

Commonwealth v. Carter and Legal Interpretations of Facilitated Suicide

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In June 2017, a media frenzy ensued after Michelle Carter was convicted of involuntary manslaughter in the state of Massachusetts for facilitating the suicide of Conrad Roy. The verdict stirred controversy and cast a spotlight on facilitation of suicide, i.e., a person's act(s) done with the purpose of helping another to die by suicide. One form of facilitation, physician-assisted suicide, has been extensively debated in the existing literature. In this article, we set out to explore the legal and forensic ramifications of non-physician-assisted suicide, which we refer to as facilitated suicide. We first conducted a review of all fifty states' legislation regarding facilitated suicide: forty-four states prohibit it by statute, and three states prohibit it through common law. Thirteen states specifically outlaw verbal facilitation of suicide. We then surveyed the case law to identify legal precedent to the *Commonwealth v. Carter* verdict. *Final Exit Network, Inc. v. State* and *State v. Melchert-Dinkel* provide contrasting yet complementary perspectives on the interplay between speech and assisted suicide. Finally, we detailed the role of forensic psychiatry in investigating facilitated suicide, specifically among adolescents and youths.

J Am Acad Psychiatry Law 46:521–31, 2018. DOI:10.29158/JAAPL.003801-18

Historically, suicide has been considered a crime in Western culture and law. In nineteenth-century England, a suicide decedent was buried next to a highway with a stake impaling their body, and their property was confiscated and seized by the King.¹ In the United States, suicide remains a common law crime, but nearly all state statutes have decriminalized suicide and attempted suicide.² While there are no historical reports of suicide being punished in the United States,¹ one man in Maryland recently pled guilty to one count of “attempted suicide,” and he was sentenced to a three-year suspended term in jail and two years of probation.³

Conversely, facilitation of suicide, i.e., a person's act(s) done with the purpose of helping another to die by suicide, remains a contentious issue in the eyes of the law. Perhaps psychiatrists are most familiar with the legal precedent established in the U.S. Supreme Court case of *Washington v. Glucksberg*,⁴ which upheld the constitutionality of Washington state's ban on physician-assisted suicide (PAS).

While PAS for terminally-ill patients has been legalized by some states,⁵ and it remains a contentious topic, in this article we will focus on suicides that are facilitated by non-physicians, hereafter referred to as facilitated suicide. Almost all U.S. states and the District of Columbia prohibit a person from facilitating suicide, either by common law or by statute. Prohibited forms of facilitation vary from state to state: direct physical assistance is almost unanimously deemed illegal, whereas verbal encouragement to die by suicide may or may not be breaking the law, depending on the jurisdiction.

Suicide by Text

On the evening of July 12, 2014, 18-year-old Conrad Roy III died by suicide by carbon monoxide poisoning. The following day, the police found Mr. Roy in his truck in a parking lot in Fairhaven, Massachusetts. Responders located a gasoline-powered water pump, believed to be the source of carbon monoxide, inside the truck.^{6,7}

The police investigation of Mr. Roy's death uncovered digital and phone conversations with his then 17-year-old girlfriend, Michelle Carter. Mr. Roy and Ms. Carter met in 2011 and had dated on-and-off, maintaining contact mostly through phone calls, text messages, and emails up until Mr. Roy's death. These communications revealed that

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Disclosures of financial or other potential conflicts of interest: None.

Mr. Roy and Ms. Carter frequently discussed Mr. Roy's intent and plans to die by suicide. In the days leading up to July 12, 2014, Ms. Carter encouraged Mr. Roy to kill himself and was presumably the last person he spoke with before he died. A selection of her texts to him read, "You're just making it harder on yourself by pushing it off, you just have to do it" (Ref. 6, p 1057); "You're gonna have to prove me wrong because I just don't think you really want this" (Ref. 6, p 1058); and, "You better not be bull shiting [sic] me and saying you're gonna do this and then purposely get caught" (Ref. 6, p 1058). Furthermore, she texted her friend a few days after the suicide, telling her friend, "I was on the phone with him and he got out of [the truck] because it was working and he got scared and I fucking told him to get back in" (Ref. 6, p 1059).

