



IN THE MATTER OF *Karen Ann Quinlan* AFTER 40 YEARS:

Some Personal Remembrances from the Sidelines of History

By John Zen Jackson, Esq.

In September 1975, I was a recent law school graduate starting a one-year term as Law Secretary to Chief Justice Richard J. Hughes of the Supreme Court of New Jersey. This time period of September 1975 through August 1976 is in many ways the pinnacle of my legal career. During the course of this year, the Court decided the *Quinlan* case,¹ recognizing a patient's right to refuse medical treatment, authorizing the termination of a patient's life support equipment and supporting the right to die. The decision was front-page news across the country and, indeed, the world. The day the decision was announced, the venerable Walter Cronkite opened the *CBS Evening News* stating: "The Supreme Court of New Jersey ruled today on an issue that has tormented the

consciences of the legal and medical professions."²

I was one of three law secretaries (also known as law clerks) for the Chief Justice that court term. We were all new to the job. On our first day of work, Richard Hughes spoke with us and delivered a strong admonition on the confidentiality of our work and other matters in chambers. That seal of confidentiality, to some extent, impacts the content of this article.

The Supreme Court of New Jersey, like the highest courts in most states and the Supreme Court of the United States, has discretion whether or not to grant a further appeal and the review of lower court decisions. Once a case had been filed, accepted for review and fully briefed by parties, the practice in the Supreme Court of New Jersey was for

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each case to be assigned to one of the law clerks (there were a total of 15 at that time) with the responsibility to review and summarize the arguments, testimony and documents in the record on appeal, analyze the case law cited by the lawyers and do additional research, when necessary, to more fully assess and present the case. What was called a “bench memo” would be prepared by that law clerk for the use of the entire Court. Later in the course of proceedings, the law clerks might also work with their Justice on the preparation of an opinion, whether it was the main opinion for the Court or a separate dissenting or concurring opinion.

In the 1975–1976 term, the opinions of the Justices were typed on a typewriter, not on a computerized word processor. The draft opinions were photocopied and circulated among the seven members of the Court through the use of messengers. Comments from any of the Justices who had not been involved in the drafting of the opinion would be considered; if a suggestion were accepted by the author, then the opinion as a whole, or a page of the opinion or even a sentence or phrase would be retyped on the typewriter, and the photocopying and circulating process would be repeated. There was no capability to send an email with a PDF attachment or even a fax. At least in the Chief Justice’s chambers, the smaller changes of a sentence or word were handled by typing that short passage, cutting it out as a small strip of paper, pasting it in place and then photocopying it. This revision was again subject to review by the Justices. When a version had the approval of the necessary members of the Court, it would be sent to the State printing office for finalization and

in the drafting of the opinion would be considered; if a suggestion were accepted by the author, then the opinion as a whole, or a page of the opinion or even a sentence or phrase would be retyped on the typewriter, and the photocopying and circulating process would be repeated.”



release to the parties, the public and the press.

THE FACTS OF THE QUINLAN CASE

The night of April 15, 1975, Karen Ann Quinlan had been to a local bar in Sussex County with friends. Returning home, she collapsed and stopped breathing for at least two periods of 15 minutes. Friends summoned police, and the rescue squad took her to Newton Memorial Hospital. She was then transferred to St. Clare’s Hospital in Denville. The interruption in her breathing had caused anoxia—an insufficient supply of oxygen in her blood causing unconsciousness. Her pupils were unreactive; she was unresponsive to deep pain, with legs rigid and curled up; and she had decorticate brain activity. She required a respirator for assistance

with breathing. There was no improvement in her neurological status over many months, and attempts to wean her from the respirator were unsuccessful. She was not brain-dead but, rather, was in a persistent vegetative state, having irreversible brain damage with no cognitive or cerebral functioning.

While the family had initially urged the physicians to do everything they could, as time went by and the daily reports by the neurologist regarding her prognosis for recovery of useful function became increasingly pessimistic, the family decided that their daughter should be removed from the artificial life support of the respirator and allowed to die. Between July and September, Mr. Quinlan came to the decision to release the hospital from any responsibility for removing Karen Ann from the respirator. The neurologist, however, would not agree to



the respirator's cessation. This led to litigation filed in the Superior Court of New Jersey on September 12, 1975, with a request that the court issue declaratory and injunctive relief authorizing and compelling the removal of the respirator and restraining any interference.

