



Newsday Photo / J. Conrad Williams Jr.

Father Eichner, with his dogs, at Kellenberg: He believes the landmark case he championed has led to a disturbing legal evolution.

Right-to-Die Pioneer Opposes Aided Suicide

IT WAS THE LANDMARK CASE that led to the state's highest court affirming an individual's right to die, and it could influence the nation's highest court as it considers the right to doctor-assisted suicide.

But it all started years ago with some flower tubs on a roof garden at Chaminade High School in Mineola.

In the late summer of 1979, Brother Joseph Fox, a member of a Catholic religious order that ran the school, moved the heavy tubs and developed a hernia. In October, Fox, 83, had surgery to remove it.

During the operation, Fox' heart stopped and his brain was badly damaged by the loss of oxygen. He lapsed into a vegetative state and could breathe only

with a respirator. Doctors informed the school's president, Father Philip Eichner, that Fox had no chance of recovering.

Eichner learned that Fox had told people he didn't want to be kept alive if there was no hope of recovery. Fox had said this during a campus discussion in 1976 of the prominent Karen Ann Quinlan case, in which the parents of a 19-year-old comatose woman asked for court permission to remove her respirator.

After consulting with two neurosurgeons, and with the support of Fox' relatives, Eichner asked for a court order to take Fox off the respirator. A State Supreme Court justice granted the request, but Nassau District Attorney Denis Dillon appealed through the Appellate Division and then the state Court of Appeals. And so it was that Eichner began the case that led to New York's highest court setting a national precedent by ruling that a person could be taken off of life-sustaining medical treatment if there was "clear and convincing evidence" that, during his lifetime, he had expressed a wish that his life not be prolonged this way.

"When we found out Brother Joseph was in a terminal state and there was no hope of bringing him back by medical intervention, and that the intervention was only prolonging his death, we decided we should terminate it and let nature take its course," Eichner recalled recently. "We did this because we are a religious people and we believe we must accept the process of death and not prolong it when there is no possibility of reversal." Fox died in January, 1980, before the Court of Appeals issued its opinion.

But in Eichner's view, the landmark case that he championed has led to a disturbing legal evolution. Last year, a federal appeals court in Manhattan, citing the Fox case, ruled in favor of plaintiffs seeking the right to assisted suicide. The court said that an

incompetent terminally ill patient refusing life-prolonging medical treatment was no different from a competent terminally ill patient seeking doctor-assisted suicide.

Now, the Manhattan case and a similar case out of Washington State have presented the U.S. Supreme Court with the awesome responsibility of deciding whether assisted suicide should be legal.

"There's been a quantum leap here," said Eichner, who now heads Kellenberg Memorial High School in Uniondale. "There's an enormous difference between letting nature take its course and intending the direct death of patients. . . . My disappointment is that this raises a profound philosophical — not legal — question, and no one is discussing it philosophically."

There has been theological opposition to physician-assisted suicide is that no one should be able to decide to end a life, which is considered in Catholic teaching to be a divine gift. To refuse life-sustaining treatment, Eichner said, "is not suicide. . . . It's not the death we're fighting; we're fighting against someone saying that 'I am God' . . . Suicide is a refusal to accept the gift of life."

There have been theological scholars who, over time, have advocated assisted suicide if a patient is terminally ill. Some have considered it an acceptable act of moral conscience. Some argue that suicide is morally acceptable if one believes in an afterlife and if one believes that God would not want you to suffer, said Dr. Daniel Sulmasy, Center for Clinical Bioethics director at Georgetown University Medical Center in Washington, D.C.

The New York State Task Force on Life and the Law, a group of medical and religious experts, said in a 1994 report: "Individual beliefs about the meaning of life and the significance of death vary greatly. For proponents, establishing assisted suicide and euthanasia as accepted alternatives would respect this diversity."

It is the Supreme Court that must now wrestle with such profound questions, with Eichner and others watching with keen interest to see how the high court will go on this case, probably the most important case it has considered since *Roe vs. Wade*.

"I have a great sadness," Eichner said, "that with all our medical technology, all our money . . . will be used to terminate problems and terminate persons with illness. . . . These enormous problems with this and I think the Supreme Court does, too."

LAW AND ORDER



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