On February 6, 2015, the Commonwealth of Massachusetts indicted Michelle Carter as a youthful offender on the charge of involuntary manslaughter due to her alleged role in Mr. Roy's death.⁶ She was to be tried in juvenile court because she was 17 years old at the time of the alleged offense. Ms. Carter opted for a bench trial, and court proceedings began on June 5, 2017. The prosecution argued that Ms. Carter manipulated Mr. Roy in two ways: first, by sending him texts in the days leading up to July 12 encouraging him to kill himself; second, by telling him on the phone to "get back in" his carbon monoxide-filled truck after he got out of the truck because he was "scared."⁸ Conversely, the defense argued that Ms. Carter's words were protected under the First Amendment and that Mr. Roy autonomously planned his suicide.⁸

The prosecution contacted the investigators, Mr. Roy's mother, and Ms. Carter's friends as witnesses. The defense put two expert witnesses on the stand: Steven Verraneau, an electronics forensic expert, and Dr. Peter Breggin, a psychiatrist.⁹ The defense retained Dr. Breggin to provide his expert opinion on Ms. Carter's state of mind while committing the alleged offense. He opined that, in June 2014, Ms. Carter had a mental illness that influenced her judgment: he retrospectively diagnosed her with "substance-induced mood disorder with manic features and irritability," with the substance in question being citalopram.¹⁰ He said that the defendant became "involuntarily intoxicated" as of July 2, 2014¹⁰ and that she was manic¹¹ and psychotic at that time.¹²

The judge did not agree with the defense's assertions and delivered his verdict on June 16, 2017, finding Michelle Carter guilty of involuntary manslaughter. He ruled that Ms. Carter caused Mr. Roy's death by suicide because, while they were on the phone on July 12, 2014, "she instructed him to get back in the truck which she has reason to know is becoming a toxic environment to human life."¹³ Furthermore, the judge ruled that Ms. Carter had a legal duty to call for help after Mr. Roy went back into the truck, and that she had failed to do so.¹³ On August 3, 2017, the judge sentenced Ms. Carter to two-and-a-half years in the Bristol County House of Correction and Jail, of which she would serve fifteen months while remaining on probation for five years.¹⁴ However, the judge ordered a stay of her sentence until the defense had exhausted appeals.¹⁵

Commonwealth v. Carter raises several questions. First, what is the legal basis for criminalizing facilitated suicide, and does verbal facilitation of suicide withstand a First Amendment challenge? Second, what is or should be the role of forensic psychiatry in such cases?

Criminalization of Facilitated Suicide

States are permitted to ban facilitated suicide: the Supreme Court has held that "assisted suicide" bans are constitutional. In *Washington v. Glucksberg*, the Court ruled that "the asserted 'right' to assistance in committing suicide was not a fundamental liberty interest protected by the due process clause" (Ref. 4, p 725), and Washington's ban on assisted suicide was "rationally related to legitimate government interests" (Ref. 4, p 728). Although this case discussed PAS, Chief Justice Rehnquist's opinion stressed several arguments that are relevant to facilitated suicide as a whole and to *Commonwealth v. Carter* in particular. First, he outlined how Anglo-American common law has criminalized suicide as well as facilitating suicide for centuries. Second, he argued that despite the decriminalization of suicide, banning "assisted suicide" was "rationally related to legitimate government interests" (Ref. 4, p 728). Such interests include the preservation of human life and the promotion of suicide prevention, especially among vulnerable at-risk groups: the young, the elderly, the terminally ill, and the mentally ill.⁴ Furthermore, when outlining the "well-established common-law view," Chief Justice Rehnquist quoted early American jurist Zephaniah Swift: "If one counsels another

to commit suicide, and the other by reason of the advice kills himself, the advisor is guilty of murder as principal” (Ref. 4, p 714, quoting from Swift’s legal treatise, *A Digest of the Laws of the State of Connecticut*). The Court did not specify in its ruling whether “assisted suicide” refers to physical and/or verbal forms of facilitation.

There is a wide range of behaviors through which one can intentionally facilitate the suicide of another. As shown in Table 1, there is substantial heterogeneity between states regarding what forms of facilitation qualify as illegal and the resulting punishments. As of March 2018, forty-four states explicitly prohibited facilitated suicide in their statutes; three states (including Massachusetts) and the District of Columbia prohibited facilitated suicide through common law.⁵ Twenty states specifically mentioned prohibiting physical facilitation to suicide, i.e., intentionally providing physical means or participating in an act through which another person dies by suicide. Thirteen states specifically banned verbal facilitation to suicide through “advising,” “encouragement,” “incitement,” or “solicitation.” Only eight states defined “causing” suicide through using “force,” “duress,” “coercion,” or “deception.” A substantial number of state statutes used the terms “assist,” “aid,” and/or “abet,” without specifying whether the statute prohibits verbal and/or physical assistance. Black’s Law dictionary defines the term “assist” as: “To help; aid; succor; lend countenance or encouragement to; participate in as an auxiliary” (Ref. 16, p 155). Although this definition implies both verbal and physical aid to reach a certain goal, legal interpretations of this term are not uniform.

