WOMEN AND ASSISTED SUICIDE: EXPOSING THE GENDER VULNERABILITY TO ACQUIESCENT DEATH

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Most he's helped were female. And therein lies a warning. Assisted suicide poses a particular threat to women.[1]

"I have decided the quality of life is not worth a dime. . . . I have nothing left to give to anyone anymore."[2] This epitaph was written by 39-year-old Rebecca Badger, an assisted suicide patient aided by Dr. Kevorkian.[3] Before her death, Badger made desperate attempts to find someone who wanted her to live, but no one responded.[4]

Badger's apparent cry for help is typical in female suicide attempts. According to the National Center for Health Statistics, "[w]omen attempt suicide three times more often than men," but men have a higher success rate.[5] The lack of success for female

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We would like to thank Erin McGrath, Mary Bunch, and Colleen Holmes for their review, commentary, and editing assistance. We dedicate this Article to our mothers and grandmothers, specifically, Lois E. Donnelly, Ruth E. Lambright, and Ruth L. Watern, who have challenged and inspired us as women of strength and dignity. "Strength and dignity are her clothing, And she smiles at the future. . . . Her children rise up and bless her. . . . " Proverbs 31:25, 28.

1 M. Cathleen Keveny, *Kevorkian and Women*, USA TODAY, Oct. 21, 1996, at 19A (discussing that the "social acceptance of assisted suicide might prove particularly dangerous to women" since women live longer, want to avoid being a burden on their children, and are more likely to be impoverished and suffer from depression).

2 Kate McKee, *Portrait of a Suicide* (visited Apr. 6, 1997) <http://www.freep.com/news/extra2/qbadger41.htm> (demonstrating the emotional reasons why women, such as Rebecca Badger, turn to the controversial means of assisted suicide in order to end their lives).

3 *See id.* She contacted Dr. Jack Kevorkian after reading about him on the Internet and after reading his book on assisted suicide entitled *Medicide*. *See id.* The full title of Kevorkian's book published in 1991 is *Prescription: Medicide: The Goodness of Planned Death.*

4 *See id.* Badger had informed her daughters of her plan to contact Kevorkian and they supported her decision, but they did not think that she would actually carry out her plan. *See id.* In addition, she contacted her ex-husband just prior to her suicide, "'[s]he said she wanted someone to intervene . . . and like an aside, she said she was wondering if I would be that person.'" *Id.* (quoting Fred Riley, Badger's ex-husband). Her ex-husband admits that he did not know what to do and that "'[he] didn't think she'd do it.'" *Id.* (quoting Fred Riley, Badger's ex-husband).

5 Stephanie Gutmann, *Death and the Maiden: Dr. Kevorkian's Woman Problem*, NEW REPUBLIC, June 24, 1996, at 20, *available in* 1996 WL 9233432. Gutmann points out that male suicides actually outnumbered female suicides 24,000 to 6,000 in 1992. *See id.* She attrib-

suicide attempts is attributed, in part, to the theory that women are not trying to end their lives, but are making a cry for help.[6]

That cry for help was preceded by a life history of stress, trouble and difficulty. Badger became pregnant at the age of sixteen, was married at seventeen, gave birth to her second child that same year, and divorced her abusive husband when she was twenty-one.[7] She relinquished custody of her children five years later believing that she was an unfit mother, but reunited with them after joining Alcoholics Anonymous (AA).[8] Gaining strength through her AA involvement and upon meeting her second husband, there seemed to be improvement in her life,[9] but then she was diagnosed with multiple sclerosis.[10] Progressively Badger complained of muscle pain and numbness, but doctors were unable to find the reason for her lengthy list of symptoms.[11] Doctors and her ex-husband

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utes this disproportion to determination on the part of the males to actually succeed. *See id.* The phenomena can be explained by examining the methods used to commit suicide. Men tend to "blow their heads off or throw themselves off buildings," whereas women tend to overdose on pills. *Id.*

6 *See id.* (stating that many times these suicide attempts are "a perverse way of reaching out, of bringing people to the bedsides and hands to the body."). Some authors have questioned why the ratio is the converse when dealing with the suicides in which Dr. Kevorkian has supplied assistance. Gutmann claims that many of the male patients who contacted Kevorkian became impatient and committed suicide on their own. *See id.*

> Kevorkian is far too media-savvy to have been sanguine for long about his disproportionate number of female patients. As the deaths of his first eight women clients were registered and charges of misogyny started ringing from the editorial pages, he began, in his fashion, to make his oeuvre look more like America. The number of men grew as the work progressed, finally bringing the total to eleven. But even with the added effort to diversify, one problem remains: Kevorkian seems to like to feint and bobble, to flirt and play coy with his clients. Some of this tendency stems from his problems finding appropriate venues for medicides and from his responsible attempts to make sure patients have explored the range of treatments. But much of it seems to have come out of Dr. K's pleasure in the process, in playing God. The upshot is that many of Kevorkian's male prospective clients had already killed themselves by the time Kevorkian got around to "setting the date."

Id.

7 *See* McKee, *supra* note 2 (providing evidence that Rebecca Badger was not emotionally stable).

8 *See id.*

9 *See id.* After joining AA, which is where she met her second husband, she earned a two year degree in Alcohol studies from JFK University in California and began speaking at AA meetings and conventions throughout the country. *See id.* "Friends and family say those few years [were] Badger's happiest." *Id.*

10 *See id* (stating that doctors and specialists tentatively diagnosed her with multiple sclerosis after conducting numerous tests).

