



VOLUNTARY EUTHANASIA SOCIETY OF NEW SOUTH WALES (INC.)

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NEWSLETTER

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Death of Dementia Sufferer

A woman whose life support was removed after a landmark legal battle has died. The woman, 68, known as BWV at the Victorian Supreme Court hearing, was taken off artificial life support after her guardians were granted the right to let her die. BWV, who suffered from a form of dementia known as Pick's Disease, had been in a vegetative state for three years and was kept alive by a feeding tube in her stomach. She had begged her family to spare her the long painful death that would have resulted from continued medical intervention. The court ruling followed her family's application to the Victorian Civil and Administrative Tribunal (VCAT) for a guardianship order so they could fulfil her wish.

In February VCAT gave guardianship to the Public Advocate, Julian Gardner, who took the family's fight before Justice Stuart Morris in the Supreme Court. Justice Morris ruled in late May that the tube was a medical rather than palliative treatment and could therefore be legally withdrawn. BWV died on 21 June, just over three weeks after the court order was made.

Counsel for the public advocate, Julian Burnside QC, said the case was not about 'euthanasia, mercy killing or assisted suicide'. He said the case concerned the wishes of those who did not want to be kept alive by artificial means and whether it was permissible to withdraw those means of keeping them alive.

BWV's death has re-ignited the debate between right-to-die

and anti-euthanasia advocates. Victorian Voluntary Euthanasia Society president Rodney Syme said the circumstances surrounding BWV's death presented a case for the legalisation of assisted suicide or voluntary euthanasia by lethal injection.

'You've got to ask the question: Is it in the best interests of BWV to have died of dehydration over a three-week period?' he said. 'There is no

dignity in a slow death by dehydration and starvation.' *Source: Melbourne's Herald Sun, 8 July 2003, by Danny Buttler With AAP.*

Editor's Note: My feelings are similar to Dr Syme's but in the interest of balance, I have included the following report which disputes this accepted view:

Death by Dehydration Seems Peaceful, Nurses Say

Terminally ill people who opt to kill themselves by forgoing food and drink appear to die at least as peacefully as those who end their lives with doctors' help, according to a survey of Oregon hospice nurses released on 24 July.

The survey - the first systematic look at what seems to happen when dying patients intentionally refuse food and fluids - suggests that people facing death have a simple, serene and legal way to end their suffering. Proposals to legalise physician-assisted suicide have sparked intense controversy in the United States. The practice is only legal in Oregon, where patients wishing to die must get their doctors to prescribe a lethal dose of barbiturates.

The Oregon nurses' survey, published in the 24th July issue of *New England Journal of Medicine*, looked at an alternative to physician-assisted drug overdoses. The Oregon Department of Human Services says these can cause complications like gagging, vomiting or bowel obstruction. Supporters of physician-assisted suicide disagree that the ingestion of drugs causes a painful death.

Study author Linda Ganzini said that until now, some doctors considered voluntary death by dehydration to be a gruesome way to die. But Ganzini, director of the Palliative Care training program at the Portland Veterans Affairs Medical Center, said the study should change some minds. 'We are not at the point of saying this is a

reasonable alternative for everyone,' Ganzini told Reuters in an interview. 'But it is an alternative for many more patients.'

Ganzini noted that in hospice patients, the normal thirst and hunger mechanisms may not be intact. If a healthy person were to stop eating and drinking, he would likely suffer more than the terminally ill, she said. The nurses in the study rated 102 deaths among patients who refused food and fluids, and 55 deaths where the doctor prescribed pills that killed the patient. On a 10-point scale where zero reflected the most comfort, the nurses typically rated the peacefulness of the dehydration deaths as a two, compared with a five for physician-assisted suicides. On suffering and pain scales, the nurses said patients who voluntarily stopped food and fluids seemed slightly more comfortable.