Notably, Massachusetts, Nevada, North Carolina, Vermont, West Virginia, Wyoming, and the District of Columbia do not have statutes explicitly prohibiting any form of facilitated suicide. Therefore, when faced with a case of facilitated suicide, these states have to pursue convictions under other sections of the criminal code, such as negligent homicide/ manslaughter laws.

Case in point, Michelle Carter’s defense contested the involuntary manslaughter charge after her indictment. Upon appeal, the Supreme Judicial Court of Massachusetts affirmed the indictment, citing two main arguments.⁶ First, the court ruled there was sufficient evidence to support the charge. Involuntary manslaughter is a common-law crime not codified in Massachusetts law, and it can be proven ac-

ordingly under “either (1) wanton or reckless conduct or (2) wanton or reckless failure to act” (Ref. 6, p 1060). The court argued that Ms. Carter’s electronic communications with Mr. Roy qualified as wanton or reckless conduct, i.e., “intentional conduct . . . involving a high degree of likelihood that substantial harm will result to another” (Ref. 6, p 1060).

Second, the court ruled there was common-law precedent to the charge,⁶ citing *Persampieri v. Commonwealth*¹⁷ and *Commonwealth v. Atencio*.¹⁸ In 1961, the Supreme Judicial Court of Massachusetts affirmed the conviction of Ilario Persampieri for manslaughter after his wife died by suicide with a firearm. The court found him guilty of “wanton and reckless conduct” after he had allegedly “taunted [his wife], told her where the gun was, loaded it for her, saw that the safety was off, and told her the means by which she could pull the trigger” (Ref. 17, p 390). In 1963, the Supreme Judicial Court of Massachusetts also affirmed the manslaughter convictions of James F. Atencio and James D. Marshall after their companion, Stewart E. Britch, shot himself during a “game of Russian roulette.” The court ruled that “the Commonwealth had an interest that the deceased should not be killed by the wanton or reckless conduct of himself and others,” (Ref. 18, p 224) and that “such conduct could be found in the concerted action and cooperation of [Mr. Atencio and Mr. Marshall] in helping to bring about the deceased’s foolish act” (Ref. 18, p 225).

In both precedents, the defendants were physically present at the scenes of death and physically assisted the decedents, whereas Ms. Carter was not physically present with Mr. Roy. However, in its confirmation of the indictment, the Supreme Judicial Court of Massachusetts found that “there was evidence that the defendant’s actions overbore the victim’s willpower,” citing Ms. Carter’s directive to Mr. Roy to “get back in” his truck and her disclosure to a friend that she “coud [sic] have easily stopped [Mr. Roy] or called the police but [she] didn’t” (Ref. 6, p 1059).

Up until 2018, Utah did not have a statute criminalizing facilitated suicide, similarly to Massachusetts. Additionally, Utah does not recognize common law crimes. Faced with two cases of facilitated suicide in October 2017, the state adopted a somewhat more radical approach. First, it charged 18-year-old Tyerell Przybycien with first-degree murder for allegedly assisting 16-year-old Jchandra Brown in

Ghossoub, Landess, and Newman

Table 1 Facilitated Suicide Legislation in Each U.S. State and the District of Columbia