11 *See id.* Badger's physician said:

> [S]he could never find anything objective to substantiate Badger's ever-expanding list of symptoms. Thumbing through Badger's medical chart — it spans three volumes, each at least 2 inches thick — [the physician] said Badger's complaints included hair loss, blood in her urine, stomach pains and numbness. But she said she assumed Badger had MS, as diagnosed by a neurologist.

began to suspect that Badger was addicted to and seeking drugs,[12] and eventually she was ordered to take Prozac after a psychological evaluation.[13]

With an income of $616.00 per month from Social Security disability for multiple sclerosis, Badger, as her symptoms progressed, moved in with her mother, whom Badger claimed tried to help her commit suicide twice.[14] Badger told police after she was hospitalized, as a result of one of these suicide attempts, that she was afraid of her mother, and that her mother urged her to kill herself with drugs.[15] She told the police that she wanted to live; that she had a lot to give.[16] Nonetheless, she began discussing the work of Dr. Jack Kevorkian with her family — she wanted their advice.[17] After deciding life was not worth living,[18] on the night of her death, she called her second husband, Fred Riley, and said that she wanted him to stop her from killing herself, but Riley did not act.[19] Later, she called one of her daughters and her best friend to ask for their advice, and ended both conversations abruptly stating

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Id. Badger's neurologist admits that his diagnosis was never conclusive. *See id.* The physician admits that Badger could have been suffering from Munchausen syndrome which is "a chronic disorder in which a person complains of physical symptoms — often abdominal pain or bleeding — that are pretended or self-induced." *Id.*

12 *See id.* (stating that her ex-husband said that if she were faking her illness that it was most likely to get painkillers). For the last few years of her life, she had been taking Valium for muscle cramps and Vicodin which is a strong painkiller. *See id.* After having kidney stones, she was taking Denerol, but her doctors "eventually cut her off, calling her behavior 'drug-seeking.'" *Id.* After being cut off, she went to Mexico where she obtained twenty syringes of Denerol. *See id.* In addition, her physician suspected Badger was addicted to painkillers, but continued to prescribe stronger substances such as liquid morphine. *See id.* Additionally, her children believed that she was faking her illness or pain because she often complained of pain when guests were present, but she returned to normal behavior after the guests left her presence. *See id.*

13 *See id.* (stating that her physician ordered a psychological examination which concluded that Badger should remain on Prozac if she continued to complain of symptoms which could not "be attributed to organic illness"). Badger continued to take Prozac on and off from 1994 until her death. *See id.*

14 *See id.* Badger was hospitalized twice for drug overdoses — once on Christmas Eve and once the following January. *See id.* Badger told police that her mother had tried to assist her suicide. *See id.*

15 *See* Kirk Cheyfitz & Kate McKee, *Suicide Was Mom's Idea, Woman Said* (visited Apr. 6, 1997) <http://www.freep.com/news/extra2/qkevo311.htm> (discussing "Badger's complaint against her mother [which] was lodged in a tape-recorded conversation with a detective . . . [and] launched a police investigation that ended . . . when . . . authorities learned Badger had died with [help from] Kevorkian.").

16 *See id.* (reporting that three weeks after her second suicide attempt, she told police "I've got a lot to give [and] . . . I'm still young.").

17 *See* McKee, *supra* note 2 (stating "[s]he was emphatic about her desire to die and the pain she was suffering."); *see also supra* note 4 (discussing the context of Badger's conversations with family members preceding her death).

18 *See id.* In a letter "to the world," she discussed her intent to end her life. *See supra* note 2 and accompanying text.

19 *See* McKee, *supra* note 2; *see also supra* note 4 (recalling that Badger had wanted Riley to intervene, but he did not take her threat of suicide seriously).

that she had to go because Dr. Kevorkian had just arrived.[20] Kevorkian, who had never met Badger, arrived that night and he and his associate conducted a brief psychological interview.[21] Satisfied with their interview, they connected the IV to Badger's arm, and she died that very night.[22]

One of the most distressing facts about the death of Rebecca Badger is that the autopsy showed no evidence of multiple sclerosis.[23] Her personal doctor now concedes that her symptoms were a result of psychiatric problems.[24] She was depressed, as many would be in her situation, and she was crying out for help.[25]

> Let's not kid ourselves. Doctor-assisted suicide is being performed not just on people who are in the last stages of terminal illness. Six of Kevorkian's victims had (or claimed) [to have] multiple sclerosis, which is not fatal or terribly debilitating in many cases. Talk of rights and self-determination is all very well, but most people choose suicide because they are depressed. With proper treatment, their wish to die would disappear.[26]

Because many of the women who have sought assistance from Kevorkian were not diagnosed with terminal disease, but rather

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[20] *See* McKee, *supra* note 2. In both conversations, she expressed doubt and "said there's no way she can tell until the moment comes if she's going to do it." *Id.* Although she asked for advice, she would not allow her daughter or friend to respond, instead she abruptly got off the telephone. *See id.*

[21] *See id.* (stating that "Kevorkian and his associates take steps to assure that all those whose suicides they assist are competent."). Dr. Georges Reding, a psychiatrist present at Badger's suicide, admits that he "certifies the mental competence of Kevorkian's clients." Cheyfitz & McKee, *supra* note 15.

[22] *See* McKee, *supra* note 2 ("A Kevorkian associate . . . conducted a brief psychological interview and made a videotape of Badger describing her ailments and suffering [and t]hen they hooked her up to the IV, and she died a few minutes later.").

[23] *See id.*; *see also* Cheyfitz & McKee, *supra* note 15.

[24] *See* McKee, *supra* note 2; *see also supra* note 11 (describing the findings of Badger's physician and her doubts that the symptoms were real and not psychological). Friends and family assert that her problems were a result of sexual abuse throughout her youth, physical abuse from boyfriends, and then from drug and alcohol addiction. *See* McKee, *supra* note 2. She tried to escape the emotional pain through "a bottle of alcohol and later in a bottle of morphine, prescribed for a disease she did not have." Cheyfitz & McKee, *supra* note 15. "'Her main problem was not physical; it was emotional . . . [a]nd a guy in Kevorkian's position should have asked about her background.'" *Id.* (quoting Fred Riley, Badger's second husband).

[25] *See* Mona Charen, *Kevorkian's Suicides Prey on Pain*, DET. NEWS, Aug. 8, 1996, at A15, *available in* 1996 WL 2926892 (discussing Badger's death as an example of doctor-assisted suicide performed on people who are not terminally ill, but on people who are depressed and can be saved with the appropriate treatment).

> Herbert Hendin, a psychiatrist who has written a forthcoming book on doctor-assisted suicide, *Seduced by Death*, believes ill and desperate patients who say they want to die are really only asking for relief from suffering. "We can bring people back from depression," he told the New York Times Magazine. "We can't bring them back from the dead."

Id.

