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LEGAL BRIEFS

A Gift Worth Giving: Honest Discussion

Mistletoe and Christmas trees, jingle bells and shopping sprees. Yes, it is that time of year again for family and friends to gather and celebrate their family, religious and cultural heritages, as well as to celebrate the end of another great year.

This means that it is also the time of year to reflect upon where we have been and where we are going, and to share with family and friends thoughts about our life's journeys. A part of that reflection should be to think about how that journey should end someday.

During the past year or so, we have discussed how Judge Robert Hammerman chose to control his significant life-ending medical situation by taking his own life. We also reviewed how Terry Schaivo was denied the opportunity for so many years to have her wishes followed once it was determined that she would never recover and enjoy any quality of life.

Both Judge Hammerman's situation and Terry Schaivo's case should be considered as lead-ins to another discussion involving "compassionate aid in dying," often referred to as "physician-assisted suicide."

Living Wills that contain directives regarding the use of artificial life-sustaining technologies when there is no reasonable hope or expectation that there will be a recovery provide that people may implement a "passive" plan to end their lives in certain situations. In other words, one can do nothing, and by doing nothing, let his or her life end naturally.

Is it possible, however, to be "proactive" and control the manner and timing of one's death when death is a certainty? For example, could one take a lethal drug when the time came? In Maryland, as in most other states, such proactive participation is a criminal act.

The one exception is Oregon. In 1994, and then again in 1997, the voters in Oregon supported their Death with Dignity Act. Under this law, a person may take proactive

steps to end his life if: (i) two doctors certify that the person has less than six months to live, (ii) the person makes three separate requests of his doctor for a lethal dose of medication, (iii) the prescription is filled after a 15-day waiting period, and (iv) the person can self-administer the lethal drug. Under this law, since 1997, a total of 208 persons have chosen to end their lives in a manner of their own choosing.

In 2001, the Bush Administration decided that a physician could not prescribe FDA-approved drugs for the purpose of ending a patient's life, and took Oregon to court to overturn its law. Federal courts, however, have not supported the Administration's efforts thus far.

The Administration's case finally reached the U.S. Supreme Court this year, and oral arguments were made before that Court in October. By July 2006, a decision should be rendered giving direction, from a federal and constitutional perspective, on this very important and personal issue.

If the Court affirms Oregon's law, other states, such as California and Vermont, may adopt Oregon's approach to providing their citizens the right to die with dignity. In fact, recent polling has shown that 70% of Americans would support such a law.

Regardless, during this holiday season, we should celebrate our life's journeys, but share with our loved ones our own thoughts and beliefs about how we can control the ending of that journey in a dignified and appropriate manner. This, indeed, would be a gift worth giving.