of intent as required in
17 Browning.

18 We also believe that Mr. Felos is
19 attempting to move the line when he suggests that
20 the Court should decide in the best interest test
21 if it did not find for clear and convincing.
22 Clear and convincing evidence, as required in
23 Browning, is simply another manifestation of the
24 presumption of life that should be maintained.

25 Additionally, the Schindlers firmly

1 believe, as others that have testified in this
2 trial, that Terri does have some level of
3 awareness and recognition of those she loves,
4 despite the testimony to the contrary. They do
5 believe there is life within Terri. Even though
6 the Schindlers could not afford to bring a
7 professionally done day-in-the-life video, that
8 would be if we were able to succeed in that, and I
9 am sure there would have been court intervention
10 because we would not have had the permission of
11 the guardian, what they were able to bring was a
12 small sample to show the Court to personalize
13 Terri to this case. To show you there is
14 something in that body.

15 Even though Father Murphy did not meet
16 Terri or her family, he did agree that the high
17 road or the ideal of the Catholic faith would be
18 as expressed in the National Conference of
19 Catholic Bishops which states in its directive
20 number 56, there should be a presumption in favor
21 of providing nutrition and hydration to all
22 patients, including patients who require medically
23 assisted nutrition and hydration, as long as this
24 is sufficient benefit to outweigh the burdens
25 involved to the patient.

1 It is imperative to remember that in
2 Terri's situation there is no financial burden
3 placed on Mr. Schiavo or on Mr. and Mrs.
4 Schindler. She is fully self-sufficient from the
5 fund that she received in her guardianship which
6 were there to provide for her care for her life
7 from the malpractice award.

8 With all the advancements of medical
9 science and the new studies on the brain, in
10 addition to the information which continues to
11 bring hope to families like the Schindlers, such
12 as the patient out in New Mexico, who after 16
13 years awoke from her coma, it's our hope that you
14 will come to the same conclusion as Richard Pearse
15 and deny Michael Schiavo's petition for authority
16 to discontinue artificial life support.

17 We hope in this denial that you will
18 also recognize there is some life, and there has
19 been no credible testimony that meets the clear
20 and convincing standards required in the Browning
21 case. Thank you, Your Honor.

22 THE COURT: Thank you. Mr. Felos, very
23 brief rebuttal. You took about -- a quarter of
24 your time you have already taken.

25 MR. FELOS: As she said so eloquently,

1 we have the burden of proof.

2 THE COURT: You are the one who set the
3 hour and 15 minutes.

4 MR. FELOS: There is no doubt that
5 Theresa Schiavo exhibits life and has life. There
6 is no doubt she has responses. A plant is alive.
7 A plant has photosynthesis reflexes. If you shine
8 a light, it moves. Shut off the light, it moves
9 the other way. There is no dispute that Theresa
10 Schiavo has life, but that is not the issue in
11 this case and that's a life -- and no one is here
12 to say that if Theresa Schiavo could be maintained
13 alive in any condition whatsoever without
14 administration of artificial life support that
15 that life should end. Absolutely end.

16 If it required taking a spoon to Theresa
17 Schiavo's mouth and having someone feed her three
18 times a day, if she can naturally intake food,
19 there is -- we would not be here talking. The
20 issue is not preserving life, but it's whether to
21 remove the artificial medical treatment which
22 sustains her existence. There is a difference
23 between life and consciousness.

24 Under Browning, under the question of
25 patient intent, upon a finding of this Court that

1 there is clear, and convincing evidence or reliable
2 evidence of the patient's intent, the level of
3 consciousness is irrelevant. As in Browning,
4 under the Browning standard, you don't have to be
5 in a permanent vegetative state to have artificial
6 life support removed. You don't have to have any
7 particular degree of consciousness.

8 If I were a patient or if you had a
9 patient who lost the ability to swallow and was
10 competent, they could refuse artificial provision
11 of sustenance because it's medical treatment.
12 So upon a finding by this Court that there's
13 reliable evidence of Terri's intent that she did
14 not want to be kept alive artificially, she did
15 not want to be kept alive if she were dependent on
16 the care of others, she would not want to be
17 hooked up to a machine, which is another way of
18 saying being kept alive artificially, whether she
19 had a minimal degree of consciousness is
20 irrelevant and has no bearing whatsoever in this
21 case.

22 Now under the best interest test, which
23 I would submit would apply to a vegetative
24 condition, then that issue may have some bearing,
25 but on the first, on the question of intent, it

1 doesn't. We heard about "she". She, Terri, has
2 her menstrual period. She, Terri, does this or
3 does that. Who is that she? If the doctors
4 diagnoses are correct, which I believe they are,
5 there is no "she" that knows she's having a
6 menstrual period. That there is no "she" that
7 knows what is happening.

