

The Kevorkian Trial(s)

Ed Roy, April 13, 2021

Sources

- Famous Trials website: <https://www.famous-trials.com/drkevorkian/2430-the-trials-of-jack-kevorkian-1994-1999-an-account>, article by Douglas Linden, © 2021.
- Book: *Death on Demand: Jack Kevorkian and the Right-to-Die Movement*, Michael DeCesare, 2015.
- Movie (HBO, 2010): *You Don't Know Jack*, starring Al Pacino, Susan Sarandon, John Goodman, Brenda Vaccaro, Danny Huston.
- Network TV Videos
- NYT Articles: June 4, 2007. Dr. Kevorkian's Wrong Way. June 3, 2011. Dr. Jack Kevorkian Dies at 83; A Doctor Who Helped End Lives. WP Article: June 27, 1997. Unanimous Decision Points to Tradition of Valuing Life.
- Wikipedia: Jack Kevorkian and other sites.
- JAMA Article: Attitudes and Practices of Euthanasia and Physician-Assisted Suicide in the United States, Canada, and Europe. EJ Emanuel, JAMA 316 (2020) 79-90.

The Law as Codification of Society's Values

What Values are relevant to Physician Assisted Suicide?

- Individual Liberty versus State's Interests
- Is there a Right to Die?
- Does the Right to Privacy extend to Choosing one's own life or death?
- Success of medical interventions has extended life longer than some want to live

Ways to end your life — is it legal?

- Refuse life support - now legal in US if clear directive
- Suicide - Legal in most but not all countries
- Assisted Suicide - Legal in many European countries and a number of states
- Voluntary Euthanasia - legal in Canada, Belgium, Luxembourg, Netherlands, Colombia, Spain, Western Australia, New Zealand (coming in November)
- Involuntary Euthanasia - murder

Social and Legal Background

- Shift in public opinion from 1970's to 1990's
- Increasing discussion of End of Life
 - Euthanasia Society of America (1938), Hemlock Society (1980)
 - Karen Ann Quinlan in late 1970's
 - US Supreme Court case about Nancy Cruzan, 1989-90
- More people approving of physician assisted suicide: 61% in 1977, 72% by 1990.
- Not uncommon for physicians to quietly facilitate patient suicides (morphine or sedative pills)

Relevant US Supreme Court rulings in 1990's: Nancy Cruzan

- Fourteenth Amendment Due Process argument. Court agreed that a competent person can exercise right to refuse life support, but ruled that an incompetent person cannot make the decision. Without “clear and convincing evidence” of Nancy’s desires, could not end life support.
- US SC ruled 5-4 that the Constitution did not prevent Missouri from requiring clear evidence of patient’s desires
- 5 separate opinions written

Cruzan Supreme Court Ruling (cont'd)

The Cruzan case set several important precedents:

- It set out rules for what was required for a third party to refuse treatment on behalf of an incompetent person.
- It established that absent a living will or clear and convincing evidence of what the incompetent person would have wanted, the state's interests in preserving life outweigh the individual's rights to refuse treatment.
- It left it to the states to determine their own right-to-die standards, rather than creating a uniform national standard.
- Resulted in prevalence of advance health directives.

Relevant Supreme Court rulings in 1990's: 1997, *Vacco v Quill* and *Washington v Glucksberg*

- No Constitutional Right to Die (Due Process 14th amendment)
- Upheld states' (Washington, New York) laws preventing physician assisted suicide
- Left open the possibility of states legislatively allowing physician assisted suicide
- (2008 Washington passed Death with Dignity Act)



Kevorkian's Background Before First Assisted Suicide

Born in Michigan in 1928 to Armenian parents who had fled Armenian Holocaust

Child prodigy, taught himself four languages, aloof from peers, Bach as deity, painter, jazz musician

University of Michigan Medical School. Pathology residency, terminated.

Research interests related to death; proponent of blood transfusions from fresh cadavers, did tests of time of death from retina appearance, proposed doing experiments on death row prisoners, proposed commercialization of organ donation.

