

# A doctor's perspective on Morris v. Brandenburg

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# Outline

- Background
- Transition from support to investment
- Why I think it is a matter for the courts

# Background

- Physician aid in dying is not suicide
- MDs do not have a crystal ball
  - Overall accuracy in predicting timing of death 58%
  - Physicians most commonly err on the side of predicting a longer time to death rather than underestimating a patient's life span
- Coercion
  - Data from Oregon do not show evidence of coercion of patients or physicians
  - Coercion cuts both ways

Fromme, et al J Palliative Medicine, 2010

Glare, P, et al BMC 2003

<http://www.oregon.gov/oha/PH/PROVIDERPARTNERRESOURCES/EVALUATIONRESEARCH/DEATHWITHDIGNITYACT/Documents/year19.pdf>

# Who and why

- Most common diagnoses
  - Cancer (78.9%)
  - ALS (6.8%)
- Patient population
  - Educated
    - >50% college degree, >96% high school graduates
  - Insured
    - 99.2%
  - Enrolled in Hospice
    - 88.7%
- Most common reason cited
  - Loss of autonomy
    - 89.5%

<http://www.oregon.gov/oha/PH/PROVIDERPARTNERRESOURCES/EVALUATIONRESEARCH/DEATHWITHDIGNITYACT/Documents/year19.pdf>

# Support

- 1994 – Oregon DWDA passes
- 1997 – Ballot initiative overturn law rejected
- 2001 – Ashcroft
- 2005 – Gonzales v. Oregon
- 2<sup>nd</sup> year medical student
- Intern
- 4<sup>th</sup> year resident
- First year attending

# Investment







Why I think it is a matter for the courts

# Establishing new rights: A look at aid in dying

Rights

Civil rights

Civil liberties

Human rights

“I perceived clearly that I was participating in a truly significant historic event in which a consensus had been reached as to the **supreme value of the human person, a value that did not originate in the decision of a worldly power, but rather in the fact of existing** – which gave rise to the inalienable right to live free from want and oppression and to fully develop one’s personality.”

Hernan Santa Cruz 1948

Understand death

Statistics (and legal opinions) are human beings with  
the tears wiped off Paul Brodeur



# Why I think it is a matter for the courts continued

- **Hard cases make bad law** is an adage or **legal** maxim. The phrase means that an extreme **case** is a poor basis for a general **law** that would cover a wider range of less extreme **cases**. In other words, a general **law** is better drafted for the average circumstance as this will be more common

## A side story

- “What is everybody complaining about? We will GIVE you equal rights!”