State	Law	Type of Crime	Type of Punishment	Notes
Alabama	22-8B	Class C felony	Up to 10 years in prison Up to \$15,000 in fines	Specifically criminalizes physical facilitation by health care providers
Alaska	11.41.120	Manslaughter (class A felony)	Up to 20 years in prison Up to \$250,000 in fines	
Arizona	13-1103	Manslaughter (class 2 felony)	Up to 12.5 years in prison	Criminalizes strictly physical facilitation
Arkansas	5-10-104	Manslaughter (class C felony)	Up to 10 years in prison Up to \$10,000 in fines	
California	401	Felony	Up to life imprisonment	Specifically criminalizes advising and encouraging Legalizes physician-assisted suicide
Colorado	18-3-104	Manslaughter (Class 4 felony)	Up to 6 years in prison Up to \$500,000 in fines	Legalizes physician-assisted suicide
Connecticut	952.53a-54a	Causing suicide: murder (class A felony)	Up to life imprisonment Up to \$20,000 in fines	Defines causation as through force, duress, or deception
	952.53a-56	Assisting suicide: manslaughter (class C felony)	Up to 10 years in prison Up to \$10,000 in fines	Criminalizes causing or aiding by means other than force, duress, or deception
Delaware	632	Manslaughter (class B felony)	Up to 25 years in prison	
District of Columbia	Common law			Refers to “the crime of assisted suicide” in 7-651.13 Legalizes physician-assisted suicide
Florida	782.08	Manslaughter (second degree felony)	Up to 40 years in prison Up to \$10,000 in fines	
Georgia	16-5-5	Felony	Up to 10 years in prison	Criminalizes strictly physical facilitation
Hawaii	707-702	Manslaughter (class A felony)	Up to 20 years in prison Up to \$50,000 in fines	
Idaho	18-4017	Felony	Up to 5 years in prison	Criminalizes strictly physical facilitation
Illinois	720 ILCS 5/12-34.5	Suicide (Class 2 felony)	Up to 14 years in prison Up to \$50,000 in fines	Specifically criminalizes physical and verbal coercion
		Suicide (Class 4 felony)	Up to 6 years in prison Up to \$50,000 in fines	Criminalizes strictly physical facilitation
		Attempted suicide (Class 3 felony)	Up to 10 years in prison Up to \$50,000 in fines	Specifically criminalizes physical and verbal coercion
		Attempted suicide (Class A misdemeanor)	Less than 1 year in prison Up to \$2,500 in fines	Criminalizes strictly physical facilitation
Indiana	35-42-1-2	Causing suicide (level 3 felony)	Up to 16 years in prison	Defines causation as through force, duress, or deception
	35-42-1-2.5	Assisting suicide (level 5 felony)	Up to 6 years in prison Up to \$10,000 in fines	Criminalizes strictly physical facilitation
Iowa	707A.2	Class C felony	Up to 10 years in prison Up to \$10,000 in fines	Specifically criminalizes physical facilitation Specifically criminalizes solicitation and incitement
Kansas	21-5407	Assisting suicide (level 3, person felony)	Up to 100 years in prison Up to \$300,000 in fines	Defines causation as through force or duress
		Assisting suicide (level 9, person felony)	Up to 13 years in prison Up to \$100,000 in fines	Criminalizes strictly physical facilitation
Kentucky	216.302	Causing suicide (class C felony)	Up to 10 years in prison Up to \$10,000 in fines	Defines causation as through force or duress
		Assisting suicide (class D felony)	Up to 5 years in prison Up to \$10,000 in fines	Criminalizes strictly physical facilitation
Louisiana	14:32.12	N/A	Up to 10 years in prison Up to \$10,000 in fines	Specifically criminalizes advising and encouraging Specifically criminalizes physical facilitation
Maine	17-A, 204	Class D crime	Up to 364 days in prison Up to \$2,000 in fines	Specifically criminalizes solicitation
Maryland	Criminal law, 3-102	Felony	Up to 1 year in prison Up to \$10,000 in fines	Defines causation as through coercion, duress, or deception Specifically criminalizes physical facilitation
Massachusetts	Common law	First- or second-degree murder	Up to life imprisonment	
Michigan	750.329a	Felony	Up to 5 years in prison Up to \$10,000 in fines	Specifically criminalizes physical facilitation Specifically criminalizes helping in planning

