

Nat Hentoff

Euthanasia: Another Warning From the Surgeon General

Surgeon General C. Everett Koop has had no trouble getting press attention for his refusal to engage in euphemisms with regard to curbing the spread of AIDS. He has been less successful in making the citizenry aware of another of his preoccupations in which he also disdains newspeak.

In lectures and articles, Dr. Koop has been warning of the increasing acceptance by the courts and the general public of "the intentional killing, by omission or direct action, of those whose lives are considered of insufficient value to maintain." The surgeon general means euthanasia—passive and active—for those who are "biologically tenacious" in that they "do not die within an acceptable time frame as determined by their families or society."

Another critic of the burgeoning "right-to-die" movement is University of Michigan law professor Yale Kamisar, an expert on constitutional law with special focus on the due process protections of the Fourth Amendment. Kamisar points out that before the 1976 court decision disconnecting Karen Ann Quinlan's

respirator, proponents of euthanasia stressed that they wanted death to be mercifully hastened only when it was voluntary, when the patient was suffering unbearable pain and was near death. Karen Ann Quinlan could not make any decisions for herself,

was not suffering unbearable pain, nor, though incurable, was she close to death.

In 1985, a court went further in expanding the power to let someone else die. Claire Conroy, a nursing home patient, was senile but capable of showing pleasure while receiving care: smiling during a back rub, for instance.

A relative wanted to remove her feeding tube, but the elderly lady died while the case was still going up the judicial ladder. Since it concerned an important issue, the New Jersey Supreme Court considered the case anyway. It did impose a number of safeguards regarding euthanasia, but, Kamisar notes, the court

ruled for the first time that a feeding tube could be considered optional treatment and be removed from patients under certain circumstances.

Since then, there have been other cases in which judges have decided that biologically tenacious patients,

though not in acute pain or near death, have stayed too long. In New Jersey, Nancy Ellen Jobes, allegedly in a persistent vegetative state, was examined by Dr. Allan Ropper, professor of neurology at Harvard Medical School, who found that she could perform certain movements requested of her and show resultant satisfaction. The judge, however, preferred to go with contrary testimony and ruled that she be denied food and water. The case is now before the New Jersey Supreme Court.

Another current case could mark a significant breakthrough for partisans of euthanasia.

SWEET LAND OF LIBERTY

In Arizona, 70-year-old Mildred Rasmussen, diagnosed as in "a chronic vegetative state," responded to painful stimuli, could swallow on her own and according to some testimony was aware of her surroundings. Although she died of complications following pneumonia in 1986, her case has acquired a life of its own because it has continued to expand its boundaries.

At one point, the Arizona Intermediate Court of Appeals ruled that even if a patient were not terminally ill, life-saving treatment (including food and fluids) could be discontinued under certain conditions: the attending physician would have to determine that the patient is comatose and his condition is incurable and irreversible.

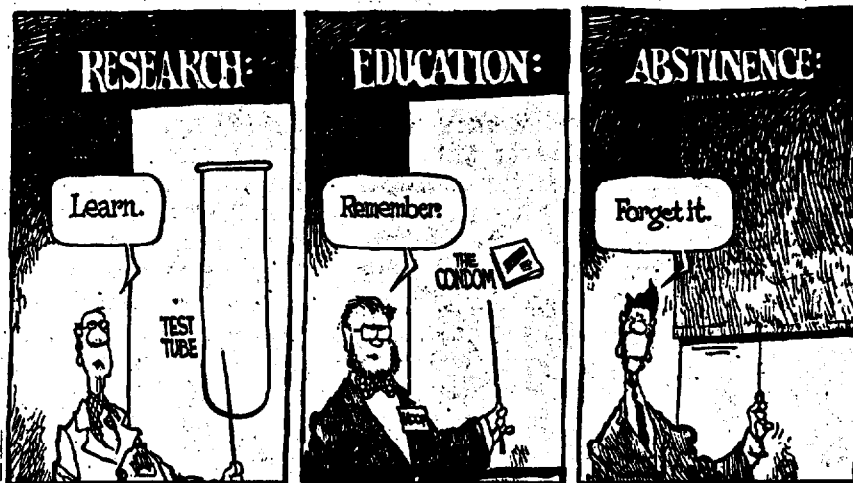
When this situation exists, those empowered by the courts to tell the physician that he can let the person die constitute a considerable list—ranging from, among others, a spouse to an adult child to a majority vote of the adult children to the nearest living relative of the patient; and if none of the above is available, the attending physician has the vote.

If this way of terminating the biologically tenacious is approved by the Arizona Supreme Court, these decisions by those on the list will henceforth be virtually without any further judicial supervision, and therefore without due process. The power to end life will have become "privatized."

The Arizona Supreme Court will also consider whether this privatization of euthanasia should be extended beyond patients in comas to any patient regarded by physicians as "incompetent or incapacitated." Accordingly, a number of alarmed disability rights organizations have entered the case. They see the possibility of people being dispatched because they are mentally retarded or otherwise defenseless.

"A few years ago," Kamisar observes, "people would have been astounded at the idea of removing food and water from a patient." But now that way to death has the imprimatur of the American Medical Association.

CURES FOR AIDS



BY MACNELLY FOR THE CHICAGO TRIBUNE