Letter from . . . Chicago

Death by judiciary order

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"I wouldn't make a downright lawyer o' the lad,—I should be sorry for him to be a raskill."—GEORGE ELLIOTT, *The Mill on the Floss.*

It is perhaps difficult to write dispassionately about the constant intrusions of the legal profession into the practice of medicine, a subject I have already discussed once before (4 October 1980, pp 926-7). Yet what is one to think of thugs roaming the streets unpunished and the backlog in the criminal courts mounting to high heaven while judges tinker with respirators and ponder on the indications for dialysis? Even some of the legislators in Congress are now beginning to think that the courts are all too often exceeding the bounds of their prerogatives in a variety of social issues. And perhaps indicative of the courts' prevailing preoccupations was the New York judge, admittedly atypical, who, bored with this mundane business of sentencing, recently expressed his ennui by allowing a convicted man to determine the duration of his sentence by tossing a coin.

Even Mr Warren Burger, the United States chief justice, has now concluded that all is not well with the legal profession. Warning that the courts can no longer cope with the steady avalanche of new cases, and criticising the law schools for "steeping their students in an adversary tradition rather than in the skills of resolving conflicts," he recently called for a greater use of arbitration for certain cases of divorce, child custody, adoption, landlord and tenant conflict, and personal injury. Litigation is expensive, time consuming, and leaves behind a trail of "litigation neurosis," said Mr Burger, and the courts cannot hope to retain the public's confidence if they let disputes drag on for years. Yet the public has also become more litigious, even more so than in the days of Jarndyce *v* Jarndyce, as shown by the man who sued to recover the fees he paid for an abortion after his neighbour's dog jumped over the fence and seduced his thoroughbred puppy.

With regard to medical practice, however, we are often reminded that not only do too many lawyers spoil the United States,[1] but that they view the current milking of the medical profession through trumped up malpractice cases as an increasingly profitable business. Nor are the legislatures, being made up mostly of attorneys, about to rush into a tort reform. With 253 lawyers in Congress and as high a representation in the State legislatures, the legal profession would appear to have created and maintained a privileged class. Judges, too, remain lawyers first, only too well aware that some day they may be off the bench earning a living in law practice. What use then to complain that the predominance of lawyers in government is unfair, and that no profession should be allowed to rig the legal and economic system in its favour?

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Detached but passionate

Yet so skewed are the prevailing arrangements that doctors are constantly being told that they must not play God, while judges, being "detached but passionate," always may. Not that judges do not occasionally slip from their Olympian heights. In recent years more complaints than ever have been filed against judges—for forgetting about a case, using foul language, drinking, making obscene phone calls, growing marijuana, for nepotism or sexual improprieties. Even one of the Supreme Court justices had recently to be admitted to a Washington hospital to be "detoxified" from a mood-elevating drug taken to relieve his backache.[2] One might be almost tempted to suggest that our God-like judges should submit samples of blood for analysis before being allowed to make those vital life and death decisions that mortal doctors are clearly not competent to make.

It is particularly difficult to understand why the courts should be so eager to intervene in cases where patients are clearly competent to express their own desires. One wonders why it should have been necessary to debate in court the case of a 70-year-old union official, unable to speak but capable of signifying that he wished to die, before the hospital felt safe to accede to his demands and have the respirator turned off. And when a doctor upbraided his mother's nephrologist for wanting to place his 87-year-old mother on dialysis,[3] did he realise that failure to do so could be construed as manslaughter? So the long shadow of the law now hangs over the practice of medicine; every doctor worries about being sued for not resuscitating, intubating, or defibrillating; and the nation's hospitals are filled with incurable patients kept alive by extraordinary means at enormous cost. For it is easier to insert a peritoneal catheter into a hopelessly unconscious patient than risk confrontation with a judge.

No less distasteful is the alternative of death by judicial order. Thus we read how in West Virginia a 76-year-old woman with terminal cirrhosis, bloated with ascites, requested her physician to "unplug the equipment" and let her die peacefully. The children, seven of them, were divided in their opinion as to what should be done. Six children went before the circuit court requesting an injunction to deny the hospital permission to "pull the plug." The seventh, a daughter, said she could not understand why her mother's wish should not be granted. During the court proceedings the doctor said he believed in life. The judge said that he was torn by the request and went to the hospital to make rounds. The patient was not improved by his visit. The judge returned to his chambers, presumably to search for precedents and write a momentous decision. During the next hearing, the doctor interrupted the proceedings with the news that he had received a message that the poor woman's pupils were fixed and dilated. This indicates "brain death," he said. The six disputing children, on being informed that their mother was "brain dead," withdrew their petition for a permanent injunction against "pulling the plug." The judge granted the patient's wish on being informed that she was already "brain dead." And the brain-dead woman "died nine minutes after the

plug on the respirator that continued her ability to breathe was pulled."

