I suspect that the offer last year by the governor of Mississippi, to prematurely free two sister prisoners if one donates a kidney to the other, seems like a reasonable offer to many readers. Judging by the newspaper accounts, legal authorities, the NAACP and prisoner support groups endorsed the initiative while only the rarely interviewed medical bioethicist offered thoughts of concern.

In addressing this issue it is impossible for me to put aside two items, which, I think, form something of an ethical background to this particular case, although the arguments I will make are quite independent of these observations. First of all, the two women, as teenagers, were convicted of luring a man into a trap in order to be robbed. He was beaten but not killed. The girls were then sentenced to life imprisonment, and while the news accounts trumpet the fact that the crime netted eleven dollars, ("Life in prison for $11!") the crime was the beating, not the robbery, and had they netted a thousand dollars or ten thousand dollars, or nothing at all, the sentence should have been the same. Most, like the NAACP, have assumed that the sentence had more to do with the color of their skin than the magnitude of the crime. The second item for background is the observation that the governor made only a week ago, that celebration of passage of the Civil Rights act was a vacuous action, as civil rights had never been a problem in Mississippi. He noted that during the early 1960s he and his friends spent their time riding in cars looking at pretty girls. There were no problems between the races where he grew up. Or at least, not that affected him.

What's wrong with a governor offering freedom in exchange for a kidney? In this case the healthy sister had offered, no strings attached, to donate the kidney, before the governor came up with the plan. The healthy sister merely wants to help her sib. The governor however, publicly noted that dialysis is costing the state $200,000 per year and that the kidney transplant will save money. If he had simply commuted the sentence, he would only be transferring the cost from one state agency to another, but the transplant represents, he hopes, a one time investment with a lasting economic solution, assuming, of course, which one should not, that Medicaid in Mississippi will pick up the cost of her drugs. There are far more slippery slopes than "offering" rewards for "voluntary" actions by prisoners.

A couple of years ago the state medical journal entertained some impassioned discussions about the ethics of offering clinical trials to AIDS patients in the ACI. One point of view was that prisoners can not, by definition, offer voluntary participation. There can never be a complete dissociation from the implications of choosing to do something that the authorities may view either with favor or with alarm. There can be no choice without repercussions. On the other hand it was argued that clinical care in any research trial, whether the subject was treated with placebo or with the active drug, was undoubtedly better than the best care the prisons could otherwise offer. Both sides, of course, fully understood the other's arguments and both saw the wisdom of generally not allowing prisoners to be in drug trials.

In the Mississippi case, we have a truly voluntary offer by the sister, and an apparently financially driven offer by the governor, with an outcome that everyone will agree is a good one, a win-win situation. But what if the sister had been reluctant to donate the kidney? Would it be ethical for the governor to offer early probation as a reward for offering the kidney? This is illegal in the United States and in most countries, that is, trading body parts for gain. What if the governor knew that a particular patient was a good match for an organ that his own daughter needed? Could he reward her for "volunteering" or threaten to punish her for not "volunteering"? In the United States there is an agreement that people who volunteer to be in research trials cannot be offered significant incentives to participate, that is, they cannot be “bought” to be in a study they’d really not like to participate in but feel that they have to in order to make ends meet. How much more of an incentive is there for a prisoner to try to find favor with authorities than by “volunteering” to do what those in power desire. How many years of freedom is a kidney worth? Bone marrow? But these are not clinical research trials. These are “voluntary” choices.

The issue in Mississippi is precedent. The governor is converting an altruistic offer into an illegal and patently unethical action with an eye towards courting popular opinion citing money-saving as the rationale. Prisoners and their care are never a high priority item, even in times of abundance. Sacrificing ethics for money is never worth the exchange. The kidney transplant should be performed. It should never have been an issue. The pardons are a legal, not an ethical issue, although in Mississippi, one must wonder.

– Joseph H. Friedman, MD

Disclosure of Financial Interests
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