On November 10, 1975, Judge Robert Muir issued the trial-level decision denying any relief to the family.³ Ordinarily, an appeal from a trial division judge's decision is reviewed by the intermediate Appellate Division before it goes to the Supreme Court. But a provision of the Rules of Court allows this appeal to be bypassed, and the case can be heard directly by the Supreme Court. Recognizing the significance of the issues in this case, the Court acted quickly. It entered an Order taking the case for review on November 17, 1975.

IN THE SUPREME COURT

The task of preparing the *Quinlan* bench memo was assigned to Mary Cheh, also one of the Chief Justice's law clerks and now a Professor of Constitutional Law and Criminal Procedure at George Washington Law School. Her workup went beyond standard legal materials such as case law and went into medical literature. Her research identified approaches to the problem that went beyond the briefs filed by the various lawyers. In particular, she identified the then-emerging concept of "ethics committees" to provide guidance on these end-of-life situations. The concept was first suggested by a physician who had just written an article in 1975.⁴ Ironically, it appeared in a legal journal because the pediatrician author felt that medicine's climate was not receptive to the idea of committees reviewing clinical-ethical issues.⁵ This concept was eventually endorsed in the Court's opinion and has become widely accepted.

Although the Supreme Court of New Jersey had a number of important cases before it that year, the *Quinlan* case stood out. Starting with the proceedings in the lower court, a significant amount of media coverage surrounded the case.

Richard Hughes chose to have his chambers in Trenton. They were located on the fourth floor of the State House Annex on West State Street. Because the library for the Chief Justice's chambers where we worked was just down the hall and around the corner from the Supreme Court's courtroom, it was easy for his clerks to sit in on oral arguments before the Court. Oral

argument in *Quinlan* occurred on January 26, 1976. The courtroom was crowded with observers and press, but I was able to find a seat toward the back of the room.

The principal lawyer for the *Quinlan* family was Paul W. Armstrong. He had been admitted to the New Jersey bar only in 1973. Five other lawyers were present for the litigants and interested parties to argue this case. They included the Attorney General of New Jersey, William F. Hyland, as well as the Morris County Prosecutor, Donald G. Collester, Jr., who addressed the law enforcement issue of whether termination of life support constituted murder or criminal homicide. Ralph Porzio, attorney for the physicians currently caring for Ms. *Quinlan*, and Theodore Einhorn, attorney for the hospital where she was being maintained on life support, were also there to argue their clients' position regarding civil tort liability. In addition, because Judge Muir had removed Ms. *Quinlan*'s father from his position as her guardian and appointed an independent representative, Daniel Coburn—as the lawyer for the guardian ad litem—also participated in the argument. The Court had also accepted a written *amicus curiae* submission for the New Jersey Catholic Conference without any oral presentation.

Following argument, and in accordance with the Court's usual practice, the Justices met in conference to discuss the tentative outcome of the case. When the Chief Justice was part of the majority as to the tentative outcome, he was empowered to assign the task of writing the opinion for the Court. For *Quinlan*, he undertook to write that opinion himself. The opinion was finalized and released on March 31, 1976, less than two months after the argument, which was a relatively swift disposition of an appeal. The back story on this prompt resolution can be found in the biography of Richard Hughes by Seton Hall law professor John B. Wefing. Hughes was scheduled to make a trip to Japan in connection with a cultural exchange established in 1972 in which Japanese judges visited and observed New Jersey courtroom proceedings. Wefing reports Betty Hughes' comments regarding her concern that the *Quinlan* family had waited long enough: "Tell the Japanese that they'll have to wait. That girl is dying. Sit down this afternoon and get going."⁶

It was the Chief Justice's custom to write out por-



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tions of his opinion in longhand. He would then dictate the opinion to a secretary, who would type it up, and then his law clerks would check the citations and have the opportunity to provide suggestions and edits. While Mary Cheh had the burden of the bench memo, the work on the opinion was now shared among the three law clerks. This included such erudite tasks as tracking down English court opinions from the 17th century in the lower-level book stacks of Firestone Library at Princeton University.