'According to the nurses' reports, most deaths from voluntary refusal of food and fluids were peaceful, with little suffering, although 8% of patients were thought to have had a relatively poor quality of death,' the researchers said. Study authors conceded that there were several limitations to their research, however. For one, the death reports from hospice nurses were based on memories and perceptions that may have happened up to four years previously. Most of the patients - 85% - died within 15 days of giving up food and water. *Source: Gene Emery, Reuters Health News, 23 July 2003.*

Bequest from Barbara Bristowe

The Society has received generous help to 'fight the good fight' in the form of a bequest from Miss Barbara Bristowe. We are extremely grateful and include the following details about her, with the permission of her executors.

Barbara Bristowe was born in Dorset, Poole where her parents started Poole Pottery. Barbara became a photographer in England, specialising in weddings. She and her parents then moved, first to New Zealand and then to Australia. She belonged to VES, WIRES and was a keen gardener.

Another Award for Max Bell Play

Perth playwright Reg Cribb has won the Queensland Premier's Literary Award for his acclaimed play *Last Cab to Darwin*. The play is based on the story of taxi driver Max Bell's tragic trip from Broken Hill to Darwin (and return) which he made hoping to take advantage of the NT's Euthanasia legislation. Cribb, whose play was enjoyed by many Sydney members at the Opera House in April this year, also jointly won the third annual Patrick White Playwrights' Award.

FOR YOUR DIARY

Meetings

- At the next informal meeting of the Society on Sunday 30 November at **Dougherty Centre, 7 Victor Street Chatswood** at 2pm the speaker will be Dr Sue Ogle. Her topic is **Assessment and Treatment of Dementia**.
- **Central Coast** - The 2004 meeting of the Central Coast branch of VESNSW will be held on **Thursday at 10 am** at the **Gosford Senior Citizens Centre, 217 Albany Street Gosford on 8 April, 5 August and 9 December**. Contact: Romaine Rutman. If you would like a lift to the August and December meetings, ring Debbie Mastin on 4975 2732 and they may be able to help. John Doyle, who is such a stalwart for this branch has been in hospital - we all wish him a speedy recovery.
- **Fee Increase in January 2004:** Membership subscriptions to VESNSW will be \$30 single and \$50 for a couple. Concession rates of \$18 single and \$30 for a couple are available for pensioners and students. Life membership cost \$550 single and \$800 for a couple.
- **Confidentiality:** VESNSW does not provide information about individual members or give the membership list to any person or organisation under any circumstances. However, if you would like your name to be added to a VESNSW 'telephone tree' - so that members can respond quickly when VE is raised on radio talk-back sessions - please let Carmel know. The Society will provide helpful advice on how to get the message across.
- **Email:** Readers of this Newsletter are asked to help to get as many VE supporters as possible to send in their email addresses. Email is the quickest and cheapest means VESNSW has of keeping members informed. If you or friends would like to be contacted by email please send your email address to: mail@vesnsw.org.au
- **Exit Australia workshops:** for details email exit@euthanasia.net or phone 0500-83 1929, or Michael Griffith on 9959 7142.
- visit the VESNSW web site at www.vesnsw.org.au

More Wise Words From Peter Goodwin

Members who attended the meeting which the Hon Jan Burnswood, MLC chaired in Parliament House in 2001 will recall the rousing address by Peter Goodwin, Medical Adviser to *Compassion in Dying of Oregon* and Associate Professor Emeritus at Oregon Health Services University. Part of his speech was published in the VES(NSW) *Newsletter* no 94 in July 2001. Peter had his letter published in *The New Yorker* on 25 November 2002:

‘In the five years since the enactment of Oregon’s *Death With Dignity Act*, I have been involved as a doctor in caring for 40 terminally ill patients who requested physician-assisted suicide. Some were among the fewer than 100 patients across the state who, having met the law’s requirements, took prescribed medications to end their lives and died peacefully, almost all of them at home in their own beds. A much larger number, reassured by the knowledge that they had a choice, have died well, without taking the medication. The Oregon act gives terminal patients an additional option, which allows them to negotiate more effectively with their doctors about their care and to refuse unwanted, intensive, and often futile care at the very end of their lives.’

