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Donald M. Wright

thus the strong chance of a faulty diagnosis. It must be accentuated that the press of business is not a defense against abandonment claims.

Abandonment is extremely serious. Not only does it involve a breakdown of medical ethics and dedication to the field, but it also endangers a human life. Therefore it is imperative to punish the offender more harshly in the future by either assessing punitive damages against the physician or revoking his license to practice medicine or instituting criminal charges against him. Such actions might have a deterrent effect on future charges of abandonment.

RICHARD ROSENTHAL

Criminal Aspects of Suicide in the United States

Suicide has been denounced as a great sin by some and eloquently defended as a natural right of man, as early as 1644, by the English cleric John Donne.[1] It has been a common and highly dramatic form of death throughout the history of man. In 1972, there were 24,280 reported suicides in this country, which is equivalent to a 11.7 suicide rate per 100,000 population.[2] This number of suicides was almost indentical to the number of homicides in the same year.[3] There is little doubt that the suicide rate in the United States will increase in the forthcoming years, if the historical correlation between times of economic trouble and an increased suicide rate continues.[4] Suicide has become a common form of death in the United States.

In dealing with the criminality of suicide, there are essentially three basic areas of importance: the act itself, attempted suicide, and the act of a second person aiding or encouraging a suicide. Each of these areas will be examined in detail within the various jurisdictions of the United States.

SUICIDE

At English common law, suicide was a felony with strict punishment and considered an immoral crime.[5] The punishment included a mutila-

1. J. Donne, *Biathantos* (1644).
2. U.S. Bureau of the Census, *Statistical Abstract of the United States*, #86, Table 62 (1974).
3. *Id.*
4. U.S. Bureau of the Census, *Historical Statistics of the United States*, Table Series B-114-128 (1960).
5. Hales v. Petit, 1 Plowden 253, 75 Eng. Rep. 387 (1562); State v. Willis, 255 N.C. 473, 121 S.E.2d 854 (1961).

tion of the suicide's body, burial of the suicide within a crossroads, and driving of a stake into the heart of the body. In addition to this unusual treatment of the corpse, all property left by the suicide was forfeited to the Crown. This harsh treatment of suicides was abolished in England[6] in 1824 and there never has been any recorded instance of this type of burial in the United States. In fact it was this extreme punishment at common law that caused one state, Michigan, to delete the common law crime of suicide from its' criminal law.[7]

The latter part of the punishment, forfeiture, never occured in this country, mainly because the newly independent American states incorporated prohibitions against such treatment in their constitutions.[8] Newer states continued this prohibition and at least one state, West Virginia, enacted a statute that specifically abolished forfeiture of a suicide's estate.[9]

With the removal of the common law punishments, which only brought shame and poverty to the suicide's survivors, there was little the courts could do to deter suicide. Confronted with the problem of maintaining a law under which the criminal could not be punished, most American courts ignored suicide as a common law crime. In the many states that later eliminated the common law, by a total reliance on statutory law, suicide was either ignored or not contemplated and the common law against suicide was ineffective in those states.[10]

At various times, however, some American courts have had occasion to decide the criminal status of suicide. Suicide, by judicial decision, has been held not to be criminal in at least seven states.[11] The common legal thread running throughout these decisions was the futility of the law; it being impossible to punish the criminal.

Several courts have decided at one time or another that, although not punishable, suicide was a crime.[12] These decisions were based on the common law and were felt to be necessary in order to have a valid legal basis to consider attempted suicide a crime also.[13] Today, only South Carolina and Alabama still hold suicide a crime, although there has been no prosecution for suicide in these states.