[26] *Id.*

were more concerned with the effect that their illness would have on family members, there is a lingering question whether women are more susceptible to assisted suicide. Moreover, are women, in particular, finding the "comfort" and "solution" of Dr. Kevorkian's controversial services more appealing than men? There is now an opportunity and, more critically, a need to expose the gender vulnerability to acquiescent death.

INTRODUCTION

Society is in the midst of a dramatic public outcry against human suffering.[27] Translating this trend to the legal forum, we are witnessing the formation of the "right not to suffer."[28] "American society, through its law, is showing a willingness to adopt, without due reflection, medical responses to suffering, and to incorporate the medical solution to suffering into our ethical and legal norms to the exclusion of other approaches."[29] The people who may be most affected by these newer concepts of jurisprudence is a matter that must be taken up by those who have vowed to be protectors of liberty. This Article is offered as a facilitation of that discussion, with an emphasis on gender related trauma.

Life is full of trauma with illness or loss of physical capacities and good mental and physical health being a major factor of distress. Various calamities of life affect individuals of differing genders in different ways, in that women are often influenced differently by a given hardship than are men.[30] "The data point to

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[27] *See* Ralph Loos, *Ethicist: Fear of Suffering Sustains Assisted Suicide*, STATE J.-REG. (Springfield, Ill.), July 31, 1996, at 16, *available in* 1996 WL 10937311 ("An unwillingness in Americans to accept suffering . . . is responsible for the growing number of discussions involving assisted suicide and dying with dignity.").

[28] *See* Lois Shepherd, *Sophie's Choices: Medical and Legal Responses to Suffering*, 72 NOTRE DAME L. REV. 103, 105 (1996). Professor Shepherd's article sounds a warning to the legal profession regarding the relative ease with which the "right to die" concept has been received in the legal community by "demonstrat[ing] that unprecedented claims to rights based on the avoidance of suffering are made and recognized in courts and legislatures." *Id.* The purpose of this Article is to not deal with the issue of the right to die itself, but to expose who may be the unwitting, or acquiescent victims of such a philosophy of "rights."

[29] *Id.* at 103. Shepherd notes also that "the loss of self-control and dignity may occur even in the absence of physical pain and that often occurs even *as a result of* medication to relieve pain." *Id.* at 103 n.4. For a greater focus on suffering itself, and the values carried, or sought to be avoided, by that term, see Lee v. Oregon, 891 F. Supp. 1429 (D. Or. 1995). In *Lee v. Oregon*, the state listed one of it's interests in challenging the constitutionality of Oregon's Death with Dignity Act, which permitted physicians to assist terminally ill patients in dying, as "avoiding unnecessary pain and suffering." *Id.* at 1434. The pain was "unnecessary" only in the sense that it could be alleviated through termination of life, as (presumably) the pain and suffering could not be alleviated through comfort care, social support, or any other means. *See id.*

[30] Much research has been done on the biological and sociological basis for gender-specific behavior. Although the topic of current understandings of sexual dimorphism is beyond the scope of this Article, for a thorough treatment of both sides of the debate in

biological predeterminants of gender-related behavior. . . . The biological profiles of males and females . . . reveal myriad basic physiological differences, many of which shape behavior."[31] How an individual behaves during and deals with trauma may indeed be predetermined by his or her gender.

Numerous factors may, when combined with illness, percolate together to create a much stronger potion than would normally be brought about by that illness alone. The result of such a cumulative effect may be a distortion of reality, doom mentality, depression, and even ultimate despair.[32] Add to these attitudes a general lack of support, whether it be moral, familial, social or financial, and an individual may feel that she is without hope.[33]

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this area, see e.g., ELEANOR EMMONS MACCOBY & CAROL NAGY JACKLIN, THE PSYCHOLOGY OF SEX DIFFERENCES 349-55 (1974) (examining the "widely held beliefs" about sex differences to determine which are supported by evidence and which are pure stereotypes); LAUREL RICHARDSON, DYNAMICS OF SEX AND GENDER: A SOCIOLOGICAL PERSPECTIVE 175-88 (1981) (explaining the biogenic theory which advocates biology's effect on behavior, yet the author believes in the alternative biocultural approach which argues that sexual inequality is due to a combination of biological, technical, and sociological factors); ANNE FAUSTO-STERLING, MYTHS OF GENDER: BIOLOGICAL THEORIES ABOUT WOMEN AND MEN (2d ed. 1982) (examining biological, hormonal, and developmental differences between men and women to determine whether they support or disprove various gender stereotypes); RUTH BLEIER, SCIENCE AND GENDER: A CRITIQUE OF BIOLOGY AND ITS THEORIES ON WOMEN (1984) (discussing the "role of science in the creation of an elaborate mythology of women's biological inferiority as an explanation for their subordinate position in" western culture); A. GLUCKSMANN, SEXUAL DIMORPHISM IN HUMAN AND MAMMALIAN BIOLOGY AND PATHOLOGY (1981) (discussing sexually dimorphic structure and function in organs and cancers of the human male as compared to the human female demonstrating that hormonal, genetic, and oncogenic agents combine to create higher sex ratios and sex differences in men and women); ROBERT W. GOY & BRUCE S. MCEWEN, SEXUAL DIFFERENTIATION OF THE BRAIN 109-11 (1980) (exploring sexual dimorphism in the size of the medial preoptic nuclei in rats); D. F. Swaab & E. Fliers, *A Sexually Dimorphic Nucleus in the Human Brain*, 228 SCIENCE 1112 (1985) (reporting that the sexually dimorphic cell group found in the preoptic area of the human brain is larger in males than females); Jeannette McGlone, *Sex Differences in Human Brain Asymmetry: A Critical Survey*, 3 BEHAVIORAL & BRAIN SCIENCES 215-63 (1980) (finding that there are differences in brain asymmetry between the sexes).

31 Gregg Johnson, *The Biological Basis for Gender-Specific Behavior, in* JOHN PIPER & WAYNE GRUDEM, RECOVERING BIBLICAL MANHOOD AND WOMANHOOD 282-83 (1991) [hereinafter Johnson, *The Biological Basis for Gender-Specific Behavior*] (using as examples heavier muscle mass and denser bones which allows for heavier work, and larger windpipes, branching bronchi, greater lung capacity, large hearts and greater red blood cell counts which encourage men to be more active). Johnson goes on to delineate these behavior distinctions into categories and sections such as "Ethological Observations on Sex," "Sex Differences in Non-nervous System Physiology," "Sex Differences in the Peripheral Nervous System," "Differences in the Limbic System," "Sex Differences in Cerebral Organization," "Sex Differences at Birth," and "Sex Difference in Stress Management." *Id.* at 282-93.