Swiss Increase in Euthanasia

A new report shows a significant increase in the number of assisted suicide cases in Switzerland over the past decade. A study by the University of Zurich found that *Exit*, one of the country’s main euthanasia organisations, provided assistance to 748 people between 1990 and 2000.

Exit’s involvement increased three fold in that period. That is 5% of all suicide cases.

A report released last month showed that Switzerland has one of the highest rates of euthanasia in Europe. Source: www.Swissinfo.org 11 July 2003

VE and Politics

Letter from Robert Cousens:

Support for voluntary euthanasia is not confined to ‘the left’ – whether that be the left of the Labor Party, the left of the Liberal Party, or a more radical minor party. Our society embraces membership from across the political (if not religious) spectrum.

Certainly, support for voluntary euthanasia does not imply support for any other cause - let alone all causes - that may be seen as ‘left’. So it was regrettable that Peter Baume, our patron, chose to associate VE support with those other currently fashionable causes of the left, illegal immigrants and the Iraq war, in his opening remarks to the EXIT conference reported in the July *Newsletter*.

Peter is, of course, entitled to his own apparent opinion that support for effective immigration control or for participation in a military intervention overseas is just as objectionable as opposition to voluntary euthanasia. But the fact is that there are members of this Society and of EXIT (including me) who do not share that opinion, and to imply that we do (let alone should) is certainly objectionable to us.

To emphasise the point, Dr Rodney Syme told us on the previous page of the same issue that VE has bipartisan support – 78% of Labor voters and 73% of Liberal voters. Since the degree of support for and opposition to the other causes that Peter mentioned is much closer to 50% each, it follows that many VE supporters must disagree with his position. Our common cause crosses the simplistic left/right divide.

The VE movement cannot afford to alienate a significant segment of its support base by appearing to tie our cause to any unrelated one – whether of the left or the right. Let’s stick to our common goal.

Editor’s Note: Professor Peter Baume’s opening remarks at the Exit Conference were published on pages 4-5 of the July 2003 *Newsletter*. The Society, while vitally interested in politics, is not aligned with any political party. Professor Baume, former Liberal Minister for Health, was expressing his own views and people are free to agree or disagree with what he says. In the same way, Robert Cousens, the previous VES(NSW) *Newsletter* editor, has been given the opportunity to put his view. Clearly, we share a common goal to make VE legal but it would be sad if members’ interests were restricted to this.

Drugs To Hasten Death For Terminally Ill Gains In-Principle Support

ABC Radio News, 5 August 2003

Advocates for the terminally ill say health authorities have taken the first steps in allowing wider access to drugs for home deaths.

The Pharmaceutical Benefits Advisory Committee (PBAC) has given in-principle support to subsidising a range of drugs which can be used to hasten death for the terminally ill.

Palliative Care Australia president Professor David Currow has spent the past eight years campaigning for the rights of terminally ill patients who want to die at home.

'People want to be cared for in the community, their family and friends are committed to that process, at the moment for many people it's not affordable,' Professor Currow says. But that has now changed with the PBAC agreeing to subsidise eight drugs including methadone and strong pain killers, which are currently out of the reach of many terminally ill patients. Research shows that while two of four seriously ill

patients want to die at home, only one in four is able to do so.

'My mother when she died wanted to do so at home and it would be a shame if other people wanted to and didn't get that opportunity,' Federal Health Minister Senator Kay Patterson said. Still under discussion is how doctors will determine which patients get access to the drugs and whether GPs will be able to prescribe medication in large, potentially lethal doses.

While Right to Life groups support access to painkillers for terminally ill patients, they believe these changes could lead to more cases of physician-assisted suicide or euthanasia.

'We don't want these drugs to fall into the wrong hands - we need safeguards so it's limited to terminally ill patients,' Right to Life spokeswoman Dr Cathy Lennon said.

The changes, which include a GP education package, will be introduced in February next year.