The New Jersey Legislature reacted favorably to their state courts' holding on suicide by enacting a statute, in 1957, making attempted

6. 4 *Geo. IV*, c.52, s.1 (1824).
7. 1943 OP. ATT'Y GEN. 342 (Mich.).
8. For example, N.C. CONST. art. 11, § 1.
9. W. VA. CODE § 61-11-4 (1923).
10. *See* WIS. STAT. ANN. § 939.10 (1958), and HAWAII REV. LAWS, § 1 (1955).
11. California, Illinois, Maine, New York, Ohio, Pennsylvania and Texas.
12. Alabama, New Jersey, North Carolina and South Carolina.
13. State v. Willis, *supra* note 5.

suicide illegal.[14] Thus, by implication, the legislature upheld the court ruling that the suicide act itself was criminal, if not punishable. However, in 1971 the New Jersey Legislature repealed the earlier law which criminalized attempted suicide.[15] This signifies a strong legislative intent that the suicide act should be stripped of illegality. No cases concerning suicide have appeared in New Jersey since 1971, but one could strongly suspect, based on the actions of the legislature, that the New Jersey Supreme Court may reverse itself on the issue. Since the essential reasoning holding suicide illegal has become moot due to legislative action, removing the illegality of attempted suicide, future decisions are subject to major scrutiny.

The North Carolina Legislature abolished both the crimes of suicide and the attempt, by a 1973 statute,[16] thus nullifying an earlier North Carolina Supreme Court decision.[17] Indiana has held, in an interesting case, suicide to be unlawful ("against the law of God and man") but not criminal.[18] There are no state statutes concerning the illegality of the suicide act, thus South Carolina and Alabama are the last state courts holding suicide to be illegal.

ATTEMPTED SUICIDE

Based on recent studies, attempts at suicide are at least eight times as numerous as successful suicides.[19] At common law, attempted suicide was punished as a misdemeanor. At present, however, only three states record statutes against attempted suicide; Texas,[20] Oklahoma,[21] and Washington.[22]

Attempted suicide has been declared criminal in an Indiana case,[23] where the court refused to extend criminality to the suicide act itself. The Illinois court has decided a case suggesting, in dicta, that it would hold as did Indiana as to the attempt.[24] Since at common law an act itself must be criminal if the attempt at such an act is to be considered criminal, it would seem a strong defense against attempted suicide could be made in Indiana and Illinois, on the basis that the act is not criminal. Upon the same theory, it would be reasonable to assume that attempted

14. N.J. STAT. ANN. § 2A-170-25-6 (1957).
15. N.J. STAT. ANN. § 2A-85-5.1 (1971).
16. N.C. GEN. STAT. ch. 14, § 17.1 (Supp. 1973).
17. State v. Willis, *supra* note 5.
18. Wallace v. Indiana, 232 Ind. 700, 116 N.E.2d 100 (1953).
19. S. FINCH & E. POZNANSAI, ADOLESCENT SUICIDE, at IX (1971).
20. VERNON'S TEX. STAT. ANN. art. 609 (1965).
21. OKLA. STAT. ANN. tit. 21, § 812 (1958).
22. WASH. REV. CODE § 9:80:220 (1961).
23. Wallace v. Indiana, *supra* note 18.
24. Royal Circle v. Achterrath, 204 Ill. 594, 68 N.E. 492 (1903).

suicide would be illegal in both South Carolina and Alabama; the two states where the suicide act itself is a crime.

Massachusetts has held attempted suicide criminal, but not punishable.[25] This came about because the Massachusetts statute, which sets out the punishment for all attempts at criminal activity, bases the attempt punishment upon the punishment for the crime attempted.[26] Since suicide cannot be punished in Massachusetts, or elsewhere, the attempted suicide cannot be punished. This logic has been followed most notably by the Maine courts,[27] and at least twelve other states, which determine the punishment for a criminal attempt in the same fashion as Massachusetts.[28]

Sometimes a suicide will attempt suicide and fail in his attempt, but in doing so kills another unintentionally. In those states where suicide is a felony, the felony-murder rule would adjudge such an unintentional killing as murder. South Carolina has upheld a murder conviction of a person who caused the death of a second party while failing to kill himself.[29] The court based its opinion on the theory that the suicide attempt was an attempted felony and the resulting death would fall under the felony-murder rule. Indiana[30] and Massachusetts,[31] states in which suicide is not a crime, also have held that a person is guilty of murder if he kills another while attempting to kill himself.

