

RECENT DEVELOPMENTS IN PHYSICIAN-ASSISTED DEATH

Professor Valerie J. Vollmar
Willamette University College of Law

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LITIGATION

Baxter v. Montana, No. ADV-2007-787 (Mont. Dist. Ct., filed Oct. 18, 2007). On 10/18/07, a suit over the right to die with dignity was filed in the Lewis and Clark County District Court in Helena, Montana, against the State of Montana and the Attorney General. The plaintiffs originally included two terminally ill patients (53-year-old Steven Stoelb and 75-year-old Robert Baxter), four Missoula physicians who treat terminally-ill patients (Stephen Speckart, C. Paul Loehnen, Lar Autio, and George Risi, Jr.), and the nonprofit patients' rights organization Compassion & Choices. The two patients were represented by Mark S. Connell, a Missoula attorney, and Kathryn Tucker, Director of Legal Affairs for Compassion & Choices. Subsequently, Stoelb's case was dropped due to disputed facts regarding his disease. The complaint claims that the state statutes criminalizing assisted suicide violate several sections of Article II of the Montana state constitution, including Section 3 (right to seek safety, health, and happiness in all lawful ways), Section 4 (right of individual dignity and right to equal protection of the laws), Section 10 (right of privacy), and Section 17 (right to due process of law). (For a discussion of Montana law, see Tucker, *Privacy and Dignity at the End of Life: Protecting the Right of Montanans to Choose Aid in Dying*, 68 Mont. L. Rev. 317 (2007).) Judge Dorothy McCarter heard arguments in the case on 10/10/08, with Assistant Attorney General Jennifer Anders arguing on behalf

bill on 9/30/08. The new law is Chapter 683 of the California Statutes of 2008.

Oregon

Survey of family members. Researchers seeking to determine the reasons that patients sought physician-assisted death interviewed family members of 83 Oregon decedents who made explicit requests for lethal medication before their deaths, including 52 who received prescriptions and 32 who died as a result of taking the medication. Linda Ganzini et al., *Why Oregon Patients Request Assisted Death: Family Members' Views*, 23 J. Gen. Intern. Med. 154 (2007). Out of a list of 28 possible reasons, the most important were wanting to control the circumstances of death and die at home, and worries about loss of dignity and future loss of independence, quality of life, and self-care ability. The least important reasons were depression, financial concerns, and poor social support.

Depression in patients choosing physician-assisted death. On 10/7/08, the British Medical Journal posted online the results of a study of Oregon patients who had died under the Oregon Death with Dignity Act. Linda Ganzini et al., *Prevalence of Depression and Anxiety in Patients Requesting Physicians' Aid in Dying: Cross Sectional Survey*, 337 Brit. Med. J. 1682 (2008). The researchers sought to determine by recognized diagnostic tests whether patients who had died from taking lethal medication were depressed. Fifty-eight patients participated in the study, all of whom had either requested aid in dying from a physician or contacted Compassion & Choices. By the end of the study, 18 patients had received a prescription for lethal medication, and nine had died by taking the medication. As compared to decedents who did not receive a prescription, decedents who had received a prescription showed a lower desire to die and a trend toward lower hopelessness scores. Of the 18 patients who received a prescription, three met the study's criteria for depression and 15 did not. All three who met the criteria for depression died by taking lethal medication within two months after being interviewed. In determining whether a patient was depressed, researchers attributed all physical symptoms of depression (such as weight loss and fatigue) to the diagnosis of depression, even if they might be a result of the terminal disease. The authors concluded that other studies and surveys in Oregon might have erred in determining that aid in dying among depressed patients is rare, and that better screening may be desirable to protect patients who might be depressed.

Progress in palliative care. On 7/15/08, The University of Wisconsin Pain & Policy Studies Group issued *Achieving Balance in State Pain Policy: A Progress Report Card*, a report evaluating state policies to improve pain management and patient care. Oregon received an A for enabling health professionals to effectively alleviate the suffering of their patients without encountering barriers in legislation or regulation. Four other states—Kansas, Michigan, Virginia, and Wisconsin—also received the highest grade. The complete report

dying.” Officials with the Oregon Health Plan had concluded that Tarceva did not meet the state’s long-standing “five-year, 5% rule” under which payment is made only if treatment provides at least a 5% chance of survival after five years. Wagner appealed the decision twice but lost both times. Her physicians then contacted the pharmaceutical company, Genentech, which agreed to give her the drug free of charge for one year. Both critics and supporters of the Oregon Death with Dignity Act were incensed by the Oregon Health Plan’s letter to Wagner. A spokesperson for the Plan said the letter was a public relations blunder and that in the future insurance officials probably would have a telephone conversation with patients instead of sending such a letter.