32 *See* Nancy J. Osgood, Ph.D, & Susan A. Eisenhandler, Ph.D, *Gender and Assisted and Acquiescent Suicide: A Suicidologist's Perspective*, 9 ISSUES L. & MED. 361, 368 (1994) (using as an example the trauma of entering a nursing home along with a tendency of illness as leading elderly women towards suicide). "When extremely devalued individuals, usually in . . . poor physical health, are placed in nursing homes, the loss of control, freedom, and power can be magnified, and life is experienced as devastating. . . . Experienced in this way, life becomes a form of imprisonment accompanied by great despair." *Id.*

33 *See id.* at 373-74 (using as an example a woman, Irene, in a nursing home who felt "unresolved shame, and anxiety . . . about her financial ruin and her disappointment about

> [H]uman males and females respond differently to stress, and herein lies another important difference in gender behavior. In both males and females, stress initially elevates adrenalin output, which in turn affects the hypothalamus to increase heart rate, blood pressure, basal metabolic rate, and responsiveness of the senses. Under initial pressure both sexes are able to put in long days, stay alert, and remain energetic. After a period of prolonged chronic hyperadrenalin, females begin to produce more cortisol and estrogen. Cortisol reduces the brain neurotransmitter serotonin, which is needed to maintain normal sleeping and waking patterns. It reduces norepinephrine, which is needed for a normal sense of well-being, leading eventually to a sense of ambivalence and even depression. Estrogen in high amounts acts as a sedative to quiet the system. It reduces heart rate, respiratory rate, and blood pressure. After a prolonged stressful time under the influence of estrogen, women may become depressed. In various studies, women are found to struggle with depression, phobias, hysterias, anorexia and other depression disorders four to ten times more commonly than men.[34]

Coupling these elements of depression and reality distortion with gender may increase the vulnerability of particular individuals, bringing a greater risk of despair from unfortunate, yet common, life circumstances.[35] This Article presents that very hypothesis: Women are more vulnerable to assisted suicide and premature, organized death because women's lives present unique opportunities for such vulnerability. There are many reasons why women are particularly vulnerable, all of which will be discussed in this Article through analyzing the women who have been assisted in their own deaths by Dr. Jack Kevorkian. Kevorkian, acting as a physician advocate of assisted suicide, has not been alone in his efforts to give individuals a "right to die."

Euthanasia, as a right to die, has consistently grown in popularity over the past several years — so much so that the concept of assisted-suicide is not necessarily regarded as harmful.[36] Rather, it

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the kind of care provided by her eleven children dashed expectations about the future and voided the meaning of her life.").

[34] Johnson, *The Biological Basis for Gender-Specific Behavior, supra* note 31, at 291-92 (citing EDWARD O. WILSON, SOCIOBIOLOGY 42-43 (1980) (documenting stress and exhaustion, reduced fertility, abusive behavior, and disease)).

[35] *See infra* notes 43, 47-80.

[36] "It is worth noting that opinion polls have established that as many as 80 percent of Americans support his call for 'the right to die.'" Charles Laurence, *Some Difficult Questions for 'Dr. Death,'* CHI. SUN-TIMES, Apr. 27, 1996, at 6, *available in* 1997 WL 6347772. This is evidenced by the popularity of associations, such as the Hemlock Society and Community and State Right to Die Civic Clubs. *See Death with Dignity: A Long Ancestry,* PORTLAND ORE-

is often esteemed.[37] The University of Toronto, for example, has announced a new position at the educational institution: North America's first endowed chair for studies in suicide.[38] In the United States, this issue has reached the highest court of the nation for judicial review.

On January 8, 1997, the Supreme Court of the United States heard two cases concerning the legality of the "right" to die.[39] Some were declaring that the Supreme Court would be "deciding the fate of two separate contradictory state laws concerning assisted

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GONIAN, Oct. 12, 1997, at B2, *available in* 1997 WL 13129521 (noting the rapid growth of the Hemlock Society whose membership rose by 50,000 people in ten years and the formation of such state groups as Compassion in Dying in Seattle and Oregon Right to Die in 1993). Equally convincing are the many cases brought by doctors and their patients to obtain judicially the right to enjoy and benefit from physician-assisted suicide. *See, e.g.*, Vacco v. Quill, 117 S.Ct. 2293 (1997); Washington v. Glucksberg, 117 S.Ct. 2258 (1997); McIver v. Krichner, 1997 WL 225878 (Fla. Cir. Ct. 1997); Cruzan v. Director, Missouri Department of Health, 497 U.S. 261 (1990); *In re* Quinlan, 355 A.2d 647 (N.J. 1976), *cert. denied sub nom.*, Garger v. New Jersey, 429 U.S. 922 (1976).

Furthermore, there is a very strong feminist contingency advocating for assisted suicide. *See generally* Jocelyn Downie and Susan Sherwin, *A Feminist Exploration of Issues Around Assisted Death*, 15 ST. LOUIS U. PUB. L. REV. 303 (1996) (promoting the empowerment of women through the full range of respect for autonomy and supporting a limited permissive policy regarding assisted suicide).

37 Oregon voters approved physician-assisted suicide twice — in 1994, Measure 16 was passed by a 51% to 49% margin, and on November 4, 1997, in Measure 51, physician-assisted suicide was reaffirmed by 60% of the voters. *See Feds Should Respect Assisted-Suicide Vote*, BUFF. NEWS, Nov. 25, 1997, at B2, *available in* 1997 WL 6476668; *see also Death with Dignity: A Long Ancestry*, *supra* note 36, at B2. The Oregon referendum, Measure 16, "allows terminally ill patients to obtain life-ending drugs" and was the first such proposal to become law. *Id.* Further evidence of the acceptance of physician-assisted suicide is the very close vote on a right to die referendum, Initiative 119, in Washington state where the voters rejected the referendum by 51% to 49%. *See Doctor-Assisted Suicide*, PORTLAND OREGONIAN, June 27, 1997, at A22, *available in* 1997 WL 4185398 (providing a chronological history of doctor-assisted suicide laws and issues); *see also Death with Dignity: A Long Ancestry*, *supra* note 36, at B2. Likewise, in California, the voters rejected a bill to allow physicians to hasten death by administering lethal medications by a vote of 54 % to 46%. *See Doctor-Assisted Suicide*, *supra*, at A22.

