

TO HELP OR NOT TO HELP: ASSISTED SUICIDE AND ITS MORAL, ETHICAL, AND LEGAL RAMIFICATIONS

*Leslie L. Mangini**

Table of Contents

I. INTRODUCTION	729
II. SUICIDE, ATTEMPTED SUICIDE AND THE LAW ...	731
A. The English Common Law View of Suicide	731
B. The American Common Law View of Unassisted Suicide	734
C. The Modern Law View of Unassisted and Attempted Suicide	734
III. THE RELIGIOUS VIEW OF SUICIDE	736
A. The Roman Catholic Church	736
B. Judaism and the Islamic Religion	737
IV. ASSISTED SUICIDE AND THE LAW GENERALLY ...	739
A. English Common Law and Modern English Law Views	739
B. American Statutory and Case Law	739
1. States With Legislation Prohibiting Assisted Suicide	739
2. Case Law Regarding Assisted Suicide	741
V. PHYSICIAN ASSISTED SUICIDE	745
A. Medical Ethics and Physician-Assisted Suicide	747
1. Historical Background of Medical Ethics	747
2. Ethics of Physician-Assisted Suicide	749
B. Proponents of Physician-Assisted Suicide	750
C. Opponents of Physician-Assisted Suicide	754
VI. MICHIGAN AND ITS UNIQUE CONCERN WITH ASSISTED SUICIDE	756
A. Michigan's Law on Assisted Suicide Prior to 1993 .	756
B. A Michigan Doctor Who Specializes in Death	758
C. Michigan's Judicial Response to Dr. Kevorkian and His Suicide Machine	760

* B.A., English, Montclair State College (*magna cum laude*); J.D., Seton Hall University School of Law, anticipated June 1995.

D. Dr. Kevorkian Continues to Provide Suicide Assistance	761
E. Michigan's Legislative Response to Dr. Kevorkian .	762
VII. RESPONSE TO MICHIGAN'S ASSISTED SUICIDE BAN	766
A. ACLU Challenges the Michigan Law's Constitutionality	766
B. The Effect of Legislation upon Dr. Kevorkians' Activities.....	768
C. Future Legislative Support for Dr. Kevorkian?	771
VIII. RESPONSE OF OTHER STATES TO DR. KEVORKIAN'S ACTIVITIES	772
IX. CURRENT ASSISTED SUICIDE LAW IN THE NETHERLANDS AND ENGLAND	775
A. The Netherlands	775
B. England	776
X. CONCLUSION	777

I. Introduction

From the moment of birth, we face the inevitability of our own mortality.¹ Stated more laconically, "[d]eath comes to everyone."² However, not everyone is content to allow their death to occur naturally and in the fullness of time. Throughout history, many individuals have hastened their own deaths by choosing suicide as an alternative to death by natural causes.³ While various theories

¹ "Mortality" is defined as "the state or condition of being subject to death." *RANDOM HOUSE COLLEGE DICTIONARY* 869 (1988).

² *In re Farrell*, 529 A.2d 404, 406 (N.J. 1987). The New Jersey Supreme Court further acknowledged that "[q]uestions of fate have . . . become matters of choice raising profound 'moral, social, technological, philosophical and legal questions involving the interplay of many disciplines.'" *Id.* at 406 (citing *In re Conroy*, 486 A.2d 1209, 1220 (N.J. 1976)).

³ The first known document regarding suicide is alleged to be *Dispute Over Suicide*, an ancient Egyptian writing believed to have originated as long ago as 2100 B.C. This document focuses on the debate a man has with his soul, due to a series of misfortunes which have recently befallen him, regarding the value of embracing life or ending it and its present suffering. See George P. Smith II, *All's Well That Ends Well: Toward a Policy of Assisted Rational Suicide or Merely Enlightened Self-Determination?*, 22 U.C. DAVIS L. REV. 275, 284 n.43 (1989) (citing D. DeCANTANZO, *SUICIDE AND SELF-DAMAGING BEHAVIOUR* 26 (1984)).

Many years later, in ancient Greece, convicted criminals were permitted to take their own lives to preclude the shame of punishment. Toward the end of the Roman Empire, however, the generally permissive view of suicide became more rigid as a

have been expounded to explain the causes of suicide, physical illness has been found to be positively correlated with suicide rates.⁴ This is especially true in cases of terminal illness, where depression⁵ may often be the motivating factor to thoughts of suicide.⁶ It is often the case that an emotionally or physically ill individual commits suicide unassisted, thereby exercising what has been deemed in modern American law to be a constitutionally protected right to make decisions concerning one's own body.⁷ However, one's legally protected right to commit suicide is threatened when the person desires assistance in the suicide from another individual,⁸ especially when the individual who assists is a physician.⁹

This note analyzes and discusses the legal, ethical, and religious complexities that result when another party, be it a physician or a non-physician, assists an individual in the termination of his or her life. The specific focus, however, is on the concept of physi-

result of the high incidence of suicide among slaves, who thereby deprived their owners of valuable property. 11 THE NEW ENCYCLOPAEDIA BRITANNICA 359 (15th ed. 1993).

⁴ 11 THE NEW ENCYCLOPAEDIA BRITANNICA 359 (15th ed. 1993). Additional causes of suicide include social factors such as childlessness, widowhood, residing in large cities and a high standard of living. Interestingly, though, during wartime suicide rates decline, and this fact has been related to a turning of aggression away from oneself and towards a common enemy. Also, an increased closeness of personal relationships during wartime reduces social isolation, which is the most important contributive factor in suicide. *Id.*

⁵ "Depression" is defined in psychiatry as "a sinking of spirits so as to constitute a clinically discernible condition." STEDMAN'S MEDICAL DICTIONARY 416 (25th ed. 1990).

⁶ Dying persons "sometimes reach a point at which continued suffering becomes a bigger enemy than death." Timothy E. Quill, *Assisted Suicide Ban: The Wrong Answer to the Wrong Question*, DET. FREE PRESS, Apr. 19, 1993, § EDP, at 11A. Dr. Quill stated that, consequently, sometimes physicians have a duty as caring professionals to help their patients find death in the most humane way possible. *Id.*

⁷ See, e.g., *Griswold v. Connecticut*, 381 U.S. 479 (1965) (recognizing fundamental privacy right in married couple's decisions regarding contraception); *Roe v. Wade*, 410 U.S. 113 (1973) (recognizing constitutional right to control fundamental decisions involving one's own body). See also *In re Conroy*, 486 A.2d 1209 (N.J. 1985) (holding that a competent adult generally has the right to withhold life-sustaining medical treatment). The *Conroy* court noted that "[o]n balance, the right to self-determination ordinarily outweighs any countervailing state interests . . ." *Conroy*, 486 A.2d at 1225.

⁸ A recent survey conducted by PHYSICIANS MANAGEMENT magazine indicates that almost one-fourth of terminally ill patients had asked their internists for assistance in committing suicide. Richard A. Knox, *One In Five Doctors Say They Assisted a Patient's Death, Survey Finds*, B. GLOBE, Feb. 28, 1992, Natl./Foreign §, at 5.

⁹ H. Tristram Engelhardt, Jr. & Michele Malloy, *Suicide and Assisting Suicide: A Critique of Legal Sanctions*, 36 Sw. L.J. 1003, 1031 (1982).

cian-assisted suicide whereby a person desires to end his or her life but, for physical or emotional reasons or both, is unable to carry out that desire unassisted. Instead, the person seeks the help of a physician to ensure a quick, painless, and humane death. The concept of legalized physician-assisted suicide is now widely accepted in the Netherlands.¹⁰ In the United States, however, the recent string of physician-assisted suicides in Michigan has created a legal uproar. After briefly exploring the background of suicide and attempted suicide, as well as the common law regarding these concepts, the balance of this note analyzes assisted suicide law embodied in both judicial decisions and legislation. Finally, the reaction of state legislatures, the legal community, and the public to a Michigan physician's performance of twenty assisted suicides within that state will be discussed and analyzed.

II. *Suicide, Attempted Suicide and the Law*

A. *The English Common Law View of Suicide*

"Suicide" is defined as the act of voluntarily or intentionally taking one's own life.¹¹ Although in modern law no American state has a statute criminalizing a successful suicide,¹² English common law deemed the commission of suicide a serious crime.¹³ In fact, the taking of a human life, whether someone else's or one's own, was considered felonious homicide.¹⁴ The common law reflected the Christian Church's philosophy at the time, which viewed suicide with antagonism and hostility.¹⁵ Accordingly, Eng-

¹⁰ See *infra* part IX and accompanying text.

¹¹ 11 THE NEW ENCYCLOPAEDIA BRITANNICA 359 (15th ed. 1993).

¹² JOHN KAPLAN & ROBERT WEISBERG, CRIMINAL LAW CASES AND MATERIALS 617 (2d ed. 1991).

¹³ See Catherine Shaffer, *Criminal Liability for Assisting Suicide*, 86 COLUM. L. REV. 348, 349 (1986) (citing *In re Joseph G.*, 667 P.2d 1176, 1183 (Cal. 1983) (holding that minor who survived genuine suicide pact made with teenaged friend, who died as a result of same, was guilty not of murder but of aiding and abetting suicide in violation of California statute).

¹⁴ "Felonious homicide" was defined by William Blackstone as "the killing of a human creature, of any age or sex, without justification or excuse This may be done either by killing one's self, or another man." *State v. Willis*, 121 S.E.2d 854, 855 (N.C. 1961) (citing CHITTY'S BLACKSTONE 189-90 (19th London Ed., Book IV (1771)).

¹⁵ During the Middle Ages, the Christian Church declared that suicide was equal to murder and, therefore, was a sin. Accordingly, Christians felt that persons who committed suicide were evil and were destined to an eternity in hell, unless there were circumstances indicating the deceased had been mentally ill. Stacy L. Mojica &

lish law perceived suicide as an immoral, criminal offense against God and also against the King, who as a result thereof was deprived of one of his subjects.¹⁶

In addition, English law declared suicide to be a social injustice and an act of cowardice that was to be punished cruelly to discourage others from committing suicide.¹⁷ Classified in the law as a *malum in se*¹⁸ felony because it was considered to be self-murder,¹⁹ suicide was punishable by forfeiture of one's property to the King.²⁰ Additionally, the bodies of successful suicides were disposed of ignominiously.²¹ It was hoped that such severe consequences would provide a deterrence to suicide and that English citizens would refrain from committing suicide out of fear of tarnishing their family name²² and leaving their families impover-

Dan S. Murrell, *The Right to Choose—When Should Death Be in the Individual's Hands?*, 12 WHITTIER L. REV. 471, 472 n.9 (1991) (citing A HANDBOOK FOR THE STUDY OF SUICIDE (S. Perlin ed. 1975)). At common law, suicide was termed *felo de se*, or a crime whereby one deliberately "puts an end to his own existence, or commits any unlawful malicious act, the consequence of which is his own death." *State v. Willis*, 121 S.E.2d at 855 (quoting CHITTY'S BLACKSTONE 189-90 (19th London Ed., Book IV (1771))).

¹⁶ Shaffer, *supra* note 13, at 349 (citing 4 WILLIAM BLACKSTONE, COMMENTARIES 188-89 (1771)).

¹⁷ Rebecca C. Morgan et al., *The Issue of Personal Choice: The Competent Incurable Patient and the Right to Commit Suicide?*, 57 MO. L. REV. 1, 5-7 (1992) (citing 4 WILLIAM BLACKSTONE, COMMENTARIES 189-90 (1771)).

¹⁸ *Malum in se* is defined as "a wrong in itself." Specifically, an act is said to be *malum in se* when it is inherently and essentially evil, i.e., immoral in its nature and injurious in its consequences, with no regard given to whether an existing statute specifically prohibits the act. BLACK'S LAW DICTIONARY 959 (6th ed. 1990).

¹⁹ See Kate E. Bloch, *The Role of Law in Suicide Prevention: Beyond Civil Commitment—A Bystander Duty to Report Suicide Threats*, 39 STAN. L. REV. 929, 931 (1987).

²⁰ Maria T. Celoz Cruz, *Aid-In-Dying: Should We Decriminalize Physician-Assisted Suicide and Physician-Committed Euthanasia?*, 18 AM. J.L. & MED. 369, 373 (1992) (citing GLANVILLE WILLIAMS, THE SANCTITY OF LIFE AND THE CRIMINAL LAW 257, 261-62, 273 (1957)).

²¹ Shaffer, *supra* note 13, at 349. "Ignominious" is defined as marked by or attended with dishonor, disgrace, or public contempt; humiliating. THE RANDOM HOUSE COLLEGE DICTIONARY 660 (rev. ed. 1988). Common English burial practices regarding suicides included the following: burying the person's body at an intersection at night with a stake driven through the heart or a stone placed over the face; dragging the deceased's body through the streets by the feet, then disposing of the body in a sewer or town dump; and treating the corpse as if the person had been executed for murder. See Mojica & Murrell, *supra* note 15, at 473 (citing A HANDBOOK FOR THE STUDY OF SUICIDE 13-14 (S. Perlin ed. 1975)).

²² In support of the idea that the deceased's family name was besmirched, there is evidence that the bodies of successful suicides were publicly hanged. One commentator described this treatment of a suicide in England in 1601: "[The deceased was] drawn by a horse to the place of punishment and shame, where he [was] hanged on a

ished.²³ Due to the fact that suicide was a common law crime, attempted suicide was a crime as well, although classified only as a misdemeanor.²⁴ It was not until 1961 that England passed legislation repealing the crime of suicide.²⁵

gibbet, and none [could] take the body down but by authority of a magistrate." Kate E. Bloch, *The Role of Law in Suicide Prevention: Beyond Civil Commitment—A Bystander Duty to Report Suicide Threats*, 39 STAN. L. REV. 929, 931 n.12 (1987) (quoting W. FULBECKEM, *THE PANDECTES OF THE LAW OF NATIONS: CONTAYNING DISCOURSES OF THE QUESTIONS, PAINTS, AND MATTERS OF LAW, WHEREIN THE NATIONS OF THE WORLD DOE CONSENT AND ACCORD* (1602)).

²³ Morgan et al., *supra* note 17, at 8 (citing 4 WILLIAM BLACKSTONE, *COMMENTARIES* 190 (1771)). Those committing two types of suicides would have their goods confiscated: an incarcerated individual who committed suicide out of fear of prosecution for the crime he allegedly committed, and a suicide resulting from either being tired of living or being unable to endure physical pain any longer. In this latter situation, only the person's *movable* goods would be forfeited to the King, as opposed to the former, whereby *all* the person's goods would be forfeited. *Id.* at 8 (citing 2 SAMUEL THORNE, *BRACON ON THE LAWS AND CUSTOMS OF ENGLAND* 423-24 (1968)) (emphasis supplied).

²⁴ Mojica & Murrell, *supra* note 15, at 481. See also *State v. Willis*, 121 S.E.2d 854 (N.C. 1961) (holding that an attempt to commit suicide constitutes an indictable misdemeanor). By way of definition, a misdemeanor is an offense lower than a felony and is generally punishable by fine, penalty, forfeiture of property, or imprisonment in a facility other than a penitentiary. BLACK'S LAW DICTIONARY 999 (6th ed. 1990).

In its decision in *Willis*, the North Carolina Supreme Court applied the English common law view of suicide as a felony on the basis that North Carolina's General Assembly had previously declared that "the laws of England are the laws of this Government, so far as they are compatible with our way of living and trade . . . [and therefore] are hereby declared to be in full force within this State." *Willis*, 121 S.E.2d at 855. Regarding punishment, the court noted that where specific punishment is not legislatively prescribed for certain misdemeanors, such as attempted suicide, the violations shall be punished as misdemeanors at common law, i.e., "by fine or imprisonment in the county jail, or both." However, in certain attempted suicide cases courts may also choose to place offenders on probation or to make use of other state facilities or services where appropriate. *Id.* at 857.

²⁵ Mojica & Murrell, *supra* note 15, at 481 (citing The Suicide Act of 1961, 9 & 10 Eliz. 2, ch. 60, § 1 (Eng.)). Specifically, The Suicide Act of 1961 provided at § 1 that "[t]he rule of law whereby it is a crime for a person to commit suicide is hereby abrogated." Comment, *The Punishment of Suicide—A Need for Change*, 14 VILL. L. REV. 463, 465 n.19 (1969) [hereinafter *The Punishment of Suicide*].

Even without referring to the specific legislative history of England's Suicide Act, one can imagine that it was motivated by the recognition that suicide is an unpunishable crime because there is no one left to punish, and by the development in England of a more lenient perception of suicide as an emotional or mental disorder. On the other hand, the Act does provide that aiding or procuring a suicide or attempted suicide is punishable as manslaughter. Mojica & Murrell, *supra* note 15, at 481 n.93.

B. *The American Common Law View of Unassisted Suicide*

Under American common law the commission of suicide has never been punished, and the English response to suicide has generally been rejected by our legislatures and courts.²⁶ Although the early American colonies also generally condemned suicide,²⁷ Massachusetts was the only state to impose ignominious burial as a penalty for suicide.²⁸ In view of the impossibility of sanctioning a person for successfully committing suicide, some state courts held that suicide was not a crime.²⁹ Even the states that continued to criminalize suicide did not devise or impose a punishment for the act.³⁰

C. *The Modern Law View of Unassisted and Attempted Suicide*

Modern society's attitude toward the taking of one's own life is much less moralistic and punitive than was the English common law belief that suicide was a religious, moral, and social wrong.³¹

²⁶ *In re Joseph G.*, 667 P.2d 1176, 1178 (Cal. 1983) (citing *The Punishment of Suicide*, *supra* note 25, at 463). As the California Supreme court noted in *Joseph G.*, because suicide is considered an expression of mental illness, "punishing suicide is contrary to modern penal and psychological theory." *Id.* at 1178 (quoting VICTOROFF, *THE SUICIDAL PATIENT: RECOGNITION, INTERVENTION, MANAGEMENT* 173-74 (1982)).

²⁷ *CeloCruz*, *supra* note 20, at 374. With the exception of Massachusetts, most American colonies dropped either their statutory or English common law-adopted penalties against suicide. *Id.*

²⁸ See *Commonwealth v. Mink*, 123 Mass. 422, 426, 429 (1877) (holding that, due to its unpunishable nature, suicide was not technically a felony but was instead a *malum in se* offense warranting ignominious burial).

²⁹ See Comment, *Criminal Aspects of Suicide in the United States*, 7 N.C. CENT. L.J. 156, 157 (1975).

³⁰ The underlying rationale for not punishing a successful suicide was threefold. First, the perpetrator is already dead and, therefore, suicide is an unpunishable crime. Secondly, the punishment imposed on the suicide's family in the form of an ignominious burial and/or forfeiture of goods was deemed harsh and unwarranted inasmuch as the family was innocent of all wrongdoing. Thirdly, it was eventually recognized that suicide was the act of a mentally ill and depressed individual who required medical treatment and compassion, not punishment and culpability. See *CeloCruz*, *supra* note 20, at 375.