On the other hand, an Iowa murder conviction was reversed on the grounds that suicide was not a felony in Iowa and death as a result of an attempted suicide could not be subject to the felony-murder rule.[32] In jurisdictions holding as Iowa, it would seem the proper charge for an attempted-suicide killing would be involuntary manslaughter.

Evidence of attempted suicide by a defendant after an arrest may be used against the defendant in a criminal trial.[33] It is generally allowed by the courts to show consciousness of guilt, and the use of such evidence is widespread in the United States. Only North Dakota has precluded such

25. Massachusetts v. Mink, 123 Mass. 422, 25 Am. R. 109 (1877); Massachusetts v. Dennis, 105 Mass. 162 (1870).

26. MASS. ANN. LAWS ch. 274 § 6 (1959).

27. May v. Pennell, 101 Me. 56, 64 A. 885 (1906).

28. ALASKA COMP. LAWS ANN. § 65-2-5 (1949); CAL. PENAL CODE § 664 (1956); FLA. STAT. ANN. § 776.04 (1944); KAN. STAT. ANN. § 21-101 (1964); MINN. STAT. ANN. § 610-27 (Supp. 1960); MO. ANN. STAT. § 556.150 (1953); MONT. REV. CODE ANN. § 94-4711 (1947); N.H. REV. STAT. ANN. §§ 590:5:6 (1955); ORE. REV. ANN. § 161.090 (1959); UTAH CODE ANN. § 76-1-31 (1953); VT. STAT. ANN. tit. 13 § 9 (1959); W. VA. CODE ANN. § 6120 (1961).

29. State v. Levelle, 34 S.C. 120, 13 S.E. 319 (1891).

30. Wallace v. Indiana, *supra* note 18.

31. Massachusetts v. Mink, *supra* note 25.

32. Iowa v. Campbell, 217 Iowa 848, 251 N.W. 717 (1933).

33. 22 A.L.R.3d 840 (1968).

evidence from being introduced in a criminal trial.[34] The only requirements to be met by the state in order to introduce such evidence is that the evidence is legally relevant to the case at hand and the state must allow a defendant to introduce testimony detailing his account of the attempt.[35]

As a result of the recent social trends recognizing suicide as a mental illness, it is doubtful that one would be held as a criminal if he attempted suicide. It is more likely that one would be committed to a mental facility. Involuntary hospitalization statutes are widespread among the states and a court's justification for the commitment would be founded upon the need to protect the person from himself. This is a valid basis for involuntary mental hospitalization under most applicable state statutes.[36] In such situations, it is constitutionally questionable whether one can be held against his will in a mental hospital regardless of evidence that he will or will not repeat the suicide attempt. Holding a person without evidence of future sucidial tendencies would be a futile endeavor, due to the lack of an apparent mental illness; a legal prerequisite for involuntary mental hospitalization.

Should a court take it upon itself, even where there is evidence of possible suicidial behavior, to make a moral judgment and try to prevent the desired suicide? Can not suicide be a logical and dignified death of a sane person, rather than presumed to be an action of one insane? Should the police power of the state extend to prevent, for example, a terminally ill cancer patient from ending his life to avoid pain and deterioration? Each case must be judged on its own merits, not treated as a mental illness or a crime per se by the courts. It is frivolous indeed to assume that insanity is the cause of all suicide attempts.

A recent Connecticut case turned down the request of a mental patient to be released from a state hospital because the court had found threats of suicidal behavior, the amputation of his foot, on the part of the patient.[37] There was no other evidence offered to show the court the presence of a mental illness, besides the above incident. However, in this case the court saw the main purpose in the hospitalization as protecting the person from himself and denied the release. As there has been grave professional doubt concerning the effectiveness of institutional treatment for preventing suicide,[38] it seems this protection-from-self theory might lack the validity the court presumed it to possess.