38 *See* Rosie DiManno, *Raise a Glass and Toast a Year of Stupidity*, TORONTO STAR, Dec. 30, 1996, at A6, *available at* 1996 WL 3405018. DiManno prefaced her comments on the endowed position by stating the chair was "[c]omplete with Jack Kevorkian whoopee cushion. . . ." *Id.* We are grateful to Joel B. Kohm of Toronto for his assistance with this piece of research.

39 *See* Washington v. Glucksberg, 79 F.3d 790 (9th Cir. 1996); Vacco v. Quill, 80 F.3d 716 (2d Cir. 1996).

> The Ninth Circuit in *Glucksberg* declared unconstitutional Washington's law against assisted suicide, finding a constitutional right to assisted suicide in the *Roe v. Wade* right to privacy. The Second Circuit in *Vacco* ruled New York's law against assisted suicide unconstitutional on equal protection grounds, reasoning that it was irrational for New York law to allow people to decline extraordinary care to prolong their lives, but to prohibit them from choosing a method that would kill them.

Jordan W. Lorence, A Review of Issues Before the U.S. Supreme Court, Address at Christian Legal Society Conference Attorney's CLE 3 (Apr. 30 - May 1, 1997) (on file with the *Cardozo Women's Law Journal*). Both cases were heard by the Supreme Court on January 8, 1997.

suicide for the terminally ill."[40] On June 26, 1997, in two unanimous decisions, the Supreme Court made a pronouncement against expanding the Equal Protection Clause or Due Process Clause of the Fourteenth Amendment to encompass a fundamental right or liberty interest in assisting another's suicide.[41] Nevertheless, many cases provide compelling arguments for hastened death. Yet the "final exit"[42] from life deserves more than a cursory review by academia.

Bound as it is in the discourse of academic disciplines and legal definitions of accountability, the controversy over assisted suicide misses the subtle and perhaps more widespread phenomenon of people who turn away from life in relatively quiet and unnoticed ways. Current discussions of assisted suicide are notable because in large part they overlook the more subtle and almost certainly more widespread phenomenon of individuals, particularly older adults, who acquiesce to serious illness (decline food and treatment, become uninterested in maintaining desired social relationships) and in so doing end their own lives quietly and slowly without the active assistance of others. This form of suicide may characterize the experience of powerless groups, older women among them, whose daily lives and orientation to time are structured by institutional settings and the adults who staff these settings.[43]

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40 Joanne Brayden, *Not Dying, But Dead*, PORTLAND OREGONIAN, Oct. 14, 1996, at B9, *available in* 1996 WL 11393697 (espousing the notion that assisted suicide should not be used to end the lives of people whose illnesses are containable or curable, and whose suffering can be alleviated through proper medical care).

41 *See* Vacco v. Quill, 117 S.Ct. 2293 (1997); Washington v. Glucksberg, 117 S.Ct. 2258 (1997). For further analysis of these decisions, see *infra* Part V.

42 "Final exit" is actually the title of a best-selling non-fiction paperback by Derek Humphry. *See* DEREK HUMPHRY, FINAL EXIT: THE PRACTICALITIES OF SELF DELIVERANCE AND ASSISTED SUICIDE FOR THE DYING (1996). This book gives instructions and suggestions on how patients can accelerate the end of life to avoid further pain and suffering. *See id*; *see also Final Exit* (visited Apr. 6, 1997) <http://www.efn.org/~ergo/exit.html>. The web page promoting the book states that "[t]his book is only for rational adults with a terminal or irreversible physical illness involving great suffering. It is not intended for persons with depression, or mental health problems, who should look to other sources for help." *See id.* Derek Humphry founded the Hemlock Society in 1980 and the Euthanasia Research & Guidance Organization in 1993. *See id.*

43 *See* Osgood & Eisenhandler, *supra* note 32, at 366. These psychologists make a case for acquiescent suicide through a case study analysis of one woman residing in a long-term care facility who took her own life. *See id.* at 370-74. "[W]e argue that this woman's death illustrates a form of suicide that emerges when women are absorbed by a physical and social context that simultaneously diminishes their worth and will not brook their release." *Id.* at 366. Though they distinguish the various types of suicide — assisted, acquiescent, and self-initiated — they make the case that assisted and acquiescent suicide raises particular concerns for women. A thorough treatment of acquiescent suicide is beyond the scope of this Article, but Osgood and Eisenhandler do an excellent job of defining the term. *See id.* at 367-70.

"We all have cause to worry about the ways in which growing social acceptance of assisted suicide might prove particularly dangerous to women."[44] Illness combined with a lack of family support and a dearth in income or assets in older age, due in large part to the physical, emotional and financial realities of women's lives, make Dr. Death a welcomed visitor in fearful hours.[45] This altitude of acquiescence constitutes a tacit consent to death itself, rather than a purposeful decision or a "right" to die.

Part I begins the discussion with financial factors specific to women that may result from divorce, premature widowhood, or a lack of earning potential in old age. As nurturers by nature, women's lives are more often spent supporting others.[46] Part II confronts these physical and emotional realities and explains the ways in which they render a woman more likely to acquiesce to her own ultimate struggle. Part III exposes the fact that women, in particular, face a deck stacked against them of difficult and stress-laden life circumstances. Demographic realities that make up our modern society are furnished as evidence to support this claim. Part IV applies these factors to a brief review of the women of record who have been assisted in their own deaths by Jack Kevorkian. Finally, Part V reviews the cases decided by the United States Supreme Court in the Spring of 1997 on the legal issues arising from assisted suicide, as well as the cases in which Kevorkian himself has been involved.

The purpose of this Article is to challenge the winds of individual and societal acquiescence toward assisted suicide and a will to die, while highlighting women's susceptibility to euthanasia. Legalized physician-assisted suicide could effectively bring about a haste toward death among women that would recreate the "gender gap" as never before. Men and women need to see the warning signs now, before women and others are victimized.