But see State v. Willis, 121 S.E.2d 854 (N.C. 1961) (defendant who attempted suicide by slashing his throat and hanging himself from a barn rafter was guilty of an indictable misdemeanor). This is one of the few modern cases that reflects a state court's attempt to retain suicide as a common law crime in order to render related acts, such as attempted and assisted suicide, punishable. However, the *Willis* court did acknowledge the problem of punishing suicides. *Id.* at 855.

³¹ Morgan, *supra* note 17, at 5. However, even though there has been a recent readiness to understand rather than to condemn suicide, modern society's tendency

Today, the Model Penal Code does not recognize suicide as a crime,³² and most American jurisdictions attach no criminal liability to persons who attempt to commit suicide.³³ No states currently have legislation making a successful unassisted suicide a crime, for the obvious reason that there is no perpetrator remaining to punish.³⁴

With regard to attempted suicide, the comments to the Model Penal Code label intrusion by the criminal law into the tragedy of attempted suicide an "abuse."³⁵ Even a surviving participant in a mutual suicide pact, who provided the means of death to the decedent, is generally not guilty of criminal homicide.³⁶ In at least one

to conceal suicidal acts still exists. 11 THE NEW ENCYCLOPAEDIA BRITANNICA 359 (15th ed. 1993).

³² See generally MODEL PENAL CODE §§ 210.1 to -.4 (Official Draft & Rev. Commentaries 1980). However, § 210.5 of the Code does provide sanctions for causing, aiding or soliciting the suicide of another, as follows:

(1) *Causing Suicide as Criminal Homicide.* A person may be convicted of criminal homicide for causing another to commit suicide only if he purposely causes such suicide by force, duress or deception.

(2) *Aiding or Soliciting Suicide as an Independent Offense.* A person who purposely aids or solicits another to commit suicide is guilty of a felony of the second degree if his conduct causes such suicide or an attempted suicide, and otherwise of a misdemeanor.

Id. § 210.5.

³³ *In re Joseph G.*, 667 P.2d at 1178.

³⁴ Kaplan & Weisberg, *supra* note 12, at 617.

³⁵ See *In re Joseph G.*, 667 P.2d at 1178 (citing MODEL PENAL CODE § 210.5, cmt. 2 (Official Draft & Rev. Commentaries 1980)). Further, "[t]here is a certain moral extravagance in imposing criminal punishment on a person who has sought his own self-destruction, who has not attempted direct injury to anyone else, and who more properly requires medical or psychiatric attention." *Id.* (quoting MODEL PENAL CODE, § 210.5, cmt. 2).

³⁶ *Id. Joseph G.* involved two teenaged boys who drove a car over a cliff after entering into a suicide pact; one boy, the defendant, survived. *Id.* at 1177. The California Supreme Court held that it was appropriate to apply an assisted suicide statute, rather than a murder statute, to the survivor of a "genuine suicide pact executed simultaneously by both parties by means of the same instrumentality." *Id.* at 1182-83.

Compare with *State v. Sage*, 510 N.E.2d 343 (Ohio 1987), in which the defendant asserted that he was innocent of aggravated murder of his girlfriend under a theory that she had died as a result of their mutual suicide pact. *Id.* at 344. The facts of this case are as follows: in response to a reported shooting at defendant's apartment, the police discovered two bodies lying on a bed in the upstairs bedroom. One was Roy Sage's girlfriend, dead of a fatal gunshot wound to her left temple and a gunshot wound to her left chest area. Sage had superficial gunshot wounds to his head and abdomen, and while en route to the hospital stated that his girlfriend had shot herself and that he had shot himself as a result of their mutual suicide pact. However, based on evidence that included the pathologist's testimony indicating it would have been

judicial decision, however, a state has refused to recognize an absolute, fundamental constitutional right to take one's own life.³⁷

III. *The Religious View of Suicide*

A. *The Roman Catholic Church*

The position of the Roman Catholic Church regarding suicide has remained virtually unchanged from the Church's inception in ancient Rome to the present date. Guided by the Ten Commandments,³⁸ the Catholic Church views suicide as specifically prohibited under the Sixth Commandment, "Thou Shalt Not Kill."³⁹ The Church has always taken the view that man was created by God and therefore He controls man's destiny.⁴⁰ More specifically, the Catholic Church sees no one as possessing the right to take *any* human life, even his or her own.⁴¹ Thus, Catholics are obligated to protect

very difficult for Sage's girlfriend to self-inflict her gunshot wounds, the court reinstated the defendant's aggravated murder conviction. *Id.* at 344.

³⁷ See *In re Caulk*, 480 A.2d 93 (N.H. 1984). In *Caulk*, the Supreme Court of New Hampshire ruled that the constitutional right to die of an otherwise healthy prisoner, who attempted suicide by self-starvation, was outweighed by two legitimate state interests: maintaining an effective criminal justice system and preserving human life. *Id.* at 97.

In its decision, the court reaffirmed that although "no constitutional right is absolute," a state may only limit a person's exercise of fundamental constitutional rights when it can prove that a compelling state interest exists. *Id.* at 95. The impassioned dissent pointed out, however, that the act the prisoner attempted to commit is perfectly legal, since suicide is no longer a crime in New Hampshire. *Id.* at 100 (Douglas, J., dissenting). Justice Douglas further noted that in allowing the defendant to starve himself to the point of death, the State would not be aiding or abetting his suicide, but would "merely [be] leaving an individual alone to speed the natural and inevitable part of life known as death." *Id.*

³⁸ The Ten Commandments are a body of moral and religious laws set forth in the Hebrew Bible known as the Old Testament. These Commandments governed the ancient Israelites and later became the fundamental principles of Christianity and Judaism. Called the "ten words" by the Israelites, the Commandments are also called "the decalogue," from the Greek for "ten" and "word." The Ten Commandments are found in Exodus 20:3-17 and Deuteronomy 5:7-21 in the King James Version of The Holy Bible. 18 WORLD BOOK ENCYCLOPEDIA 106 (1969).

³⁹ Exodus 20:1-17 (King James).

⁴⁰ As one representative of the Catholic Church stated: "[w]e're all in the hands of God and God is the creator and preserver of life. We have no right to intervene." Interview with Reverend Monsignor Harold P. Darcy, Seton Hall University School of Law Chaplain, in Newark, N.J. (Oct. 19, 1993) [hereinafter Monsignor Darcy Interview].

⁴¹ *Id.* Monsignor Darcy clarified this view by saying that "[w]e are just stewards, and we exert stewardships over our lives." *Id.*

and maintain their own lives because those lives effectively belong to God.⁴²

Unlike the Church of England's harshly ignominious burial practices regarding suicides,⁴³ Catholics who committed suicide 200 years ago were buried properly, although they received no religious ceremony.⁴⁴ Today, the concept of non-religious burials for suicides has been mitigated by the widespread Catholic belief that people who are driven to commit suicide frequently do so as a result of mental or psychological illness.⁴⁵

B. *Judaism and the Islamic Religion*

The Jewish view of suicide and assisted suicide parallels that of the Roman Catholic Church. Judaism vehemently opposes the concept, sharing the Catholic certitude in the sanctity of human life.⁴⁶ Under Judaic tradition, even a "diminished" life filled with pain, suffering, and mental anguish has infinite value.⁴⁷ In Israel, according to ancient Jewish Talmudic law, persons who committed

⁴² True believers, therefore, must "see in life something greater, namely, a gift of God's love, which they are called upon to preserve and make fruitful." *DECLARATION ON EUTHANASIA, DAUGHTERS OF ST. PAUL, THE SACRED CONGREGATION FOR THE DOCTRINE OF THE FAITH* 6-7 (St. Paul Ed., May 5, 1980) [hereinafter *DECLARATION ON EUTHANASIA*]. The Declaration further states that:

[O]n the other hand death is unavoidable; it is necessary, therefore, that we, without in any way hastening the hour of death, should be able to accept it with full responsibility and dignity. It is true that death marks the end of our earthly existence, but at the same time it opens the door to immortal life.

Id. at 13.

Apparently, therefore, the Catholic principle that physicians should also refrain from using "extraordinary" means to extend or preserve human life concurs with the Catholic belief that God controls man's destiny.

⁴³ See *supra* notes 21-22 and accompanying text.

⁴⁴ Monsignor Darcy Interview, *supra* note 40.

⁴⁵ *Id.* Today, therefore, most Catholics who commit suicide are permitted to be buried in a religious ceremony. *Id.*

⁴⁶ One commentator, referring to *Genesis* 9:6, observed that "[t]he shedding of blood is the primeval sin, and throughout the centuries ranks in Jewish law as the gravest and most reprehensible of all offenses." Mary Margaret Penrose, *Assisted Suicide: A Tough Pill to Swallow*, 20 *PEPP. L. REV.* 689, 698 n.52 (quoting Amnon Carmi, *Live Like a King, Die Like a King*, in *EUTHANASIA* 4 (1984)).

⁴⁷ *Id.* at 698 n.52 (citing Rabbi Levi Meier, *Code and No-Code: A Psychological Analysis and the Viewpoint of Jewish Law*, in *LEGAL AND ETHICAL ASPECTS OF TREATING CRITICALLY AND TERMINALLY ILL PATIENTS* 94 (A. Edward Doudera & J. Douglas Peters eds., 1982)). According to the Jewish faith, therefore, man is required to suffer the consequences of his mortal nature. Specifically, "pain [and suffering are] a direct conse-

suicide were considered blasphemous and immoral and were denied a sacred burial.⁴⁸ The modern Jewish attitude toward suicide remains unfavorable.⁴⁹ Not surprisingly, Judaism is absolutely and unconditionally opposed to the direct taking of a human life by another person, even in the form of euthanasia.⁵⁰ When a member of the Jewish faith is at the terminal stage of an illness, Judaism requires that the person not be distracted by an attempt to define death, but instead to direct his or her attention to the sanctity of life and its interminable value.⁵¹

Muslims, who follow the religion of Islam, mirror both the Catholic and Jewish postures on suicide.⁵² Muslims also deplore suicide, believing that persons who commit suicide are thereby denied entrance into Paradise and are consequently sentenced to hell.⁵³ Even modern-day Muslims condemn suicide, as well as any

quence of original sin, which should be stoically endured." *Id.* (citing Carmi, *supra* note 46).

⁴⁸ See Mojica & Murrell, *supra* note 15, at 476 (citing SUICIDE IN DIFFERENT CULTURES 1 (N. Farberow ed. 1975)). Similar to the Catholic Church's modern opinion, however, Jewish law prescribes that, if possible, the fatal act should be deemed to result from murder instead of from suicide, and that suicide caused by mental illness or fear was to be treated as a natural death. *Id.* at 476 n.45. Today, although Judaism condemns suicide, Jews who commit suicide are still permitted to engage in traditional burial rites. See Penrose, *supra* note 46, at 698.

⁴⁹ In Israel, in fact, assisted suicide and suicide pacts remain illegal and are considered murder punishable by life imprisonment. See Mojica & Murrell, *supra* note 15, at 476-77.

⁵⁰ See Martin B. Berman, *Whose Rite is it Anyway?: The Search for a Constitutional Permit to Die*, 22 Sw. U. L. Rev. 105, 114 n.48 (1992). Orthodox Jewish leaders have argued that euthanasia is murder even if it was designed to put an end to unbearable suffering. Rabbi Levi Meier explains that "[d]espite the noble intent which prompts such action, mercy killing is considered an unwarranted intervention in an area which must be governed only by God." *Id.* at 116 (citing *Jewish Law*, reprinted in JEWISH VALUES IN BIOETHICS 44 (Rabbi Levi Meier, Ph.D. ed., 1986)).

⁵¹ See Berman, *supra* note 50, at 114 n.48 (citing *The Right Honorable Lord Immanuel Jakobovits, Ph.D., Ethical Problems Regarding the Termination of Life*, reprinted in JEWISH VALUES IN BIOETHICS 90 (Rabbi Levi Meier, Ph.D. ed., 1986)). Lord Jakobovits asserted that Judaism is unconditionally opposed "to any form of direct or active euthanasia, of deliberately hastening the end. . . ." *Id.* Members of the more liberal factions of Jewish thought, however, condone the administration of pain-relieving medication even though it may hasten death. This form of drug therapy is viewed by its Jewish proponents as not actually causing death because it involves a long, slow process. *Id.* at 116 (citing CENTRAL CONFERENCE OF AMERICAN RABBIS, UAHC COMMITTEE ON BIOETHICS, AUTONOMY: MY RIGHT TO LIVE OR DIE, BIO-ETHICS PROGRAM/CASE STUDY 14 (1989)).

⁵² See Penrose, *supra* note 46, at 698.

⁵³ *Id.* at 698-99 (citing ENCYCLOPEDIA OF RELIGION 128 (Mircea Eliade ed., 1987)).

form of euthanasia.⁵⁴

IV. Assisted Suicide and the Law Generally

A. English Common Law and Modern English Law Views

At English common law, one who persuaded or advised someone to commit suicide was guilty of second degree murder if present at the time of the act.⁵⁵ Even if the individual aiding a suicide was *not* present at the actual suicide, he or she was still guilty of manslaughter⁵⁶ as an accessory before the fact.⁵⁷ In addition, persons who survived suicide pacts could also be found guilty of murder.⁵⁸ Today, aiding or assisting another in the commission of suicide is still classified as manslaughter in England.⁵⁹

B. American Statutory and Case Law

1. States with Legislation Prohibiting Assisted Suicide

Prior to February 25, 1993,⁶⁰ twenty-seven of the fifty United

⁵⁴ *Id.* at 699 (citing Russell Chandler, *Religion Confronts Euthanasia*, L.A. TIMES, Nov. 2, 1991, at A1).

⁵⁵ Sue Woolf Brenner, *Undue Influence in the Criminal Law: A Proposed Analysis of the Criminal Offense of "Causing Suicide,"* 47 ALB. L. REV. 62, 64 (1982). Second degree murder can be loosely defined as all types of murder which do not fall under the category of first degree murder. Specifically, first degree murder includes all murder perpetrated by means of poison, or by lying in wait, or by any other kind of willful, deliberate, and premeditated killing, or which shall be committed in the perpetration of, or attempt to perpetrate, any arson, rape, robbery or burglary. Thus, all other kinds of murder are deemed murder of the second degree. BLACK'S LAW DICTIONARY 1019 (6th ed. 1990).

⁵⁶ "Manslaughter" is defined as the unjustifiable, inexcusable and intentional killing of a human being without deliberation, premeditation and malice. BLACK'S LAW DICTIONARY 964 (6th ed. 1990).

⁵⁷ Brenner, *supra* note 55, at 66. See also *Mink*, 123 Mass. at 425 (discussing several early English cases). An "accessory before the fact" is one who orders, counsels, encourages, or otherwise aids and abets another to commit a felony and who is not present at the commission of the offense. BLACK'S LAW DICTIONARY 14 (6th ed. 1990). However, under English common law an accessory to a crime could not be tried until after the principal had been tried. Accordingly, since trying someone who committed suicide was impossible, the accessory to the successful suicide could also not be tried. William E. Mikell, *Is Suicide Murder?*, 3 COLUM. L. REV. 379, 387 (1903).

⁵⁸ Mikel, *supra* note 57, at 387-88 (citing *Regina v. Allison*, 8 Car. & P. 418 (1838)); see *Mink*, 123 Mass. at 425.

⁵⁹ Mojica & Murrell, *supra* note 15, at 481 (citing The Suicide Act of 1961, 9 & 10 Eliz. 2, ch. 60, § 1 (Eng.)). Specifically, England's Suicide Act punishes as manslaughter the aiding or procuring of a suicide or attempted suicide. *Id.*

⁶⁰ This is the retroactively effective date of Section 752.1027, Michigan's statute

States had existing statutes that specifically criminalized the act of intentionally causing, assisting, promoting, aiding, abetting, advising, or encouraging a person to commit suicide.⁶¹ Some states classify assisted suicide simply as a "crime,"⁶² while others specify

prohibiting assisted suicide, that was passed on March 31, 1993. See MICH COMP. LAWS ANN. § 752.1027 (West Supp. 1993). Previously, Michigan had no statute against assisted suicide but was compelled to enact Section 752.1027 in response to a recent abundance of physician-assisted suicides in that state performed by Dr. Jack Kevoonian. This situation will be discussed in further detail *infra* notes 84 and 136.

⁶¹ These state statutes which specifically prohibit assisted suicide include: ALASKA STAT. § 11.41.120(a)(2) (1978) (intentionally aiding suicide manslaughter); ARIZ. REV. STAT. ANN. § 13-1103A(3) (1989) (intentionally aiding suicide manslaughter); ARK. CODE ANN. § 5-10-104(a)(4) (Michie 1987) (purposely causing or aiding suicide manslaughter); CAL. PENAL CODE § 401 (West 1988) (deliberately aiding, advising or encouraging suicide felony); COLO. REV. STAT. ANN. § 18-3-104(1)(b) (West 1986) (intentionally causing or aiding suicide manslaughter); CONN. GEN. STAT. ANN. § 53a-56(a)(2) (West 1985) (intentionally causing or aiding suicide second degree manslaughter); DEL. CODE ANN. tit. 11, § 645 (1987) (promoting suicide Class D felony); FLA. STAT. ANN. § 782.08 (West 1992) (assisting self-murder manslaughter); ILL. ANN. STAT. ch. 38, para. 12-31 (Smith-Hurd 1991) (inducement to commit suicide Class Two felony); IND. CODE ANN. § 35-42-1-2 (Burns 1985) (intentionally causing suicide Class B felony); KAN. STAT. ANN. § 21-3406 (1988) (intentionally advising, encouraging or assisting suicide Class E felony); ME. REV. STAT. ANN. tit. 17-A, § 204 (West 1983) (intentionally aiding or soliciting suicide Class D crime); MINN. STAT. ANN. § 609.215 (West 1987) (intentionally advising, encouraging or assisting suicide); MISS. CODE ANN. § 97-3-49 (1973) (willfully advising, encouraging, abetting or assisting suicide felony); NEB. REV. STAT. § 28-307 (1990) (intentionally aiding and abetting suicide Class IV felony); N.H. REV. STAT. ANN. § 630:4 (1986) (causing or aiding suicide Class B felony); N.J. STAT. ANN. § 2C:11-6 (West 1982) (purposely aiding suicide second degree crime); N.M. STAT. ANN. § 30-2-4 (Michie 1978) (deliberately aiding suicide fourth degree felony); N.Y. PENAL LAW §§ 120.30, .35, 125.15(3) (McKinney 1984) (intentionally causing or aiding suicide attempt Class E felony); N.D. CENT. CODE § 12.1-16-04 (1991) (intentionally or knowingly aiding, abetting, facilitating, soliciting or inciting suicide Class C felony); OKLA. STAT. ANN. tit. 21, §§ 813-15 (West 1983) (willfully advising, encouraging, abetting or assisting suicide); OR. REV. STAT. § 163.125 (1989) (intentionally causing or aiding suicide second degree manslaughter); 18 PA. CONS. STAT. ANN. § 2505 (1983) (intentionally aiding or soliciting suicide second degree felony); S.D. CODIFIED LAWS ANN. § 22-16-37 (1976) (intentionally encouraging, abetting or assisting suicide Class Six felony); TEX. PENAL CODE ANN. § 22.08 (West 1989) (intentionally promoting or assisting suicide third degree felony) (repealed Sept. 1, 1994); WASH. REV. CODE ANN. § 9A:36.060 (West 1988) (knowingly causing or aiding suicide Class C felony); WIS. STAT. ANN. § 940.12 (West 1982) (assisting suicide Class D felony).

