Judge: Nazi eugenics, euthanasia rulings give the right to 'suicide'

by Linda Everett

Michigan, as one prominent Detroit attorney put it, is becoming "a concentration camp without walls." The state's main claim to fame these days is as the home of Jack "Dr. Death" Kevorkian, the former pathologist who "helps" desperate people bring about their own end. Yet only 50 years ago Michigan, as one of the Great Lakes states, shared in the highest industrial standard of living in the world.

It is in such a climate of moral decay, that a Detroit judge, with no evident fear of a public outcry, dared to invoke a 1927 U.S. Supreme Court eugenics ruling that notoriously became the model for Nazi "race hygiene" laws, and linked it with an equally egregious euthanasia policy to form the legal foundation for a new barbarism—allowing "rational" individuals to kill themselves with help from doctors. This occurred on Dec. 13, 1993 with the ruling of Judge Richard C. Kaufman against the state's law banning "assisted suicide."

Background to the case

One year ago, in February 1993, Michigan legislators overwhelmingly voted to make it a felony to provide the physical means by which another person attempts or commits suicide or to participate in a physical act by which another person attempts or commits suicide.

The Michigan chapter of the American Civil Liberties Union challenged the law. By May 1993, Wayne County Circuit Court Judge Cynthia Stephens struck it down on various technicalities. She added: "This court finds that the rights to self-determination, rooted in the Fourteenth Amendment of the Federal Constitution and of the Michigan constitution, includes the rights *to choose to cease living*."

The state appealed her ruling along with a similar one by Circuit Court Judge Jessica Cooper to the Michigan Appeals Court. Each time Kevorkian was charged with violating the assisted-suicide ban, his attorney-accomplice Geoffrey Fieger petitioned the court to dismiss all charges because, he claimed, the law violated the Fourteenth Amendment to the Constitution, which provides: "nor shall any State deprive any person of . . . liberty . . . without due process of law."

Wayne County Circuit Court Judge Richard C. Kaufman also took up the constitutionality issue after Kevorkian was charged in the September death of Donald O'Keefe. On Dec. 13, Kaufman ruled that the state law against assisted suicide is "unconstitutional and overbroad with respect to a person's liberty interest in committing rational suicide." Kaufman sweeps aside most of Fieger's (and the ACLU's) claims, along with Fieger's idea that judges may "constitutionalize any claimed right according to their own private philosophical or religious viewpoints." Kaufmann opposes those who would make the guarantee of liberty in the Fourteenth Amendment "an empty vessel" into which the Supreme Court "is free to pour a vintage" that it thinks "better suits present-day tastes."

To determine whether this alleged right (to kill oneself or to be killed by another) is indeed protected by the liberty provision of the Fourteenth Amendment, Kaufman says it is necessary to analyze if that right is "deeply rooted in this Nation's history and traditions" and if it is part of "the contemporary collective conscience" (a test used by the Supreme Court in *Griswald v. Connecticut*). Fieger claimed that in the Nancy Cruzan case, in which the Cruzan family was given the legal right to starve and dehydrate their brain-damaged daughter, the U.S. Supreme Court not only recognized a person's right to die, but pronounced a constitutional right to obtain assistance in ending one's life. Kaufman disagrees, but seeks to review a historical analysis of attitudes toward suicide, just as the Supreme Court did in its 1973 ruling in *Roe v. Wade,* which made abortion legal—based on an alleged support for abortion in ancient Greece and Rome.

Based on the work of several fanatical promoters of voluntary/involuntary suicide and euthanasia, Kaufman discovers that "there is significant support in our tradition and history for . . . approving suicide" from Plato, the Greeks, Romans, and the Stoics. Why, Kaufman writes, even Tertullian considered Christ's crucifixion a suicide!

The state has a recognizable interest in preserving life by proscribing suicide, but, that state interest, Kaufman says, must "be weighed against the constitutionally protected inter-

ests of the individual," as determined by the Supreme Court in *Cruzan*. The state's interest in preserving life "must take a back seat to other protected rights," like the right to refuse medical treatment if it is agreed a person's quality of life is poor.

The case of Carrie Buck

Kaufman then cites the 1927 U.S. Supreme Court ruling in *Buck v. Bell,* which upheld the Commonwealth of Virginia's eugenics law, requiring the sterilization of certain women. Kaufman says that the Supreme Court found "sufficient interest to avoid the creation of certain life because the state concluded the quality of such life was too low and too much a burden on society to permit."