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44 Keveny, *supra* note 1, at 19A (suggesting that the majority of assisted suicide candidates will be female according to demographics, such as age, income, healthcare, children, and depression).

45 *See* Shepherd, *supra* note 28, at 117.

> Physician-assisted suicide and withdrawal of life support are two situations in which patients look for, and doctors may be willing to provide, relief from suffering through death. These are situations where not only are physicians asked to and often willing to participate in the dying process by providing medical assistance to that end, but where individuals have asserted with some success that they are entitled to such assistance, that they have a *right* to die.

Id.

46 *See infra* notes 97-98 and accompanying text (discussing the nurturing traits of women and women's traditional role of taking care of others).

I. FINANCIAL FACTORS

A. Divorce

The trauma of divorce begins long before the legal action is commenced, and continues long after the final judicial decree is delivered.[47] The conflict involved is bitter, personal and lengthy.[48] Trauma is often an inadequate term, as divorce trauma may be better characterized as behavioral deviations.[49] The emotional suffering causes many to go through a period of "emotional shock."[50] It is estimated that 63% of women involved in divorce experience high or medium trauma.[51] In the midst of this emotional trauma, financial distress and economic hardship are frequently added troubles.

The economic consequences of divorce for women often include a reduction in available income after separation and/or di-

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47 *See* WILLIAM J. GOODE, AFTER DIVORCE 185 (1956) (stating that "[f]or most divorces . . . the process of divorce conflict is a relatively slow one, in which the bitterness . . . serves gradually to estrange the parties . . . [and therefore t]hey are 'being divorced' for months before the decree.").

48 *See id.*

> Divorcee habits are gradually formed, as each spouse fails to give as much emotional support, cooperation, friendship, or understanding as before. For most if not all of these cases, we can speak of unhappiness, bitterness, or perhaps a feeling of misfortune during some period, but certainly most of it is created by the conflict and the unraveling of marital habits rather than by the final divorce itself.

Id.

49 *See id.* ("[S]ome individuals who divorce do go through a period of deep emotional disturbance, disorganization of habits, and failure to carry out role obligations.").

50 *See id.* (explaining that when people have extreme emotional disturbances due to divorce, trauma is an inadequate term since these people go through a more extreme version of trauma — emotional shock).

51 *See id.* at 186. Dr. Goode supervised a study of divorce trauma, separating test groups by gender, stage of divorce, and social status. *See* FREDERICA K. LOMBARD, READINGS IN FAMILY LAW: DIVORCE AND ITS CONSEQUENCES 13-16 (1990) (citing GOODE, *supra* note 47). The study also used six behavior items which might be supposed to vary somewhat under the impact of conflict, exploring difficulty in sleeping, poorer health, greater loneliness, low work efficiency, memory difficulties, increased smoking, and increased drinking. *See* GOODE, *supra* note 47, at 186. These data indicate that a considerable proportion of women demonstrated evidence of personal difficulty. *See id.*

> Thus, approximately two-thirds had a greater feeling of loneliness or being friendless, or had poorer health, or greater difficulty in sleeping some time during these several phases. For three of the seven items, drinking, smoking, and forgetting, the predominant majority of cases failed to show much disturbance. However, for one of these items, drinking, there is likely to be a hesitation about admitting that it did increase. For the third, forgetting, we would expect that most individuals would have some difficulty in remembering any given period as one in which forgetting was increased, unless it was very pronounced. In short, although no unequivocal and universally predictable period of personal disorganization can be asserted, there is ample evidence that for a substantial proportion of the divorcees there is disruption of personal organization at *some* period.

Id. at 186-87.

vorce.[52] "Divorce has radically different economic consequences for men and women. While most divorced men find that their standard of living improves after divorce, most divorced women and the minor children in their households find that their standard of living plummets."[53] Relying on spousal support, rather than sharing in the family finances, results in a large decrease in income.[54] In the first year of divorce alone, divorced women experience a 73% decline in their standard of living.[55] Such a reduction in available finances often means a move to "inferior housing, drastically diminished or nonexistent funds for recreation and leisure, and intense pressures due to inadequate time and money."[56] It is also very difficult for women to improve their position. When women attempt to rely on self-generated income and introspective security, they may still be at a greater disadvantage than divorced men due to the history of gender discrimination in employment.[57]

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52 *See generally* LENORE J. WEITZMAN, THE DIVORCE REVOLUTION: THE UNEXPECTED SOCIAL AND ECONOMIC CONSEQUENCES FOR WOMEN AND CHILDREN IN AMERICA 323-56 (1985) (investigating the reasons for and effects of the plummet in living standards for divorced women in contrast to the increased standard of living for divorced men).

53 *Id.* at 323. This discrepancy can be explained by the inadequacy of support for the wife, the increased financial demands placed on the wife after the divorce in order to raise any children and the husband's greater earning capacity. *See id.* at 340. The husband has a greater earning potential because they command higher salaries, women jeopardize their careers for marriage and a family, and they have the responsibility of raising the children. *See id.* at 342.

54 *See id.* at 323.

> Since only a few wives are awarded alimony, the only supplementary income they are awarded is child support and the average child support award covers less than half of the cost of raising a child. Thus, the average support award is simply inadequate: even if the husband pays it, it often leaves the wife and children in relative poverty.

Id. at 341.

55 *See id.* at 323 (observing that men, on the other hand, experience a "42 percent rise in their standard of living"). *See generally* Merideth Johnson, *At the Intersection of Bankruptcy and Divorce: Property Division Debts Under the Bankruptcy Reform Act of 1994*, 97 COLUM. L. REV. 91 (1997) [hereinafter Johnson, *At the Intersection of Bankruptcy and Divorce*] (discussing the hardships women face in gaining support when their ex-husbands declare bankruptcy). "The harsh financial effects of divorce substantially result from a combination of three factors: women are likely to suffer a decrease in standard of living after divorce; women generally earn less and are subject to more obstacles in the workforce; and men more often seek discharge in bankruptcy proceedings." *Id.* at 101.

56 WEITZMAN, *supra* note 52, at 323.

> More women than men . . . reported that they were "more concerned about money now than when they were married," "more careful about budgeting," and "spending their money on necessities, not extras." . . . Some financial worries cannot help affecting their social and emotional lives, it is not surprising that divorced women report more stress and less satisfaction with their lives than any other group of Americans."