⁶² See, e.g., ME. REV. STAT. ANN. tit. 17-A, § 204 (1983); N.J. STAT. ANN. § 2C:11-6 (West 1982). New Jersey's assisted suicide statute is located in the criminal code chapter entitled "Criminal Homicide," and states that "[a] person who purposely aids another to commit suicide is guilty of a crime of the second degree if his conduct causes such suicide or an attempted suicide, and otherwise of a crime of the fourth degree." *Id.* However, in order for a defendant to qualify under the offense of aiding suicide

that the offense is a felony.⁶³ Many of these statutes are silent as to punishment,⁶⁴ but it appears that Minnesota imposes one of the most severe forms of punishment for this offense of all the states that prohibit it.⁶⁵

2. Case Law Regarding Assisted Suicide

Most of the judicial decisions on the subject of assisted suicide are actually right-to-die cases in which the patient was in a persistent vegetative state and his or her parents or guardian requested the removal or cessation of life-sustaining medical treatment.⁶⁶

instead of being charged with criminal homicide, there must have been a suicidal plan originating with the victim and the act of suicide or attempt thereof must have been volitional on the victim's part. *See State v. Lassiter*, 484 A.2d 13, 19 (N.J. Super. Ct. App. Div. 1984) (citing N.J. STAT. ANN. 2C:11-3 to -5).

Maine's assisted suicide statute provides that "[a] person is guilty of aiding or soliciting suicide if he intentionally aids or solicits another to commit suicide, and the other commits or attempts suicide." ME. REV. STAT. ANN. tit. 17-A, § 204(1) (West 1983). Further, soliciting or aiding a suicide in Maine is punishable as a Class D crime, which differs from criminal homicide in the fourth degree, a Class B crime. *Id.* § 204(2).

⁶³ *See, e.g.*, CAL. PENAL CODE § 401 (West 1988); KAN. STAT. ANN. § 21-3406 (1988); NEB. REV. STAT. § 28-307 (1990); N.H. REV. STAT. ANN. § 630:4 (1986); N.M. STAT. ANN. § 30-2-4 (Michie 1978); PA. CONS. STAT. ANN. § 2505 (1983); TEX. PENAL CODE ANN. § 22.08 (West 1989) (repealed Sept. 1, 1994); WASH. REV. CODE ANN. § 9A.36.060 (West 1988).

⁶⁴ *See, e.g.*, KAN. STAT. ANN. § 21-3406 (1988); ME. REV. STAT. ANN. tit. 17-A, § 204 (West 1983); N.H. REV. STAT. ANN. § 630:4 (1986).

⁶⁵ Minnesota's statute provides for a punishment of up to fifteen years in prison or payment of a fine not to exceed \$30,000, or both. MINN. STAT. ANN. § 609.215 (West 1987). *See also State v. Bauer*, 471 N.W.2d 363 (Minn. Ct. App. 1991), involving a defendant who assisted the suicide of his 18-year old girlfriend, Rachele Cazin, who was six and one-half months pregnant. Bauer had supplied the loaded gun for the couple's use in a mutual suicide in a wooded area, then backed out of the suicide pact. After leaving Cazin with the gun and walking away, Bauer heard a gunshot, found Cazin dead, hid her body and ran home. Later that evening Bauer made an anonymous call to a priest confessing to what had occurred. Upon police questioning, Bauer admitted his involvement and was arrested. *Id.* at 364-65.

On appeal, the guilty verdicts against Bauer of aiding a suicide (prohibited by § 609.215) and felony fetal homicide (prohibited by § 609.2662(2)) were upheld. Bauer argued that his sentences of 24 months imprisonment for aiding a suicide and 60 months concurrent imprisonment for felony fetal homicide constituted cruel and unusual punishment in violation of the Eighth Amendment of the U.S. Constitution. *Id.* at 368. The Minnesota Court of Appeals disagreed, holding that the trial court did not abuse its discretion in sentencing Bauer because it had granted him a 50% downward durational departure based on offense severity. *Id.*

⁶⁶ *See, e.g.*, *Cruzan v. Missouri Dep't of Health*, 497 U.S. 261 (1990) (competent persons have constitutionally protected liberty interest in refusing unwanted medical

However, there are also cases dealing with requests by mentally competent adults for a discontinuance of certain medical treatment that would prolong and sustain their lives.⁶⁷ In the much-cited case of *Bouvia v. Superior Court*,⁶⁸ the California Court of Appeals upheld a mentally competent twenty-eight year old quadriplegic woman's right to physician-assisted suicide. Elizabeth Bouvia, an intelligent and mentally competent person, had on several previous occasions expressed the desire to die.⁶⁹ In compliance with her request, the court directed that she was entitled to have a nasogastric tube, which had been inserted and maintained

treatment, which interest outweighs legitimate state interest in protection and preservation of human life); *McKay v. Bergstedt*, 801 P.2d 617 (Nev. 1990) (competent adult patients desiring to refuse or discontinue medical treatment may do so after conforming to certain procedural safeguards); *Rasmussen by Mitchell v. Fleming*, 741 P.2d 674 (Ariz. 1987) (72-year old nursing home patient in chronic vegetative state possessed fundamental right to withhold life-sustaining medical treatment); *In re Farrell*, 529 A.2d 404 (N.J. 1987) (competent 37-year old mother who lived at home had right to withdrawal of life-sustaining respirator that outweighed state's interest in preserving life); *Bouvia v. Superior Court*, 179 Cal. App. 3d 1127 (1986) (28-year old mentally competent quadriplegic who had previously expressed desire to die had right to removal of feeding tube, thereby enabling her to die); *Superintendent of Belchertown v. Saikewicz*, 370 N.E.2d 417 (Mass. 1977) (incurably ill, mentally retarded patient was entitled to enforcement of right to privacy and self-determination by guardian ad litem); *In re Quinlan*, 355 A.2d 647 (N.J. 1976) (father could exercise comatose daughter's right to privacy by authorizing removal of life support).

⁶⁷ See, e.g., *McKay v. Bergstedt*, 801 P.2d. 617 (Nev. 1990) (31-year old mentally competent quadriplegic man); *In re Farrell*, 529 A.2d 404 (N.J. 1987) (37-year old mentally competent woman with Lou Gehrig's disease); *Bouvia v. Superior Court*, 225 Cal. Rptr. 297 (Cal. App. Ct. 1986) (28-year old mentally competent quadriplegic woman). See also *In re Gardner*, 534 A.2d 947 (Me. 1987) (25-year old man in chronic vegetative state was entitled to removal of life-sustaining medical treatment because of his previous declaration of intent made while competent); *Superintendent of Belchertown v. Saikewicz*, 370 N.E.2d 417 (Mass. 1977) (incompetent 67-year old mentally retarded man with leukemia, if competent, would not have consented to chemotherapy); *In re Conroy*, 486 A.2d 1209 (N.J. 1985) (life-sustaining medical treatment may be withheld from incompetent patient when it is clear that, if competent, patient would have refused).

⁶⁸ 225 Cal. Rptr. 297, 305 (Cal. Ct. App. 1986).

⁶⁹ Ms. Bouvia had been rendered a quadriplegic from her affliction with severe cerebral palsy since birth. Prior to this lawsuit she was a patient in a Los Angeles public hospital, and eventually her palsy and quadriplegia progressed to the point that she was completely immobile, physically helpless, and wholly unable to care for herself. As a result, she wanted to end her life but the hospital refused to comply with her wishes. *Id.* at 299. Accordingly, Ms. Bouvia filed suit against the hospital's Medical Director, her physicians and her nurses for the removal from her body of a nasogastric feeding tube which had been inserted and maintained in her against her will and without her consent. The tube was so placed for the purpose of keeping Ms. Bouvia alive through involuntary forced feeding. *Id.* at 298-300.

in her against her will, removed immediately.⁷⁰ In a poignantly written opinion, the *Bouvia* majority vehemently asserted that it was not the policy of the State of California "that all and every life must be preserved against the will of the sufferer."⁷¹

Conversely, in 1971 the New Jersey Supreme Court had held that there was no constitutional right to die.⁷² Later, however, the court modified its position in the famous case of *In re Quinlan*.⁷³ In *Quinlan*, the court acknowledged that states undoubtedly have the power to criminally sanction someone for the taking of a human life. However, this power to sanction does not extend to individu-

⁷⁰ *Id.* at 299. As previously mentioned, Ms. Bouvia's hopeless and irreversible paralysis had resulted in her total dependence on others. Stating that her emotional and mental feelings were entitled to respect, the court granted Ms. Bouvia the "right to refuse the increased dehumanizing aspects of her [quadriplegic and totally dependent] condition created by the insertion of a permanent tube through her nose and into her stomach." *Id.*

⁷¹ *Id.* at 305. The court went so far as to label it "monstrous" for physicians to assert their right to preservation of a virtually unbearable life that someone else must endure for 15 or 20 more years. Because Ms. Bouvia's condition was irreversible, the court noted that she

would have to be fed, cleaned, turned, bedded, toileted by others for 15 to 20 years! Although alert, bright, sensitive, perhaps even brave and feisty, she must lie immobile, unable to exist except through physical acts of others. Her mind and spirit may be free to take great flights but she herself is imprisoned and must lie physically helpless subject to the ignominy, embarrassment, humiliation and dehumanizing aspects created by her helplessness.

Id.

⁷² See *John F. Kennedy Memorial Hosp. v. Heston*, 279 A.2d 670, 672 (N.J. 1971) (22-year old Jehovah's Witness in need of blood transfusion to survive not entitled to refuse transfusion based on religious beliefs). After pointing out that "conduct in pursuance of religious beliefs is not wholly immune from governmental restraint," *id.* at 672, the court further noted that:

[t]he question is not whether the State could punish [Ms. Heston] for refusing a transfusion. . . . The question is whether the State may authorize force to prevent death or may tolerate the use of force by others to that end. . . . If a court finds, as the trial court did, that death will likely follow unless a transfusion is administered, the hospital and the physician should be permitted to follow that medical procedure.

Id. at 673.

⁷³ 355 A.2d 647 (N.J. 1976). See also *In re Conroy*, 486 A.2d 1209 (N.J. 1985) (wherein the court affirmed *Quinlan*, stating that the right to make certain decisions concerning one's body, including refusal or withdrawal of life-sustaining medical treatment, is protected by the federal constitutional right of privacy); *In re Farrell*, 529 A.2d 404 (N.J. 1987) (building on principles stated in *Quinlan* and *Conroy* by upholding right of competent patient to refuse medical treatment even if that decision will hasten patient's death).

als who terminate the life-sustaining medical treatment of a patient pursuant to the constitutional right of privacy, which allows the patient to refuse such medical treatment.⁷⁴

Aside from the "right-to-die with dignity" cases, very few assisted suicides are brought to the attention of law enforcement authorities.⁷⁵ When cases in which individuals, as opposed to physicians, have assisted others to commit suicide *have* reached the courts, it has generally been held that the survivor of a genuine mutual suicide pact is not guilty of first-degree murder.⁷⁶ However, defendants in that same situation have been found guilty of

⁷⁴ *Quinlan*, 355 A.2d at 670. More specifically, "[t]he constitutional protection extends to third parties whose action is necessary to effectuate the exercise of that right where the individuals themselves would not be subject to prosecution. . . ." *Id.*

The court analogized this inherent privacy right and right to bodily integrity to a woman's constitutionally protected right to terminate her pregnancy under certain conditions. *Id.* at 663 (citing *Roe v. Wade*, 410 U.S. 113, 153 (1973)).

⁷⁵ See generally Cheryl K. Smith, *What About Legalized Assisted Suicide?*, 8 ISSUES L. & MED. 503 (1993). In fact, Hemlock Society statistics compiled from newspaper reports revealed the occurrence of only twelve assisted suicides between 1980 and 1991. *Id.* (citing CASES OF EUTHANASIA, MURDER AND ASSISTED SUICIDE, NATIONAL HEMLOCK SOC'Y (1991)).

The Hemlock Society is an American, non-profit organization incorporated under California and Oregon laws. Formed by Derek Humphrey and three other individuals in Los Angeles, California in 1980, its purpose was to campaign for the rights of terminally ill persons to choose voluntary euthanasia. Membership in the Society has grown steadily to approximately 38,000 members. The Society has 70 chapters. See generally DEREK HUMPHREY, *THE HEMLOCK SOC'Y, FINAL EXIT: THE PRACTICALITIES OF SELF-DELIVERANCE AND ASSISTED SUICIDE FOR THE DYING* (1991) [hereinafter *FINAL EXIT*].

Humphrey, a former writer for the London Times, euthanized his first wife by providing her with a mixture of codeine and secobarbital. Although criminal charges were filed against him, Humphrey was never prosecuted. Years later, Humphrey's second wife, who suffered from breast cancer, also ingested a fatal combination of secobarbital. See Mary Margaret Penrose, *Assisted Suicide: A Tough Pill to Swallow*, 20 PEPP. L. REV. 689, 690 n.6 (1993) (citing Dennis L. Breo, *M.D.-Aided Suicide Voted Down*, 266 JAMA 2895 (1991)).

⁷⁶ See *In re Joseph G.*, 667 P.2d 1176, 1182 (Cal. 1983) (suicide pact was "genuine" because no evidence existed that decedent's participation in pact was anything but fully voluntary and uncoerced). See also *State v. Sage*, 510 N.E.2d 343 (Ohio 1987) (setting forth general rule that surviving participant of a mutual suicide pact, who provides means of death to decedent, is not guilty of a criminal offense; based on specific facts of *Sage*, Ohio Supreme Court found defendant guilty of involuntary manslaughter). See *supra* note 35 and accompanying text; see also *People v. Campbell*, 335 N.W.2d 27 (Mich. App. Ct. 1983) (defendant who provided intoxicated and depressed individual with gun and bullets, then left premises, resulting in individual thereafter killing himself, did not commit crime of murder).

aiding and abetting the suicides of their companions.⁷⁷ Conversely, in a Kansas Supreme Court decision, the court affirmed a defendant's first-degree murder conviction in what apparently began as a suicide attempt. The evidence, the court held, did not support a finding that the victim had committed suicide because the defendant, a female friend of the decedent, had at decedent's request injected him with a fatal dose of cocaine and then, also at decedent's request, shot him in the head when the cocaine failed to kill him.⁷⁸

V. *Physician-Assisted Suicide*

According to the American Medical Association, assisted suicide and euthanasia differ in the degree of the physician's participation.⁷⁹ Particularly, physician-assisted suicide occurs when the doctor facilitates a patient's death by actually providing the means and/or information necessary to enable the patient to end his or her life.⁸⁰ Voluntary euthanasia,⁸¹ on the other hand, is when the

⁷⁷ See, e.g., *State v. Bauer*, 471 N.W.2d 363 (Minn. App. Ct. 1991) (teenaged male defendant was convicted of aiding a suicide of six and one-half month pregnant girlfriend for providing gun with which she shot herself in a proposed mutual suicide pact); *In re Joseph G.*, 667 P.2d at 1176 (survivor of mutual suicide pact in which two teenaged boys drove car over cliff was guilty of aiding and abetting suicide of companion, not of first-degree murder).

⁷⁸ *State v. Cobb*, 625 P.2d 1133 (Kan. 1981) (evidence did not support finding that victim had committed suicide). Although defendant argued that the decedent desired to commit suicide and she simply assisted him, the court found that these facts did not support the court giving a jury instruction on assisted suicide. *Id.* at 1136. The court reasoned that a trial court is required to instruct the jury on a lesser included crime only when evidence exists under which the defendant might reasonably have been convicted of the lesser crime. *Id.* at 1135 (citing *State v. Patchett*, 621 P.2d 1011 (Kan. 1981)). In addition, the *Cobb* court stated that Kansas' assisted suicide statute did not contemplate active participation by one in the overt act that directly caused another's death. Instead, "where a person actually performs, or actively assists in performing, the overt act resulting in death, such as shooting or stabbing the victim, . . . his act constitutes murder . . ." *Id.* at 1136 (citing *State v. Bouse*, 264 P.2d 800 (Or. 1953)).

⁷⁹ See *Council Report: Decisions Near the End of Life*, 267 JAMA 2229 (1992) [hereinafter *Council Report*].

⁸⁰ *Id.* An example of actually providing the necessary means is a physician who provides sleeping pills to a patient together with information about the lethal dose, when the physician is aware that the patient might use the pills to commit suicide. *Id.* at 2229.

⁸¹ "Euthanasia" is an English word derived from the Greek words "eu" (good) and "thanatos" (death), meaning in combination "good death." See Maria T. Celoz Cruz, *Aid-In-Dying: Should We Decriminalize Physician-Assisted Suicide and Physician-Committed*

physician not only makes the means enabling the patient's death available, but also "is the actual agent of death upon the patient's request."⁸² This definition is interesting from a legal standpoint because those states with statutes prohibiting assisted suicide acknowledge that a suicide assister must have intentionally, purposely, deliberately, or willfully aided, advised, or encouraged another person to commit suicide to trigger criminal liability under the statute.⁸³ Conceivably, therefore, no legal liability will accrue against a physician who merely withholds or withdraws medical treatment at the request of a competent adult patient.⁸⁴ However, when a physician terminates the life of a dying patient by

Euthanasia?, 4 AM. J. L. & MED. 369, 376 (1992) (citing 5 THE OXFORD ENGLISH DICTIONARY 444 (2d ed. 1989); 1 HENRY G. LIDDELL & ROBERT SCOTT, A GREEK-ENGLISH LEXICON 714, 731, 784 (1940)).

Euthanasia is more commonly referred to as "mercy killing," which is defined as "the hastening of death through the affirmative acts of a second party who believes the dying person wishes to die due to a terminal or hopeless disease or condition." Laura L. Marcinko, *To Live or Die: Creating a Choice of Medically Assisted Suicide in Michigan's Proposed Law*, 8 THOMAS M. COOLEY L. REV. 609, 611 (1991) (citing BLACK'S LAW DICTIONARY 988 (6th ed. 1990)).

⁸² TIMOTHY E. QUILL, DEATH AND DIGNITY: MAKING CHOICES AND TAKING CHARGE 158 (1993).

⁸³ See, e.g., CAL. PENAL CODE § 401 (West 1988); KAN. STAT. ANN. § 21-3406 (1988); ME. REV. STAT. ANN. tit. 17A, § 204 (West 1993); MINN. STAT. ANN. § 609.215 (West 1987); MISS. CODE ANN. § 97-3-49 (1973); NEB. REV. STAT. § 28-307 (1990); N.H. REV. STAT. ANN. § 630:4 (1991); N.M. STAT. ANN. § 30-2-4 (Michie 1978); N.J. STAT. ANN. § 2C:11-6 (West 1982); PA. CONS. STAT. ANN. § 2505 (1983); TEX. PENAL CODE ANN. § 22.08 (West 1993).