34. State v. Condotte, 7 N.D. 109, 72 N.W. 913 (1897).

35. People v. Carter, 48 Cal.2d 737, 312 P.2d 665 (1957).

36. For example, D.C. CODE ANN. § 21-545(b) (1967).

37. Maycock v. Martin, 157 Conn. 56, 245 A.2d 574, *cert. denied*, 393 U.S. 1111 (1969).

38. Subcommittee on Mental Health Services, Cal. Assembly Interim Committee on Ways and Means, *The Dilemma of Mental Commitments in California*, A Background Document 152-55 (undated).

In light of a recent United States Supreme Court case,[39] holding that effective treatment must be offered an involuntary mental patient in a state hospital or the patient must be released, unless he is dangerous to others, it seems a patient who has attempted suicide but shows no present suicidal threats should be released. If a patient really desires to kill himself, it is doubtful he can be halted, even in a mental hospital. Without effective treatment for those who attempt suicide, a mental hospital would be hard-pressed to justify holding a patient against his will.

AIDING SUICIDE

At common law, an aider to a suicide was treated as a principal of the crime if he was present at the suicide itself. If absent, he was considered an accessory before the fact.[40] However, as stated earlier, only two states still follow the common law on suicide. Many states have enacted statutes which make the aiding and abetting of suicide a crime.[41] But, in states where there are no penal statutes concerning suicide,[42] the criminality of aiding in a suicide must be based upon the criminal status of the suicide act and attempt.

May a state punish an aider to the act if it does not hold the act itself as a crime? One court in Texas[43] held that, since suicide was not a crime in Texas, it could not punish an aider to a suicide, absent a criminal statute to the contrary. This was based on the common law principal that the act itself must be criminal if the aider is to be subject to criminal liability.

However, even in the absence of such a statute, some courts have held persons who aid in a suicide, by providing the means of death, guilty of

39. Donaldson v. O'Conner, 43 U.S.L.W. 4929, 493 F.2d 504 (1974).

40. Mahan v. Alabama, 168 Ala. 70, 53 So. 89 (1910).

41. ALASKA STAT. § 11.15.050 (1949) (aiding treated as manslaughter); ARK. STAT. ANN. § 41-2211 (1947) (aiding treated as murder); WEST ANN. CAL. CODE, PENAL § 401 (1905) (aiding a felony); CT. GEN. STAT. ANN. § 53a-56 (1971) (treated as manslaughter); DEL. CODE ANN. tit. 11 § 645 (1953) (a felony); FLA. STAT. ANN. § 782.08 (Supp. 1975) (a felony); MINN. STAT. ANN. § 609.215 (1931); MISS. CODE ANN. § 97-8-49 (1942) (a felony); VERNON'S ANN. MO. STAT. § 559.080 (1934) (treated as manslaughter); REV. CODE OF MONT. § 94-5-106 (Supp. 1973 MONT. CRIM. CODE OF 1973) (a felony); N.D. CENT. CODE ANN. §§ 12-33-103, 12-33-07 (1960); N.M. STAT. § 40A-2-5 (1963) (a felony); MCKINNEY'S CON. LAWS OF N.Y. ANN. § 120.30 (1967) (felony); OKLA. STAT. ANN. tit. 21 §§ 813-18 (1958); ORE. REV. STAT. § 163.115(3) (1973) (treated as manslaughter); PURDON'S PA. STAT. ANN. § 2505 (1972); LAWS OF PUERTO RICO ANN. tit. 33 § 1385 (1937) (felony); S.D. CODE § 22-16-37 (1939); WASH. REV. CODE § 980.030 (1961); WIS. STAT. ANN. § 940.12 (1955).

42. Alabama, Arizona, Colorado, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Ohio, Rhode Island, South Carolina, Tennessee, Utah, Vermont and Wyoming.

43. Sanders v. Texas, 54 Tex. Crim. 101, 112 S.W. 68 (1908).

murder.[44] One might suggest that such a conviction, void of statutory authority crimalizing such aid, rests upon weak judicial logic.