Legal Interpretations of Facilitated Suicide

Table 1 Continued

State	Law	Type of Crime	Type of Punishment	Notes
Minnesota	609.215	Suicide	Up to 15 years in prison Up to \$30,000 in fines	
		Attempted suicide	Up to 7 years in prison Up to \$14,000 in fines	
Mississippi	97-3-49	Felony	Up to 10 years in prison Up to \$1,000 in fines	Criminalizes assistance in any manner, including advising and encouraging
Missouri	565.023.1	Voluntary manslaughter (class B felony)	Up to 15 years in prison	
Montana	45-5-102	Assisting suicide (criminal homicide)	Up to life imprisonment	Although not clearly stated in the statute, assisting suicide is a homicide offense as per the Montana Criminal Law Commission*
	45-5-105	Assisting attempted suicide	Up to 10 years in prison Up to \$50,000 in fines	Specifically criminalizes solicitation Does not criminalize physician-assisted suicide
Nebraska	28-307	Class IV felony	Up to 2 years in prison Up to \$10,000 in fines	
Nevada	Not addressed			Specifies that it does not authorize "assisted suicide" in 449.670
New Hampshire	630:4	Causing suicide (class B felony)	Up to 7 years in prison Up to \$4,000 in fines	Specifically criminalizes solicitation
		Otherwise (misdemeanor)	Up to 1 year in jail Up to \$2,000 in fines	
New Jersey	2C:11-6	Causing suicide (crime of the second degree)	Up to 10 years in prison Up to \$150,000 in fines	
		Otherwise (crime of the fourth degree)	Up to 18 months in prison	
New Mexico	30-2-4	Fourth-degree felony	Up to 18 months in prison Up to \$5,000 in fines	
New York	Penal law 125.15	Manslaughter in the second degree (class C felony)	Up to 15 years in prison Up to \$15,000 in fines	Punishable as murder (class A-I felony) if the person "causes or aids the suicide by the use of duress or deception"
	Penal law 120.30	Promoting a suicide attempt (class E felony)	Up to 4 years in prison Up to \$5,000 in fines	Punishable as attempt to commit murder (class A-I felony) under penal law 120.35 if the person "causes or aids the suicide attempt by the use of duress or deception"
North Carolina	Not addressed			
North Dakota	12.1-16-04	Causing suicide (class AA felony)	Up to life imprisonment	Defines causation as through deception, coercion, or duress Specifically criminalizes physical facilitation Specifically criminalizes incitement and solicitation
		Assisting suicide (class C felony)	Up to 5 years in prison Up to \$10,000 in fines	
Ohio	3795	Felony of the third degree	Up to 60 months in prison Up to \$10,000 in fines	Criminalizes strictly physical assistance
Oklahoma	21-813	Felony	Up to 2 years in prison Up to \$1,000 in fines	Criminalizes assistance in any manner, including advising and encouraging
Oregon	163.125	Manslaughter in the second degree (class B felony)	Up to 10 years in prison	Specifically criminalizes physical facilitation Legalizes physician-assisted suicide
	163.193	Assisting another person to commit suicide (class B felony)	Up to \$250,000 in fines	
Pennsylvania	Title 18, 2505	Causing suicide (criminal homicide)	Up to life imprisonment	Qualifies as such if causation was through force, duress, or deception
		Causing suicide (felony of the second degree)	Up to 10 years in prison Up to \$25,000 in fines	Qualifies as such if causation was through other means Specifically criminalizes solicitation
		Otherwise (misdemeanor of the second degree)	Up to 2 years in prison Up to \$5,000 in fines	Specifically criminalizes solicitation
Rhode Island	11-60	Felony	Up to 10 years in prison Up to \$10,000 in fines	Criminalizes strictly physical facilitation
South Carolina	16-3-1090	Felony	Up to 15 years in prison	Defines causation as through force or duress Specifically criminalizes physical facilitation
South Dakota	22-16-37	Class 6 felony	Up to 2 years in prison Up to \$4,000 in fines	Criminalizes assistance in any manner, including advising and encouraging
Tennessee	39-13-216	Class D felony	Up to 12 years in prison Up to \$5,000 in fines	Criminalizes strictly physical facilitation

Table 1 Continued

State	Law	Type of Crime	Type of Punishment	Notes
Texas	Penal code 22.08	Causing suicide or serious bodily injury (state jail felony) Assisting suicide (class C misdemeanor)	Up to 2 years in jail Up to \$10,000 in fines Up to \$500 in fines	Criminalizes facilitation and attempting to facilitate
Utah	76-5-205	Manslaughter (felony of the second degree)	Up to 15 years in prison Up to \$10,000 in fines	Criminalizes strictly physical facilitation
Vermont	Common law			Legalizes physician-assisted suicide
Virginia	8.01-622.1	Civil liability	Liability for damages	Punishes strictly physical facilitation
Washington	9A.36.060	Class C felony	Up to 5 years in prison Up to \$10,000 in fines	Legalizes physician-assisted suicide
West Virginia	Common law			Refers to "the crime of assisting suicide" in 16-30-14
Wisconsin	940.12	Class H felony	Up to 6 years in prison Up to \$10,000 in fines	
Wyoming	Not addressed			

* As per the 2012 Annotations to the Montana Code Annotated by the Montana Legislative Services Division.

her suicide by hanging. Mr. Przybycien reportedly bought her the rope, drove her to the site, tightened the noose around her neck, and filmed her suicide.¹⁹ In the second case, the state of Utah charged Teresa Renae Clark with three counts of attempted aggravated murder for allegedly helping Karma Saltern attempt suicide on three separate occasions.²⁰ Both Mr. Przybycien and Ms. Clark face life in prison.^{19,20} These two cases prompted Utah state representative Michael McKell to sponsor legislation making facilitated suicide a manslaughter offense, which was successfully passed into law in March 2018.²¹

First Amendment Considerations

Throughout the *Commonwealth v. Carter* legal proceedings and trial, there was a substantial debate regarding whether Ms. Carter's speech was protected by the First Amendment. Case law can provide some answers. The Supreme Court has long held that "the right to free speech is not absolute at all times and under all circumstances" (Ref. 22, p 571). It has ruled that the following categories of speech are not protected by the First Amendment: obscenity, child pornography, and "fighting words."²² The exceptions of obscenity and child pornography do not apply here, but the "fighting words" exception has some relevance to *Commonwealth v. Carter*. The Court initially used the term "fighting words" in *Chaplinsky v. New Hampshire*,²² referring to words "which by their very utterance inflict injury or tend to incite an immediate breach of the peace" (Ref. 22, p 572). The Court further explained "fighting words" in its holding in *Brandenburg v. Ohio*²³: "The

constitutional guarantees of free speech and free press do not permit a state to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action" (Ref. 23, p 447). Additionally, in its holding in *Snyder v. Phelps*,²⁴ the Court differentiated between speech addressing "matters of public concern" (Ref. 24, p 451) and "matters of purely private significance" (Ref. 24, p 452); it argued that the "content, form, and context" (Ref. 24, p 453) of the speech need to be examined to determine whether it deals with "matters of public concern" and therefore needs to be protected.