⁸⁴ See MICH. COMP. LAWS ANN. § 752.1027 (West 1993), effective March 31, 1993 and immediately effective February 25, 1993. This statute contains two important aspects that guide the conduct of Michigan medical practitioners. First, the statute expressly states that a suicide assister must have "provide[d] the physical means by which the other person attempts or commits suicide." *Id.* § 7(1)(a). In addition, the statute clarifies that the previously quoted provision "shall not apply to withholding or withdrawing medical treatment . . . [and] does not apply to prescribing, dispensing, or administering medications or procedures if the intent is to relieve pain or discomfort and not to cause death, even if the medication or procedure may hasten or increase the risk of death." *Id.* § 7(2) to -(3).

But see WASH. REV. CODE ANN. § 70.122.100 (West 1992), whereby the State of Washington indicates that "mercy killing or physician-assisted suicide [are] not authorized." The statute reads: "Nothing in this chapter shall be construed to condone, authorize, or approve mercy killing or physician-assisted suicide, or to permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying." *Id.* (emphasis supplied).

Thus, unlike Michigan and most other states, Washington's legislature does not provide immunity from criminal liability for physicians who enable their patients to die by the withholding or withdrawing of medical treatment.

engaging in a positive act, such as the injection of a poisonous drug, criminal liability is clear under the current laws of most states.⁸⁵ Nevertheless, to date, in every instance where a physician has compassionately assisted a terminally ill patient to commit suicide, criminal charges against the physician have eventually been dismissed or a verdict of not guilty has been entered.⁸⁶

A. *Medical Ethics and Physician-Assisted Suicide*

The potentially criminal aspect of physician-assisted suicide notwithstanding, another issue must be considered even when a physician does not commit an affirmative act to assist his patient to die: Are the requirements of medical ethics met when physicians are aware that either their actions or inactions will facilitate a patient's death?

1. Historical Background of Medical Ethics

Although it can be argued that there is a marked legal distinction between actively causing the death of a patient and passively enabling a patient to die,⁸⁷ the conduct of physicians throughout the world is nevertheless guided by the express language of the Hippocratic Oath.⁸⁸ This ancient ethical code of medical conduct was originally promulgated by the "Father of Medicine," the Greek

⁸⁵ Percy Foreman, *The Physician's Criminal Liability for the Practice of Euthanasia*, 27 BAYLOR L. REV. 54 (1975). The author notes that a physician's criminal liability is unclear where the physician ends the patient's life by an omission of life-saving therapy. *Id.* at 55.

⁸⁶ QUILL, *supra* note 82, at 158.

⁸⁷ Dennis J. Horan, *Euthanasia, Medical Treatment and The Mongoloid Child: Death As a Treatment of Choice?*, 27 BAYLOR L. REV. 76, 82 (1975). The author further asserts that "[a] physician is not legally obligated to sustain life by heroic or extraordinary means." *Id.* at 82.

⁸⁸ 5 THE NEW ENCYCLOPAEDIA BRITANNICA 939 (15th ed. 1993). The full text of "The Oath of Hippocrates," which in approximately 400 B.C. set forth the ideals that were to be the goals of every doctor, is as follows:

I SWEAR BY APOLLO, THE PHYSICIAN, AND AESCULAPIUS AND HEALTH AND ALL-HEAL AND ALL THE GODS AND GODDESSES THAT, ACCORDING TO MY ABILITY AND JUDGMENT, I WILL KEEP THIS OATH AND STIPULATION:

TO RECKON him who taught me this art equally dear to me as my parents, to share my substance with him and relieve his necessities if required: to regard his offspring as on the same footing with my own brothers, and to teach them this art if they should wish to learn it; without fee or stipulation, and that by precept, lecture and every other mode of instruction, I will impart a knowledge of the art to my own sons and to those of

physician Hippocrates.⁸⁹ Specifically, the second section of the oath requires the physician's pledge to prescribe only beneficial treatments to patients according to his or her abilities and judgment; to abstain from causing hurt or harm; and to live an exemplary professional and personal life.⁹⁰ It is generally recognized, therefore, that one of the most sacred canons of medical ethics is that doctors must not kill.⁹¹ Why, then, have some physicians abandoned this sacred oath by either indirectly⁹² or directly⁹³ assisting

my teachers, and to disciples bound by a stipulation and oath, according to the law of medicine, but to none others.

I WILL FOLLOW that method of treatment which, according to my ability and judgment, I consider for the benefit of my patients, and abstain from whatever is deleterious and mischievous, I will give no deadly medicine to anyone if asked, nor suggest any such counsel; furthermore, I will not give to a woman an instrument to produce abortion.

WITH PURITY AND WITH HOLINESS I will pass my life and practice my art, I will not cut a person who is suffering with a stone, but will leave this to be done by practitioners of this work. Into whatever houses I enter I will go into them for the benefit of the sick and will abstain from every voluntary art of mischief and corruption; and further from the seduction of females or males, bond or free.

WHATEVER, in connection with my professional practice, or not in connection with it, I may see or hear in the lives of men which ought not to be spoken abroad I will not divulge, as reckoning that all such should be kept secret.

WHILE I CONTINUE to keep this oath unviolated may it be granted to me to enjoy life and the practice of the art, respected by all men at all times but should I trespass and violate this oath, may the reverse be my lot.

13 WORLD BOOK ENCYCLOPEDIA 301 (1969).

⁸⁹ Hippocrates of Chios lived from approximately 460 B.C. to approximately 377 B.C. See 9 WORLD BOOK ENCYCLOPEDIA 226 (Field Enterprises Educ. Corp. 1969). Hippocrates required all of his medical students to take his oath. The timelessness and modern significance of the oath is evident in its current repetition at the graduation ceremonies of many medical schools. 13 WORLD BOOK ENCYCLOPEDIA 301 (1969).

⁹⁰ 13 WORLD BOOK ENCYCLOPEDIA 301 (1969).

⁹¹ Jennifer A. Zima, *Assisted Suicide: Society's Response to a Plea for Relief or a Simple Solution to the Cries of the Needy?*, 23 RUTGERS L.J. 387 (1992) (citing Willard Gaylin et al., *Doctors Must Not Kill*, 259 JAMA 2139 (1988)).

⁹² See Timothy E. Quill, *Death and Dignity—A Case of Individualized Decision Making*, 324 NEW ENG. J. MED. 691 (1991), in which Dr. Quill passionately and articulately describes his "indirect" assistance in the suicide of "Diane," a terminally ill patient. Diane committed suicide by a self-administered overdose of barbiturates prescribed for her by Dr. Quill with full knowledge of her intent to use them to take her own life before the painful and debilitating effects of fatal leukemia had fully materialized. *Id.*

⁹³ To date, Dr. Jack Kevorkian has assisted 20 persons in committing suicide. These suicides were accomplished either through the use of Dr. Kevorkian's "suicide machine" (discussed in detail *infra*) or by inhaling carbon monoxide from a cannister

their patients to commit suicide? It can be argued that physicians who assist patients to kill themselves perform a necessary function for those persons who desperately want to die but who feel they cannot do it on their own.⁹⁴ Conversely, physicians who assist suicides have also been labeled "American Death Squads."⁹⁵ Medical commentators have voiced a fear that these "angels of mercy" might turn into overzealous fanatics, assisting in inappropriate suicides of persons not ripe for such an abrupt end to their lives.⁹⁶

2. Ethics of Physician-Assisted Suicide

As mentioned previously, the conduct of physicians is strictly guided by the Hippocratic ethic.⁹⁷ The Hippocratic Oath contains

provided by the doctor. See generally *The Donahue Show: Doctor Death: Should Your Doctor be in the Suicide Business?* (NBC television broadcast, Jan. 30, 1992) [hereinafter *Donahue Transcript*] (transcript on file with the *Seton Hall Legislative Journal*); Tom Morganthau et al., *Dr. Kevorkian's Death Wish*, NEWSWEEK, Mar. 8, 1993, at 46; Doron Weber, *A Way Around Kevorkian*, USA TODAY, Aug. 9, 1993, at 13A; Zima, *supra* note 91, at 387.

⁹⁴ See *Donahue Transcript*, *supra* note 93, at 1. Sherri Miller, age 43, who was suffering from multiple sclerosis, stated that she had sought out Dr. Kevorkian's assistance to commit suicide because "I waited too long. I cannot do anything myself. I waited too long." Marjorie Wantz, age 58, suffering from chronic pain due to pelvic scarring, had informed Dr. Kevorkian that she tried to take her own life on three separate occasions and did not succeed: "I tried it, as you know, with the car. I put the hose on the exhaust and through the window. I stayed in the car over three hours and I tried it three times. Nothing happened." *Id.*

⁹⁵ 133 CONG. REC. S11901 (daily ed. Sept. 9, 1987) (statement of Sen. Humphrey). At this euthanasia-centered debate, Senator Humphrey introduced for insertion into the record an article by Nat Hentoff entitled *The American Death Squads*. Hentoff's article expresses deep concern about recent judicial decisions whereby courts have allowed patients to have life-sustaining medical treatment removed or withheld, stating that "fewer doctors each year are fighting for certain patients' lives. Instead, they are helping the courts ease the removal of more barriers to killing." *Id.*

⁹⁶ These overzealous physicians, it is feared, may eventually "bring[] the 'comfort' of death to some who do not clearly want it, then to others who 'would really be better off dead,' and finally, to classes of 'undesirable persons,' which might include the terminally ill, the permanently unconscious, the severely senile, the pleasantly senile, the retarded, the incurably or chronically ill, and perhaps, the aged." *Id.*

Conversely, according to a study by University of Pennsylvania Medical Center researchers, a physician's decision to withdraw life support from a terminally ill patient is actually based on his or her personal biases that have little to do with the patient's wish to die. Barbara Laker, *What Tugs at a Doctor who Pulls the Plug?*, NEWS TRIB., Oct. 18, 1993, at B5. Dr. David Asch, a medical ethicist at the University and co-author of its study, believes that physicians are less likely to withdraw life support if the machines or intravenous fluids are needed because of an error made by the physician during surgery or treatment, or if the physician believes the patient will survive for days before actually dying. *Id.*

⁹⁷ See *supra* note 88 and accompanying text.

the genuinely ethical obligations of beneficence and nonmaleficence, including prohibitions against euthanasia and abortion.⁹⁸ Although modern medical technology has advanced in ways inconceivable to the first ancient physicians, certainly if there was any doctrine that seemed resistant to the radical changes that modern physicians feel all of medicine to be undergoing, it was medicine's ancient ethical framework.⁹⁹ It has also been said that the medical profession should not acquiesce to any calls for physician-assisted suicide because a demand for a right to commit suicide is really, much like an actual suicide attempt, a cry for help.¹⁰⁰ At the 1991 annual meeting of the American Medical Association, its President, Dr. John Ring, expressed concern that such acquiescence would threaten the doctor-patient relationship.¹⁰¹

B. *Proponents of Physician-Assisted Suicide*

On the other hand, some doctors and a majority of the public¹⁰² ignore ethical considerations and support physician-assisted

⁹⁸ Edmund D. Pellegrino, M.D., *The Metamorphosis of Medical Ethics: A 30-Year Retrospective*, 269 JAMA 1158 (Mar. 3, 1993). The express language of the Hippocratic Oath instructs physicians not to assist women to have abortions, yet our modern American law provides an inherent immunity from criminal liability for physicians who perform abortions. An argument can be made, therefore, that perhaps the confines of the ancient Hippocratic Oath, promulgated in 400 B.C., should not continue to be forced upon modern physicians who must flexibly conform to developing technology and an ever-changing world. *Id.*

⁹⁹ Pellegrino, *supra* note 98, at 1158.

¹⁰⁰ Harry R. Moody, *In My Opinion*, AARP BULLETIN (Am. Ass'n of Retired Persons, Washington, D.C.), Sept. 1993, at 22. See also Elizabeth Kristol, *Key Issue Blurred in Kevoorkian case*, NEWS TRIB., Dec. 6, 1993, at B4. In her article expressing her distaste with the concept of physician-assisted suicide, the author asserts that "it is a squeamish business to take one's life - and thank goodness for that. It is just this squeamishness that keeps the vast majority of desperate people from committing suicide. . . . This profound revulsion at the physical act of effecting one's own death . . . is an essential part of our humanity and a powerful manifestation of the persistent desire to live." *Id.*

¹⁰¹ Dr. Ring vehemently disagrees with making physicians "agents of any effort that would violate our duty 'to do no harm' - by asking us to . . . assist in suicide, or to kill people, even in state-sanctioned executions." *Background: The AMA on Euthanasia: Kevoorkian Goes to Trial*, LIFE AT RISK (Nat'l Conference of Catholic Bishops/Secretariat for Pro-Life Activities, Washington, D.C.), July 1992, at 2 (citing JAMA (Apr. 22-29, 1992)).

¹⁰² In a 1990 Roper Poll, a nationwide survey of a cross-section of 2,000 women and men, it was discovered that 64% of those surveyed agreed that a physician should be legally allowed to end a terminally ill patient's life when there is no hope of recovery and when the patient asks for assistance to die. Only 24% believed that a physician should not by law be permitted to assist suicides, while 13% were undecided. See

suicide. Notwithstanding the confines of the Hippocratic Oath, many modern physicians believe in justified euthanasia but are reluctant to admit this belief given the risk of criminal sanctions.¹⁰³ The role of today's physician as a "healer" now also appears to include the role of assisting suffering, terminally ill patients to die.¹⁰⁴ Commentators writing in the *New England Journal of Medicine* have stressed that it does not violate our society's morality requirements when a physician assists in the rational suicide of a patient who is terminally ill.¹⁰⁵ Dr. Timothy Quill has also been a longtime advocate of a patient's right to die with as much dignity and self-

Laura L. Marcinko, *To Live or Die: Creating a Choice of Medically Assisted Suicide in Michigan's Proposed Law*, 8 THOMAS M. COOLEY L. REV. 609, 624 (1991) (citing HEMLOCK QUARTERLY, July 1990, at 6).

Additionally, a Gallup Mirror of America poll conducted on this issue revealed that 59% of American adults support the right of people with terminal illnesses to take their lives, and two-thirds of those surveyed said it was morally right for a physician to assist in such a suicide. Ronald Kotulak, *Murder Charge Dismissed Against Suicide Doctor*, CHI. TRIB., Dec. 14, 1990, at 1C.

¹⁰³ See FINAL EXIT, *supra* note 75, at 125. In fact, Mr. Humphrey notes, "[t]o acknowledge their belief publicly offers [the physician] a risk of being branded - and perhaps investigated - as a practitioner of this compassionate option." *Id.* This type of ostracization is evident in the medical profession's opinion and treatment of Dr. Jack Kevorkian, the self-styled "obiatrist" who specializes in suicide assistance, which he labels "medicide." To date, Dr. Kevorkian has assisted in the "medicides" of 20 terminally or incurably ill persons. See *infra* notes 152, 160, 166, 192, 196, 201-203 and accompanying text. Dr. Kevorkian's license to practice medicine has been revoked and criminal charges have repeatedly been brought against him for assisting suicides. Since approximately 1985 the doctor has been unable to find employment in any accredited hospital. See Mark Hosenball, *The Real Jack Kevorkian*, NEWSWEEK, Dec. 6, 1993, at 28; *Suicide Machine Doctor Told Not to Use It Again*, SAN FRANCISCO CHRON., Feb. 6, 1991, at A3.

¹⁰⁴ See QUILL, *supra* note 82, at 51. Specifically, "[c]aring humanely for the dying and trying to help them find a dignified death is a fundamentally vital role for physicians." *Id.* at 52.

In addition, the American Civil Liberties Union argues that since under current law a competent adult has the right to refuse life-sustaining medical treatment, that same individual "should have the right to request the assistance of a physician in bringing about a peaceful and dignified end to a painful illness. . . . These views are based upon fundamental civil liberties principles of bodily autonomy and self-determination, privacy, and the freedom of thought and religion." Information Packet #1, (ACLU/Dept. of Public Educ., New York, N.Y.) (on file with the *Seton Hall Legislative Journal*).

¹⁰⁵ Note, *Physician Assisted Suicide and The Right to Die with Assistance*, 105 HARV. L. REV. 2021, 2021 n.4 (1992) (citing Wanzer et al., *The Physician's Responsibility Toward Hopelessly Ill Patients: A Second Look*, 320 NEW ENG. J. MED. 844, 848 (1989)).

control as possible.¹⁰⁶ In his article published in *The New England Journal of Medicine*, Dr. Quill articulately and passionately recounts his indirect assistance in the suicide of his terminally ill patient "Diane" in 1991.¹⁰⁷ A Rochester, New York grand jury, however, refused to indict Dr. Quill for his actions in Diane's suicide.¹⁰⁸ Accordingly, Dr. Quill continues to argue that advanced palliative measures¹⁰⁹ should be used on terminally ill patients by their physicians with whatever care and expertise is appropriate, without fear of professional or legal sanctions, so that physicians can almost always ensure that their patients experience a relatively pain-free and dignified death.¹¹⁰

However, while Dr. Quill specifically advocates physician-assisted suicide of terminally ill patients,¹¹¹ Derek Humphrey, a founder and former Executive Director of The Hemlock Society,¹¹² appears to advocate the notion of suicide by persons suffering from non-terminal illnesses as well.¹¹³ Nevertheless, Mr. Humphrey spe-

¹⁰⁶ See generally Timothy E. Quill, *Death and Dignity—A Case of Individualized Decision Making*, 324 *NEW ENG. J. MED.* 691 (1991).

¹⁰⁷ *Id.* After being diagnosed as dying of leukemia, Diane, a married woman with a college-aged son, decided to forego aggressive treatment and live out her remaining few months at home. When Diane asked Dr. Quill for a prescription for barbiturates, ostensibly to help her sleep, he knew that "[w]hen the time came, she wanted to take her life in the least painful way possible" before the full effects of the leukemia debilitated her. *Id.* at 693. When Dr. Quill wrote out and gave Diane the requested prescription, he was uneasy about the legal, spiritual, professional and personal boundaries he was exploring, yet he "also felt strongly that [he] was setting her free. . . ." In his article, Dr. Quill candidly admitted that he made sure Diane knew the amount of barbiturates she needed to take to commit suicide. *Id.*

¹⁰⁸ Steve Padilla, "Voluntary Euthanasia" *Advocate Offers a Means to an End*, *L.A. TIMES*, Jan. 18, 1992, Metro § , at 5, pt. B, col. 1.

¹⁰⁹ "Palliative" is defined as "mitigating; reducing the severity of; denoting the alleviation of symptoms without curing the underlying disease." *STEDMAN'S MEDICAL DICTIONARY* 1124 (25th ed., 1990).

¹¹⁰ See *QUILL*, *supra* note 82, at 51.

¹¹¹ See *Quill*, *supra* notes 82, 92 and 107 and accompanying text.

¹¹² See *supra* note 75 and accompanying text.

