The Devil's Advocate

On December 22, 1976, the weather had turned cold in New York City. Otis Simmons, a 55-year-old derelict, was found in a frozen condition outside the Americana Hotel. A passerby, noting that Simmons was without shoes, took him into the lobby and tried to call an ambulance. When that was unsuccessful, Mr. Simmons walked several blocks to Roosevelt Hospital, where he was admitted to the emergency room.

The staff at Roosevelt concluded that although amputation was not essential to save Simmons' life, the condition of his legs and feet was such that it was advisable to amputate his right leg just below the knee, and to do a partial amputation of his left foot. Mr. Simmons some ten years earlier, when living in Detroit, had experienced another frostbite and reported that portions of four fingers had fallen off by themselves, but that he had recovered. Perhaps because of his Detroit experience, he insisted that he would not willingly permit amputation. Roosevelt Hospital, at the insistence of its surgical staff, brought an application in the supreme court to permit amputation without Simmons' consent.

The court appointed Simon Rosenzweig, former director of the Mental Health Information Service for the First Department, as guardian *ad litem* for Simmons. It also sought and secured at least three psychiatric reports as to Simmons' mental status, and the judge had personal interviews with him. In its twenty-seven-page opinion, the court concluded that the application should be denied.[1]

This interesting decision commences with a finding that amputation admittedly was not necessary as a life-saving emergency measure, and stated: "This court emphasizes that if a life saving emergency existed or exists, no court authorization is necessary and there is no justiciable legal controversy. The responsibility is that of the physicians and hospital to exercise their sound medical judgment." The court cited with approval prior decisions holding that emergency requirements should not be delayed nor the responsibility shirked "while fearful physicians and hospitals first seek judicial sanction for a determination which at the end must, in any event, be a medical decision rather than a legal one."

If a life-saving emergency does not exist, however, the court continued, the question becomes that of whether or not Otis Simmons was competent to give or withhold his consent to the proposed treatment. On this issue the court rejected the conclusions of its own psychiatric experts and found Simmons to be competent to determine his own fate. In support of this "second-guessing" the court pointed to its bedside interviews with Simmons, his physical improvement while at Roosevelt, and his prior release after only five weeks at Kirby-Manhattan Psychiatric Center in April, 1976. Apparently

the court assumed that Simmon's mental condition rapidly improved after detoxification.

One of the court-designated psychiatrists reported that Mr. Simmons was suffering from a chronic organic brain syndrome and concluded that he lacked the mental capacity to knowingly give or withhold consent. However, he added a caveat to the effect that if Simmons were declared incompetent it did not follow that surgical treatment should be immediately carried out. A second psychiatrist testified that Simmons was not competent to accept or reject recommended surgery. The court, however, concluded that "both psychiatrists have failed to give proper weight to the pattern of the patient's previous bout with disorientation and confusion – apparently after another period of intoxication." No reference was made to a third psychiatric evaluation which concluded that Simmons was not currently competent to utilize ordinary judgment in responding to decisions concerning his physical illness, that he had delusions and hallucinations, and suffered from "a paranoid psychosis in organic brain disease." This latter report highlighted delusional material including the patient's claims that he had been to Jerusalem where he was made a "Son of God," that he had paid Roosevelt Hospital $100 million for rent, that he owned TV Channel 8, which made millions for him, and that he had cured over 100 million frozen people all over the world. In response to questions about his drinking, Simmons replied that he drinks every day – good Scotch.

The court's opinion attempts to justify rejection of the psychiatric testimony on the tenuous basis that the psychiatrists may have thought that the surgery was immediately necessary as a life-svaing procedure, and that such may have been their expressed premise. In addition, the court relied upon its observation to responses by Mr. Simmons to its questions, and asserted that "he is rational, now has a good memory, understands the nature of the treatment being proposed and the consequences either of a rejection or a reception. He has stated that he would rather die than suffer amputation."

The court thereupon dismissed the application without prejudice to renewal should the patient's mental condition worsen and without prejudice to the hospital's right to care for Mr. Simmons in a life-threatening emergency. In reaching that result the court followed the advice of the guardian *ad litem* and the wishes of Otis Simmons, who said that he would prefer to "die with my legs on."

Unfortunately, this decision did not come to grips with the complex problem of just what constitutes competence or incompetence to make a rational decision regarding medical treatment in a non-life-saving situation and the possible application of the implied consent doctrine to non-emergency cases. At this writing apparently the spread of gangrene has been stopped and Mr. Simmons is still alive. Perhaps surgery was not necessary and Otis Simmons may have an early release from Roosevelt.

The decision not only rejected the recommendations of Roosevelt's surgical staff but also brushed aside the evaluations of three impartial psychiatrists. It may be argued that surgical recommendations in non-emergency situations should be suspect because of the occupational preferences of surgeons when in doubt to operate. Rejection of the

psychiatric evaluations is a more complex matter, and the court's lame explanation that the psychiatrists really did not understand issues, *i.e.*, competence of Simmons to determine for himself what should be done in a non-emergency situation, is not convincing. The larger issue is two-fold: (1) what limits, if any, are there on a patient's legal right to determine and control medical procedures? and (2) assuming that he loses such autonomy when he is not "competent," what does it take to establish "incompetence"?

The New York court blithely asserts that the patient loses his usual right of self-determination in an emergency "life-saving situation," whether competent or not. He also has no autonomy if he is deemed to be incompetent, even if it is not a life-saving situation. At the other extreme is the position of complete individual autonomy in both life-saving emergency situations and in more routine cases. The problem of the involuntary commitment of a suicidal patient may involve a comparable issue, as may the problem of court-ordered blood transfusions to Jehovah's Witnesses. The Karen Quinlan case, it may be noted, involved the case of a mentally incompetent patient, whose father was appointed as guardian to determine the course of treatment, or its suspension, in consultation with a committee from the hospital.

Since an appeal of the Otis Simmons case is unlikely, we will have to await other decisions (involving other fact patterns) before we may be sure of the philosophical premises behind New York law and how it will be applied. The law with regard to self-determination in medical situations is in ferment, and it is undesirable to have it developed on a piecemeal or individual case basis. We need comprehensive statutory guidelines for the resolution of such difficult questions, and the medical profession should be consulted, as it was with regard to the Uniform Anatomical Gift Act, so that there is a clear delineation of public policy and a proper sharing of decision-making between physician and patient.

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References

1 The decision is reported in *The New York Times*, January 11, 1977, p. 37, col. 4. At this writing, the case is unreported in the law reports.