Washington

Initiative filed. In 1991, Washington voters rejected by a vote of 54% to 46% Initiative 119, which would have allowed active euthanasia as well as physician-assisted suicide. On 1/9/08, former Governor Booth Gardner filed with the Secretary of State the Washington State Death with Dignity Initiative (Initiative 1000), which is based on the Oregon Death with Dignity Act. See <http://www.secstate.wa.gov/elections/initiatives/text/i1000.pdf>. On 7/3/08, supporters delivered an estimated 320,000 voter signatures at the state capitol, well over the 224,880 valid signatures required to get the initiative on the 11/4/08 ballot. On 7/24/08, Secretary of State Sam Reed certified I-1000 for the ballot.

Human Life of Washington. In April 2008, Human Life of Washington filed a federal lawsuit claiming that Washington’s campaign finance laws are overly broad and asking the court to invalidate portions of those laws for being unconstitutional. *Human Life of Washington v. Brumsickle*, No. 2:08-CV-00590 (W.D. Wash., filed Apr. 16, 2008). Human Life argued that it should not have to register with the state as a political action committee and disclose its donors, because it only wanted to engage in “issue advocacy” and “voter education” rather than explicitly oppose I-1000. The group also argued that its donors would be harassed or intimidated by supporters of I-1000 if their names were disclosed. Alex Morgan, campaign manager for the initiative, said that Human Life wanted to keep voters in the dark because much of the money to pay for “voter education” was likely to come from out of state, largely from the Catholic church. On 7/9/08, Judge

in the television show *The West Wing*) for advertisements against the initiative. The supporters have recruited Washingtonians to tell their personal stories.

Washington State Medical Association. In July 2008, the Washington State Medical Association (WSMA) said that it opposed I-1000 and that its “opposition was emphatically voted on” at the prior year’s meeting. In fact, WSMA members never voted on the initiative. Rather, a resolution asking the WSMA for neutrality on the issue was dropped when it appeared to have little support. The only related resolution that was adopted said that WSMA supported quality end-of-life care “without participation in hastening death or providing a means for patients to hasten their own death,” and reiterated support for its previous position that physicians should not “intentionally cause death.” As of late September 2008, donors who identified themselves as physicians had contributed about \$17,000 to the Coalition Against Assisted Suicide and about \$29,000 to the Yes! on I-1000 campaign.

Survey of physicians. A survey commissioned by the Washington State Medical Association and conducted by Elway Research in 2007 showed that 50% of the 502 physicians who responded said they would support a measure such as I-1000, while 42% would oppose it. More female than male physicians said they would support such a measure.

Public opinion polls. A statewide poll of 405 registered Washington voters taken 7/27-7/31/08 by Elway Research showed that 39% favored I-1000, 26% opposed it, and 35% were undecided. A later poll taken by Elway in September 2008 showed that 57% favored I-1000, 33% were opposed, 16% were leaning in favor, 10% were leaning against, and 10% were undecided. A poll conducted by Survey USA for KING 5 News and reported on 9/23/08 showed that likely voters supported the measure by a margin of 54% to 26%, with support up 3% over the preceding six weeks.

Oregonian editorial. On 9/21/08, the Oregonian newspaper published an editorial acknowledging that its original concerns about the Oregon Death with Dignity Act had been shown to be unfounded, and that safeguards built into the law appeared to be working. The editorial acknowledged that few deaths occur under the Act, the law is popular, and Oregon now is recognized as the national leader in providing access to palliative medicine and pain treatment. Nonetheless, the editorial board refused to endorse Washington’s I-1000 initiative, saying that its fundamental objection “is the same as it has always been—that it’s wrong to use physicians and pharmacists to hasten patients’ deaths” and that its “basic

However, the bill has been stalled in a homeland security and terrorism subcommittee for months. In August 2008, Suzy's parents Mike and Mary Gonzales visited the offices of nearly 40 members of the U.S. Senate and House of Representatives, as well as other officials and suicide and prevention activists, to promote passage of the bill. Herger said he has picked up several new co-sponsors for the bill and is trying to get a hearing scheduled, but will reintroduce the bill in the next Congress if necessary.