Fear of Death

Letter in *The Spectator*, 5 July 2003 by Dr Andrew D Lawson, Royal Berkshire Hospital, Reading, UK.

'Nowadays it seems well nigh impossible to suggest to someone that in the care of the elderly aggressive interventions might not always be a good thing. In my experience, this is less to do with avoiding litigation and more to do with assuaging relatives who insist on 'something' being done to stave off death, which in our post-modernist secular society is the ultimate failure.

There is a huge discrepancy between the sort of survival rates people expect and real-life survival rates. This may be related to the fact that the public gets its information from television. A good example of this is survival following cardiac arrest. American researchers looked at medical dramas such as *ER* and *Chicago Hope* and found that on television up to 70% of cardiac-arrest survivors leave hospital, none

with any brain damage. In the UK media the percentage is more realistic - about 50% - but still way off the mark. The truth is that about 15% of cardiac-arrest patients survive at best, many with brain damage. In those over the age of 80, with significant illness, survival after cardiac arrest approaches 0%.

Medical dramas are also littered with phrases such as 'it's a miracle', when sadly, miracles are rather uncommon. This all leads to an expectation of success in cases where the medical and nursing attendants have quite the opposite expectation, a situation bound to produce conflict. Interestingly, medics and paramedics have been found to be quite selective when it comes to the circumstances under which they would wish to be resuscitated.

It will take a sea change in society to accept that there are times when the most moral and correct thing to do for a dying patient is to let them die.'

France: Overdose Kills Right-To-Die Man



Vincent Humbert

Source: BBC, 26 October: <http://news.bbc.co.uk/1/hi/world/europe/3142246.stm>

A severely handicapped Frenchman has died two days after his mother put an overdose in his drip. The case of 22-year-old Vincent Humbert who was left mute, blind and paralysed following an accident three years ago has sparked a nationwide debate over euthanasia in France. Vincent was mentally alert and wanted to die. His mother, Marie Humbert, 47, was briefly arrested after

injecting him with barbiturates. She has now been released into psychiatric care. Euthanasia is illegal in France and prosecutors are considering whether to charge Mrs Humbert with murder or manslaughter.

Local prosecutor Gerald Lesigne said the investigation would continue 'normally' - a post-mortem examination would be carried out to determine the cause of Vincent Humbert's death. But Justice Minister Dominique Perben has urged 'the greatest humanity in applying the law' in this case. Opinion polls suggest that the majority of French people believe Marie Humbert was right to carry out her son's request. Following this tragic case, more than 80% of respondents say the law against voluntary euthanasia should now be changed, says the BBC's Caroline Wyatt.

'He got what he wanted, and what he wanted is

Mr Chirac

My name is Vincent Humbert, I am 21. I was in a traffic accident on 24 September 2000. I spent nine months in a coma. All my vital organs were affected, except for my hearing and my brain, which allows me a little comfort. I can move my right hand very slightly, putting pressure with my thumb on each letter of the alphabet. These letters make up words and the words form sentences. This is my only method of communication. I have a nurse beside me, who spells me the alphabet. This is how I have decided to write to you. The doctors have decided to send me to a specialised clinic. You have the right of pardon and I am asking you for the right to die.

I would like to do this for myself but especially for my mother; she has left her old life to be by my side, working morning and evening after visiting me, seven days out of

seven, without a day of rest. And all this to be able to pay the rent for her miserable studio flat. For the moment, she is still young. But in a few years, she will not be able to keep up such a pace of work, that is to say she will not be able to pay her rent and so will be obliged to go back to her apartment. But it is impossible to imagine my remaining here without her by my side, and I think that all patients who are sound of mind are responsible for their actions and have the right to want to continue to live or to die.

I would like you to know that you are my last chance. You should also know that I was a fellow citizen without a history, without any judicial record, a sportsman and a volunteer fireman.