Id. at 344.

57 *See* Johnson, *At the Intersection of Bankruptcy and Divorce*, *supra* note 55, at 101-02.

> Because the sex-role revolution has yet to reach homemaking and childcare responsibilities, women remain at a distinct disadvantage. Second, years of gender discrimination in the workforce have made it difficult, if not impossible, for

Economic consequences resulting from divorce lead to additional hardships that directly result from the insufficiency of funds.[58] The outcome is an overall intensification of the mental and psychological stress for divorced women.[59] "On a societal level, divorce increases female and child poverty and creates an ever-widening gap between the economic well-being of divorced men, on the one hand, and their children and former wives on the other."[60] Women have a lot to lose economically by divorce, and

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women to become primary wage earners. Employers discriminate against working women through the imposition of gender-specific work requirement and the invocation of women's "differences" as justification for their absence from traditionally male jobs. Women may also confront sexual harassment at work, frustrating their efforts at mobility and even causing them to leave their jobs.

Id.

58 *See* WEITZMAN, *supra* note 52, at 323. These hardships include "social dislocation and a loss of familiar networks for emotional support and social services. . . ." *Id.*

59 *See id.*

> [D]ivorced men and women exhibit more symptoms (such as "nervous breakdowns" and "inertia"), and in more serious degree, than do persons of other marital statuses. Divorced and separated people have the highest admission rates to psychiatric facilities. . . . Divorce also takes a toll on the physical well-being of both sexes. Divorced people have more illness, higher mortality rates (in premature deaths), higher suicide rates, and more accidents than those who are married. . . . [W]hile both sexes "share" some of the psychic and physical distress of divorce, women seem to experience the greater stress and their stress seems to take a higher toll. Beyond question, much of the women's stress is attributable to their economic condition. This is to be expected in light of the well-known relationship between low socioeconomic status and both mental and physical illness.

Id. at 349.

60 *Id.* at 323. Dr. Weitzman takes special note of the fact that the longer a woman is married, displacement by divorce is all the more devastating, and results in a domino effect toppling other areas of her life. *See generally id.* at 324-36.

> In light of these data, it is not surprising to find that the group of divorced women who report the most distress with their financial loss and who express the strongest feelings of outrage and injustice, are the longer-married middle- and upper-middle-class women we interviewed. These relatively well-to-do women — those who shared family incomes of $40,000 or $50,000 or more before the divorce — experience the *greatest downward mobility* after divorce.
>
> Accompanying their loss of income are the secondary effects of downward mobility: the moves to less comfortable housing and poorer neighborhoods, the loss of neighborhood and friendship networks, the need to establish credit and find services in new communities, and the need to help out with the financial problems of children who are legally grown but not financially self-sufficient.
>
> Not inconsiderable among these secondary effects of economic deprivation is the woman's estrangement from established social activities and social networks. Newly restricted income often precludes her participation in activities that her friends take for granted but she can no longer afford. When she declines their invitations they soon stop asking her and she becomes increasingly isolated from both friends and social community.
>
> In addition, when a woman's friendship networks have been built around her husband's job or profession, she usually loses her place after divorce and finds herself on the outside looking in. While most divorced women retain a few married friends who remain supportive, social activities with the old "circle" usually decline. Within a year, the dissociation from marital friends is typically much greater for women than for men.

tend to suffer in myriad ways as a result. When the divorce involves young children, women often face even greater financial burdens because mothers are more often awarded custody, and must pay for the day-to-day needs of the children that are not covered by child support.[61] Older women who go through a divorce of a long-term marriage also experience a greater financial burden because they are often deprived of retirement benefits which a former husband will receive as a result of his employment, whereas the wife most likely stayed at home to manage the household.[62] Furthermore, older women are even more vulnerable to financial instability upon divorce, since they do not have the same opportunity as younger women to find jobs, build up some retirement savings, or remarry and receive the benefit of a second income.[63] Women who divorce between the ages of forty and sixty typically endure greater financial difficulty in the short term than younger divorced women, but divorce will also hinder the long term financial well-being of younger women as the disadvantage can continue throughout the remainder of their lives.[64]

Crown, Mutschler, Schulz and Loew, in a comprehensive analysis of economic well-being, found that older divorced and separated women have very modest asset holdings and the highest poverty rates among older women. In their review of secondary data, receipt of pension income (other than social security) was

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Id. at 334-35.

61 *See* Johnson, *At the Intersection of Bankruptcy and Divorce, supra* note 55, at 101. "The median income in families headed by women with children under six years of age was only 30 percent of the median income for all families whose children were under six." WEITZMAN, *supra* note 52, at 343.

62 *See generally* Joan M. Krauskopf & Sharon Burgess Seiling, *A Pilot Study on Marital Power as an Influence in Division of Pension Benefits at Divorce of Long Term Marriages*, 1996 J. DISP. RESOL. 169 (hypothesizing from a study conducted by the authors "that women are receiving less pension benefits than they are entitled to during a divorce because the power imbalance in negotiation favors the husband more often than the wife.").

> Many anecdotal accounts indicate that pension benefits in the husband's name are often not shared as the law envisions. Research data establishes that older divorced women tend to be impoverished later in life when they can no longer work if they do not receive private retirement benefits during a divorce. No data indicate(s) clearly either the extent to which women of long-term marriages fail to receive the share of pension benefits to which they are entitled or, if they do not, why.

Id.

63 *See id.* at 174 (citing Diane Pask, *The Effect of Family Breakdown on Retirement Planning, in* AN AGING WORLD: DILEMMAS AND CHALLENGES FOR LAW AND SOCIAL POLICY 855, 858 (1989)).

64 *See id.* (citing Joan Pennington, *The Economic Implication of Divorce for Older Women*, 23 CLEARINGHOUSE REV. 488, 489 (1989)).

found to be a significant determinant of the financial well-being of older divorced women.[65]

Women also face further disadvantages because they are unable to receive financial support from their former spouses. Complaints about "deadbeat dads" who have left women and children in poverty after divorces are evidence of the belief held by some American citizens that courts favor men.[66] Women claim they are most hard-hit by post-divorce decisions which provide inadequate and poorly enforced financial awards.[67] Although some may believe that this argument would have been more compelling before the federal government imposed guidelines on the state, evidence reveals that these guidelines have made little improvement on the treatment that women face in court.[68]

In conclusion, research demonstrates that women have suffered dramatic decline in economic status as a result of divorce.[69] More specifically, the impact of divorce on older women can be devastating in the short term, as well as for the rest of their lives.[70]

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65 *Id.* (quoting William Crown et al., *The Economic Status of Divorced Older Women, Policy Center on Aging,* Heller School, Brandeis University (1993)).