OTHER NATIONAL DEVELOPMENTS

Dr. Jack Kevorkian. Euthanasia advocate Dr. Jack Kevorkian has obtained the number of signatures required to run as an independent for the 9th Congressional District seat in Michigan. His primary issue is promoting the Ninth Amendment, which reserves to the people those rights not specifically enumerated in the Constitution. Kevorkian argues that the amendment means that the government has no right to stop smoking, mandate helmets or seat belts, or ban abortions, homosexual marriage, drugs, or helping someone kill themselves.

Lorie Hentges. On 9/15/08, a grand jury in Monmouth County, New Jersey, indicted 39-year-old

more, as compared to 45% of those earning \$25,000 or less. With respect to location, only 45% of people living in the South picked death, while the figure was 61% in the West. College graduates were more likely to choose death (57%) than respondents who did not finish high school (30%).

MEDICAL DEVELOPMENTS

Palliative sedation. At its annual meeting in June 2008, the American Medical Association approved a new policy saying that physicians may ethically sedate terminally ill patients with uncontrolled pain to the point of unconsciousness. The House of Delegates adopted a report from the Council on Ethical and Judicial Affairs saying that physicians are obligated to offer palliative sedation (also known as terminal sedation) as a last resort when “symptoms cannot be diminished through all other means of palliation.” However, physicians should first consult with a multidisciplinary team or a palliative care specialist, obtain consent from the patient or the patient’s surrogates, and document the rationale for the sedation in the medical record.

frequency of depression and whether their relatives agreed with the decision]

Iva Sorta-Bilajac, *Croatian Physicians' and Nurses' Experience with Ethical Issues in Clinical Practice*, 34 J. Med. Ethics 450 (2008) [the most difficult ethical dilemmas at the University Hospital Rejika concerned euthanasia and physician-assisted suicide (49% of physicians and 52% of nurses)]

Angelo E. Volandes et al., *Health Literacy Not Race Predicts End-of-Life Care Preferences*, 11 J. Palliative Med. 754 (2008) [use of educational video for African-Americans and whites suggested that health literacy and not race was an independent predictor of end-of-life preferences]

Gülten Karadeniz et al., *Turkish Health Professional's Attitude Toward Euthanasia*, 57 Omega 93 (2008)

Katri Elina Clemens, *Attitudes Toward Active Euthanasia Among Medical Students at Two German Universities*, 16 Support Care Center 539 (2008)

Sarah Elizabeth Harrington & Thomas J. Smith, *The Role of Chemotherapy at the End of Life: "When Is Enough, Enough?,"* 299 JAMA 2667 (2008) [many patients with advanced cancer do not know how long they have to live or how chemotherapy will affect their lives; physicians may fail to give this information to their patients, or patients misunderstand or do not want to hear the information]

Suzanne Audrey et al., *What Oncologists Tell Patients About Survival Benefits of Palliative Chemotherapy and Implications for Informed Consent: Qualitative Study*, 337 Brit. Med. J. 752 (2008) [in recorded consultations between nine oncologists and 37 patients with advanced cancer in southwest England, information given to patients about survival benefit of palliative chemotherapy was vague or nonexistent]

Charles Douglas et al., *Managing Intentions: The End-of-Life Administration of Analgesics and Sedatives, and the Possibility of Slow Euthanasia*, 22 Bioethics 388 (2008)

Joris Gielen et al., *Attitudes of European Physicians Toward Euthanasia and Physician-Assisted Suicide: A Review of the Recent Literature*, 24 J. Palliative Care 173 (2008)

INTERNATIONAL DEVELOPMENTS

Australia

Federal parliament. In March 2008, the Senate Standing Committee on Legal and Constitutional Affairs began an inquiry into the Rights of the Terminally Ill (Euthanasia Laws Repeal) Bill 2008, which was introduced in February by Australian Greens Senator Bob Brown as a private member's bill. The bill would repeal the 1997 Euthanasia Laws Act, which prohibited legalizing euthanasia in any Australian territory and served to overturn euthanasia laws in the Northern Territory nine months after they were enacted. (The federal

parliament does not have the legal authority to prohibit Australian states from enacting euthanasia legislation.) In June 2008, the Senate Committee recommended by a split vote that the bill be allowed to proceed. However, the committee recommended that the bill be amended so that instead of reinstating the Northern Territory's former laws, the Territory would be allowed to pass new legislation. Senator Brown indicated that he would introduce an amended bill shortly.

