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REPORT OF GENERAL COUNSEL

**Eugene Krasicky, Esquire
General Counsel
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During the past year, many important legal events have emerged, and perhaps you have read about some of them in the newspapers. I would like to share some of these matters with you.

About two months ago my office recommended to the Executive Committee of the Conference that there be an intervention in the lawsuit that was brought affecting the Vietnamese orphans. At the time that Vietnam fell, approximately 3,000 Vietnamese infants were brought to this country. Some of you, I am sure, will remember reading about the crash of one airplane that was part of the baby airlift. Of the 3,000 children flown to the United States, almost 400 of them were sponsored by Catholic agencies. Catholic Relief Services brought them out of Vietnam, and they were met in this country by our Catholic Committee on Refugees. Almost simultaneously with the landing of the children in this country, a lawsuit was brought in California seeking to have all of the youngsters returned because the claim was made that the parents of these children had not consented to their departure from the country.

The suit was brought as a class action, although the plaintiffs purported to act for only three Vietnamese children whose parents allegedly had never consented to their being brought here for adoption purposes. The litigation has been in the federal district court in California since that time. The youngsters brought by Catholic agencies have been placed with Catholic families by various diocesan Catholic Charities. The adopting parents, at least in the far west, became very concerned about their right to keep the children as members of their respective families. So after much soul searching, we decided that it would be wise for the Catholic Committee on Refugees to become a party in the lawsuit.

Until we moved to intervene in the lawsuit, it wasn't going very well. As part of the process of deciding what to do and whether there should be an intervention, we made some contacts with various federal government offices. These contacts continued after we made the decision to get into the lawsuit. We spent some six weeks trying to talk to the attorney for the federal government who was responsible for the case. We were sent from one office to another. One sensed that there seemed to be some feeling of guilt on the part of the government officials we spoke to that they were somehow "improperly involved" in having brought these youngsters over and they would very much like to walk the center line between the group that wanted to send them back and the people who were trying to keep the children here. I should like to make it clear that this case presented some problems for us, because if there are natural parents in Vietnam for these youngsters, and if they did not consent to their adoptions here, the natural rights of parents were being violated. Traditionally, our position is and must continue to be that the rights of natural parents must be upheld. The problem was that you couldn't be sure that there were natural parents in Vietnam. Nor was there any *just* way to determine

such facts. In any event, we moved to intervene in the lawsuit with the filing of our briefs. The judge narrowed the class down to the three children specifically identified by plaintiffs; not 3,000 children, but only three. None of the three children is sponsored by Catholic agencies.

The plaintiffs were very aggressive. They asked to have the class action order made final, but the trial court refused to do so. Then the child placement agencies which intervened in the case asked to be dismissed from the lawsuit and to have the decision made final as to them. The case is now on appeal to the Ninth Circuit. But the court has refused to stay the proceedings, so the children are now in a position to be adopted by our families.

I'd like to make a few comments about some other matters that are of great interest. One of them is *In the Matter of Karen Quinlan*, 355 A.2d 647, decided March 31, 1976. The *Quinlan* case is a sad case, because you have a young person who is in an incurable condition, and you have the process of law determining what ought to be done finally for that person. In my judgment, it was most unfortunate that the case was ever brought. But the fact remains it was brought and has been determined. Now, the decision in *Quinlan* is very just for the Quinlan family. So when you read commentaries praising the decision, the commendations are well taken in that regard. But I am fearful for the future. The *Quinlan* decision is going to cause many problems. As often happens when you have a decision rendered by a multi-person body, such as a court, there are troublesome holdings and reasonings in the opinion. You wonder how they ever got in the opinion, but they are there nevertheless. It is the rationale for the opinion that is most troublesome to me. In its opinion the court used words such as "cognitive" and "sapient" when considering life, whether or not it ought to be continued, and whether or not it ought to be supported. The court created an intermediate body, kind of an ethics committee, to examine what the attending doctor was going to do, after consulting with the family. And here's what they said about this ethics body:

"If that qualified body agrees that there is no reasonable possibility that Karen has emerged from her present comatose condition to a *cognitive sapient state*, the present life support systems may be withdrawn." (emphasis supplied.)

The words "cognizant" and "sapient" are not biological terms. They are descriptive phrases reflecting a qualitative assessment and are necessarily subjective. The words pose a grave danger to the protection of life.