In an early portion of the opinion, the Chief Justice eloquently framed the issues in the case:

The matter is of transcendent importance, involving questions related to the definition and existence of death; the prolongation of life through artificial means developed by medical technology undreamed of in past generations of the practice of the healing arts; the impact of such durationally indeterminate and artificial life prolongation on the rights of the incompetent, her family and society in general; the bearing of constitutional right and the scope of judicial responsibility, as to the appropriate response of an equity court of Justice to the extraordinary prayer for relief of the plaintiff. Involved as well is the right of the plaintiff, Joseph Quinlan, to guardianship of the person of his daughter.⁷

As the Chief Justice himself later acknowledged, the nature of the case led to one Justice preparing a separate concurring opinion delving even deeper into these issues.⁸ But while a draft of that separate opinion was prepared, it was never circulated, and the members of the Court eventually agreed to all join in the opinion written by Hughes.

OPINIONS, PRECEDENTS AND MILESTONES

In the history of New Jersey, only one person has held the positions of Governor and of Chief Justice: Richard J. Hughes. That executive experience informed much of his work as the administrative head of the state

judiciary. It also served him well to bring all the justices to speak together in a single opinion for the Court in *Quinlan*. That the opinion was unanimous reinforced the decision's moral authority.

Although *Quinlan* did not answer all questions for the end-of-life challenges, it was a beginning, and the Court would work its way through additional issues in cases that actually presented those issues. Much of that happened with the *Conroy-Jobes-Peter-Farrell* group of cases that the Court decided between 1985 and 1987.⁹

Although the termination of life support was the central issue in the *Quinlan* case, the lower court's decision removing Mr. Quinlan as his daughter's guardian was also an important component. In addressing that issue, the Chief Justice drew on experience from his long time in public service. One of the precedents cited in *Quinlan* regarding the role of guardians was *In re Rollins*,¹⁰ an opinion that Richard Hughes had written in 1949 when he was serving as a judge for the Mercer County Court.

No one connected to the case was unaware or naive concerning the decision's ground-breaking nature, its ramifications and the potential reactions to it. The Chief Justice grounded the decision in a personal right of privacy and autonomy. Federal case law involving reproductive rights, including the then relatively recent abortion decision of *Roe v. Wade*, was cited as authority. But recognizing the controversy and challenges that might follow, the opinion had a one-sentence footnote that was eventually moved into the body of the text: "Nor is such right of privacy forgotten in the New Jersey Constitution."¹¹ This sentence provided "an adequate state ground" for the decision that would limit, if not prevent, any review by the federal courts. Indeed, the Supreme Court of the United States later denied a petition seeking such review.¹²

While the Court heard oral argument in Trenton every other week, the Justices met in Newark in the off-week to review draft opinions that had been circulated and to discuss the cases and other court business. For the session on

March 29, 1976, during which *Quinlan* would be discussed, the Chief Justice had one of his secretaries and one of his law clerks come to Newark to be available at that conference in anticipation of finalizing the opinion. The secretary, Joan Doyle, brought her own Remington typewriter. I was that law clerk. This type of task had never happened before, and it never happened again, at least during my time with the Court.

The Justices met privately in the conference room. From time to time, I was summoned and given some marked-up pages. At times, the Chief Justice came out to hand me something to review and check. The pages would be retyped as the members of the Court worked their way through the lengthy opinion. The intensity of the Justices' review even reached discussions of punctuation, whether a comma or a semicolon should be used in a sentence. By the end of the day, the opinion had been finalized and approved.

I had traveled to Newark by train that morning. The Chief Justice offered me a ride home. As I sat in the front seat and conversed with the Chief Justice and his driver, the sense of increasing relaxation was palpable. At least two things had been accomplished: For this family, the

case was now concluded, and a landmark had been placed for a turning point in the murky end-of-life jurisprudence that has existed up to that point. Indeed, 14 years later, when the Supreme Court of the United States recognized a patient's constitutional right to refuse medical treatment, it referred to *Quinlan* as "the seminal decision" in this area of the law.¹³ (Since the Constitution of 1947 reorganized the New Jersey court system and starting with the leadership of Chief Justice Arthur Vanderbilt, the Supreme Court of New Jersey has enjoyed a stature and reputation for independence and innovation that has made it one of the leading state courts.¹⁴ Many decisions of the New Jersey Supreme Court are studied in law schools across the country. The *Quinlan* opinion is among them.)

The next day, however, revealed that the opinion had not been finalized. The Chief Justice had begun the opinion identifying "the central figure in this tragic case" and noted in the second sentence that "[a]t the age of 21, she lies in a debilitated and allegedly moribund state." Karen Ann Quinlan's birthday was March 29, and she had just turned 22 as the opinion was finalized in Newark. Holding up release of the opinion in Trenton briefly, we searched it for age references and revised them using the old-fashioned literal "cut and paste" technique. The opinion was then made



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public and released to the attorneys for the parties and to the press who had gathered at the State House Annex on the morning of March 31, 1976, to get a copy of the opinion as soon as it was available.