Victoria. On 6/11/08, Greens MP Colleen Hartland introduced the Medical Treatment (Physician Assisted Dying) Bill 2008 in the Victorian parliament. If passed, the bill would allow physicians to prescribe lethal medication but would not permit them to administer lethal injections. Upper House MPs debated the bill during June through September. Twenty-one of the 40 MPs were required to vote for the bill for it to pass the Upper House, but the bill failed on 9/10/08 on a conscience vote of 13 in favor and 25 against. However, the bill was sent to an Upper House committee for further consideration.

South Australia. Greens MP Mark Parnell has announced that he intends to introduce a new euthanasia bill in the next South Australian parliament.

Graeme Wylie. Shirley Justins, a 58-year-old woman and longtime partner of Graeme Wylie, and her friend Caren Jennings, a 74-year-old woman who supports voluntary euthanasia, were charged with murdering 71-year-old Wylie in Cammeray in March 2006 with a lethal overdose of the drug Nembutal. Wylie suffered from severe dementia and Alzheimer's disease, and Swiss authorities had rejected his request to go to Switzerland for an assisted death because tests showed him to be incapable. After trial began before the New South Wales Supreme Court, the defendants pleaded not guilty to murder but admitted to lesser offenses. However, the Crown Prosecutor rejected the not guilty pleas. Following a six-week trial, a jury found Justins guilty of manslaughter and Jennings guilty of being an accessory to manslaughter. Bail was continued, with a likely sentence date sometime in November. The women were expected to seek noncustodial sentences, although Justice Roderick Howe could impose sentences of up to 25 years each. On 9/18/08, Caren Jennings (who suffered from terminal breast cancer) died from taking a lethal dose of Nembutal. A statement read after her death blamed the prosecutor for his "bullying" of the women.

Angelique Flowers. In August 2008, Angelique Flowers, a 31-year-old Melbourne writer dying of Crohn's disease and cancer, sent an emotional video plea for euthanasia laws to Prime Minister Kevin Rudd. A video clip of her appeal can be seen on YouTube at www.youtube.com/watch?v=jdxd_EFDd4s. Flowers finally contacted Exit and used YouTube to seek and obtain Nembutal. She died of her illness on 8/19/08.

Suicide "tourists." Since 2001, Exit International has helped nearly 300 people—mostly Australians, New Zealanders, and a few Americans—to find Nembutal, which can be used to cause a person's death, in veterinary pharmacies in Mexico. Exit provides information packets for these "tourists." In July 2008, West Australian coroner Alastair Hope indicated that he would investigate the Mexican suicide by Nembutal of Erin Berg, a mother of four young children. Berg's sister, Sally Doyle, said that her sister had traveled to Mexico after reading one of Dr. Philip Nitschke's books, and urged that the book be withdrawn from sale

in Australia.

Tracey Spicer

Czech Republic

Proposed legislation. Independent Senator Václava Domšová has proposed a bill giving patients who are in hopeless situations and enduring physical and mental pain the right to

on 1/1/07. The bill is the first legislation governing medical decisionmaking for persons who lack mental capacity. The law now allows execution of a living will and appointment of an agent. In August 2008, Richard Brooks, former head of the Office of the Public Guardian, criticized the Act and said it should be rewritten because of the delays, disputes, and high costs it has caused for families.

Debbie Purdy. Debbie Purdy, a 44-year-old woman with progressive multiple sclerosis, is seeking a statement from the Director of Public Prosecutions (DPP) specifying what would be considered to be aiding and abetting a suicide. Purdy wants to know whether her husband could be prosecuted for actions such as booking her into the Dignitas clinic in Zurich, helping to push her wheelchair there, or making her travel arrangements. If he faces prosecution, she plans to travel to Switzerland alone and end her life early. Purdy accuses the DPP of breaching her right to respect for her personal and family life under Article 8 of the European Convention on Human Rights. Two Justices of the High Court heard arguments on 10/2 and 10/3/08, but reserved judgment on the case. The High Court has not indicated when a decision will be made.