8 There was cited to Your Honor the
9 Slumwitz case in which counsel gave you various
10 definitions of the standard in that case.
11 Slumwitz was a case about what standard of proof
12 do you need to rebut the presumptive validity. I
13 submit to you that the standard that this Court
14 should follow is the standard as to these oral
15 statements as said on Page 15 of the Browning case
16 which merely states the evidence of the oral
17 declarations be reliable.

18 The Court asked during the course of the
19 trial what difference does it make where Terri was
20 when the grandmother died. Well, you just heard
21 that on the argument of Ms. Campbell. She is
22 trying to attack the credibility of Terri's
23 statement to Mike during the train trip on the
24 basis he must have it wrong because the
25 grandmother died five months after that train

1 trip. You heard Mr. Schiavo's testimony as to
2 calling Mr. and Mrs. Schindler after they, after
3 Mr. Schiavo was in a car accident on the way to
4 the train station and was told Terri's grandmother
5 died and informed Terri of that.

6 Also remember, Your Honor, Mr.
7 Schindler's deposition. He is the one that said
8 on the stand that I know Terri was in Philadelphia
9 and I know because my mother was hospitalized in
10 October, five months before her death, and they
11 took the trip in October. But in reading his
12 deposition, he stated his mother was hospitalized
13 in March when she died and she had not been
14 hospitalized for years before that.

15 There is a statement about motherhood.
16 I don't quote the Bible very well, Your Honor, but
17 I beleive there's something to the effect that
18 when persons marry they leave the home and the
19 spouses cleave unto themselves and create a new
20 home. Theresa Schiavo is not a baby, as heard on
21 the tape. She's a married woman who we heard made
22 her own choices, and the person in our society
23 that we look to to make decisions for spouses is
24 the other spouse.

25 You know, I have also heard in

1 argument, well, let's not rely just on the
2 scientific evidence. Well, the doctors, they
3 merely rely on science. Well, I may believe
4 Your Honor that souls converse, that even if
5 Theresa Schiavo, even if unconscious people may
6 feel another, souls may exchange information, but
7 unfortunately that is not a basis in which this
8 Court dealing in facts can make a decision on what
9 the subjective impressions of someone may be.

10 About the ribbons of brain matter, Dr.
11 Barnhill testified that autopsies of patients like
12 Theresa show that is scar tissue, and even if it
13 were functional tissue, he testified the nature of
14 consciousness, not brain, is the ability of
15 different areas of the brain to interact and
16 connect with each other. Even if there were an
17 isolated pocket of brain material, it would not
18 imply or bring consciousness because there is no
19 connectiveness to anything else in Theresa's
20 brain, which is filled with fluid.

21 On Theresa's intent and the statements,
22 another thing this Court may very well want to
23 remember is the order in which they were given.
24 And we assume that a person's most recent
25 declaration is the one to which we might give most

1 weight. And what was the first? The first was
2 the alleged statement given in response to the
3 joke of Diane Meyer right after high school. That
4 was the first. And even assuming that statement
5 were true, Your Honor, we all know that people
6 grow. People mature. Beliefs change. So I think
7 that is a factor the Court might want to take into
8 consideration.

9 In closing, I wanted -- and the Court
10 nods with approval -- I wanted to read one passage
11 from the case In Re: Matter of Conroy, 468
12 Atlantic 2d on Page 1249. The presence of
13 progressive, irreversible, extensive, and extreme
14 physical deterioration such as ulcers, lesions,
15 gangrene, infection, incontinence and the like,
16 which frequently afflict the bedridden, terminally
17 ill should be considered in the formulation of an
18 appropriate standard.

19 The court was talking about what tests
20 should be used in removal of life support.
21 Medical and nursing treatment of individuals in
22 extremes and suffering from these conditions
23 entails the constant and extensive handling and
24 manipulation of the body. At some point, such a
25 course of treatment upon the insensate patient is

1 bound to touch the sensibility of even the most
2 detached observer. Eventually, pervasive bodily
3 intrusions, even for the best motives, will arise
4 feelings akin to humiliation and mortification for
5 the helpless patient. When cherished values of
6 human dignity and personal privacy, which belong
7 to every person living or dying, are sufficiently
8 transgressed by what is being done to the
9 individual, we should be ready to say enough.