The above cases frame the debate at the center of *Commonwealth v. Carter*: In the context of two people with a preexisting relationship, one's speech to another may not necessarily be protected by the First Amendment if it incites the other person to commit an act of violence. However, does encouraging another person to inflict self-harm qualify as fighting words? While suicide is an act of violence, it is no longer deemed a "lawless action," leaving the issue of whether someone's words encouraging another to die by suicide would qualify as fighting words open to interpretation. As we have already discussed, while several forms of facilitated suicide are broadly criminalized in the United States, laws vary from state to state. Some states have narrowed the definition of facilitated suicide to physical assistance, but others have adopted broader statutes to include verbal forms of facilitation. This has led to constitutional challenges in Georgia (*Final Exit Network, Inc. v.*

*State*²⁵) and in Minnesota (*State v. Melchert-Dinkel*²⁶) on grounds of First Amendment violations, with different interpretations and results.

Final Exit Network is an organization that provides its members in all fifty states with “free services,” including “relevant information, home visits, and a compassionate presence for self-deliverance for approved applicants and their families.”²⁷ In 2007, John Celmer, a terminal cancer patient, requested the company’s services to end his life. After his request was reviewed and approved, he was assigned an “exit guide,” who provided him instructions on how to buy the necessary equipment. Final Exit Network’s medical director and the “exit guide” were present with Mr. Celmer when he died by suicide through helium asphyxiation, holding his hand as he died.²⁸ In 2010, four members of the company were indicted on several charges, including assisted suicide. The defense appealed the indictment on grounds that the Georgia Statute § 16-5-5 violated the First Amendment. The statute declared any person “who publicly advertises, offers, or holds himself or herself out as offering that he or she will intentionally and actively assist another person in the commission of suicide and commits any overt act to further that purpose is guilty of a felony” (Ref. 25, p 723). The Georgia Supreme Court unanimously held that § 16-5-5 was unconstitutional “under the free speech provisions of the United States and Georgia Constitutions” (Ref. 25, p 725). The court dismissed the charges against Final Exit Network,²⁸ and the Georgia legislature rewrote Statute § 16-5-5 to specifically prohibit physical assistance to suicide.

In 2011, William Francis Melchert-Dinkel was convicted in a Minnesota court of advising and encouraging another individual to die by suicide. He had allegedly posed as a young depressed woman in chat rooms and had given pointers and advice about hanging to chat-mates who expressed their wishes to die by suicide. In 2005, one person in England hanged himself after a series of online conversations with Mr. Melchert-Dinkel. In 2008, another person in Canada died by suicide by throwing herself in a frozen river, after Mr. Melchert-Dinkel had established contact with her in the few days prior to her suicide.²⁶ In 2012, the Minnesota Court of Appeals confirmed the conviction. However, the Supreme Court of Minnesota reversed and remanded Mr. Melchert-Dinkel’s conviction because it deemed the statutory prohibition to encourage and advise an-

other to die by suicide a violation of the First Amendment. The court held that the terms “encourages” and “advises” in Minnesota Statute 609.215 violated the Constitution and thus remanded the case to determine whether Mr. Melchert-Dinkel had assisted the decedents in their suicides.²⁶ In his opinion, Justice Anderson writes:

Unlike the definition of “assist,” nothing in the definitions of “advise” or “encourage” requires a direct, causal connection to a suicide. While the prohibition on assisting covers a range of conduct and limits only a small amount of speech, the common definitions of “advise” and “encourage” broadly include speech that provides support or rallies courage. Thus, a prohibition on advising or encouraging includes speech that is more tangential to the act of suicide and the State’s compelling interest in preserving life than is speech that “assists” suicide. Furthermore, the “advise” and “encourage” prohibitions are broad enough to permit the State to prosecute general discussions of suicide with specific individuals or groups. Speech in support of suicide, however distasteful, is an expression of a viewpoint on a matter of public concern, and, given current U.S. Supreme Court First Amendment jurisprudence, is therefore entitled to special protection (Ref. 26, p 24).