Quinlan created a space in which a dialogue concerning the weighty questions involved in end-of-life decision making and the role of medicine could occur. In a particularly profound passage, the Chief Justice had written:

We glean from the record here that physicians distinguish between curing the ill and comforting and easing the dying; that they refuse to treat the curable as if they were dying or ought to die, and that they have sometimes refused to treat the hopeless and dying as if they were curable.¹⁵

Quinlan provided the first milestone in the patient empowerment strategy that is central to the hospice movement. Over the past 40 years, the dialogue and conversation have embraced other end-of-life/right-to-die lawsuits such as the *Conroy-Jobes-Peter-Farrell* cases in New Jersey and elsewhere, as well as legislative enactments, including the Declaration of Death Act providing a definition of death that includes neurological criteria for brain death, Advanced Directives and Practitioner Orders for Life-Sustaining Treatment (POLST) and even consideration of physician-assisted suicide. Issues involving patient or family demands for continued treatment despite contrary medical advice (sometimes referred to as “medical futility”) are also within this space and a search for consensus. In *Betancourt v. Trinitas Hospital*, a case presenting this type of concern, the intermediate Appellate Division dismissed an appeal as moot because of the death of the patient during the pendency of the appeal, but it stated:

While we dismiss the appeal, we do not see our declination to resolve the issue on this record and in this case to be an end to the debate. The issues presented are profound and universal in application.¹⁶

This all began with *Quinlan*.

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- ¹ *In re Quinlan*, 70 N.J. 10, 355 A.2d 647, cert. denied sub nom. *Garger v. New Jersey*, 429 U.S. 922 (1976).
- ² Filene, P. G. (1998). *In the arms of others: A cultural history of the right-to-die in America* (p. 93). Lanham, MD: Dee.
- ³ 137 N.J. Super. 227, 348 A.2d 801 (Ch. Div. 1975).
- ⁴ Teel, K. (1975). The physician’s dilemma. A doctor’s view: What the law should be. *Baylor Law Review*, 27, 6.
- ⁵ Myers, D., & Lantos, J. (2014). The slow, steady development of pediatric ethics committees, 1975–2013. *Pediatrics in Review*, 35, e15.
- ⁶ Wefing, J. B. (2009). *The life and times of Richard J. Hughes: The politics of civility* (p. 255). New York, NY: Rivergate Books.
- ⁷ *In re Quinlan*, supra, 70 N.J. at 19-20, 355 A.2d at 652.
- ⁸ Wefing, J. B. (2009). 254–255.
- ⁹ *In re Conroy*, 98 N.J. 321, 486 A.2d 1209 (1985); *In re Jobes*, 108 N.J. 394, 529 A.2d 434 (1987); *In re Peter*, 108 N.J. 365, 529 A.2d 419 (1987); *In re Farrell*, 108 N.J. 335, 529 A.2d 404 (1987).
- ¹⁰ 65 A.2d 667 (N.J. Cty. Ct. 1949).
- ¹¹ *In re Quinlan*, supra, 70 N.J. at 40, 355 A.2d at 663.
- ¹² *Garger v. New Jersey*, 429 U.S. 922 (1976).
- ¹³ *Cruzan v. Director, Mo. Dep’t of Health*, 497 U.S. 261, 270 (1990).
- ¹⁴ Johnson, N. (2014). *Battleground New Jersey: Vanderbilt, Hague, and their fight for justice* (pp. 232–233). New Brunswick, NJ: Rutgers University Press; Mulcahy, K. M. (2000). Modeling the garden: How New Jersey built the most progressive State Supreme Court and what California can learn. *Santa Clara Law Review*, 40, 863–864; Canon, B. C., & Baum, L. (1981). Patterns of adoption of tort law innovations: An application of diffusion theory to judicial doctrines. *American Political Science Review*, 75, 975, 978; See also: Tractenberg, P. L. (Ed.). (2013). *Courting justice: Ten New Jersey cases that shook the nation*. New Brunswick, NJ: Rutgers University Press.
- ¹⁵ *In re Quinlan*, supra, 70 N.J. at 47, 355 A.2d at 667.
- ¹⁶ 415 N.J. Super. 301, 318-19, 1 A.3d 823, 833 (App. Div. 2010).