I do not deserve a scenario as terrible as this and I hope that you will read this letter, which is specially addressed to you... Please accept, Mr President, my warmest compliments.'

what counts,' said Laurent, Vincent's brother after the death was announced. 'I am happy that my brother is finally free, it's an enormous relief,' he said. The incident was highly-publicised - Mrs Humbert had announced her plans to the media and she put the overdose on the drip three years to the day Vincent had the accident. Her son had written to ask President Jacques Chirac to allow him to end his life (see box).

The request was turned down, but the publicity ignited a fierce debate in France over whether the law forbidding assisted suicide should be changed.

Vincent Humbert's book *I Ask for the Right to Die* was published in France, describing his intense frustration at what he called a 'living death'. He wrote the book using his right thumb, the only part of his body he was able to move.

The letter written in November 2002 by Humbert to President Chirac before his death from an overdose administered by his mother.

Humbert's death prompted the French Justice Minister, Dominique Perben, to announce the launch of a debate on euthanasia on his ministry's website.

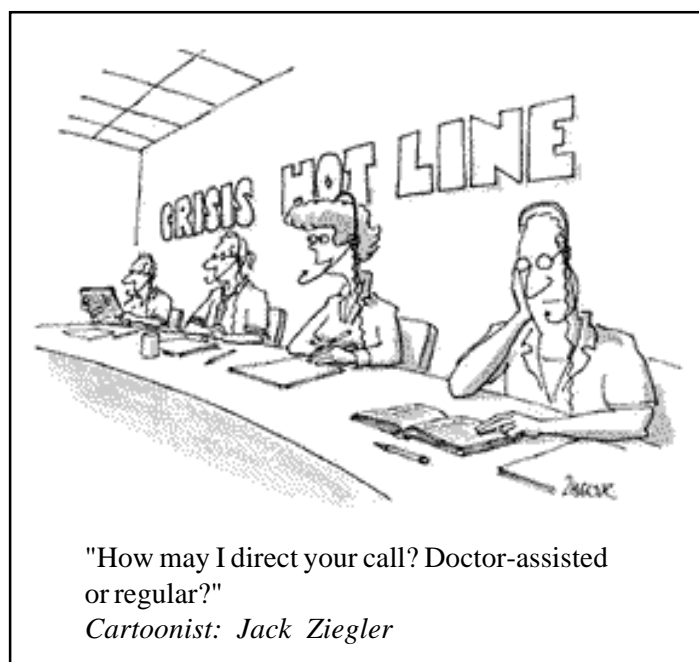
Study Finds Bereaved Suffer Less After Euthanasia

Source: ABC Radio, 25 July 2003

Bereaved relatives and friends of cancer patients who die by euthanasia, find it easier to cope than counterparts of patients who die a natural death, according to a Dutch study published 26 July in the *British Medical Journal (BMJ)*.

The research is based on interviews with 189 bereaved people whose loved ones had died by euthanasia and 316 relatives or friends patients who had been allowed to die a natural death. Among the 'euthanasia' group, symptoms of traumatic grief and stress were respectively five times and two and a half times less likely to occur than among the 'natural death' group.

The team, from Utrecht's University Medical Centre in the Netherlands, speculates that relatives and friends of patients who died by euthanasia suffered less grief because they had a chance to say goodbye. In addition, they were more prepared for the way and moment of the imminent death, and could speak about the death openly. 'Our results should not be interpreted as a plea for euthanasia, but as a plea for the same level of care and openness in all patients who are terminally ill', the authors emphasise.



Euthanasia or physician-assisted suicide became legal in the Netherlands in April 2002 after having been tolerated for a number of years. In 2002, there were 1,882 cases of euthanasia, compared with 2,054 in 2001 and 2,123 the previous year. The overwhelming majority of cases are cancer patients.

Central Coast Members Urge Changes To Enduring Guardianship Appointments

At a meeting on 4 August 2003, a large number of members and supporters decided to capitalise on the excellent local coverage given to the purpose of voluntary euthanasia around the meeting at Toukley organised by Fred Thompson with the assistance of the NSW society. We have decided to lobby our

Dear (add name of your State MP)

As my local member of the NSW Parliament, I would like you to represent my concerns about having my decisions about care at the end of my life respected by law.

