The right to privacy and the right to die

Some of the most significant Supreme Court decisions have, in recent years, been based upon a constitutionally protected right of privacy; that is, an individual's right to be free from unwarranted intrusions into his personal affairs.

This constitutionally protected right of privacy was first used to protect an individual's rights to use contraceptives, under the theory that the state enforcement of anti-contraception statutes would be an unwarranted intrusion into the privacy of the marital bedroom. Sometime later, the same right of privacy was used to grant women a constitutionally protected right to obtain an abortion and prohibited the state or other entities from unreasonable interference with that right.

Most recently, this right of privacy has been utilized as a basis to terminate medical treatment of an irrevocably ill patient. It is ironic that this right of privacy, used for such significant decisions, is not a specific right granted by the United States Constitution, but is rather a judicially-formulated right which is said to flow from the penumbra of rights guaranteed in the U.S. Constitution.

The Karen Quinlan Case

The most recent application of the right of privacy was made in a unanimous decision of the New Jersey Supreme Court which removed legal impediments from having Karen Anne Quinlan removed from a respirator. The 22-year-old Miss Quinlan has been kept alive by use of life supporting equipment for almost a year after she lost consciousness, apparently as a result of an adverse reaction of a combination of alcohol and tranquilizers.

The prevailing medical opinion has been that there is no reasonable probability of Karen ever emerging from her present comatose condition or that other significant recovery will occur. However, Miss Quinlan's physician and hospital refused to permit the life supporting equipment to be disconnected for fear of possible civil and legal sanctions.

The parents of Miss Quinlan were convinced that she would never recover, and that if she could have chosen, she would never have chosen to linger and languish in the twilight between life and death, supported only by modern medical machinery; but rather, she would have desired a death with dignity.
therefore, in the face of the physician and hospital resistance, brought suit to:
(1) have a court assume control over the situation, (2) appoint the parents as guardians of Miss Quinlan, and (3) permit the guardians to make the choice of a death with dignity for Miss Quinlan.

The trial judge, however, declined to appoint the parents as guardians; and further, he refused to authorize the court-appointed guardian to withdraw Miss Quinlan from the respirator. His decision was based upon his perception of the prevailing standards of practice in the medical profession and the failure of the expert witnesses to rule out absolutely any chance of recovery.

Having lost at the trial court level, the parents pressed an appeal to higher New Jersey Courts, including the New Jersey Supreme Court.

The New Jersey Supreme Court in reviewing the decision recognized that the trial court's perception of the medical standards may have been influenced by the current explosion of malpractice litigation and the proliferation of possible criminal sanctions—sanctions which are even more disturbing for the professional. Although the treating physicians indicated that these considerations were not involved in their judgment not to disconnect the life support systems, the Supreme Court concluded that they must have had some effect on their decision.

The court then reviewed the current struggles within the medical profession in attempting to devise a modern definition of death, in part due to the development of organ transplant procedures. The court recognized that the concept of brain death, although useful under certain circumstances, could not be the exclusive manner of determining death.

The court concluded that the focal point of such a decision should be "the prognosis as to the reasonable probability of returning to a cognitive and sapient life, as distinguished from the forced continuation of that biological vegetative existence to which Karen seemed to be doomed."

The court further concluded that there could be no criminal homicide charges brought against any one of the doctors for withdrawing the respirator, since the presumed death would be expiration by existing natural causes.

Furthermore, since the termination of treatment would flow from the patient's right of privacy, the resulting death could not come within the scope of the homicide statutes, such activity being the exercise of a constitutionally protected right and, hence, protected from criminal prosecution.

In conclusion, the court stated that: if the guardian and the family of Karen agree, and if a responsible attending physician concurs that there is no reasonable probability of her emerging from her present comatose condition, and if an ethics committee of the hospital concurs with that decision, then the "present life support system may be withdrawn and said action shall be without any civil or criminal liability therefore on the part of any participant, whether guardian, physician, hospital, or other."

**Basis of the court's decision**

The court based its decision on the sole ground that a person has the right to make life-sustaining medical decisions for himself, free from interference by the state; and that if that person is incompetent to make such a decision, the guardian, (in this case the father) could make it. The patient's right to privacy supports and justifies the right to decide one's own fate.

This decision, on the one hand, has been hailed by religious leaders. On the other hand, it has been criticized by the American Medical Association for "requiring physicians to undergo an unnecessary review by ethics committees before they could make such a decision."

In general, the decision has caused widespread confusion within the medical-legal circles.

What is interesting to note is that
this New Jersey Supreme Court decision is in full accord with other court decisions considering the subject matter. There has been no unreversed court decision subjecting a physician to either criminal or civil sanctions for the termination of life support systems on an irreversibly comatose patient.

The true irony of the Quinlan case is that Karen Quinlan’s withdrawal from life support equipment was judicially authorized because of her right to exercise her right of privacy. Yet, to have such a right asserted required prosecution of one of the most publicized medical-legal cases of this decade.