¹¹³ *FINAL EXIT*, *supra* note 75, at 138-41. Although in his "suicide manual" Mr. Humphrey, a non-physician, deals primarily with the ways in which terminally ill persons might successfully commit suicide, he also appears to condone the assisted suicide by Dr. Jack Kevorkian of Janet Adkins, who was not terminally ill but who had Alzheimer's disease. However, Mr. Humphrey notes that "Alzheimer's can be seen as a form of 'mind death' or 'partial brain death' " rather than a terminal illness. *Id.* at 140. In addition, in the book's chapter entitled "Going Together?", Mr. Humphrey remarks on the subject of couples who choose to die together (when one of the two is terminally ill and the other perfectly healthy): "Who are we to look in the minds of

cifically stated at a January 1992 Hemlock Society meeting that the Society advocates suicide only for the terminally ill.¹¹⁴ Humphrey believes there are several medical, professional, and social reasons why physicians should assist patients to commit suicide.¹¹⁵ He also acknowledges, however, that there are certain situations in which the physician should decline assisting in the suicide.¹¹⁶

others? That the couple would wish to die together is a tribute to the strength of a loving relationship." *Id.* at 101.

Humphrey's suicide manual climbed national bestseller lists upon its release in 1991, selling more than a half-million copies across North America. *See* Penrose, *supra* note 46, at 690 n.7. However, the first how-to handbook on suicide was published in London ten years earlier. This 32-page pamphlet, entitled *A Guide to Self-Deliverance*, was distributed in 1981 by EXIT - The Society for the Right to Die With Dignity, a 45-year old London-based organization. EXIT distributed its guide to members who were at least twenty-five years old and who had a three-month standing membership with the organization. The purpose of this do-it-yourself suicide manual was to help persons overcome their fear of death and the agony of dying. *See* George P. Smith, II, *All's Well that Ends Well: Toward a Policy of Assisted Rational Suicide or Merely Enlightened Self-Determination?*, 22 U.C. DAVIS L. REV. 275, 303-04 (1989).

¹¹⁴ Padilla, *supra* note 108.

¹¹⁵ One such "professional reason" cited by Mr. Humphrey is that "physicians know better than anyone approximately when a patient will die, and the manner of death." *Id.* at 128. Therefore, if that patient has asked for euthanasia too early and it is clearly not justified, the doctor is in the best position to argue against it. *Id.* Other reasons are: that only physicians have lawful access to drugs which are lethal and are knowledgeable in the techniques for administering them; that doctors are trained to observe certain criteria before taking action; and that patients with certain debilitating diseases cannot swallow and need skillful injections by physicians to end their lives. *Id.* at 127-28.

The "social reasons to help" enumerated by Mr. Humphrey include:

- 1) Some patients have outlived their close friends and relatives and, therefore, have no one else to assist them to die;
- 2) Relatives to whom the patient turns for help may be too consumed with guilt or emotional problems to provide assistance;
- 3) Patients are almost undoubtedly fearful of ending their own lives unassisted for fear of "botching it" and surviving with possible physical damage and emotional stigma;
- 4) A doctor's role is to both cure and relieve suffering, thus making physician-assisted suicide most appropriate when no cure is possible and the patient seeks relief from the physician;
- 5) The physician is not emotionally involved with the patient and possesses the technology and skill to end the patient's life with gentleness and certainty.

Id. at 129.

¹¹⁶ According to Mr. Humphrey, a physician should not assist in suicides if "[h]elping another person to die offends the physician's moral and ethical codes." *Id.* at 129. Other reasons not to help are when the physician barely knows the patient and/or mutual respect between them is lacking; and when the doctor is not fully

Finally, the position of American society as a whole regarding physician-assisted suicide is rather favorable. The results of a November 1991 survey¹¹⁷ illustrate that two out of three people in the United States believe that physicians should be allowed to give dying patients drugs with which to kill themselves, if that represents the patients' wishes.¹¹⁸ In fact, one out of four persons would ask a doctor to give them lethal drugs if they were dying.¹¹⁹ If the opinion polls are correct, it appears that most people do not oppose the notion of physician-assisted suicide.¹²⁰ On the other hand, there are also some very influential factions of American society that are vehemently opposed to physician-assisted suicide.

C. *Opponents of Physician-Assisted Suicide*

The American Medical Association (hereinafter "AMA") strongly opposes physician-assisted suicide, arguing that it is a physician's job to preserve lives, not to take them.¹²¹ In a 1989 article, an AMA representative affirmed that assisting patients to end their lives is a radical departure from that organization's fundamental purpose.¹²² At its Council on Ethical and Judicial Affairs, the AMA

aware of the patient's medical status, thereby making it "not the time for hasty, ill-considered actions which may be regretted later." *Id.*

¹¹⁷ See Cathy Collison, *Memo: News for Young Readers*, DET. FREE PRESS, Nov. 14, 1991, NEWS § , at 2A.

¹¹⁸ *Id.*

¹¹⁹ *Id.* However, the persons surveyed were not questioned regarding Dr. Kevorkian's "suicide machine" (discussed *infra* at note 150). Further public support for physician-assisted suicide is evident in yet another opinion poll wherein 68% of the respondents felt that persons dying of an incurable, painful disease should be allowed to end their lives before the disease ran its course. See *Council Report, supra* note 79, at 2229 (citing *Associated Press/Media General Poll No. 4* (Media General, Richmond, Va.), Feb. 1985).

¹²⁰ Susan Watson, *Kevorkian's Favorite Cause is Back in the News - Himself*, DET. FREE PRESS, Oct. 27, 1991, COM § , at 4G. The reporter goes on to state her view that "[t]erminally ill patients and those in intractable pain should have the right to make a choice about the quality of their living and their dying." *Id.* However, Ms. Watson also notes that specific state legislation on this subject is needed because people who are "understandably depressed after learning that they have a terminal illness should not be able to rush out and get a suicide doctor." *Id.*

¹²¹ Mark Caro, *Tough News: Angel or Killer? Doctor Helps Ill Patients Die*, CHI. TRIB., Apr. 6, 1993, KIDNEWS § , at 3C.

¹²² Samuel F. Hunter, *Active Euthanasia Violates Fundamental Principles*, 262 JAMA 3074 (1989). In addition, euthanasia and suicide "irreversibly exclude other medical, psychological, and social avenues" available to patients who are despondent from illness or pain. *Id.*

voiced its opinion that "active euthanasia" is a euphemistic phrase that actually means intentionally taking someone else's life. This type of behavior, the AMA argues, is not included in the practice of medicine, whether performed with or without the patient's consent.¹²³

In addition, it appears that our government's executive branch opposes physician-assisted suicide. While campaigning for the Presidency in September 1992, President Clinton expressed his thoughts on physician-assisted suicide at a televised "town meeting" held in Detroit.¹²⁴ The President said he certainly would do whatever he could to oppose it and that he thinks the practice is wrong.¹²⁵ Mr. Clinton further stated that he would veto a bill to legalize physician-assisted suicide.¹²⁶

Perhaps the most vehement opponent of physician-assisted suicide is the Roman Catholic Church.¹²⁷ Inasmuch as the Catholic Church disfavors unassisted suicide, it is not surprising that it completely disapproves of assisted suicide, whether performed by a physician or a non-physician.¹²⁸ As stated above, the guiding principle behind the Church's position is the Sixth Commandment.¹²⁹ The Church believes that God gives life and God takes it away, and that

¹²³ See Note, *Physician Assisted Suicide and The Right to Die With Assistance*, *supra* note 105, at 2021 n.4 (citing COUNCIL ON ETHICAL AND JUDICIAL AFFAIRS OF THE AM. MEDICAL ASS'N REPORTS, § 12, at 2 (1989)). Additionally, Thomas Marzen, an attorney with the National Legal Center for the Medically Dependent and Disabled, expressed that group's disfavor with the concept of physician-assisted suicide, saying that "[i]t's well known that 95 percent of people who attempt to commit suicide are people who have emotional or mental problems of some kind." If there is an increase in the number of physicians willing to assist their patients to commit suicide, Mr. Marzen fears, there will be "no assurance that the people [the physician] 'helped die' didn't have the same kind of problem." See Caro, *supra* note 121, at 3C.

¹²⁴ See *A Chronicle of Euthanasia Trends in America*, LIFE AT RISK 1 (Nat'l Conference of Catholic Bishops/Secretariat For Pro-Life Activities, Washington., D.C.), Oct. 1992 (citing DET. FREE PRESS, Sept. 23, 1992).

¹²⁵ *Id.*

¹²⁶ *Id.* at 1 (citing ASSOCIATED PRESS, Sept. 23, 1992).

¹²⁷ The Church's unequivocal view is that "[n]othing and no one can in any way permit the killing of an innocent human being, whether a fetus or an embryo, an infant or an adult, an old person, or one suffering from an incurable disease, or a person who is dying. Furthermore, no one is permitted to ask for this act of killing, either for himself or herself or for another person. . . ." DECLARATION ON EUTHANASIA, *supra* note 42, at 8.

¹²⁸ Monsignor Darcy Interview, *supra* note 40.

¹²⁹ The Sixth Commandment states that "Thou shalt not kill." *Exodus* 20:1-17 (King James).

persons have no right to act as God in their own life or in the lives of others.¹³⁰ Thus, human life is to be preserved at all cost.¹³¹ Any Catholic who encourages or assists another person to commit suicide is immediately excommunicated from the Church.¹³²

The suicide assister may, however, gain readmission to the Church in the future if he makes a sincere public statement admitting his guilt and wrongdoing.¹³³ The Catholic Church believes, therefore, that a person's constitutional right to privacy, self-determination, and control of one's body¹³⁴ is secondary to God's right to our lives while on Earth.¹³⁵

VI. Michigan and Its Unique Concern with Assisted Suicide

A. Michigan's Law on Assisted Suicide Prior to 1993

As mentioned previously, prior to March 31, 1993 Michigan had enacted no statute specifically criminalizing assisted suicide.¹³⁶

¹³⁰ As St. Paul said: "If we live, we live to the Lord, and if we die, we die to the Lord." DECLARATION ON EUTHANASIA, *supra* note 42, at 6 (citing *Romans* 14:8; cf. *Phil.* 1:20).

¹³¹ "[B]elievers see in life . . . a gift of God's love, which they are called upon to preserve and make fruitful . . . [and which] gives rise to the following consequence[]: . . . No one can make an attempt on the life of an innocent person without opposing God's love for that person, without violating a fundamental right, and therefore without committing a crime of the utmost gravity. . . ." DECLARATION ON EUTHANASIA, *supra* note 42, at 6-7.

¹³² See Monsignor Darcy Interview, *supra* note 40 and accompanying text. Once excommunicated, the suicide assister could not receive the sacrament or live a full Catholic life until he or she received absolution from the Church and received the sacrament of reconciliation. *Id.*

¹³³ *Id.* By virtue of a Catholic's baptism, he cannot be forbidden readmission to the Church after excommunication as long as he sincerely admits his guilt and does what the Church requires in order to be readmitted. *Id.*

¹³⁴ See, e.g., *In re Quinlan*, 355 A.2d 647 (N.J. 1976); *Roe v. Wade*, 410 U.S. 113 (1973); *Union Pac. Ry. Co. v. Botsford*, 141 U.S. 250 (1891).

¹³⁵ Monsignor Darcy Interview, *supra* note 40. An analogy can be made between the Catholic Church's opinion of assisted suicide and its view of abortion. Although legal abortion is the "law of the land" today, the Church vehemently disapproves of it, believing that life begins at conception and, therefore, that abortion is murder. Under the Catholic Church's Revised Code of Canon Law, any person who procures a completed abortion is excommunicated from the church. Similarly, any Catholics who assist in the abortion, such as doctors, nurses or other medical personnel, are excommunicated as well. By analogy to abortion which, like assisted suicide, is considered murder, it follows that physicians or medical practitioners who assist suicides have taken a human life. If these persons are Catholics, they must be excommunicated from the Church. *Id.*

¹³⁶ See MICH. COMP. LAWS ANN. §§ 752.1021-1027 (West 1993)(enacted by 1992

The first time Michigan's legal system grappled with the assisted suicide issue was in 1920. In *People v. Roberts*,¹³⁷ the Michigan Supreme Court held the defendant guilty of first-degree murder for furnishing poison to his wife with which to commit suicide.¹³⁸ In its decision, the court conceded that if it were relevant under Michigan law that the defendant's wife took the poison willingly with the intent to commit suicide, then, morally, the heinousness of the defendant's crime would be diminished greatly. The court noted, however, that the law at the time made no distinction based on morality.¹³⁹

Unlike the outcome of *People v. Roberts*, in 1983 the Michigan Court of Appeals in *People v. Campbell*¹⁴⁰ held that mere incitement to suicide was not, under present Michigan statutes, a crime and thereby acquitted the defendant of murder.¹⁴¹ Mr. Campbell had furnished an intoxicated and depressed friend with a gun and bullets with which to kill himself, then left the premises, and his friend thereafter successfully committed suicide.¹⁴² The court found no unanimity of custom or usage regarding assisted suicide strong enough to be considered common law. Thus, it held that defendant's act of simply providing the weapon that the decedent eventually used, and then leaving the scene, was not a criminally

Mich. Pub. Acts 270, effective March 31, 1993 but immediately effective February 25, 1993).

¹³⁷ 178 N.W. 690 (Mich. 1920).

¹³⁸ *Id.* at 693. The wife of defendant Roberts had been suffering from multiple sclerosis, a disease of the central nervous system that affects both the brain and the spinal cord. Apparently depressed from the debilitating effects of this incurable disease, Mrs. Roberts had, the summer previously, tried to commit suicide by ingesting carbolic acid. Therefore, her husband knew she desired to end her life. On May 23, 1919, Mrs. Roberts asked her husband to mix a quantity of the poison "paris green" in a cup and place it on a chair at her bedside. He complied, and she drank the poison, thereby causing her own death, to which act her husband pleaded guilty and for which he was later convicted of murder. *Id.* at 690-92.

¹³⁹ *Id.* at 693. The court further noted that if distinctions in a defendant's punishment should be made between whether the victim intended to commit suicide or was unwillingly murdered by the defendant, they must be made by the legislature. The reasoning behind this statement is that "[p]urposely or maliciously to kill a human being, by administering to him or her poison, is declared by the law to be murder, irrespective of the wishes . . . of the party to whom the poison is administered. . . ." *Id.*

¹⁴⁰ 335 N.W.2d 27 (Mich. Ct. App. 1983).

¹⁴¹ *Id.* at 31.

¹⁴² *Id.* at 28-29.

sanctionable act under current Michigan law,¹⁴³ since Michigan's state legislature had not classified such conduct as murder.¹⁴⁴

B. *A Michigan Doctor Who Specializes in Death*¹⁴⁵

In the past three years, Michigan's legal system has been unwittingly forced to look anew at the issue of assisted suicide. Janet Adkins, a fifty-four year old Oregon schoolteacher, made an important and extremely private decision during the spring of 1990 that was to have far-reaching public consequences. Mrs. Adkins, a Hemlock Society member,¹⁴⁶ suffered from Alzheimer's disease¹⁴⁷ and consequently decided to end her life.¹⁴⁸ After approaching three doctors in Oregon who refused to help her commit suicide,¹⁴⁹ this happily married mother of three grown sons watched Dr. Jack Kevorkian¹⁵⁰ demonstrate his "suicide machine" on the

¹⁴³ *Id.* at 29-30. The court stated that "[t]he remedy for this situation is in the Legislature. We specifically invite them to adopt legislation on the subject. . . ." *Id.* at 30.

¹⁴⁴ *Id.* Although the court found defendant's conduct to be "morally reprehensible," the lack of legislation covering this conduct required the court to dismiss all charges against the defendant. *Id.*

¹⁴⁵ Dr. Jack Kevorkian, a 65-year old retired Michigan pathologist, carries business cards that read: "Jack Kevorkian, M.D., Bioethics and Obiatry. Special Death Counseling." The doctor defines "obiatry" as going to one's death with the aid of a physician. See FINAL EXIT, *supra* note 75, at 134. Consequently, Dr. Kevorkian has been known throughout the news as "Dr. Death." See, e.g., Edward Walsh, *Kevorkian Charged in Assisted Suicide—Michigan Prosecutor Says He Intends to Force Resolution of Issue*, WASH. POST, Aug. 18, 1993, at A1; Tom Morganthau et al., *Dr. Kevorkian's Death Wish*, NEWSWEEK, Mar. 8, 1993, at 46.

¹⁴⁶ See FINAL EXIT, *supra* note 75 and accompanying text.

¹⁴⁷ Alzheimer's disease generally causes progressive and irreversible destruction of brain cells. It is more specifically defined as "[a] disease characterized by progressive dementia and diffuse cerebral cortical atrophy, . . . loss of neurons, and . . . degeneration in the neurons that remain." GOULD MEDICAL DICTIONARY 57 (4th ed. 1979)

¹⁴⁸ See *Donahue Transcript*, *supra* note 93, at 6; FINAL EXIT, *supra* note 75, at 131.

¹⁴⁹ FINAL EXIT, *supra* note 75, at 132. Although none of these three physicians would directly assist Mrs. Adkins to die, they expressed obvious sympathy with euthanasia. In fact, one of the doctors told Derek Humphrey that he had helped six people to die with drugs over the course of his career. *Id.*

¹⁵⁰ By way of background, Dr. Jack Kevorkian began his medical career as a pathologist during the 1950s. Apparently obsessed with the concept of death, Kevorkian made regular visits to terminally ill hospital patients and peered deeply into their eyes. The doctor's goal was to pinpoint the precise moment that death occurred. From 1960 to 1985, Dr. Kevorkian moved from hospital to hospital, and even went to California to pursue a film project that never succeeded. During his years as a pathologist, through the use of medical journals and pamphlets, Kevorkian propagated his idea of allowing condemned convicts to volunteer for "painless" medical

April 26, 1990 episode of *The Donahue Show*.¹⁵¹ Mrs. Adkins liked the “gentle and certain death with dignity” that Dr. Kevorkian was offering, so she contacted him and he suggested that she come to meet him in Michigan when she was ready.¹⁵²

Dr. Kevorkian video-recorded his first interview with Mrs. Adkins in Royal Oak, Michigan.¹⁵³ Then, on June 4, 1990, in Dr. Kevorkian’s 1968 Volkswagen van parked in a Michigan campsite, Janet Adkins’ life ended through the use of Dr. Kevorkian’s “suicide machine.”¹⁵⁴

experiments that would begin when they were still alive but which would eventually be fatal to the prisoners. See Hosenball, *supra* note 103, at 28-29.

During the 1980s, in an obscure German medical journal Kevorkian outlined his plan for human experiments on the brains of death-row inmates, but suggested that the experiments could also include anyone facing “imminent death,” including “all brain-dead, comatose, mentally incompetent or otherwise completely uncommunicative individuals.” More recently, in television interviews and pamphlets Kevorkian has been stressing his proposal to allow death-row criminals to donate their organs for transplant. *Id.*

¹⁵¹ See FINAL EXIT, *supra* note 75, at 132; *Donahue Transcript*, *supra* note 93, at 6. On *The Donahue Show*, Dr. Kevorkian explained the way his suicide machine works:

The first thing here is a bottle of saline and . . . a needle is put into the vein and a slow drip is started. . . . [A] drip of saline . . . will be started by whoever is in there—a doctor, executioner, layman, nurse, technician and the drip is very slow. It can go on as long as you want. When the person is ready to die, this other end is plugged in the wall. The person has this switch in his hand and just clicks the switch like that—once. The machine then cuts off the saline and starts this second bottle of Pentothal, which will put the patient into a deep coma in 20 or 30 seconds. Everybody here who has had a major operation under anesthesia has been executed that way, except you are revived. . . . Then, the machine, a minute later, will turn on the third solution . . . of potassium chloride. And I’m going to mix in Sucasol Choline [sic], a muscle paralyzer, . . . then when it reaches the heart, [it] will stop the heart. So you’re essentially having in about two minutes a painless heart attack in deep sleep, which is the most humane and dignified way to die.

