competent does the diversity of opinion begin. As expected, the several solutions presented little unanimity and varied from the reasonable to the ridiculous.

Perhaps the most ludicrous comments of the day were advanced by Professor Charles Baron, who thinks that every difficult problem should be brought to the court room. This addition to the already overcrowded dockets surely would bring the entire judicial system to a grinding halt. Afraid to leave any decision to the solitary physician or to the immediate family, he would apparently leave everything to the judgment of the court — seldom utilizing a jury and presided over by a solitary judge.

His apparent belief that the purpose of the court is "to establish principles — ethical principles" makes me more than a little uneasy. The purpose of the court, especially in ethical issues, is to reflect the mood of society, to sense the will of the people, and to mirror already established societal values. The courts then should be lagging behind, awaiting decisions by the public, not vice versa. Courts would do well to articulate society's decision and to restrain their own limited and necessarily prejudiced opinions.

The alternate suggestion, that all these thorny decisions should be left to the physician, fails equally to address the issue. Certainly, the provider of health care needs to be intimately involved, but should not have such decisions "dumped" in his lap.

Both of these legal opinions show an ingrained distrust for the immediate family. Perhaps this arises from seeing so many families in an adversary situation and in dealing primarily with families where there is dissent, distrust, and dissatisfaction. Quite frankly, usually the opposite situation prevails. The immediate family is loving and caring, with the best interests of the patient being foremost in their concern.

The family appears to be in the strongest ethical position, although this may not be recognized legally. The family is closest to the patient, and therefore most likely to be able to recognize what his wishes would have been were he in possession of his faculties. This position was articulated by Professor Robert Veatch, specifically pointing out that patient's values are most usually a reflection of the family values. Furthermore, he clarifies the obvious, that family value systems are sufficiently variable that different answers to the same ethical dilemma will be reached in accordance with the patient's heritage and religious convictions.

Ideally, with input from the patient's physician, the immediate family, and an ethical advisor — usually the family clergyman, the hospital chaplain, a counselor, or other trusted professional — a reasonable and sound decision can be reached that is within the moral framework that would be considered acceptable to the patient.

By all means the last resort should be the courts as is evidenced by the recent long drawn out decisions.

Carl W. Liebert, Jr., M.D., F.A.C.S.
Louisville, Kentucky

The following letter was solicited by the editors:

Dear Editors:

Although I cannot in good conscience call Dr. Liebert's solution "ludicrous," it does seem to me to have a fatal flaw. In my experience, giving decision-making power for the incompetent patient to the immediate family really means giving it to the attending physician.

Even in this day, a family is unlikely to face such a decision more than once. The quandary is likely to find the family members feeling unprepared and uneasy. They may not be unanimous. They will certainly be grief-stricken, confused, and anxious to avoid the sequelae of guilt. Under the circumstances, they are usually eager to pass the decision-making burden to the doctor whom they see as an "expert" in dealing with all aspects of the problem. Unlike Dr. Liebert, many doctors feel the power to decide should reside with them anyway. When they approach the family with their own minds made up, they are capable of presenting the problem in a light which guides the family to the "correct" decision even where the family is willing to decide.

If these decisions are to be made by anyone other than a court-appointed guardian, they should, as Relman has suggested, *see The* Saikewicz *Decision: A Medical Viewpoint*, AMERICAN JOURNAL OF LAW & MEDICINE 4(2): 233-42, be made by someone who was earlier picked for that purpose by the now incompetent patient. Such a "ward-selected" guardian, who consents in advance to play such a role and who has discussed with the ward the decision he or she would want, stands some chance of playing a meaningful "informed consent" role with the attending physician. In default of such a formal selection, resort should continue to be made to the courts for the reasons I have discussed elsewhere.

Charles H. Baron, LL.B., Ph.D.
Professor of Law
Boston College
Newton Centre, Mass.

Dear Editors:

I simply could not send my evaluation form without expressing appreciation for the quality of the conference in Chicago. Living in a conservative mid-American city, where ethical issues are unlikely to be directly addressed, where meetings of doctors and lawyers are generally mutually patronizing and placating, where nurses and administrators for the most part allow themselves to be locked into traditional roles and ideas, may have contributed to my enthusiasm. However, I do not feel that these circumstances and my needs have entirely distorted my perception. I had a definite sense that I was in the presence of committed professionals and thinking persons. Some were clearly more open and in touch with the complexity of the issues, some more intellectually honest, some more visionary; still, overall the process of exchange worked.

What I learned and what I realized I did not know has inspired me in both my personal endeavors and professional goals. As a hospice nurse, the printed material, along with the taping I was able to do, will serve as the basis for an inservice program. I am convinced that at the very least this process will raise the necessary questions.

Susan Spanel, R.N.
Eau Claire, Wisconsin

Editor's Note: The conference referred to above was held in Chicago in October 1980. Similar programs were held earlier in Detroit, Los Angeles, and Minneapolis. ASLM and the Health Administration Press of the University of Michigan will publish a book based on the proceedings of these conferences. Entitled TERMINALLY ILL PATIENTS: LEGAL AND ETHICAL VIEWS ON THEIR TREATMENT, the book should be available in the Spring of 1981. It is being edited by A. Edward Doudera, J.D., and J. Douglas Peters, J.D., cochairperson of the Detroit conference.

https://doi.org/10.1111/j.1748-720X.1980.tb00618.x Published online by Cambridge University Press