No longer employed as pathologist by 1982, age 54

Started publicizing availability to assist suicide with "mercitron"

Janet Adkins

First Assisted Suicide for Kevorkian

- In 1989, several people who read about Dr. Kevorkian's machine in *Newsweek* contacted him. One was a 54-year-old teacher from Portland, Oregon named Janet Adkins. Janet had led an active life. She climbed Mount Hood, trekked in Nepal, hang glided, and raised a family. She was suffering from early onset Alzheimer's disease.
- Accepted no payment for his services.
- Any patient must express "a firm, voluntary, and unwavering wish to die."

June 4, 1990 (Cruzan decision was June 25, 1990)

Janet Adkins

- Michigan had no law against suicide, so no arrest made initially, even though Kevorkian had called police after she died
- Three days after she died, Kevorkian was on Geraldo and the Today Show
- Oakland County Prosecutor Richard Thompson spent years trying to convict K

Early Kevorkian Legal Proceedings

- 6/8/90 Judge Alice Gilbert issues temporary injunction against K
- 12/3/90 K charged with murder
- 12/12/90 Preliminary hearing
- 12/13/90 Judge McNally dismisses murder charge, calls on legislature
- 2/5/91 Judge Gilbert makes injunction permanent
- 12/18/91 Med Examiner rules death of Wantz and Miller was murder
- 12/19/91 Grand Jury convened
- 2/92 K arrested for murder of Miller and Wantz
- 7/22/92 Charges dismissed by Judge Breck

After Early Charges dismissed

Lack of specific law in Michigan

- Janet Adkins, Sherry Miller, and Melanie Wantz
- In 1991 Michigan legislature introduced bill to establish commission to study issue, then bill was amended to make assisted suicide a crime until the report from that commission
- Lower court ruled this law was unconstitutional because it had two purposes
- Michigan Supreme Court later reversed lower courts (a ban was constitutional) and ruled no right to suicide

First Trial

Thomas Hyde, April 21, 1994

- Suicide #17, carbon monoxide inhalation (termination of medical license meant no drugs), 30-year old with Lou Gehrig's disease
- Wayne Co, dispute about location of event
- Video of Hyde, "I want to end this. I want to die." Partner Heidi Hernandez, "I've watched him suffer too long."
- Easing pain was allowed under Michigan law; K testified he was ending Hyde's suffering.
- Heidi Hernandez cried during Fieger's emotional summary

Second Trial

Merian Frederick and Ali Khalili, February 20, 1996

- Frederick, 72-year old with Lou Gehrig's disease
- in presence of her son and his wife and UU minister
- Carbon monoxide, Frederick pulled clip to release gas into mask
- Ali Khalili, Illinois physician with multiple myeloma
- Prosecution pointed to K's interest in experimenting on terminal patients
- Khalili's wife Sandra testified to how bad his pain was
- Jury acquitted after 9 hours of deliberation

Third Trial

Sherry Miller and Marjorie Wantz, April, 1996

The “Common Law Trial”

- Murder charges reinstated after Michigan Supreme Court ruled assisted suicide was common law felony (12/94)
- Dual suicide, one CO and one KCl, MS and pelvic pain unrelieved by 10 surgeries
- Judge Breck ruled prosecution had to prove only that K provided means
- K dressed in historic costume, Fieger held up blank piece of paper saying it was the law that K had broken
- Three days of deliberation then acquittal
- Rate of assisted suicides accelerated after trial, 18 in 5 months



*man: Public crusader or
attention-grabbing egotist?*

Fourth Trial


Loretta Peabody, June, 1997, maybe multiple sclerosis?

- Inexperienced Ionia County prosecutor, first grand jury ever
- Mistrial declared after opening arguments

Fifth Trial

Thomas Youk, 1999, ALS, Lou Gehrig Disease

- Kevorkian administered lethal injection
- Kevorkian showed video of the event on 60 Minutes
- K had assisted in 130 suicides
- Charged with Murder and delivery of controlled substance
- Decided to be his own lawyer, fired Fieger

A man with grey hair and glasses is sitting in a wooden rocking chair in a dimly lit room. He is wearing a dark, long-sleeved shirt and light-colored trousers. The room is viewed through an open doorway, and a desk lamp is visible on a table to the left, casting a warm glow. The overall atmosphere is quiet and contemplative.