Most importantly, the *Quinlan* case rests on the rationale of the right of privacy, the right of Karen Quinlan to privacy. Theories regarding privacy are not on firm ground in our present legal system. We must observe that from the time *Griswold v. Connecticut*, 381 U.S. 486, was decided upholding the privacy of married people to have access to contraceptives and the privacy of a woman to secure an abortion, *Roe v. Wade*, 410 U.S. 113, and *Doe v. Bolton*, 410 U.S. 179, which also rest on privacy, the shift between those two extremes has been quite significant. In the ten-year period intervening between those two decisions, the court has shifted from the right of privacy as a familial right to the right of privacy as an individualistic right.

One of the most troubling features of the *Quinlan* decision is the extraordinary attempt which this court makes to be considered as an important precedent. I should like to read to you, verbatim, a footnote that appears penultimate to the conclusion in the opinion:

"The declaratory relief we hereby award is not intended to imply that the principles enunciated in this case might not be applicable in diverse other types of terminal medical situations, such as those described by doctors Korin and Diamond, *supra*, not necessarily involving the hopeless loss of cognitive and sapient life."

Here we find an invitation to the judicial community in the State of New Jersey and throughout the country to apply the rationale of this case to other terminal medical situations, not necessarily involving the hopeless loss of cognitive or sapient life. There is grave danger in the *Quinlan* decision. All of us should be aware of it.

Now, unlike the case I talked to you about yesterday, where the final decision in the New York case will stop not only federal aid in New York to disadvantaged children but in all other states as well because the injunction will flow against federal officials authorized to disburse federal funds to every state in the union, the *Quinlan* case, of course, affects only the Quinlans. Nevertheless, the decision in *Quinlan* is an open invitation to courts throughout the land to apply the rationale of privacy in terminal medical situations. In its footnote, the court referred to the testimony of a Dr. Julius Korin. As a part of the record in *Quinlan*, Dr. Korin testified to a medical practice of judicious neglect. I wonder whether we are likely to see in our lifetime deformed children being born in hospitals and signs being posted: "Do not feed" as a further example of judicious neglect.

In the last two months the Supreme Court heard argument in the three abortion cases. While my staff was present for the argument of all of them, I heard the entire oral argument in *Planned Parenthood et al. v. Danforth*, No. 74-1151, 1419. *Danforth* involved the first case which the Supreme Court has heard since *Doe* and *Roe*, where the abortion issues are squarely before the Court. Everything else has been handled summarily, appeal denied, the decision of the lower court affirmed or not affirmed, certiorari not granted. In *Danforth*, the Missouri law provided that parents must give their consent for a pregnant minor female to have an abortion. Further, a wife cannot have an abortion without her husband's consent. In *Bellotti v. Attorney General*, No. 74-1151, the Massachusetts statute dealt only with the right of parents to participate in the abortion decision of a pregnant minor female. In the third case, *Singleton v. Wulfe*, No. 74-1393, two doctors sought to litigate a woman's right to abortion with Medicaid funds.

The argument in *Danforth* was most interesting. It was as though everybody were treading on egg shells. There seemed to be an atmosphere present that I had never observed before. The argument was significant for what was not said rather than what was said. The Missouri legislature had required the doctor before he performed the abortion to ascertain whether or not that child was viable, and put a burden on the doctor to determine viability before performing an abortion. This was upheld by the lower court. Appellants argued that this was a limitation of the absolute right to abortion. Except for rebuttal, there was no mention by anyone, Court members included, of the viability of the unborn child, save for one sentence in the rebuttal by the appellant, Planned Parenthood.

It appears to me the Court is having a very difficult time with the rights of parents over the pregnant female who is a minor. If I were to bet on it, I think the Court will uphold the right of those parents, which if upheld will provide the first limitation on this absolute reading of *Doe* and *Roe* by lower courts that this right to privacy of a woman to have an abortion is subject to no limitations whatsoever. So I think there is some hope.

As you know, we have filed a brief in the *Danforth* case in behalf of the Conference and in a very subtle way we requested the High Court to reverse *Roe* and *Doe*. We have no expectation that they will do so. Interestingly enough, a brief was filed in behalf of a Catholic doctor objecting to *Roe* and *Doe* and the Supreme Court refused to accept the brief, issuing an order expressly rejecting the brief. We understand that the Court became angry over the tone of the brief. There is a great sensitivity on this issue in the Court and Justice Blackmun by the way he appeared that day, appeared to mirror this sensitivity.

The Supreme Court has before it for decision a number of other cases in which we are interested. There is *Roemer v. Board of Public Works*, No. 74-730, dealing with general grants in aid to Catholic colleges by the State of Maryland, which will affect grants in aid to our colleges and universities throughout the country. The decision there looks kind of close, but we will have to wait and see. It was won in the lower court, and it should be decided probably by late June.