I support the information provided in the document called 'Planning Ahead ... Enduring Guardianship' and the associated Form for the Appointment of Enduring Guardian, available from the Guardianship Tribunal. However, I have discovered that it has not been possible to use it to suit my personal circumstances without going to the expense of paying for private legal advice.

I would like you to help me arrange so that any adult, regardless of income, can approach a Justice of the Peace to have the following additions accepted as an attachment to the form:

2. (e) to consent to post mortem, organ donation and cremation. (This can be deleted if not appropriate to your wishes or beliefs.)
3. I require that my guardians exercise his or her functions subject to the following directions:
 - A If, because of disability:
 - (a) I have become unable to participate effectively in decisions about my medical care; or
 - (b) I become totally dependent on others for personal care; or
 - (c) I am in chronic incurable pain;and two medical practitioners are of the opinion that I am unlikely to recover from such condition, then:
 - (d) I am not to be subjected to any medical intervention or treatment aimed at prolonging or sustaining my life (that is, no CPR); and
 - (e) Any distressing symptoms (including any caused by lack of food or fluid) are to be fully controlled by analgesic or other treatment, even though that treatment shortens my life.
 - B. While in hospital a copy of this appointment of enduring guardian (including this attachment) be placed prominently at my bed and also that it be given to my care managers.
 - C. If any physician attending me is unwilling to accept my guardians' directions, I direct my guardians to release such physician of the responsibility for my care and to arrange to transfer me to the care of a physician who can accept such directions.

As you may be aware, very strong support was shown at a public meeting at Toukley NSW on 29 July 2003, for legislation to be enacted in NSW along the lines of the Northern Territory *Rights of the Terminally Ill* Act or similar legislation more recently enacted in other parts of the world such as the Netherlands, Belgium and the state of Oregon in the USA.

I would appreciate your giving me the opportunity to meet with you, in the company of some friends with similar opinions, to explain the background to this request.

Yours sincerely

(add your name, address, date and phone number if you wish)

local politicians once more, following up individual letters with a request for a group meeting.

We also seek the support of the NSW committee and office to provide members with a list of NSW MLCs who supported Ian Cohen's private member's bill in the next newsletter, and seek a meeting with all of them to discuss ways forward. We would also like them to pursue the cause of making legal – and free – the option of adding directions along the lines of our Advance Directive to the legal form for the

Appointment of Enduring Guardian. (This is available from the Guardianship Tribunal, freecall 1800 463 928).

We suggest that other members in NSW may like to write to their MP, and organise with other members or friends in your electorate to join in a group meeting to pursue the matter personally. - Names and addresses of NSW politicians are listed on the website of the NSW Parliament

Overwhelming Support: Only Five Vote Against Euthanasia

A Central Coast Voluntary Euthanasia Society meeting has voted to support a Toukley pensioner who confessed to smothering his terminally ill wife.

Fred Thompson, 70, told police last August he had suffocated his wife at her request to end her suffering from multiple sclerosis. About 200 people gathered in the auditorium of Toukley Bowling Club to listen to talks by voluntary euthanasia campaigner Phil Nitschke, Whitlam-era attorney general Kep Enderby and Mr Thompson himself.

All but five voted to support a motion expressing sympathy and support for Mr Thompson, and calling for the introduction of voluntary euthanasia legislation in NSW. The resolution will be forwarded to all NSW politicians, and to the Department of Public Prosecutions.

Dr Nitschke told the meeting that terminally ill patients and their carers faced an 'inhospitable legal climate' in trying to choose how and when they died. He said the lack of voluntary euthanasia laws in Australia was 'unfair and unjust', sometimes forcing family members to intervene to end the suffering of a terminally ill loved one who wished to die.

Mr Thompson told the audience he had smothered his wife because she asked him to end her suffering. 'I believe sincerely that a sick person has the right to choose to end their life when it becomes

intolerable,' he said. He urged people to write, fax and email their MPs asking them to introduce legislation supporting voluntary euthanasia. 'We need a decent law that enables people to make a final exit from this world according to their own wishes,' he said. 'Don't put it off, go home and ask your local MP to put up a private member's bill on this issue.'