Donahue Transcript, *supra* note 93, at 6.

¹⁵² See FINAL EXIT, *supra* note 75, at 132.

¹⁵³ *Id.* at 134. During that interview, Dr. Kevorkian was satisfied that Mrs. Adkins was rational in her decision to commit suicide. *Id.* In support of his argument that Janet Adkins really was ready to end her life is a statement made by Dr. Kevorkian to reporters immediately after a Michigan judge had dismissed murder charges against the doctor for his role in Janet Adkins’ death. Dr. Kevorkian stated that “[s]he thanked me as she was going under . . . [and said] ‘[y]ou just make my case known.’” Ronald Kotulak, *Murder Charge Dismissed Against Suicide Doctor*, CHI. TRIB., Dec. 14, 1990, NEWS §, at 1C.

¹⁵⁴ Dr. Kevorkian invented his “suicide machine” in the fall of 1989, then attempted to advertise it in a local medical journal. When the journal refused, he advertised the machine in local newspapers. Apparently, the suicide machine generated

C. *Michigan's Judicial Response to Dr. Kevorkian and His Suicide Machine*

Shocked and disturbed at Dr. Kevorkian's public revelation of his role in Janet Adkins' death, the Michigan judiciary took immediate action to temporarily restrain Dr. Kevorkian from using his suicide machine on others.¹⁵⁵ In a strongly worded opinion, Oakland County Circuit Court Judge Alice L. Gilbert told Dr. Kevorkian that his role in assisting Janet Adkins' suicide "flagrantly violated" all codes and standards of medical practice.¹⁵⁶

In early December of 1990, Michigan Prosecutor Richard Thompson had Dr. Kevorkian arrested and charged with first-degree murder in connection with Janet Adkins' death.¹⁵⁷ Kevorkian, however, took his incarceration in stride.¹⁵⁸ On December 13, 1990, over Prosecutor Thompson's vehement objection, Michigan District Court Judge Gerald McNally dismissed the murder charge

sufficient media attention to warrant Dr. Kevorkian being invited to appear on *The Donahue Show* to demonstrate it. See Zima, *supra* note 91, at 23; FINAL EXIT, *supra* note 75, at 134; *Donahue Transcript*, *supra* note 93, at 6.

¹⁵⁵ On June 8, 1990, four days after Dr. Kevorkian assisted Janet Adkins to commit suicide, a Michigan Circuit Court Judge, the Honorable Alice L. Gilbert, barred Dr. Kevorkian from using his "suicide machine" on anyone else. In fact, to ensure Kevorkian's compliance with the preliminary injunction issued against him, the court took his suicide machine into custody. See Edward Walsh, *Court Bars Use of Suicide Machine; Doctor Who Aided in Woman's Death Denounced; Appeal Planned*, WASH. POST, Feb. 6, 1991, at A7. See also *People ex rel. Thompson v. Kevorkian*, slip op. 90-390963-AZ (Mich. Cir. Ct., Oakland Cty., Feb. 5, 1991).

¹⁵⁶ See Walsh, *supra* note 152. Judge Gilbert went on to state that Kevorkian's "arrogance, coupled with unabashed disregard and disrespect for his profession and its current professional and ethical standards, reveal that his real goal is self service rather than patient service." *Id.* Dr. Kevorkian responded to the temporary injunction by stating that "[p]ersecution is always a prelude to an advance." Kevorkian felt he was being harassed for advocating what will ultimately be viewed as an enlightened approach to the terminally ill. In fact, Kevorkian has stated that in August of 1990 (two months after he assisted his first suicide), nearly 50 additional people asked him to help them end their lives. *Id.*

¹⁵⁷ Sandy McClure et al., *Doctor Who Provided Suicide Machine Jailed; Kevorkian Charged With Murder for Assisting in Death*, DET. FREE PRESS, Dec. 4, 1990, NEWS §, at 1B. Prosecutor Thompson charged Kevorkian because, as he put it, although Janet Adkins had pushed the button that started the lethal drugs flowing into her veins, Kevorkian had provided the drugs, attached the machine to her, and instructed her how to use it - all solely for the purpose of killing her. *Id.*

¹⁵⁸ Dr. Kevorkian bravely told reporters that "[w]hat happens to me is immaterial. The time has come for this thing [physician-assisted suicide]. . . ." *Id.* Kevorkian called his arrest "a charade" and taunted the police detective who arrested him by repeatedly insisting to be handcuffed to "make the charade right to the letter." *Id.*

against Dr. Kevorkian.¹⁵⁹ Judge McNally said the State failed to prove that Kevorkian had planned and carried out Janet Adkins' death, calling on the Michigan legislature to address the issues raised by this case.¹⁶⁰

D. *Dr. Kevorkian Continues to Provide Suicide Assistance*

On October 23, 1991, Dr. Kevorkian performed assisted suicides number two and three on Sherry Miller, age 43, and Marjorie Wantz, age 58,¹⁶¹ for which the doctor was arrested on February 5, 1992 and charged with two counts of first-degree murder.¹⁶² Unlike the December 1990 murder charge, however, these two charges were not immediately dismissed by the Michigan court, even though it acknowledged that Michigan had no law prohibiting assisted suicide.¹⁶³

On November 20, 1991, as a result of his role in the suicides of Janet Adkins, Sherry Miller, and Marjorie Wantz, the Michigan Board of Medicine suspended Dr. Kevorkian's license to practice medicine.¹⁶⁴ His pending double-murder trial and medical license

¹⁵⁹ See Ronald Kotulak, *Murder Charge Dismissed Against Suicide Doctor*, CHI. TRIB., Dec. 14, 1990, NEWS §, at 1C.

¹⁶⁰ *Id.* On the last day of the hearing, a suicide note supposedly signed by Mrs. Adkins was produced. The note read, in part: "This is a decision taken in a normal state of mind and is freely considered. I have Alzheimer's disease and I don't want it to progress any further. I don't want to put myself or my family through any more of this terrible disease." *Id.*

¹⁶¹ See Jesse Washington, *Doctor Charged in Suicide Case: Prosecutor Says He Won't Seek Jail Time*, BERGEN RECORD, Aug. 18, 1993, at A16; Morgenthau et al., *supra* note 145, at 46; *Donahue Transcript*, *supra* note 93, at 1-2. Sherry Miller, who suffered from multiple sclerosis, died by a lethal dose of carbon monoxide; Marjorie Wantz, who had a painful pelvic disease, took a fatal injection alongside Ms. Miller at Ms. Miller's secluded cabin in the Michigan woods. See *id.* Neither Ms. Miller or Ms. Wantz were terminally ill. See William Douglas, *NEWSDAY*, Feb. 29, 1992, NEWS §, at 2.

Since Dr. Kevorkian's "suicide machine" was impounded by the Michigan courts, he now uses carbon monoxide with patients. The way this works is that the doctor provides a cannister filled with carbon monoxide to which a mask is attached that is fitted with a tube and a clip to start the flow of gas. The patient pulls the clip, breathes the carbon monoxide and falls unconscious; death comes within minutes thereafter. See Morgenthau et al., *supra* note 142, at 47.

¹⁶² See Douglas, *supra* note 158, at 2.

¹⁶³ *Id.* Naturally, Oakland County Prosecutor Lawrence Bunting was pleased with District Court Judge James P. Sheehy's decision to allow the case to proceed to trial. Prosecutor Bunting indicated that although "[t]he last judge said what the law should be," Judge Sheehy "followed the law." *Id.*

¹⁶⁴ See Edward Walsh, *Michigan Suspends License of Doctor Who Aided Suicides; Kevorkian Accused of Violating State's Public Health Code*, WASH. POST, Nov. 21, 1991, at A3.

suspension notwithstanding, on May 15, 1992 Dr. Kevorkian assisted Susan Williams, 52, another multiple sclerosis victim, to commit suicide.¹⁶⁵ Later, the Michigan courts again had no choice but to dismiss the Miller and Wantz murder charges against Dr. Kevorkian because Michigan had no specific legislation under which to convict him for these assisted suicides.¹⁶⁶ Disregarding any potential future criminal sanctions, Dr. Kevorkian went on to perform twelve additional assisted suicides from September 1992 through February 1993.¹⁶⁷

E. Michigan's Legislative Response to Dr. Kevorkian

Dr. Kevorkian was either an angel of mercy or a murderer, depending on one's point of view.¹⁶⁸ Michigan's case law on as-

The unanimous decision by the twelve-members of Michigan's Board of Medicine came at the request of Michigan's Attorney General, Frank J. Kelley, based on several violations by Dr. Kevorkian of the state's public health code. In response to the license suspension, Dr. Kevorkian's lawyer, Michael Schwartz, told a Michigan television station that the doctor did not need a medical license to continue assisting suicides because "Dr. Kevorkian can do anything that any unlicensed human being can do if asked for advice." *Id.*

¹⁶⁵ See Morganthau et al., *supra* note 93, at 46. This action by Dr. Kevorkian was in direct contravention to the February 5, 1991 judicial decision by Judge Alice L. Gilbert of the Michigan Circuit Court for the County of Oakland. See *People ex rel. Thompson v. Kevorkian* No. 90-3900963-AZ slip op. at 34 (Mich. Cir. Ct., Feb. 5, 1991).

There, the court ruled that because "the proposed practice of physician-assisted suicide is outside the realm of acceptable medical practice and threatens the integrity of the medical profession . . . Dr. Kevorkian [was] permanently enjoined from employing *any device* to assist a person in committing suicide." *Id.* at 25-27 (emphasis supplied).

¹⁶⁶ See Edward Walsh, *Kevorkian Charged in Assisted Suicide; Michigan Prosecutor Says He Intends to Force Resolution of Issue*, WASH. POST, Aug. 18, 1993, at A1. The decision dismissing these murder charges was rendered by Oakland County Circuit Court Judge David Breck on July 21, 1992. *Id.*

¹⁶⁷ The following are the 12 persons Dr. Kevorkian helped to commit suicide after Janet Adkins, Sherry Miller, and Marjorie Wantz: Susan Williams, 52 (multiple sclerosis); Lois Hawes, 52 (lung cancer); Catherine Andreyev, 46 (cancer); Marcella Lawrence, 67 (heart disease, emphysema); Marguerite Tate, 70 (Lou Gehrig's disease); Jack Miller, 53 (bone cancer, emphysema); Stanley Ball, 82 (pancreatic cancer); Mary Biernat, 73 (breast cancer); Elaine Goldbum, 47 (multiple sclerosis); Hugh Gale, 70 (emphysema, heart disease); Jonathan Grenz, 44 (cancer); Martha Ruwart, 41 (ovarian cancer). See Morganthau et al., *supra* note 142, at 46-47.

¹⁶⁸ See Mark Caro, *Tough News—Angel or Killer? Doctor Helps Ill Patients Die*, CHI. TRIB., April 6, 1993, KIDNEWS §, at 3C. Michigan Prosecutor Richard Thompson has likened Dr. Kevorkian to "Jeffrey Dahmer in a lab coat." *Id.* See also Morganthau et al., *supra* note 142, at 46. Conversely, some people fully support Dr. Kevorkian and,

sisted suicide was disturbingly ambiguous.¹⁶⁹ Clearly, it was time for the Michigan legislature to act, and act it did. First, on December 12, 1991 Michigan's House of Representatives introduced House Bill 5415, known as the "Death with Dignity Act of 1992."¹⁷⁰ This Act, effective November 3, 1992, provided criteria under which persons could request and receive aid-in-dying, and contained an exemption from criminal or civil liability for physicians or health care providers who assisted persons to die in accordance with the Act's requirements.¹⁷¹ Also, the Act specifically did not authorize "mercy killing or any other deliberate act or omission to

although they do not want their loved ones to die, they would like them to die with dignity. See *Donahue Transcript*, *supra* note 93, at 3.

¹⁶⁹ See, e.g., *People v. Campbell*, 335 N.W.2d at 27 (inducing or assisting suicide not a crime where defendant handed gun to victim); *People v. Roberts*, 178 N.W. at 690 (placing poison within terminally-ill woman's reach to enable her to commit suicide was first-degree murder).

¹⁷⁰ See H.B. 5415, 86th Mich. Leg., Reg. Sess. (1991). The purpose of this bill was to provide:

- (a) a process for requesting and authorizing or refusing aid-in-dying;
- (b) that aid-in-dying be provided or not provided in response to a written directive;
- (c) for the revocation of such a directive;
- (d) to exempt certain persons from penalties and liabilities; and
- (e) to prescribe liabilities.

Id. at §§ 3-5, 7, 9 & 19.

¹⁷¹ *Id.* § 3(1)-(4). Michigan H.B. 5415 states that a person who is 18 years of age or older and who is of sound mind may exercise a "directive" to authorize or reject "aid-in-dying." The bill defines "directive" as a document setting forth a patient's wishes concerning the provision of aid-in-dying, *id.* § 2(c), and "aid-in-dying" as the intravenous injection of a substance causing painless and swift termination of life. *Id.* § 2(a).

Section 4(a) to (k) sets forth the detailed conditions which must be met so that aid-in-dying would be provided legally, pursuant to a valid directive. These conditions are, in pertinent part:

- (a) The attending physician has seen the directive. ["Attending physician" is defined as the physician who has primary responsibility for the treatment and care of a patient.]
- (b) The attending physician has treated the patient for at least six months prior to implementing the directive.
- (c) The attending physician and one other physician, after personal examination, have determined the patient to be suffering from both of the following:
 - (i) An incurable, irreversible, and uncontrollable disease or condition which will likely result in death within six months;
 - (ii) Physical pain, the elimination of which would require the regular application or medication that would render the patient unaware of self or environment beyond simple reflect or reaction to noxious stimuli.
- (d) At least 60 days have elapsed since the directive was executed.

end human life, other than aid-in-dying by a physician when voluntarily requested by a conscious patient of sound mind. . . ."¹⁷² Generally, therefore, this new bill (1) provided that knowingly or intentionally causing a person to commit suicide is murder; (2) stated that causing an attempted suicide is murder; and (3) created a new offense called criminal assistance to suicide, punishable by a lesser sentence than that for murder.¹⁷³ Apparently, however, the Michigan courts have interpreted this statute as containing an exemption from criminal liability for physicians (such as Dr. Kevorkian) who assist the suicides of competent patients at the patients' request.¹⁷⁴

Faced with an increasing rise in the number of assisted suicides committed by Dr. Kevorkian, in November 1992 the Michigan Senate introduced Senate Bill 211¹⁷⁵ which amends Public Act 270 of 1992 in two ways. First, the bill creates the Michigan "Com-

- (e) At least 30 days after the directive was executed, the patient spontaneously at least twice communicated to the attending physician the patient's desire that the directive be carried out. . . .
- (h) The decision of the attending physician to administer aid-in-dying is reviewed and approved by at least two members of a three-member committee to ensure compliance with the provisions of this section. At least one member of the committee shall not be a physician and no member of the committee shall have any prior relationship or acquaintance with the patient.
- (i) The patient is conscious and of sound mind at the time the directive is carried out.
- (j) The directive is carried out by a physician present throughout the entire procedure until the death of the patient.
- (k) Implementation of the directive is videotaped.

Id. § 4(a)-(e), (h)-(k).

¹⁷² *Id.* § 18. In addition, § 19(1) of the Act sets out conduct which, if it causes the patient's death, shall constitute murder under MICH. COMP. LAWS §§ 750.316 to -.317 (1993). This conduct includes: "(a) Providing aid-in-dying knowingly against the wishes of the patient; (b) Forging or falsifying a directive with the intent to cause aid-in-dying contrary to the wishes of the patient; (c) Coercing or fraudulently inducing a patient to execute a directive. . . ." *Id.* § 19(1).

Further, the Act provides that knowingly providing aid-in-dying in violation of the Act will constitute a felony which is punishable by up to five years in prison or a fine not to exceed \$10,000, or both. *Id.* § 19(2). Additionally, the Act indicates that negligent violation of the provisions of the Act shall constitute a felony which is punishable by up to two years in prison or a fine not to exceed \$4,000, or both. *Id.* § 19(3).

¹⁷³ See generally Marcinko, *supra* note 81, at 609.

¹⁷⁴ See *supra* note 165 and accompanying text.

¹⁷⁵ See S.B. 211, 87th Mich. Leg., Reg. Sess. (1993). This Bill was introduced by Senators Dillingham, Schwarz, Welborn, Dingell and Geake. The purpose of S.B. 211 was to "amend . . . Act No. 270 of the Public Acts of 1992, entitled 'An act to create

mission on Death and Dying" to study the issue of assisted suicide and to develop and submit recommendations regarding assisted suicide to the legislature within 15 months after the effective date of Act 270 (March 31, 1993).¹⁷⁶ Second, the bill amended Public Act 270 to create the new crime of criminal assistance to suicide.¹⁷⁷ Specifically, S.B. 211 makes assisted suicide a felony punishable by a maximum of four years in prison and/or a fine not to exceed \$2,000.¹⁷⁸ In its final form, Public Act 270 bans assisted suicide after February 25, 1993 and instructs the study commission to report to the legislature at the end of fifteen months of the Act's effective date, March 31, 1993.¹⁷⁹ However, the amended Act will

the Michigan commission on death and dying; . . . to prohibit certain acts pertaining to the assistance of suicide; [and] to prescribe penalties. . . ." *Id.*

¹⁷⁶ See S.B. 211, § 4(1). The Michigan Commission on Death and Dying consists of 20 regular members and 20 alternate members. Many of the Committee's members are from the medical field, and include persons representing: Michigan Association for Retarded Citizens; Health Care Association of Michigan; Michigan Association of Osetopathic Physicians & Surgeons; Michigan Head Injury Survivor's Council; Michigan State Medical Society; Michigan Nurses Association; Michigan Psychological Association; Michigan Association of Suicidology; Michigan Hospice Organization; Michigan Psychiatry Society.

The remaining members/alternates consist of persons who represent the following organizations: Michigan Council for Independent Living; National Association of Social Workers; Hemlock of Michigan; Right to Life of Michigan, Inc.; ACLU of Michigan; Citizens for Better Care; Michigan Senior Advocates Council; American Association of Retired Persons; State Bar of Michigan; Michigan Non-Profit Homes Association; Prosecuting Attorneys Association of Michigan. See LEGISLATIVE SERVICE BUREAU, LANSING, MICH., MICHIGAN COMMISSION ON DEATH AND DYING MEMBERS AND ALTERNATE MEMBERS (on file with the *Seton Hall Legislative Journal*).

Interestingly, the Committee member representing Michigan's State Bar is Wayne County Prosecutor John D. O'Hair, who reluctantly issued felony charges against Dr. Jack Kevorkian in August, 1993 for Kevorkian's role in assisting the suicide of Thomas Hyde, age 30. See Washington, *supra* note 161, at A16.