Then the Court has before it *Simon v. Eastern Kentucky Welfare Rights Organization*, No. 74-1124. This is the case which considers whether or not our hospitals can retain their tax exempt status if they do not perform a certain amount of charitable work, that is, work without payment. We are also interested in the Virginia segregated academies case, *Runyon v. McCrary*, No. 75-62, where so-called white academies do not choose to accept black pupils, but wish to retain their tax exemption.

I should like to speak briefly about the operation of my office. We're still at four: George Reed, Pat Geary, John Liekweg and myself. We are still looking for the fifth and we're looking with great care to find the right person. It is not my purpose to train somebody to go off and make a lot of money, and it's hard to find dedicated people. Thus, I am proceeding very carefully. I think we have assembled a very fine staff. I am very pleased with my assistants. Sometimes we don't agree on everything, but that's part of every operation.

I think we have fulfilled so far a commitment that I made to you that we would try to provide better service for you; we are very interested in you. This remains a continuing obligation. Not only do you give us information about what's happening in your parts of the country, but we want you to give the best possible representation in your cases that affect everybody else.

During this meeting, there have been some references to the Pallotines. The Pallotines in Maryland, in that little area, are affecting everybody throughout the country. So your lawsuits affect everybody else, and we want you to make the best possible defenses and we want to provide as much help as we can. Sometimes it is difficult to make suggestions to some of you. You may think we are trying to run your case but that is not our purpose. We are interested in the larger goals, the very best possible representation for our institutions.

Recently we sought to assist a lawyer representing a Catholic hospital. He was involved in a case that was going to affect all of our institutions up and down the country. So we offered to help him with his brief. We asked for a copy of the draft of his brief and were told it was not ready.

We finally succeeded in getting the brief two days before it was to be filed. Our review demonstrated that half of the cases that the court should be made aware of were not cited in the brief. Moreover, the leading case supporting our rationale was not in the brief. We proceeded to call him on the phone and inform him that these

cases should be put in. We also suggested that he ought to reverse his arguments; the strongest argument should not be last but should be first. After discussing the matter with him, he finally agreed to do everything we suggested, except to rearrange his argument. This is probably not the best way to operate and we recognize that because some of you are under very tight schedules, there may not be time for all of this, but we stand ready to help you in any way that we can.

Last year I promised that there would be a newsletter. None of you have received it because there hasn't been any. However, we think it's still a good idea and we're going to work on it and try to get it out for this coming year.

Our annual meeting seems always to fall on Mother's Day week, at least in my time it has. This presents problems for some of you. I know it is difficult to leave your families on that day, especially if you have a long way to travel. So we wonder about the wisdom of holding our meeting at that particular time. In order to learn your wishes in the matter, we're going to pass out to you now a sheet which will give you a chance to express your preference as to whether our meeting should be held earlier than this particular week, should it be held this particular week, or should it be held at a later time. In our survey, we have worked roughly within a one-week period. Those of you who are members of the Diocesan Attorneys Association, if you let us know how you feel we'll try to make an accommodation. We would like as many of you to come to this meeting as we can get. If Mother's Day is a problem, then the meeting should be scheduled at another time.

When you arrived, you were given a printed program. We were rather proud of it because it was a Bicentennial program in appropriate colors of red, white and blue. Then someone came into the office and said can we have a copy of your program. We gave it to him. He looked it over and he said there's a word misspelled on the front cover. Sure enough, "counsel" was misspelled. Our secretaries swear under oath that the text that went to the printer had "counsel" spelled correctly. The printer agrees that counsel on the draft was spelled correctly, so he has re-printed the program. We would like you to take it with you as a souvenir of our fallibility. You can keep the incorrect copy and if the need ever arises you have proof about how sloppy this office can be.

In planning our program we have tried to present to you the issues that we think are emerging as the important issues. During the meeting I have asked some of you to tell me what you think about our programs, and some people I did not even have to ask. We, of course, know we cannot please everybody, but we want to have a good program so that you will continue to come. We want you to be well versed in current problems in our country. I think the Bishops are entitled to the best possible representation and they rely on us to help you to provide that representation.

If you have any complaints about the program, I would prefer not to hear them today. However, I would appreciate your writing me a letter and telling us what you thought of the program. I know you are very busy so if you liked the program, don't bother to write us. But we do want the best possible programs.