A woman with cancer who had travelled from Western Sydney to attend the meeting summed up a major concern of many elderly and sick members of the audience. 'I'm on my own my daughter lives in Perth she said 'I've come to this meeting because I don't know what to do, or how to - I just wish I had someone loving to do it for me,' she said.

Not everyone who attended the meeting supported calls for new euthanasia laws. Elizabeth Dunne, of Toukley, was one of a few people to oppose motions put forward at the meeting. 'I feel that withholding treatment and voluntary euthanasia are two separate issues,' Mrs Dunne said. 'I think clear thinking can be clouded by emotions,' she said. Mrs Dunne said her father had been on life support, and she had been asked to decide whether to 'turn off the machine'. Her father survived, and enjoyed months of 'quality time' afterward. 'I don't believe in killing anyone,' she said. *Source: Central Coast Express Advocate, Cathy Stubbs, 31 July*

Can Civil Disobedience Change The Law On Assisting Suicide?

by Professor Loane Skene and Dr Paul Nisselle
Medicine Today, 1 August 2003

Does merely being present at a euthanasia suicide count in the eyes of the law as assisting the suicide? The law will remain as it is until altered by Parliament but in relation to assisting suicide there is probably some scope for judges to rule that some acts are crimes and others are not.

The well publicised death of Mrs Nancy Crick in Queensland last year reopened the euthanasia debate. In their efforts to have the law changed, the pro-euthanasia lobby tried the new approach of having some of their members take part in an act of civil disobedience by attending Mrs Crick's home at the time she was planning to commit suicide.

The plan was to have people present in such large numbers that it would be unlikely that they would each be prosecuted for the criminal offence of assisting suicide. If these people were not prosecuted, the law would fall into disrepute. If they were prosecuted and acquitted, others would be more confident that they would not be prosecuted if they were present as a mark of support at the suicide of a person who wanted to die because life was no longer tolerable. Each prosecution and acquittal would, the lobby hoped, undermine the law of assisted suicide and the law itself would gradually be changed. The pro-euthanasia lobby draws comparisons with the law of abortion. It says the law has been changed by judicial interpretation (the way in which the courts

interpret the law), so that abortions are now commonplace despite abortion still being a criminal offence in most Australian jurisdictions. The lobby argues that the law on assisting suicide can be changed in the same way (ie by judicial interpretation) so that people who may be regarded as assisting suicide are not prosecuted and those prosecuted can have their charges dismissed, such that attending 'euthanasia suicide' will no longer be a criminal offence. ...

When we compare the law on assisting suicide with the law on abortion, it can be seen that there is less scope for differing interpretations of the legislation prohibiting assisting suicide. The reason is that it is always unlawful to assist suicide. Section 6B(2) of the *Crimes Act 1958* (Vic), for example, states: '(2) Any person who (a) incites any other person to commit suicide ... ; or (b) aids or abets any other person in the commission of suicide ... shall be guilty of an indictable offence.' Unlike in the abortion legislation, there is no mention of lawful or unlawful actions in this legislation. Thus, if attending a suicide is regarded as assisting, there is no scope for a judge to rule that it is not unlawful for a person or persons to be present during the death of someone committing suicide. Matters such as not encouraging or aiding the dying person are irrelevant.

However, there may be other arguments available to people attending a 'euthanasia suicide'. They may contend that it cannot be proved that they have the *mens rea* (criminal intent) that must generally be proved as an element of a criminal

offence. They were merely there; their intention was not - or could not be proved beyond reasonable doubt to have been - that the other person should commit suicide. Although the law does not state that a particular intent is an element of the offence, intent should arguably be implied.