It is this type of "detached but passionate investigation on an individual patient basis" that in the opinion of the legal profession is needed before a comatose patient is allowed to die. The details, embodied in the 1980 decision by Judge Milton Mollen, require that the diagnosis of brain death should be confirmed by three other doctors, that the attorney general and the district attorney should be notified, that a guardian should be appointed to protect the patient's interests, and that all parties should be heard in court before a decision is made.[4] In several other recent cases the judges have also affirmed the courts' prerogative to make the final decision, even though this may be unrealistic. "Society can ill afford the emotional and financial costs of going to court to get a court order allowing discontinuance of life support system," said recently the president of the Los Angeles County Medical Society, as his society (like many others) was struggling to come up with guidelines on withdrawal of life supports. Yet until such guidelines are developed and fully accepted, doctors remain in a bind unless they choose to make the judge a permanent fixture in the intensive care unit.

Slow-code

The other approach, undoubtedly more common than most would care to admit, is to do things quietly and make decisions "in the closet"—what the nurses in one particular intensive care unit call slow-code. Thus when a very old woman, once a sweet lady but now permanently out of touch with the world, lingered on for weeks curled up in a vegetative state, maintained by dialysis and hyperalimentation, nobody was bold enough to call a halt to this exercise in futility. One night she stopped breathing but was duly resuscitated and intubated by a house physician who did not know her and who, having no instructions to the contrary, had no choice. "Why did you do this and not let her die?" asked an angry daughter the next morning. The house physician explained his predicament and the legal situation. "Why don't you turn off the respirator now?" insisted the daughter. The physician reiterated that he would be breaking the law. At last, exasperated, he said "Why don't *you* pull the plug yourself?" The woman covered her eyes, burst into tears, and rushed from the room. The next day the tube became accidentally disconnected from the respirator. The woman kept breathing. A notation was made on the chart that respiration was stable and the blood gases normal. The woman died two hours later. Everybody tried to console the daughter. "I don't feel upset now," she said between tears, "it is better this way"—yet much of her grief could had been saved if the courts had not become concerned in the first place in these highly personal and private matters.

Even more difficult are the decisions at the other extreme of life, as shown in England by the case of the obstetrician in Leicester, and here by the episode of the Danville Siamese twins. Born in a small Illinois town to a young doctor and his wife, a nurse, the boys were joined together from the waist down, with three legs, sharing cardiovascular and excretory systems, and having no prospect of ever being successfully separated. A sign in the nursery saying "do not feed in accordance to the parents' wishes" appeared mysteriously but was apparently ignored by one of the nurses. Then somebody complained to the child welfare department, resulting in the twins being made wards of the State and moved to a large children's hospital in Chicago. Later a zealous local State's attorney prosecuted the parents and their paediatrician for attempted murder, and, although the case was dismissed, he reportedly still plans to continue pressing charges. The parents, after further legal proceedings, subsequently regained custody over the twins, who are now being nursed in their home in an oxygen tent with around the clock nursing. One year later they remain alive, but the smaller one has chronic heart failure and, on his imminent death, is expected rapidly to exsanguinate the healthier brother.

Needless to say, the episode achieved wide publicity and coverage by the news media. The parents, in addition to undergoing a shattering emotional experience, now face huge expenses in nursing the twins, as well as owing $30 000 in legal fees. The young paediatrician, who also owes $10 000, has been reportedly "devastated" by the experience and lives in daily fear of being prosecuted again for murder. Some of the doctors in town have started a legal defence fund, but not all agreed that the case had been handled correctly. Some thought that the twins should have been removed immediately to a special unit, others that the nurses should have received more guidance and support. One newspaper focused on "the nasty little secret" that infanticide of seemingly hopelessly deformed babies is common and tacitly encouraged. "But are not some babies better off dead?" asked one editor, noting that nothing is easy about these ethical questions that test society's deepest beliefs as its ability to maintain life increases. But some of the medical writers blamed the "bureaucratic meddling in medical care," thinking that the present legal situation imposed an unjustified financial and emotional drain on society, and suggesting that judges would be better employed spending more of their time prosecuting criminals.

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A young woman of 32 has chronic urticaria affecting the pressure areas; she has also dermatographism. What investigations and treatment are advised?

The question implies that the patient is suffering from two separate types of physical urticaria—pressure urticaria and dermatographism. These are probably best considered to be unrelated, although some overlap has been recorded.[1 2] Pressure urticaria characteristically comes on a few hours after prolonged deep pressure on the skin, and the swellings last for some hours. Dermatographism, often inappropriately considered the prototype of all types of urticaria after the pioneering work of Sir Thomas Lewis, follows within minutes of superficial stroking of the skin and persists for minutes. The mediators concerned in pressure urticaria are unknown. Pressure urticaria may occur on its own or rather more commonly as one facet of an idiopathic chronic urticaria. When it occurs on its own other trigger factors can seldom be elicited and investigation is hardly called for. Treatment is unsatisfactory. Antihistamines provide at best indifferent relief. Systemic steroids may help but are seldom justified. When pressure urticaria is part of idiopathic chronic urticaria the investigation and treatment should be along the lines for chronic urticaria[3] but one is even less likely to find removable causes than with any other chronic urticaria without a pressure component. Dermatographism is often mild, requiring only reassurance, but antihistamines do usually provide useful symptomatic relief, sometimes in surprisingly small doses.—R H CHAMPION, consultant dermatologist, Cambridge.

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