Miss B. On 9/7/08, Dame Elizabeth Butler-Sloss, President of the High Court family division, granted the request of “Miss B” to be allowed to refuse life-sustaining treatment. Miss B is a 43-year-old former social care professional who has been paralyzed and unable to breathe on her own for more than a year. A lawyer for the hospital trust said they intended to appeal the decision.

End-of-life care. Lord Darzi, the Health Minister, has completed a year-long review of the National Health Service (NHS). He promised to set hospital managers free to listen to the wishes of old and sick patients about where they want to spend their final days. Research by the NHS Confederation showed that 56% of terminally ill patients preferred to die at home, and 11% wanted to die in the hospital. However, only 20% died at home, while 56% died in the hospital. New teams of specialist nurses will be given authority over the arrangements for patients facing death. The NHS will publish its first End of Life Care Strategy by the end of 2008, and a new NHS care program will provide support for hospitals trying to help patients who want to die at home.

Lothian project. Edinburgh University has conducted an 18-month pilot project covering over 130 elderly patients. When patients and their families were allowed to die in a place of their choice, unnecessary admissions to hospitals from care homes and hospices were reduced by 40%.

Dignitas. In September 2008, Dignitas claimed that the organization had helped 100 Britons die in Switzerland.

Dr. Ian Kerr. In July 2008, 61-year-old Glasgow physician Ian Kerr appeared before a General Medical Council (GMC) panel in connection with the 2005 death of “Patient A,” an 87-year-old woman. Kerr was alleged to have prescribed temazepam that the patient used to end her own life two days later. He also was accused of keeping inadequate records regarding prescriptions of sodium amytal sleeping pills for five other patients. The GMC

charged Kerr with having engaged in actions that were “inappropriate, irresponsible, liable to bring the medical profession into disrepute, and not in his patient’s best interest.” At the conclusion of a two-week hearing, the GMC found that Kerr’s fitness to practice was impaired by virtue of his misconduct, and suspended him from practicing medicine for six months. Kerr said that he would not appeal from the decision and would not again prescribe potentially fatal drugs to patients who want to kill themselves. In August 2008, the National Health Service Greater Glasgow and Clyde said it would remove Kerr’s name from the list of general practitioners in the board area, but his practice would remain open and he could re-apply to be put back on the list.

Baroness Warnock. Lady Warnock, Britain’s leading moral philosopher, has previously suggested that elderly persons who do not want to become a burden on their caregivers should be helped to die. In a recent interview by the Church of Scotland’s magazine *Life and Work*, Warnock stated that persons with dementia who do not want to become a burden also should be helped to die.

MSP Margo MacDonald. Margo MacDonald, independent Member of the Scottish Parliament for the Lothians, has Parkinson’s disease and believes she should be allowed to bring about her own death if her condition continues to worsen. She has stated that the Dutch model for assisted suicide is best. On 7/16/08, BBC One broadcast a documentary called “BBC Scotland Investigates: Margo MacDonald—My Right to Die.” MacDonald reacts to the “exit hood” at http://news.bbc.co.uk/2/hi/uk_news/scotland/7508077.stm.

BBC euthanasia program. On 7/18/08, Broadcast reported that a BBC One drama called “A Short Stay in Switzerland” would be based on the true story of Dr. Anne Turner, who had an incurable neurological illness. Turner traveled to Switzerland to carry out her wish to die.

Dr. Philip Nitschke. Dr. Philip Nitschke scheduled the first-ever do-it-yourself suicide workshops in Britain in October 2008. The first was scheduled on 10/13/08 in London and the second on 10/16/08 in Bournemouth, Dorset. The Bournemouth town council cancelled Nitschke’s initial booking at the town’s adult center, saying the event was not appropriate for that venue. A second venue was booked in Bournemouth, but that hotel also backed out. While in Britain, Nitschke plans to take advantage of its “liberal publishing laws” to launch an online version of his *Peaceful Pill Handbook*. Nitschke’s “Delivery Machine” that was used to allow four patients to commit suicide in Australia is on display in the British Science Museum.

Poll of physicians. Doctors.net.uk, an online discussion forum and professional network that represents 95% of British physicians, polled physicians in July 2008 asking: “In your opinion, should legislation be changed to allow euthanasia?” Of physicians polled, 35% favored assisted suicide, 60% were against it, and 5% were unsure.