On remand, Mr. Melchert-Dinkel was convicted of one charge of assisting suicide and one charge of attempting to assist a suicide, the latter being subsequently reversed on appeal.²⁹

Interestingly, in 2015, a Minnesota court convicted Final Exit Network of assisting Doreen Dunn in dying by suicide by helium asphyxiation years earlier, in 2007. The company’s medical director and Ms. Dunn’s “exit guide” were present in the room when she died by suicide, but they did not physically assist her in the act. Minnesota’s Court of Appeals affirmed, holding that, based on *State v. Melchert-Dinkel*, Final Exit Network’s conviction under the new Minnesota statute did not violate the First Amendment.³⁰ Both the Minnesota Supreme Court and the U.S. Supreme Court denied *certiorari*.³¹

The Georgia and Minnesota cases detailed above show that both state judiciaries agreed on the risks of prohibitions imposed on speech in support of suicide. However, they reached different resolutions. The Georgia Supreme Court ruled that verbal facilitation of suicide is protected speech regardless whether it is an opinion expressed in a public forum or a directive made from one person to a specific other. This holding led the Georgia legislature to rewrite the statute to criminalize strictly physical facilitation. The Minnesota Supreme Court decided otherwise, ruling that the verbal facilitation of suicide can withstand a First Amendment challenge de-

pending on the context: providing directives to another person with whom one has a preexisting relationship, with the intention of helping in completing suicide, may not be protected. The court interpreted the word “assist” as broad enough to include intentional and specific verbal facilitation of suicide, but restrictive enough to exclude public promotion of suicide. While this balance withstood a First Amendment challenge in Minnesota in the case of Doreen Dunn, it is unclear whether it would have survived the scrutiny of the Supreme Court, which declined to review the case.

Not only did *Commonwealth v. Carter* raise serious legal issues that remain largely unresolved, the case also highlighted the need for forensic psychiatric expertise to provide relevant scientific evidence to assist the trier of fact in understanding criminal responsibility and potential mitigating factors in these cases.

Role of Forensic Psychiatry

Commonwealth v. Carter is a complicated case involving two adolescents in an online relationship that ended with one’s suicide. Is Ms. Carter guilty of assisting Mr. Roy in his suicide? While this question is ultimately answered by the trier of fact, forensic psychiatrists can help the trier of fact interpret the mindsets and behaviors of the involved parties. Forensic psychiatry can provide key information through two assessments: the defendant’s psychiatric evaluation for diminished capacity or mitigation purposes, and the decedent’s psychological autopsy.³²

In both types of forensic evaluations, several factors should be considered when evaluatees are adolescents or youths. First, empirical data has shown that adolescents are prone to risk-taking and impulsive behaviors, which leads to an increased risk of violence.³³ Numerous studies have demonstrated a relative prominence of emotional reactivity and sensation seeking in the adolescent brain compared with cognitive inhibitory control.^{33–35} This vulnerability is explained by the ascendancy of the mature limbic system over the developing prefrontal cortex.^{33,35} Studies have also shown that adolescents’ decisions and behaviors can be substantially influenced by context: adolescents are able to rationally understand behavioral risks in hypothetical situations, but they are more likely to be driven by their emotions “in the heat of the moment,” even if they “knew better.”³³

Second, peer relations, whether face-to-face or online, play a major role in adolescent life.³⁶ Adolescents have been found to be more vulnerable to peer influences than adults.³⁷ Extensive research has shown that bullying perpetration and victimization are associated with suicidal behavior.^{38,39} Peer connectedness has also been found to be associated with adolescent suicidal behavior, indicating that social relations may not necessarily yield constructive support and advice.⁴⁰ Furthermore, peer influences have been shown to be strongly associated with risk-taking behavior among adolescents,⁴¹ as adolescents are more likely to seek out and connect with peers who share their inclination for sensation seeking.³⁴

Third, recent research has shown that online exposure to suicide increases the risk of suicidal behavior among vulnerable adolescents.^{38,39,42} The association between social media and suicide involves a wide range of platforms. There is strong evidence implicating cyberbullying, cybersuicide pacts, and pro-suicide websites in increasing suicide rates.^{39,43,44} Youths who reported a history of self-harm were significantly more likely to have used the Internet to access information about suicide methods or to discuss it in chat rooms or forums.^{43,45}

Moreover, pro-suicide online communications might foster peer pressure to attempt suicide.³⁹ For example, the “Blue Whale Game” is an online “challenge” consisting of a consecutive series of online tasks given by administrators to online adolescent “challengers,” the final one being to attempt and die by suicide.⁴⁶ After his arrest in Russia in November 2016, Philipp Budeikin admitted to inventing the “game” for the purpose of “cleansing society;” he pled guilty to “inciting at least 16 teenage girls to kill themselves” and was sentenced to three years and four months in prison.^{47,48} Although this online phenomenon has been associated with several suicides around the world, including in the United States, a substantial causal link between the “Blue Whale Game” and suicide events has yet to be established.⁴⁹