¹⁷⁷ See S. MARGULES, S.B. 211: SECOND ANALYSIS, SFA BILL ANALYSIS (Senate Fiscal Agency, Lansing, Mich.), Feb. 18, 1993, at 1.

¹⁷⁸ See S.B. 211 § 7. Under § 7(1), persons are guilty of criminal assistance to suicide if they: "(a) Provide the physical means by which the other person attempts or commits suicide; (b) Participates in a physical act by which the other person attempts or commits suicide." *Id.* § 7(1).

Section 7(2) indicates that § 7(1) does not apply to withholding or withdrawing medical treatment. *Id.* § 7(2). Section 7(3) indicates that § 7(1) does not apply to prescribing, dispensing or administering medications or procedures if the intent is to relieve pain or discomfort and not to cause death, even if the medication or procedure may hasten or increase the risk of death. *Id.* § 7(3).

¹⁷⁹ See *Michigan Bans Assisted Suicide*, LIFE AT RISK, (Nat'l Conference of Catholic Bishops/Secretariat For Pro-Life Activities, Washington, D.C.), Dec. 1992, at 1 [hereinafter *Michigan Bans Assisted Suicide*]. Thus, the Act will go out of effect, unless the

be repealed six months after the date the Commission on Death and Dying makes its recommendations to the Legislature in accordance with Section 4 of the Act.¹⁸⁰ Finally, since this temporary, amendatory act is apparently an emergency measure to militate against Dr. Kevorkian, it was to take effect retroactively on February 25, 1993.¹⁸¹

VII. *Response to Michigan's Assisted-Suicide Ban*

A. *ACLU Challenges the Michigan Law's Constitutionality*

On March 1, 1993, the American Civil Liberties Union (hereinafter "ACLU") of Michigan filed a lawsuit against the Michigan Attorney General on behalf of ten individuals.¹⁸² In its complaint, the ACLU sought to invalidate Michigan's temporary ban on assisted suicide on grounds of unconstitutionality.¹⁸³ The ACLU's substantive due process argument is that Michigan's new law deprives persons of a constitutionally guaranteed fundamental

legislature votes to make it permanent, on December 31, 1994, which is six months after the commission's deadline for recommendations to the legislature, June 31, 1994. *Id.*

¹⁸⁰ See S.B. 211, § 7(5). The study commission is to make recommendations to the legislature 15 months after the effective date of the Act, or on June 31, 1994. *Id.*

¹⁸¹ *Id.* Although this Bill was not actually effective until March 31, 1993, Dr. Kevorkian's blatant statements that he would not stop helping others die caused the Michigan Legislature to recognize an urgent need to put their prohibition on assisted suicide into "immediate effect" as of February 25, 1993. See *Michigan Bans Assisted Suicide*, *supra* note 179, at 1.

¹⁸² See *Hobbins v. Attorney Gen.*, 61 U.S.L.W. 2764 (Mich. Cir. Ct., Wayne Cty., May 20, 1993) [hereinafter *Hobbins v. Attorney Gen.*]. This suit was brought on behalf of the following ten individuals: Teresa Hobbins, 42 (cancer patient who wanted "assistance in terminating her life"); Marie DeFord (desires to assist Hobbins' suicide); Kenneth Shapiro, 50, (cancer patient who wants "physician assistance to terminate his life"); Kenneth Weinberger, M.D., (rheumatologist who believes law will infringe on his "best professional judgment and patients' rights to use pain medicine"); William Drake (pharmacist who fills pain medication prescriptions); Elliot Luby, M.D. (psychiatrist who gives potentially suicidal patients drugs that can be lethal in large doses); Norman Bolton, M.D. (surgeon who prescribes pain medications that could hasten death); Kenneth Tucker, M.D. (oncologist); Kathryn Upton, M.D. (president of Michigan Society of Internal Medicine who counsels patients "who express interest in the voluntary self-termination of life"); and D. Elliot Grysen, M.D., J.D. (claims duty to give clients "legal advice and information regarding voluntary termination of life.") See *The ACLU and the Hobbins Case: Anatomy of a Lawsuit*, LIFE AT RISK, (Nat'l Conference of Catholic Bishops/Secretariat For Pro-Life Activities, Washington, D.C.), Feb./Mar. 1993, at 3 [hereinafter *Anatomy of a Lawsuit*].

¹⁸³ See *Anatomy of a Lawsuit*, *supra* note 181, at 3.

right—the right to die.¹⁸⁴ Michigan Circuit Court Judge Cynthia D. Stephens concluded that the Michigan statute banning assisted suicide¹⁸⁵ does just that, finding that two of the ten plaintiffs have a “right to die” protected by both the state and federal constitutions.¹⁸⁶ In voiding the statute on procedural due process grounds, the court opined that a person’s right to self-determination, which is rooted in the U.S. Constitution’s Fourteenth Amendment and in the Michigan Constitution, includes the right to choose to cease living.¹⁸⁷

However, Michigan’s Attorney General Frank Kelley appealed this decision to the Michigan Court of Appeals, asking that the law be reinstated while the appeal is pending.¹⁸⁸ On June 22, 1993, by a vote of two to one, the Court of Appeals complied with the Attor-

¹⁸⁴ See *Excerpts from the ACLU’S Response Brief* (ACLU, New York, N.Y.) (on file with the *Seton Hall Legislative Journal*), wherein the ACLU states as follows:

Plaintiffs’ substantive constitutional challenge is premised on the concept of personal autonomy embodied in the “liberty” protected by the due process clauses of the Michigan and federal Constitutions, and in the right to privacy guarantee . . . [which] embraces the right of a competent terminally ill person to make decisions about the voluntary termination of life, including the decision to hasten the inevitable end of life in order to avoid continuing and unbearable pain and suffering.

Id.

See also *ACLU Challenges Michigan Assisted Suicide Law; Case Filed on Behalf of Cancer Patients, Doctors*, ACLU MICHIGAN NEWS RELEASE (ACLU/ACLU Fund of Michigan, Detroit, Mich.), Mar. 1, 1993. The press release includes the following statement by the ACLU’s Executive Director, Howard Simon:

This is an area in which the state must respect our personal freedom and autonomy. No government official or private organization should be able to dictate how much pain or suffering we must endure before being allowed to bring an end to our life . . . This is an area where the government and private interest groups do not belong - it is a decision that must be left to patients, their families and their doctors.

Id. at 1 (quoting Howard Simon, Executive Director, ACLU of Michigan).

¹⁸⁵ 1993 Mich. Pub. Act 270 (codified at MICH. COMP. LAWS ANN. § 752.102 (West 1993)).

¹⁸⁶ Plaintiffs Hobbins and Shapiro, the court found, “demonstrate a substantial likelihood of success on their claim of an impermissible interference with their liberty interests.” See *Hobbins v. Attorney Gen.*, *supra* note 182, at 7. See *Michigan Judge Finds Right to Suicide, LIFE AT RISK*, (Nat’l Conference of Catholic Bishops/Secretariat For Pro-Life Activities, Washington, D.C.), May 1993, at 1.

¹⁸⁷ See *Hobbins v. Attorney Gen.*, *supra* note 182, at 7-9. However, Judge Stephens also said she did not know “whether the statute places an undue burden or restriction on [the right to die].” *Id.* at 9.

¹⁸⁸ See *Michigan Law Reinstated — For Now, LIFE AT RISK*, (Nat’l Conference of Catholic Bishops/Secretariat For Pro-Life Activities, Washington, D.C.), June 1993, at 1.

ney General's request and reinstated the law.¹⁸⁹ In late December 1993, in yet another ruling on the issue of the constitutionality of Michigan's law banning assisted suicide, the Michigan Circuit Court struck down the assisted suicide statute as unconstitutional.¹⁹⁰ That decision has also been appealed to the Michigan Court of Appeals. Oral arguments were heard before that court on January 6, 1994, and a final decision was expected by February 18, 1994.¹⁹¹

B. *The Effect of Legislation upon Dr. Kevorkian's Activities*

Dr. Kevorkian has repeatedly "thumbed his nose" at Michigan's controversial law banning assisted suicides¹⁹² by continuing to help people to die notwithstanding the legislature's ban on such activity.¹⁹³ Immediately after committing his seventeenth assisted

¹⁸⁹ *Id.* The ACLU lamented the law's reinstatement, stating through a representative that it was disappointed that the court chose "to suspend the rights of competent adults who are suffering from a terminal illness." In addition, Dr. Kevorkian's defense attorney, Geoffrey Feiger, believes the law's reinstatement was based on "fear and utter stupidity." *Id.* at 1 (citing ASSOCIATED PRESS, June 23, 1993).

¹⁹⁰ *Court TV* (Court TV cable television broadcast, Jan. 6, 1994) (report of Dan Abrams, Court TV reporter) (videotaped recording of broadcast on file with the *Seton Hall Legislative Journal*) [hereinafter *Court TV Broadcast*]. In holding that Michigan's ban on assisted suicide is unconstitutional, Michigan Circuit Court Judge Richard Kaufman opined that "[w]hen a person's quality of life is significantly impaired by a medical condition [that] is extremely unlikely to improve . . . and the decision to end one's life is freely made without undue influence, such a person has a constitutionally protected right to commit suicide." *Id.* (quoting Opinion of Judge Richard Kaufman, Michigan Circuit Court.)

¹⁹¹ On January 6, 1994 the Michigan Court of Appeals heard appeals on the following three cases, which have been consolidated into one appeal: *People v. Kevorkian* (appeal from murder charges filed against Dr. Kevorkian before Michigan's assisted suicide law was enacted; *Hobbins v. Attorney Gen.* (appeal brought by the ACLU asserting that Michigan's assisted suicide statute was improperly drafted and violates the "title/object" requirement of the Michigan Constitution; and *People v. Kevorkian* (appeal by the Michigan County Prosecutor's Office of Judge Richard Kaufman's recent decision rendering the assisted suicide law unconstitutional). *Court TV Broadcast*, *supra* note 189.

The three judge panel hearing these appeals consisted of Judge Clifford Taylor, Judge E. Thomas Fitzgerald, and a visiting judge, Judge Shelton. *Id.*

¹⁹² See Morganthau et al., *supra* note 145, at 46, wherein Dr. Kevorkian is quoted as having said that "the Michigan Legislature is 'medically ignorant'" and that he does not care about the law. *Id.*

¹⁹³ On May 16, 1993, Dr. Kevorkian assisted Ronald Mansur, age 54, Kevorkian's sixteenth assisted suicide; on August 4, 1993 he assisted Thomas Hyde, Jr., age 30, his seventeenth assisted suicide; and on September 9, 1993 he assisted Donald O'Keefe, age 73, his eighteenth assisted suicide. See Jesse Washington, *Doctor Charged in Suicide*

suicide of Thomas Hyde, Jr., Dr. Kevorkian publicly confessed to taking part in Mr. Hyde's death.¹⁹⁴ For the third time in three years, Michigan prosecutors arrested and criminally charged Kevorkian for his role in helping someone to die.¹⁹⁵ On August 17, 1993, Wayne County Prosecutor John D. O'Hair, relying on Michigan's new law, brought criminal charges against Dr. Kevorkian for assisting in Mr. Hyde's death on August 4, 1993.¹⁹⁶

Case, BERGEN RECORD, Aug. 18, 1993, at A16; *Accused Suicide M.D. "Assists" Yet Another*, STAR-LEDGER (Newark), Sept. 11, 1993 at —. Since Dr. Kevorkian's suicide machine was impounded by the Michigan courts, he has been assisting suicides through a system whereby the patient inhales a lethal dose of carbon monoxide through a mask. At least one of these suicides by carbon monoxide poisoning, that of Thomas Hyde, Jr., took place in the doctor's van parked in a remote area in Michigan. See Washington, BERGEN RECORD, *supra* at A16.

¹⁹⁴ See *Kevorkian: Forcing The Issue*, LIFE AT RISK, (Nat'l Conference of Catholic Bishops/Secretariat For Pro-Life Activities, Washington, D.C.), July/Aug. 1993, at 1. Specifically, Dr. Kevorkian dared Michigan police to arrest him for violating the new anti-assisted suicide law by admitting: "I assisted Thomas Hyde in a merciful suicide. There's no doubt about that. I state it emphatically. I will always do so when a patient needs it because I'm a physician." *Id.*

¹⁹⁵ See Walsh, *supra* note 145, at A1. See also Washington, *supra* note 193, at A16. A warrant was issued charging Dr. Kevorkian with assisting the suicide of Thomas Hyde, age 30, on August 4, 1993. Mr. Hyde, who had suffered from Lou Gehrig's disease, died after inhaling carbon monoxide from a canister in Kevorkian's van, which was allegedly parked on Belle Isle near the Detroit River. Washington, *supra* note 193, at A16.

¹⁹⁶ See Walsh, *supra* note 145, at A1. Kevorkian's attorney, Geoffrey Feiger, was quoted as saying he welcomed the prosecution because it was an opportunity to demonstrate that the law was the product of "the religious nuts and lunatics we've elected" to the Michigan legislature. Also, Feiger indicated that as a defense to the charges he would assert that the new law was unconstitutional. *Id.* Unlike Kevorkian's public confession regarding Mr. Hyde's suicide, see *supra* note 194 and accompanying text, Kevorkian admitted nothing about his involvement in Donald O'Keefe's suicide, causing Feiger to claim that the prosecutor "doesn't have an iota, a scintilla, a speck of evidence" that Kevorkian broke Michigan law. See *Michigan Faces Triple Threat in Kevorkian Case*, LIFE AT RISK, (Nat'l Conference of Catholic Bishops/Secretariat For Pro-Life Activities, Washington, D.C.), Sept. 1993, at 3 [hereinafter *Michigan Faces Triple Threat*].

Ironically, Prosecutor O'Hair is a member of the state's Commission on Death and Dying and said he would propose making assisted suicide legal under certain conditions. Prosecutor O'Hair has stated that if he contracted Lou Gehrig's disease or a similar affliction whereby he became bedridden and needed other people to feed him, he would not have a moment's hesitation about making the decision to end his life. Mr. O'Hair went on to state that, unlike abortion, "[i]t's an individual enslaved in his own body." See Washington, *supra* note 173, at A-16.

In spite of the Michigan legislature's 1992 law attempting to criminally sanction persons who assist suicides, on May 2, 1994 a Michigan jury cleared Dr. Kevorkian of all criminal charges filed against him in connection with the assisted suicide of Thomas Hyde in August of 1993. See David Margolick, *Jurors Acquit Dr. Kevorkian in*

On September 9, 1993, Dr. Kevorkian assisted his eighteenth suicide,¹⁹⁷ and was later arrested and then arraigned for that assisted suicide in the Michigan Circuit Court on October 27, 1993.¹⁹⁸ Kevorkian claimed he was willing to plead "no contest" to assisting in this suicide in exchange for a hearing on the constitutionality of Michigan's new law banning assisted suicide.¹⁹⁹ On November 5, 1993 Dr. Kevorkian was again arrested and charged with violating Michigan's controversial assisted suicide law.²⁰⁰ After spending three days in jail, Dr. Kevorkian was released through the payment of his bond by a Michigan attorney.²⁰¹ On November 29, 1993, while out on bail, the doctor was charged again with assisting his nineteenth suicide²⁰² and was taken into custody on November 30, 1993 after a Michigan judge signed an arrest warrant against

Suicide Case, N.Y. TIMES, May 3, 1994, at A1. The jury, consisting of nine women and three men, interpreted Michigan's assisted-suicide statute as allowing physicians to administer deadly drugs to persons to ease their anguish and suffering. Thus, the jury acquitted Dr. Kevorkian because it believed the doctor did not intend to help Mr. Hyde commit suicide, but that he instead administered a deadly dose of carbon monoxide to Mr. Hyde to relieve his pain and suffering. *Id.* at B8, col. 3.

¹⁹⁷ The eighteenth person who received suicide assistance from Dr. Kevorkian is Donald O'Keefe, a retired 73-year old Ford Motor Company worker who had bone cancer. Mr. O'Keefe was married but his wife was out of town at the time. He was found dead in his home in Redford Township, Michigan with a mask and tube over his nose and mouth, and a carbon monoxide canister nearby. See *Assisted Suicide M.D. "Assists" Yet Another*, STAR-LEDGER (Newark), Sept. 11, 1993 at —. An explanation of Dr. Kevorkian's carbon monoxide procedure is set forth *supra* at note 160.

¹⁹⁸ *Kevorkian Seeking Court Hearing on Law*, NEWS TRIB., Oct. 27, 1993, at A-8.

¹⁹⁹ *Id.* At his arraignment, Dr. Kevorkian stood silently upon hearing the charge against him. Judge Richard Kaufman entered a plea of "not guilty" on Kevorkian's behalf. *Id.*

²⁰⁰ See *"Dr. Death" is Holding Fast to Jail Hunger Strike*, STAR-LEDGER (Newark), Nov. 7, 1993, § 1, at 34. Once in jail, Dr. Kevorkian immediately began a hunger strike and his attorney, Geoffrey Feiger, indicated that his client would refuse to cooperate with authorities and resist any attempts to move or feed him while he is in custody. *Id.*

²⁰¹ See *Lawyer Posts Bail for Kevorkian*, NEWS TRIB., Nov. 9, 1993, at A10. John A. DeMoss, the attorney who paid Dr. Kevorkian's \$20,000 bail, does not represent Kevorkian. Mr. DeMoss stated that he does not support the doctor or his backers because they have "reduced the issue of suicide and assisted suicide to a hysterical bunch of rhetoric that has no meaning." However, he is sympathetic to terminally ill people who wish to end their lives. Dr. Kevorkian had refused to post his own bond because he believed that to do so would force him to buy his own freedom. *Id.*

²⁰² See *Kevorkian is Charged Again with Aiding a Suicide*, N.Y. TIMES, Nov. 30, 1993, at A18. This time, the charges were brought against Dr. Kevorkian in Oakland County, Michigan by Prosecutor Richard Thompson, for the death of Merian Ruth Frederick. Ms. Frederick, a 72-year old woman from Ann Arbor, Michigan, died on October 22, 1993 in an apartment rented by Dr. Kevorkian. *Id.*

the doctor on November 29, 1993.²⁰³ Approximately one week before Dr. Kevorkian's arrest, he had witnessed his twentieth suicide²⁰⁴ for which he has not yet been criminally charged.