*Wallace: Dr. Jack Kevorkian,
who has acknowledged*



2:07:17 / 7:09

You Don't Know Jack

| HBO



Summary of Kevorkian Legal Proceedings

- First assisted suicide in 1990; criminal charges dropped because no Michigan law against it, but civil court injunction against doing it again
- Tried four times for murder or physician-assisted suicide from 1994 to 1997; acquitted three times, one mistrial.
- 1999 charged with murder of Thomas Youk, convicted
- Paroled, 2007

Post-Kevorkian developments

70% of assisted suicides are for cancer patients, 15% ALS

No evidence of abuse where legal (Emanuel, 2020 JAMA)

Brittany Maynard: 2014 suicide on social media

- GBM diagnosis at age 29
- Moved from California to Oregon to allow suicide
- Posted her plans on YouTube, and then the actual act; 12 million hits

Current Status: Still part of Culture Wars

Physician assisted suicide legal in ten jurisdictions, nine states and DC:

California 2016

Colorado 2016

DC 2017

Hawaii 2019

Maine 2019

New Jersey 2019

New Mexico 2020

Oregon 1994

Vermont 2013

Washington 2008

- 2/25/93 Michigan law against assisted suicide passed to take effect immediately (first was scheduled to take effect in March)
- 5/21/93 Judge Cynthia Stephens overturns state ban on technicality
- 8/93 Wayne Co prosecutor charges K with murder of Thomas Hyde (#17)
- 11/30/93 K charged with Merian Frederick's death and Khalili (#19)
- 4/21/94 Hyde trial begins in Wayne Co
- 5/2/94 Jury acquits K of Hyde crime
- 5/10/94 Michigan Court of Appeals rules ban was flawed but reinstates charges related to Wantz and Miller

- [11/8/94 Oregon passes its Death with Dignity Act]
- 12/94 Michigan Supreme Court rules ban was constitutional and rules common law felony covers assisted suicide
- 3/95 US Court of Appeals rules on WA case that there is no right to suicide
- 4/95 US Supreme Court declines to hear appeal
- 11/28/95 Police break into K's house w/o warrant, K sues
- 11/30/95 Charged with Merian Frederick's death assisting suicide
- 12/ /95 K in jail on hunger strike
- 1/4/96 Charged with assisting suicide of Ali Khalili
- 2/20/96 Second trial, Merian Frederick and Ali Khalili p128 Acquitted
- 4/96 Wantz and Miller Common Law trial

- 9/96 Police break into house, K sues
- 6/97 Fourth Trial, Loretta Peabody, Ionia Co, mistrial after opening arguments
- 9/98 Another Michigan state ban takes effect
- [9/17/98 Thomas Youk injected by K]
- 11/22/98 Sixty Minutes episode with K showing voluntary euthanasia of Thomas Youk
- 11/25/98 Prosecutor Gorcyca charges with murder of Youk
- K fires Fieger
- 3/99 Fifth Trial. Judge Jessica Cooper rules on evidence allowed if Assisted Suicide charge is dropped and only murder charge continues
- 4/13/99 Judge Cooper sentences K
- 2007 K paroled
- [6/3/2011 K dies, age 83]

Karen Ann Quinlan



- Age 21, crash diet/valium/alcohol lead to cessation of breathing for 20 min; in coma and persistent vegetative state
- On ventilator and nasogastric feeding tube
- Parents thought ventilator was “extraordinary means” (Pope Pius said OK to not use extraordinary means to keep alive)
- Went to court to allow removal from ventilator, arguing right to privacy; rejected by NJ Superior Court, accepted by NJ Supreme Court in 1976
- Removed from ventilator but not feeding tube; lived 9 more years, at time of death weighed 65 lbs.

Nancy Cruzan



- 1989-1990
- Background: 25 yr old, auto accident, face down in water. Coma, vegetative state, feeding tube inserted to maintain.
- family decided to remove tube, hospital required court order
- circuit court gave permission, but state appealed. Missouri Supreme Court overturned circuit court. Went to US Supreme Court 1989. First right to die case. Ruling in June, 1990.

Precedents in Michigan

- For: 1920's case, man left his wife poison, and he was convicted of murder
- Against: 1983, man gave his friend a gun and he shot himself; convicted of murder but overturned by appellate court, that ruling upheld by Mi. SC