When evaluating an adolescent defendant in cases of facilitated suicide, forensic psychiatrists must have a comprehensive understanding of the jurisdiction’s laws.⁵⁰ A detailed account of the social history of the defendant, particularly focusing on the relationship with the decedent, is crucial. This includes, but is not limited to, social media and Internet activities of the defendant. Digital collateral sources can yield “real-

time data” not subject to recall or other biases and can shed insight into the person’s self-perception, beliefs, and behaviors at different points in time.⁵¹ Additionally, an assessment of the adolescent defendant’s proneness to impulsive and risk-taking behavior, incomplete personality development, and susceptibility to peer influences can be highly relevant because these can be mitigating factors and may be influential in the guilt phase or sentencing phase of a trial.^{50,52} Moreover, some states allow a defense of diminished capacity, which asserts that the defendant did not possess the requisite mental state to commit the offense. In states where facilitated suicide is a specific intent crime (see Table 1), the psychiatric evaluation would help determine whether the adolescent defendant formed the required intent to commit the crime. Diagnoses of mood disorder or attention-deficit and hyperactivity disorder might be especially relevant given their association with increased impulsivity and decreased rational decision-making ability.⁵³ Substance-induced mental conditions might also be considered, depending on the state.⁵⁴

Forensic psychiatrists may also perform psychological autopsies of the decedent. A psychological autopsy is defined as “a systematic retrospective investigation of the decedent’s state of mind at the time of death to determine (to the highest degree of certainty possible) whether the decedent was suicidal, and, if so, what distal and proximal risk factors contributed to that suicide risk” (Ref. 55, p 105). This process would require gathering collateral information similar to what has been described above. Sources of information include autopsy and post-mortem toxicology reports, interviews with family and friends, and a review of school and medical records.⁵⁵ Previous authors have suggested addressing six key components of the decedent’s death: cause, mode, motive, intent, lethality, and mental capacity.^{55,56} Information about the decedent’s reasons behind the suicidal act (motive), their specific intent while engaging in the act (intent and lethality), and their ability to rationally understand the lethal consequences of the act are important.⁵⁶ An overview of relationships with peers can help determine whether there were any potential external causal or intervening factors to the suicidal act.

While psychological autopsies have been criticized for diagnostic inaccuracies,⁵⁷ they have been used successfully in establishing causality and criminal re-

sponsibility for a suicide decedent. In *Jackson v. State*,⁵⁸ the Court of Appeal of Florida affirmed Theresa Jackson’s conviction for child abuse after a psychological autopsy determined that “the relationship between the defendant and her [17-year-old] daughter was a substantial contributing factor in the daughter’s decision to commit suicide” (Ref. 58, p 720).

Summary

Facilitated suicide continues to be the subject of heated discussion in both the legal and medical fields. *Commonwealth v. Carter* has broadened the debate and emphasized the current social relevance of digital forms of communication, especially among youths. Several conclusions transpire from this analysis. First, criminalization of facilitated suicide varies substantially from state to state. The overwhelming majority of states have laws prohibiting a non-physician person from facilitating the suicide of another person. In states where no such statutes exist, as in Massachusetts or Utah, prosecutors may seek charges under existing manslaughter or murder statutes. Complicating matters further is the inconsistency in the language used in the statutory prohibitions of facilitated suicide. While different terms might carry different meanings, terms such as “to cause” and “to assist” appear to be interpreted differently depending on the jurisdiction. When looking at how state courts have interpreted “to assist,” one consideration involves whether the defendant provided physical versus verbal assistance to the decedent. Physical acts in the furtherance of suicide may be seen as more compelling evidence of criminal responsibility. Verbal facilitation of suicide seems to represent more of a gray area.

There is no consensus as to whether verbal facilitation of suicide is completely protected by the First Amendment. The Georgia judiciary seems to answer in the affirmative and has narrowed its statute to prohibit only physical facilitation of suicide. Meanwhile, the Minnesota Supreme Court cited the terms “to advise” and “to encourage” as being unconstitutionally vague and recognized the term “to assist” to refer to both physical and verbal facilitation of suicide. The Minnesota judiciary’s approach appears to emphasize the context as a determining factor of whether the speech is protected. However, the boundaries of this context remain unclear. Does telling someone in a fit of rage to kill themselves qualify

as a criminal act, or does breaking the law require more specific, step-by-step instructions? There seems to be a large gray area between these two extremes, an area in which criminal liability may exist. Legislatures should address and clarify seemingly debatable and vague laws pertaining to facilitated suicide. Moreover, those laws should tackle the role that digital forms of communication may play in the furtherance of self-harmful behavior and suicide.

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