If the state, Kaufman continues, "is allowed to prevent the creation of life because it deems the resulting quality too low, how can it deprive a person of the right . . . to come to that same conclusion with respect to their own life?"

So, on the abhorrent eugenics ruling, Kaufman builds another, equally estranged from the concept of natural law which inspired the U.S. Constitution, to claim that "a person has a constitutionally protected right to commit suicide." He concludes that while the state must protect children or incompetent persons with no "objective debilitating physical illness" from committing "irrational" suicide, there are times when the state cannot prohibit "rational" suicide for a competent adult suffering in pain from a terminal illness.

The 1927 *Buck* ruling, hailed by the Nazis in the development of their race purification program six years later, led 30 other states to pass similar laws. All were based on the Model Eugenical Sterilizations Law developed by Harry H. Laughlin of the Harriman family's Eugenics Records Office, to curb the fecundity of any group he considered "defective," including paupers, the blind, deaf, and epileptics, as well as "moron" Jewish or Italian immigrants who failed IQ tests written in English. The *Buck* precedent was orchestrated by "experts" who never saw the young institutionalized Carrie Buck, but who testified to her "feeblemindedness" based on a volunteer's statement that Buck had a "look about her."

The 'duty' to die

Who will protect vulnerable patients under Kaufman's ruling today? Who decides who is "competent" enough to be allowed "suicide"? Even Kaufman doesn't seem to recognize the genocidal spring from which he drew his conclusions—namely the philosophical works by Margaret Pabst-Battin and David J. Mayo, who promote suicide as humanitarian, morally correct, and "even obligatory." Battin says, "The ordinary expected thing to do is to do your dying relatively early . . . relatively easily, in a way in which you won't impose a burden on others." Just as the so-called right to die is now enforced as a *duty* to die, these people require suicide of those with an alleged poor quality of life before they become a "burden."

Many "biomedical ethicists" demand the same, labeling basic life-saving interventions for the elderly as the root cause for shrinking medical resources. The budget crisis drives states to similar ruthless decisions. Last summer, the Michigan Department of Social Services charged an indigent family with child abuse because the family insisted that their sick infant receive life-saving medical treatment which the state social worker claimed was "unnecessary," because the baby was going to die "anyway."

Kevorkian's victims

Now, consider the victims of Dr. Kevorkian, many of whom were mentally or physically disabled people who refused basic treatment or psychiatric intervention. Yet, when Judge Kaufman applied his criteria for "rational suicide" to Kevorkian's 18th victim, Donald O'Keefe, he quickly concluded that O'Keefe's suicide was "rational," and dropped all charges against Kevorkian in that case.

How could that be? O'Keefe was 73 when Kevorkian gassed him on Sept. 9. He had been diagnosed with bone cancer weeks earlier. The judge based his opinion on a videotape in which O'Keefe said he didn't want to live because he had excruciating pain. Yet despite all that pain, O'Keefe *had not seen or talked to his physician for weeks*. And, the only reason that O'Keefe's disease was terminal, permanent, and painful—per Kaufman's criteria—was that he refused all treatment, save one chemotherapy session. O'Keefe's doctor said that his patient was depressed, which is typical of many patients shortly after they are first diagnosed with cancer. The depression would have lifted with treatment, but O'Keefe never received it. So, how could an incompetent patient give his informed consent—which is necessary for even removing a bunion, let alone suicide?

Was the patient ever told of a striking new bone cancer treatment called Metastron, which wipes out cancer pain without sedation for nearly six months? Did he get the chance to choose between death and possibly hiking cross-country, as some Metastron users are now doing?

It is clear that O'Keefe was suicidal, but not so desperate that he would take his life himself. He needed approval for that act, about which he felt ambivalent, and he got it from someone he believed was an authority—Dr. Death—just as Carrie Buck and hundreds of institutionalized youngsters like her commonly "did whatever her people wanted."

Now, the muddleheaded Judge Kaufman, who was recently stopped by police for smoking marijuana while driving around the Detroit suburbs, bypasses all traditional moral authority and natural law to convince himself that suicide is "accepted within our contemporary conscience." For such proof, he cites a physician who openly espouses the Nazi belief that "most" physicians accept that under certain conditions "the *alternative* to life serves the best interest of the patient, the surviving family and society." In Michigan, these days, it seems they'll believe anything—even their judges.