This argument has some merit. Those attending may say that they did not want the person to commit suicide but if that were to occur they did not want the person to die alone. And they may draw analogies. Imagine that a person who is unaware of the events that have led to the bedside gathering simply walks into the room and is present at the time of death. Is that person guilty of an offence simply because he or she is in the room? What if an onlooker attempts to stop the

The well publicised death of Mrs Nancy Crick in Queensland last year reopened the euthanasia debate.

suicide? Surely that person is not to be regarded as having committed a crime. The offence requires proof of an intention, and mere presence is not enough.

This discussion does not mean that being present at a 'euthanasia suicide' will never be a crime. It will depend on whether those present were actively encouraging the suicide or were merely providing support and comfort. There is some scope for judges to clarify the law and to rule that some acts are crimes and others are not. If the onlookers at Nancy Crick's bedside are prosecuted, judges will be required to rule for the first time in Australia

whether intention must be proved as an element of the offence of assisting suicide. To that extent, the use of civil disobedience will have been successful in clarifying the law. It should be borne in mind that a decision not to prosecute is not a precedent but an exercise of the prosecutor's discretion, and that another prosecutor may take a different view. Also, the law will remain as it is until it is altered by Parliament. The most that might be achieved by judicial interpretation is that the offence of assisting suicide requires proof of intention. In these early assisted suicide cases at least, the judgment will be the decision of a single judge and will be open to being overturned on appeal. For the euthanasia lobby, however, it is a step forward.

Medicine Today Series Editor's Comment: In 1995, a young woman ('CES') in New South Wales sued a number of doctors working in a 24-hour clinic for negligent delay in diagnosis of pregnancy.' The 'damage' asserted was loss of the chance to have the pregnancy terminated. The plaintiff's claim was dismissed on the grounds that she did not have a lawful reason for a termination and hence damages could not be awarded for the loss of the chance to commit an illegal act.

The Court of Appeal, however, set aside the judgment and found for the plaintiff. Justice Michael Kirby (then President of the NSW Court of Appeal) said: '[T]he central question in the appeal was... whether [CES] could establish, on the balance of probabilities, that, if she had not been deprived of the opportunity, she would successfully have obtained a termination'. He concluded: '[T]he evidence establishes that [CES] would have successfully sought and obtained a termination. Therefore ... the causal connection between that negligence (in failing to detect her pregnancy and depriving her of the opportunity to terminate has been successfully established'.

In short, whether or not the woman had grounds for a lawful termination was ultimately irrelevant to the judgment as the evidence was that in Sydney in 1995, on the balance of probabilities, she would have been able to obtain a first trimester abortion. Hence, the negligent delay in the diagnosis of pregnancy until after the end of the first trimester caused her to lose the opportunity to terminate the pregnancy.

If the witnesses to Nancy Crick's death were charged with aiding and abetting a suicide, would the judge take similarly robust view of the balance between practical realities of current community standards and 'black letter' law? It seems we may never know because the Police and the Director of Public Prosecutions appear to have decided not to test the law. Both pro and anti-euthanasia groups will find that unsatisfactory as they want a case to be tried to test the law.

Abortion and euthanasia are both intensely moral issues, and the community is deeply divided between a utilitarian position (the lesser of two 'evils') and a Kantian one (the end never justifies the means). The difference between the two issues is in the number of individuals directly involved. The anti-abortionists argue that one human being does not have the right to destroy the chance of life of another (potential) human being, and the pro-abortionists argue that the continued existence of an embryo should not be allowed to 'destroy' the life of the mother. By contrast, euthanasia involves directly only one human being. Should we have the lawful right, if of sound

mind, to end our life? If so should we have the right to seek assistance and support to do so? Doctors, as citizens, have the same right as any other citizen to enter these debates and to attempt to influence change in the law. However, doctors as doctors have no right to act in any way other than in accord with current law. If confronted directly with these issues, seek advice, through your medical defence organisation.

References

1. R. v. Davidson (1969) VR 667 at 672 (Vic SQ).
2. R. v. Wald (1971) 3 NS"CR 25.
3. CES v. Superclinics Australia Pty Ltd (1995) 38 NSWLR 47.
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