Most state statutes on aiding criminal acts prohibit the aiding of a second person in the commission of a crime at common law or by statute.[45] In North Carolina, where the common law on suicide is abolished and there is no statutory prohibition of suicide, there appears to be no legal basis to punish one aiding in a suicide. However, it is possible that a court, in such a precarious position, may punish an aider to a suicide. The court could view the death of the suicide as a homicide and base the punishment of the aider on the state homicide statute. This would be a questionable action by the court, but homicide statutes in certain states are so broad as to lend themselves to an interpretation encompassing an aider to suicide.[46]

States maintaining statutes prohibiting aiding in an suicide, attempt to do so to discourage the actions of those who might encourage a suicide in order to advance personal motives. An inheritance, ridding one's self of a burdensome dependent, or an attempt to disguise a homicide, could lead a person to aid or abet another who kills himself; absent a punishment deterrence. The reasons for these statutes are founded upon sound medical evidence that most suicides are very indecisive,[47] and actual encouragement or aid in obtaining the method of suicide might cause many suicides to complete the act, who would otherwise waiver.

The existence of suicide-aiding criminal statutes might give rise to a problem in the area of euthanasia. Euthanasia is not free from criminal liability in any state, but the increasingly favorable social view toward such acts might cause some courts to review the illegality of euthanasia.

An opportunity for such judicial review could ripen in a jurisdiction statutorily prohibiting aiding in a suicide. If a physician, upon the request of a patient for euthanasia, ceases his medical aid and lets the patient die, could not the physician face a charge of aiding in a suicide, in those jurisdictions where this crime exists?

In a District of Columbia case,[48] a federal court held that where a patient refuses medical treatment in a hospital, the patient could be subject to criminal arrest; if he is within a jurisdiction where attempted suicide is illegal. Thus, if the patient can be arrested for attempted suicide, it follows that the physician could be arrested for aiding in the

44. Burnett v. Illinois, 204 Ill. 208, 68 N.E. 505 (1903); Michigan v. Roberts, 211 Mich. 187, 178 N.W. 690 (1920); Aven v. Texas, 122 Tex. Crim. 478, 277 S.W. 1080 (1925) (a conflict with the Texas case in note 43).

45. For example, N.C. GEN. STAT. ch. 14 § 5 (1852).

46. N.Y. PENAL CODE § 125 (1965).

47. Hirsh, *Suicide, Part Four*, 4 MENTAL HYGIENE 384 (1960).

48. Application of the President and Directors of Georgetown College Inc., 331 F.2d 1000, *cert. denied*, 377 U.S. 978 (1964).

suicide. The same court went on to state that, in the absence of a suicide-attempt criminal statute, the patient refusing treatment could be free from all criminal conduct. Therefore, in a jurisdiction with a statute prohibiting the aiding of suicide, but with no statute against the attempt, a physician could be subject to arrest; while the patient who requested the euthanasia is free from such a threat. It would appear the physician would be subject to criminal charges, in those jurisdictions prohibiting the attempt or aiding of a suicide, regardless of the criminal status of the patient. In the future, states which desire to legalize euthanasia not only must release physicians from homicide liability, but also from liability extending from criminal suicide-aiding laws; in order to avoid a catastrophic conflict.

CONCLUSION

The criminal laws concerning the suicide act and attempt have never been numerous, while those prohibiting the aiding of suicide are more widespread. In recent years, at least four states have abolished the suicide act and attempt as crimes.[49] In the few states retaining such violations, there have been no recent prosecutions for these crimes. Granted the mental state of many suicides, it would be doubtful whether the danger of criminal liability would be an effective deterrent. However, the laws concerning aid to suicides do punish conduct which is not in the public interest and, as such, these laws should be retained and not removed; as, for the most part, the laws dealing with the suicide act and attempt have been.

DONALD M. WRIGHT

Ravin v. State: Marijuana Use in the Home Protected by Right of Privacy

INTRODUCTION

The Supreme Court of Alaska recently announced a progressive, enlightened and unprecedented ruling in *Ravin v. State*.[1] The extensive well-written opinion, declaring that possession and use of marijuana in the home by adults is protected by the constitutional right of privacy, is a vanguard among the cases in which the right of privacy has been

49. New Jersey, North Carolina, North Dakota and South Dakota.

1. 537 P.2d 494 (Alas. Sup. Ct. 1975).