10 Father Murphy, one reason he testified
11 is he called it the dark cloud of the medical
12 treatment system. He described the dual edge
13 sword of medical technology. The boon and benefit
14 it brings, but also the ability to keep us alive
15 way beyond our time. And what he most feared, and
16 he expressed this, is that situations where
17 patients are kept alive way past the natural death
18 process, especially where patients are kept alive
19 contrary to their intent, gives rise to the belief
20 in people that they have to take their own lives
21 to avoid medical treatment to avoid being kept
22 alive.

23 It was the spector of physician assisted
24 suicide which concerns Father Murphy in this case
25 and in similar cases. That people see this and

1 say, "Oh my God, look what happened when somebody
2 gets caught up in the medical/legal system. They
3 are kept alive like that indefinitely in that
4 condition. Rather than have that happen to me, I
5 am going to take a pill and end my life
6 prematurely while I have the ability because once
7 I loose control, look can what happen to me."

8 And that's what happened. That is what
9 is happening here. Enough. Her intent should be
10 carried out and that intent was not to be kept
11 alive artificially in this condition. Thank you.

12 THE COURT: Did -- I might have your
13 cases that you all quoted.

14 MS. CAMPBELL: Do you want the same
15 copies of the same ones?

16 THE COURT: No. Did you mention -- one
17 you did not mention. Slumwitz.

18 MR. FELOS: I have a copy.

19 (THEREUPON, A BENCH CONFERENCE WAS HAD
20 OUTSIDE THE HEARING OF THE COURT REPORTER.)

21 THE COURT: As has been stated by both
22 attorneys, this has been an extremely difficult
23 case. Obviously, not one I can rule upon at this
24 time. I have a lot of information to go over. I
25 used up one legal pad taking notes and I'm about

1 halfway through this one. There is a lot of
2 evidence that has been submitted, together with
3 some good case law that both lawyers have worked
4 on and given to me for my consideration.

5 I do want, at this time, to comment that
6 quite obviously whatever I rule will be contrary
7 to the wishes of Mr. Schiavo or Mr. and Mrs.
8 Schindler. This is not a case that has any
9 prospect of being divided somewhere in between
10 those two positions, quite obviously.

11 I do want to tell the three of you that
12 whatever decision the Court reaches, it certainly
13 will have been with the assistance of extremely
14 able trial counsel. I know all three of them. I
15 have known them for a long time. They have done
16 an outstanding job in this case in presenting all
17 the facts that could possibly be presented to the
18 Court. So whatever outcome is made, it's my
19 decision and I have certainly been assisted by the
20 effort of your attorneys.

21 As I told the attorneys at the bench, I
22 intend to reach a decision in this case in two
23 weeks. This is not a decision that I can make
24 quickly, but it's not a decision that gets any
25 better the longer I consider it. We need to make

1 a decision so we know what we need to do with
2 regard to Theresa. So please do not bug, for lack
3 of a better word, bug your attorneys before then.
4 I'll keep them advised of my progress.

5 I do not intend to call another hearing
6 to read my decision. I don't think that would be
7 in your best interests, any one of the three of
8 you. I intend to fax my written opinion to the
9 attorneys, as simultaneously as I can, and keep
10 them as advised as I can of when that will occur.

11 Again, I want to compliment you on
12 keeping your emotions as under check as you
13 could. This has been an extremely difficult
14 case. Probably the most difficult case I have
15 presided over in my term on the bench. Again, I
16 thank you for your patience. I want to thank
17 counsel. I want to thank the media, who have been
18 as unobtrusive as you can possibly be in this
19 case. With that final thought, we will stand
20 adjourned.

21 THE BAILIFF: All rise. Court is
22 adjourned.

23 (THEREUPON, THE TRIAL ENDED ON 1-28-00 AT
24 11:30 A.M.)
25

CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF PINELLAS)

I, BETH ANN ERICKSON, Deputy Official Court Reporter in and for the Sixth Judicial Circuit, State of Florida;

DO HEREBY CERTIFY that the foregoing proceedings were had at the time and place set forth in the caption thereof; that I was authorized to and did stenographically report the said proceedings; and that the foregoing pages is a true and correct transcription of my said stenographic report.

IN WITNESS WHEREOF I have hereunto affixed my official signature this 17 day of June, 2000 at Clearwater, Pinellas County, Florida.

Beth Ann Erickson

BETH ANN ERICKSON, RPR
Court Reporter
Notary Public, State of Florida

Sworn to and subscribed before the undersigned officer this 17 day of April, 2000

[Signature]
Notary Public
State of Florida at Large



Roger A. Rose
MY COMMISSION # CC-46157 EXPIRES
May 12, 2001
BONDED THRU TROY PAUL INSURANCE, INC.