C. *Future Legislative Support for Dr. Kevorkian?*

Recently, Michigan's Commission on Death and Dying, established on December 15, 1992 by Public Act 270, has recommended to the legislature a permanent policy on assisted suicide.²⁰⁵ The Commission apparently endorses assisted suicide and wants to confine its discussions to simply determining *when* it will be legally permissible.²⁰⁶ In fact, a bill has been introduced by Michigan's

²⁰³ After being forced by police officers to stand outside his home while the officers performed an apparently warrantless search of the doctor's Royal Oak, Michigan apartment for evidence, Dr. Kevorkian was instructed to accompany them to the police station. However, after Kevorkian waited several hours at the office of his attorney, Geoffrey Feiger, for an arrest warrant to be issued, Feiger told the prosecutor's office that he would surrender Kevorkian to the police the next morning at 9:00 a.m., which he did. *Id.*

See also *Police Once Again Seeking Kevorkian*, NEWS TRIB., Nov. 30, 1993, at A10. Merian Frederick, 72, had been suffering from amyotrophic lateral sclerosis, or Lou Gehrig's disease, and died by inhaling carbon monoxide in Dr. Kevorkian's presence in a Royal Oak, Michigan apartment. Prosecutor Richard Thompson told reporters that his investigators faced a "conspiracy of silence" in that neither Kevorkian nor friends or relatives of Ms. Frederick would answer police questions. However, the prosecutor said he had built a strong case with evidence, including the carbon monoxide canister that killed Ms. Frederick. *Id.* Dr. Kevorkian has refused to post bond or to eat solid food while in jail. See *Kevorkian Returns to Jail, Refusing to Pay His Bond*, N.Y. TIMES, Dec. 1, 1993, at B10.

²⁰⁴ On November 22, 1993 Dr. Ali Khalili, 61, a rehabilitative medicine specialist from Oak Brook, Illinois, died in Dr. Kevorkian's presence in a Royal Oak, Michigan apartment rented by Dr. Kevorkian. Dr. Khalili, who died after breathing carbon monoxide, was diagnosed in January 1990 with multiple myeloma, a type of bone cancer. According to Michael Schwartz, Dr. Kevorkian's attorney, the disease had spread through Dr. Khalili's skeleton and he was in constant pain despite the use of a morphine pump that regularly injected him with the powerful pain-killer. When police officers received a call from an unidentified man who reported a "medicide," Dr. Kevorkian's term for physician-assisted suicide, they arrived at the apartment and found Dr. Khalili dead on a couch. See *Kevorkian Sees 20th Suicide*, NEWS TRIB., Nov. 23, 1993, at A7. Although Dr. Kevorkian rents the apartment in which both Merian Frederick, who died on October 22, 1993, and Dr. Khalili were found, Dr. Kevorkian lives in the apartment next door. *Id.*

²⁰⁵ See *Michigan Faces Triple Threat*, *supra* note 195, at 3.

²⁰⁶ *Id.* However, the legislature is not bound by the recommendations of the study commission, especially since the commission's bias toward assisted suicide has become clearly evident so early in the process. *Id.*

House of Representatives²⁰⁷ to repeal Act 270, thereby allowing an individual to assist a terminally ill person to commit suicide.²⁰⁸ This proposed amendment, however, directly contradicts the Michigan judiciary's view that the fundamental rights of privacy and self-determination do not include the right to direct another person to kill, or the right of a third person to participate in ending the life of another.²⁰⁹

VIII. *Response of Other States to Dr. Kevorkian's Activities*

In early 1993 several other states introduced bills into their legislatures in a specific attempt to criminalize assisted suicide. In Indiana, a bill similar to Michigan's new assisted suicide ban was introduced on January 12, 1993.²¹⁰ This bill was approved by the Indiana Senate in March by a 41 to 9 vote, and by its House of Representatives on April 7, 1993 by an 85 to 12 vote.²¹¹ In other states, such as Ohio,²¹² Tennessee, Connecticut, North Carolina,

²⁰⁷ See H. 4841, 87th Mich. Leg., Reg. Sess. (1993) (introduced by Representative Jaye on June 10, 1993 and referred to the Committee on Judiciary).

²⁰⁸ See H.J. Res. R, 87th Mich. Leg., Reg. Sess. (1993), introduced by Representative Jaye on June 10, 1993 and referred to the Committee on Judiciary, which proposes an amendment to Article I, § 25 of the Michigan Constitution of 1963 which would read: "Article I, Sec. 25: An individual may assist in the suicide of a terminally ill person who voluntarily expresses the specific intent to terminate his or her life." *Id.*

²⁰⁹ See *People ex rel. Thompson v. Kevorkian* No. 90-3900963-AZ slip op. at 26-27 (Mich. Cir. Ct., Feb. 5, 1991). See also *supra* note 165 and accompanying text.

²¹⁰ H. 1416, 108th Ind. Leg., Reg. Sess. (1993) provides that "a person who intentionally assists, aids, or abets another human being in committing suicide commits assisting suicide, a Class C felony." *Id.* The bill also inserts the crime of assisted suicide into various statutes. *Id.*

²¹¹ See *States Act on Assisted Suicide, LIFE AT RISK 2* (Nat'l Conference of Catholic Bishops/Secretariat For Pro-Life Activities, Washington, D.C.), Apr. 1993 [hereinafter *States Act on Assisted Suicide*].

²¹² See H. 18, 120th Ohio Leg., Reg. Sess. (1993-94), which was introduced on January 15, 1993. The stated purpose of this bill is "[t]o enact section 2903.09 of the Revised Code to create the offense of causing another to commit or attempt suicide and the offense of coercing suicide, and to declare an emergency." *Id.* § 1. H. 18 states, in pertinent part, that:

(A) No person, with knowledge that another person intends to commit suicide or intends to attempt to commit suicide, shall purposely do any of the following:

(1) Provide the physical means by which the other person commits or attempts to commit suicide;

(2) Participate in any physical act by which the other person commits or attempts to commit suicide;

and South Carolina, for example,²¹³ similar bills have been introduced and are under consideration. Dr. Kevorkian had previously stated that he had his eye on Ohio as a state with no ban against assisted suicide.²¹⁴ That may explain why the proposed Ohio legislation specifically states that it was "hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety."²¹⁵ Rhode Island's response to Dr. Kevorkian was not to hurriedly enact an assisted suicide law but rather to create a special legislative commission to study assisted

(3) Counsel or otherwise assist the other person in planning to commit suicide or to attempt to commit suicide;

(4) Aid or abet the other person in committing suicide or attempting to commit suicide. . . .

. . . .

(D) It is an affirmative defense to a charge of a violation of division (A) of this section that, at the time of the alleged violation, the defendant was a physician . . . and the defendant administered any medical procedure, treatment, intervention, or other measure to the other person . . . for the purpose of diminishing his pain or discomfort and not for the purpose of causing his death, even though the medical procedure, treatment, intervention, or other measure may hasten or increase the risk of the other person's death.

Id.

²¹³ See S. 872, 98th Tenn. Leg., 1st Reg. Sess. (1993) (introduced Feb. 4, 1993); H. 1113, 98th Tenn. Leg., 1st Reg. Sess. (1993) (introduced Feb. 17, 1993); H. 7247, 1993 Conn. Leg., Reg. Sess. (introduced Mar. 15, 1993); H. 417, 140th N.C. Leg., Reg. Sess. (1993) (introduced Mar. 11, 1993); H. 3551, 1993 S.C. Leg., Statewide Sess. (introduced Feb. 23, 1993). Each of these bills creates the criminal offense of assisted suicide; Tennessee's bills, however, adds "assisting suicide as grounds for license denial, suspension or revocation of certain health care professionals." S. 872, 98th Tenn. Leg., 1st Reg. Sess. (1993) and H. 1113, 98th Tenn. Leg., 1st Reg. Sess. (1993).

²¹⁴ See *States Act on Assisted Suicide*, *supra* note 211, at 3. Apparently, Dr. Kevorkian was aware that Ohio had no law banning assisted suicide, and such a law was not, in fact, introduced into the Ohio legislature until January 15, 1993. *Id.* See also H. 18, 120th Ohio Leg., Reg. Sess. (1993-94); *infra* note 215 and accompanying text.

²¹⁵ See H. 18, 120th Ohio Leg., Reg. Sess. § 2 (1993-94). This section goes on to state that committing and attempting to commit suicide are against the state's public policy, and that

other states have experienced violations of a similar public policy by one or more physicians who have counseled individuals contemplating suicide and provided them with the physical means to commit suicide; and that, to preclude any physician or other person engaging in the practice of assisting suicides in this state, it is imperative that stringent criminal penalties be enacted into law. Therefore, this act shall go into immediate effect [on 1/5/93].

Id.

suicide and the right to die in that state.²¹⁶

In Texas, on the other hand, Dr. Kevorkian's actions have had the opposite effect. Texas currently has a statute that addresses the issue of "aiding suicide," making an offense thereunder a third-degree felony.²¹⁷ Texas Senator Gonzalo Barrientos, however, has introduced a bill in the legislature that would *permit* active euthanasia in that state after certain legal requirements were complied with.²¹⁸

Texas is not the only state that recently has seriously considered legalizing assisted suicide. In California, a "euthanasia initiative," called Proposition 161, was placed on the state's November 3, 1992 ballot, primarily with the help of the "Californians Against Human Suffering."²¹⁹ However, California's ten million voters rejected Proposition 161 by a 54 to 46 percent vote against the euthanasia initiative.²²⁰

²¹⁶ See S. 784, R.I. Leg., Reg. Sess. (1993), introduced to the Senate Committee on Special Legislation on February 11, 1993.

²¹⁷ See TEX. PENAL CODE ANN. § 22.08 (West 1980). This statute, which was repealed effective Sept. 1, 1994, was entitled "Aiding Suicide," and states that:

(a) A person commits an offense if, with intent to promote or assist the commission of suicide by another, he aids or attempts to aid the other to commit or attempt to commit suicide.

(b) An offense under this section is a Class C misdemeanor unless the actor's conduct causes suicide or attempted suicide that results in serious bodily injury, in which event the offense is a felony of the third degree.

Id.

The repealed version of this statute, which takes effect on September 1, 1994, amends section (b) to state that "[a]n offense under this section is a Class C misdemeanor unless the actor's conduct causes suicide or attempted suicide that results in serious bodily injury, *in which event the offense is a state jail felony.*" TEX. PENAL CODE ANN. § 22.08 (West 1994) (emphasis supplied).

²¹⁸ See *States Act on Assisted Suicide*, supra note 210, at 2. However, the bill specifically requires the prior approval of a Texas probate judge before a terminally ill patient could ask a physician to administer lethal medication or treatment to the patient. Senator Barrientos stated in the March 30, 1993 HOUSTON CHRONICLE that a constituent drafted the bill because he was horrified by the suicide of a neighbor who used a shotgun. *Id.*

²¹⁹ This group, founded in 1986 with a grant from The Hemlock Society, see *supra* note 75 and accompanying text for background information on The Hemlock Society, collected over 500,000 signatures of California residents in order to place its euthanasia initiative on the state's November 3d ballot. See *Euthanasia Legislation: New Battles in the States*, LIFE AT RISK 3 (Nat'l Conference of Catholic Bishops/Secretariat For Pro-Life Activities, Washington, D.C.), Apr. 1992.

²²⁰ See *Proposition 161 Defeated*, LIFE AT RISK 1, (Nat'l Conference of Catholic Bishops/Secretariat For Pro-Life Activities, Washington, D.C.), Nov. 1992. Interestingly, this was the same percentage of votes by which Washington State voters in 1991 struck

IX. Current Assisted Suicide Law in The Netherlands and England

A. The Netherlands

An analysis of assisted suicide law in the United States must also necessarily include a look at the way this issue is dealt with in the Netherlands. The Netherlands is generally perceived as having the most lenient stance of all countries on suicide and physician-assisted suicide.²²¹ Yet, while no provisions for criminally sanctioning suicide or attempted suicide are contained in the Netherlands' Penal Code,²²² assisted suicide is a culpable act in that country.²²³ Although the Dutch legislature has not formally legalized voluntary active euthanasia,²²⁴ Dutch courts have long allowed physician-assisted suicide for patients whose suffering is unbearable and perpetual, and whose prognosis is hopeless.²²⁵ In a recent landmark

down a similar initiative proposed by the "Washington Citizens for Death with Dignity." *Id.* See also *California To Vote On Assisted Suicide*, LIFE AT RISK 1, (Nat'l Conference of Catholic Bishops/Secretariat For Pro-Life Activities, Washington, D.C.), Apr. 1992.

²²¹ See Morgan et al., *supra* note 17, at 12.

²²² *Id.* (citing Marian H.N. Driesse et al., *Euthanasia and the Law in the Netherlands*, 3 ISSUES L. & MED. 385, 386 (1988)).

²²³ *Id.* (citing Henk Rigter, *Euthanasia in the Netherlands: Distinguishing Facts From Fiction*, HASTINGS CTR. RPT. SPEC. SUPP. 31 (Jan./Feb. 1989)). However, assisted suicide is a crime only if the suicide was successful in ending his or her life. The punishment imposed on a suicide assister is not more than three years in prison sentence and a fine not to exceed 25,000 guilders. *Id.* at 12 n.66.

²²⁴ See Celoz Cruz, *supra* note 20, at 385.

²²⁵ See 3 LIFE AT RISK No. 3, at 1 (*National Conference of Catholic Bishops, Washington, D.C.*), Apr. 1993 (citing REUTERS, Apr. 21, 1993). In practice, therefore, physicians who assist patients to end their lives are generally immune from criminal prosecution as long as they comply with the following conditions:

The patient must:

- (1) expressly and repeatedly request to die, leaving no room for reasonable doubt about his or her desire to do so;
- (2) be suffering severe physical or mental anguish with no prospect of relief;
- (3) make a well-informed, free, and enduring decision; and
- (4) refuse other care or otherwise have exhausted all other treatment options.

The physician must:

- (1) consult at least one other doctor and is advised to keep a record of the course of events; and
- (2) invoke a defense of *force majeure* if indicated.

See Celoz Cruz, *supra* note 20, at 385 n.117 (citing Henk Rigter, *Euthanasia in the Netherlands: Distinguishing Facts from Fiction*, HASTINGS CTR. REP. (Jan./Feb. 1989, at Spec. Supp. 31, 32)).

decision, a Dutch court acquitted a physician of any criminal liability for helping a physically healthy but mentally depressed woman to commit suicide.²²⁶ In addition, after twenty years of judicially-created euthanasia law, major parties in the Dutch Parliament have recently agreed upon a plan to formally legalize the practice of physician-assisted suicide.²²⁷ Doctors must comply with certain guidelines, however, in order to perform assisted suicide with complete impunity.²²⁸ The Dutch Parliament's action has had a two-fold result: a drastic increase in reported cases of adult euthanasia and a new public debate on the involuntary killing of handicapped infants.²²⁹

B. *England*

The British Medical Association acknowledges the profoundly difficult dilemma facing doctors whose patients ask them to assist in their suicides. The organization also declares, however, that the taking of human life is wrong and therefore does not believe the current law prohibiting physician-assisted suicide should be changed.²³⁰ In one recent English case where a physician gave a lethal dose of drugs to a seventy year old patient with intractable pain who had asked to die, the doctor was convicted of attempted

²²⁶ See 3 LIFE AT RISK No. 3, at 1 (*National Conference of Catholic Bishops, Washington, D.C.*), Apr. 1993 (citing ASSOCIATED PRESS, Apr. 22, 1993). The court stated that "[w]hat the cause of her suffering was—illness or otherwise—is not important." The 50-year old woman was depressed because her two sons had died and her alcoholic husband frequently abused her. *Id.*

²²⁷ See 3 LIFE AT RISK No. 1 (*National Conference of Catholic Bishops, Washington, D.C.*), Jan. 1993, *News Briefs* col., at 2.

²²⁸ *Id.* The required Dutch guidelines are as follows:

- (1) Patients must be terminally ill and in unbearable suffering, and make a "considered request" to be killed;
- (2) Doctors must consult a colleague before complying; and
- (3) Doctors must report all euthanasia cases to the coroner.

Id. at 2.

²²⁹ See 2 LIFE AT RISK No. 8 (*National Conference of Catholic Bishops, Washington, D.C.*), Aug. 1992, *News Briefs* col., at 2. Since the Parliament has virtually legalized euthanasia in the Netherlands, Dutch doctors reported 339 mercy killings in January 1992 alone, compared with the 591 reported in all of 1991. In addition, Dutch doctors "quietly" give lethal doses of medication to about ten newborn babies a year, most of whom had brain damage due to lack of oxygen before or during birth or were born with severe congenital defects. *Id.* (citing SACRAMENTO BEE, Aug. 8, 1992).

²³⁰ See 3 LIFE AT RISK No. 1, at 4 (*National Conference of Catholic Bishops, Washington, D.C.*), Jan. 1993 (citing REUTERS and ASSOCIATED PRESS, Nov. 18, 1992).

murder but given a twelve-month suspended sentence.²³¹ Conversely, in another case the president of the British High Court's family division ruled that the family and doctors of a twenty-two year old comatose man who survived only through a feeding tube could have the tube removed, thereby enabling the man to die.²³²

X. Conclusion

It has been asserted that in a voluntary physician-assisted suicide it is the patient, not the physician, who commits the final act.²³³ In fact, the majority of, if not all, physician-assisted suicides occur only after patients have actively enlisted their physicians' help to end their suffering. In addition, this country's highest court continues to affirm the constitutionally guaranteed right to privacy and self-determination found in *Griswold v. Connecticut*²³⁴ and *Roe v. Wade*.²³⁵ Certainly, then, all persons, and perhaps especially those who sincerely wish to die, are entitled to have their personal autonomy respected by the law and by society.

Unfortunately, a posture on the issue of physician-assisted suicide by our legislatures and courts that favors rights of privacy and bodily integrity may also lead us down a potentially fatal slippery slope. Do we as a society really want more physicians to adopt the adamant right-to-die philosophy of Dr. Jack Kevorkian, and to emulate his recent actions? Unless the answer to this question is in the negative, it is foreseeable that, in the near future, many non-terminally ill persons faced with the uphill climb of recovery from an illness or disease will simply give up. Instead of fighting to survive, many persons would instead opt for a quick and painless end to their travail in the form of physician-assisted suicide. Certainly, we do not want this kind of quitter's mentality to develop into a societal norm. Suicide of any kind should not be glorified or euphe-

²³¹ *Id.*

²³² *Id.* Some commentators called this "legalized euthanasia," but the court replied that, to his family, the man was already "dead." A final appeal of this decision by the state's Official Solicitor was dismissed by the House of Lords. *Id.*

²³³ *QUILL*, *supra* note 82, at 141. Dr. Quill believes that "the physician's participation is indirect" and argues that "[n]o one should *have* to be alone at death to protect anyone." *Id.* (emphasis in original). The term "voluntary euthanasia," as defined by Dr. Quill, means that "the act of putting the person to death is the end result of the person's own free will." *Id.* at 142.

²³⁴ 381 U.S. 479 (1965).

²³⁵ 410 U.S. 113 (1973).

mized; it should be perceived as what it really is: giving up the fight.

Because the issue of physician-assisted suicide is such an emotionally charged one, and if left unregulated can have deadly consequences, it earnestly needs to be addressed by our legislators, judges, physicians, ethicists, theologians and private citizens. Obviously, this issue presents a predicament. On the one hand, every member of society (and especially physicians, with whom we entrust our very lives) must respect and obey the laws that our legal system enacts and interprets. On the other hand, persons such as Dr. Kevorkian argue that our lawmakers and judges must also respect the decisions of competent persons who deliberately and voluntarily choose to die with the help of others. Unless an appropriate balance can be struck between a state's compelling interest in preserving human life and an individual's compelling interest in dying with dignity through a physician's assistance, the dilemma of assisted suicide will continue to plague American society for many years to come.