Public opinion poll and end-of-life guide. In October 2008, Dignity in Dying reported the results of a poll of British adults it had commissioned. Nearly one in three of those polled believed that assisted suicide was legal, even though the practice in fact is a crime punishable by up to 14 years in prison. The survey also revealed other areas of confusion

about end-of-life decisions. For example, 27% of those surveyed thought that a patient could not refuse medical treatment in advance if

persistent vegetative state, as well as her sense of freedom and vision of life.” On 7/31/08, Milan prosecutor Maria Antonietta Pezza lodged an appeal, which the Court Cassation (Italy’s highest criminal court) is expected to decide on 11/11/08. In the meantime, both chambers of the Italian parliament passed a motion asking Italy’s Constitutional Court (the country’s highest court) to rule on whether the Milan court’s ruling impinged on parliament’s legislative powers. On 10/9/08, the Constitutional Court rejected parliament’s appeal, noting that parliament could change the law if it wished.

Korea. On 7/10/08, the Seoul Western District Court dismissed a petition filed by the children of a comatose 75-year-old woman named Kim asking for permission to remove her respirator and feeding tube and allow her to die. Kim had been comatose since February 2008 when she sustained brain damage from bleeding. The court said that stopping treatment conflicted with the principle of the absolute value of life and that Kim’s prior statements that she would not want to rely on a respirator to live were made when insufficient information was available to her.

The Netherlands. The Dutch Right to Die society has received approval from the Dutch Council and Deputy Health Secretary Jet Bussemaker for Do Not Resuscitate tags to be worn around the purchaser’s neck. However, emergency medical workers object to the tags out of concern over conflicts with family members and possibly having to stop resuscitation once it seems to be working.

New Zealand

Dr. Philip Nitschke

of life.

South Africa. Christa Boshoff, a candidate for a doctoral degree at the University of the Free State, has released the results of a survey of 217 Free State physicians about their attitudes towards euthanasia. Her survey showed that white physicians were more positive towards euthanasia than black physicians, specialists were more positive than general practitioners, and surgeons who had practiced for between 11 and 15 years were more positive than other physicians who had been practicing for the same period of time. Atheists were the most positive about euthanasia, and physicians from non-Christian religions such as Islam and Hinduism were the most negative.

Spain

Right to Die with Dignity. In August 2008, members of Right to Die with Dignity met with Spain's Minister of Justice Mario Fernandez Bermejo to demand legislation allowing euthanasia and assisted suicide for patients who are terminally ill and make a request in advance. Although the meeting did not end with a concrete agreement, the Minister published a statement after the meeting expressing concern that terminally ill patients have a dignified end to their lives and assuring that the government was in "a period of deep thought" regarding palliative care.

Andalusía. The government of Andalusía expects the parliament to pass regional legislation by the summer of 2009 that would allow withdrawing and withholding life-sustaining treatment for terminally ill patients, as well as recognize a right to receive treatment against pain, including palliative sedation. Under the draft law, physicians who "apply useless and unjustified measures to prolong life" could face fines of between 60,000 and one million euros.

Conference on death with dignity. In July 2008, several medical and government organizations sponsored a program called "Death with Dignity: Assistance in Dying" at the Universidad Internacional Menéndez Pelayo de Santander. Dr. Luis Montes and other Spanish euthanasia advocates issued the "Manifesto of Santander," which states that a human being "enjoys the rights of self-determination, liberty, dignity, and others, which permit him to dispose of his life, which permit him to confront death in light of his personal decision."

Switzerland

Government investigation of assisted suicide. On 7/2/08, the Swiss cabinet instructed the justice ministry and the federal police to prepare a report on assisted suicide by early 2009, in order to help determine whether existing rules should be updated. The cabinet is particularly concerned about the care, counseling, and documentation that groups such as Dignitas provide to people seeking to end their lives. The report also will discuss whether groups should be allowed to help healthy people kill themselves. Dignitas said it welcomed the cabinet's move.

Dignitas. Swiss officials have launched an investigation into claims that Dignitas has been

pouring the ashes of dead people into Lake Zurich. A former Dignitas employee said she personally knew that Dignitas members had poured the ashes of 200 people into the lake. Local council member Daniel Scheidter said he was working with prosecutors to see what