66 *See id. See generally* Krauskopf & Seiling, *supra* note 62, at 169 ("The authors hypothesize that women are receiving less pension benefits than they are entitled to during a divorce because the power imbalance in negotiation favors the husband more often than the wife."). In some final analyses, they reported, "[a]mong those cases with the husband only having retirement benefits, the wife was awarded none of the value in three cases, sixty percent in two cases, fifty percent in two cases, and twenty-five percent in one case." *Id.* at 186-87. This is not to say that the Authors necessarily agree with this belief.

67 *See* LOMBARD, *supra* note 51, at 81 (focusing on the divorce process in its social as well legal contexts and covering emotional perspectives in partners and children, economic realities of divorce, and observations and new solutions for the legal system itself).

68 *See* Krauskopf & Seiling, *supra* note 62, at 174 (reporting that "[t]here are indications that federal and state laws authorizing and encouraging division of pension benefits at divorce are not functioning as intended" and analyzing studies to demonstrate this point).

69 *See, e.g.*, WEITZMAN, *supra* note 52, at 323-56. *See generally* Gay C. Kitson & Leslie A. Morgan, *The Multiple Consequences of Divorce: A Decade Review,* 52 J. MARRIAGE & FAM. 913, 914-15 (1990) (discussing the economic adjustment that women experience as a consequence of divorce). They cite a study of divorced Californians which indicates a "dramatic decrease in [the] standard of living for women and sizable improvements for men in the first year after divorce." *Id.* at 914.

70 *See* Krauskopf & Seiling, *supra* note 62, at 174 ("While younger women have opportunities to participate in the workforce, building their own retirement program, or to remarry and benefit from another husband's pension at retirement age, women who divorce at a later age have fewer opportunities."). *See generally* Joan Pennington, *The Economic Implications of Divorce for Older Women,* 23 CLEARINGHOUSE REV. 488 (1989) (assessing the disparity of male and female positions in divorce litigation and highlighting the detrimental effects on older women of property division, spousal support, pensions, professional degrees and licenses, and health care, stating "'The Divorce Revolution' has left maimed and mutilated lives in its wake, and has devalued whole lifetimes of sacrifice and dedication. No group of women has felt more deceived or betrayed than older women." (citations omitted)).

Women are arguing that the "feminization of poverty"[71] started with the unequal distribution of property[72] and continues on through inadequate enforcement of any award that they were able to get.[73] Divorce is a financial trauma for women.[74]

B. Widowhood

When a spouse dies, many survivors endure periods of deep emotional disturbance, disorganization of habits, and failure to carry out role obligations.[75] The finality of bereavement is extremely upsetting, and often the surviving spouse is not at all prepared for such totality, especially because death lacks the conflict that divorce inherently entails.[76] For these reasons, the trauma of

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71 Diana Pearce, *Welfare is Not For Women: Toward a Model of Advocacy to Meet the Needs of Women in Poverty*, 19 CLEARINGHOUSE REV. 412, 412 (1985) (discussing the "feminization of poverty").

> What is the "feminization of poverty?" Whether as widows, divorcees or unmarried mothers, women have always experienced more poverty than men. But in the last two decades, families maintained by women alone have increased from 36 percent to about 50 percent of all poor families. That is the feminization of poverty.

Id. (citing BUREAU OF THE CENSUS, U.S. DEPARTMENT OF COMMERCE, MONEY INCOME AND POVERTY STATUS OF FAMILIES AND PERSONS IN THE UNITED STATES: 1983 (1984)). Pearce argues that "much of women's poverty is due to two causes that are basically unique to females. Women often must provide all or most of the support for their children, and they are disadvantaged in the labor market." *Id.* at 413.

72 *See* Lynn Hecht Schafran, *Gender and Justice: Florida and the Nation*, 42 FLA. L. REV. 181, 188-89 (1990) (citing as an example the fact that a New Jersey task force found that a "wife would receive no more than thirty-five to forty percent of net marital assets").

73 *See id.* at 190 (quoting, for example, an attorney who remarked that "[c]hild support enforcement . . . is a joke"); *see also* Leah Guggenheimer, *A Modest Proposal: The Feminomics of Drafting Premarital Agreements*, 17 WOMEN'S RTS. L. REP. 147, 150 (1996) (stating that men will occasionally hide assets to reduce child support payments, which they often will not pay, and which women do not have the resources to enforce).

> The lack of a well-functioning child support enforcement system is a problem that can be properly analyzed as gender bias because it disadvantages women so much more than men. About 90% of custodial parents are women. All of the problems that impede support collection thus affect women in a disproportionate manner.

Schafran, *supra* note 72, at 190.

74 *See* LOMBARD, *supra* note 51, at 81-82 ("[F]or women, often divorce is an economic disaster; they frequently receive insufficient support and a less than equitable share of the property (if there is any) in a settlement."). *See generally* WEITZMAN, *supra* note 52, at 323 (discussing the harsh economic effects that divorce has on women).

75 *See* GOODE, *supra* note 47, at 185 (demonstrating that there are some similarities between the trauma experienced by widows and those women whose marriages end in divorce).

76 *See id.*

> [T]he divorce is preceded by a long period of conflict whose effect is to reduce the emotional attachment between the spouses, and thereby to make the finality of the divorce less upsetting than that of bereavement. Of course, the marriage ending in divorce has no monopoly over marital conflict, but it is at least safe to guess that the average amount of conflict is (a) more frequent, and (b) more intense between divorcing spouses than between spouses whose marriage ends through death.

Id.

death is that much greater than the trauma of divorce.[77] The emotional, social, personal and, particularly, financial changes leave many widows and divorcees with little means of support.[78] "Widows and divorced women who left their jobs to become full-time wives and mothers may be significantly disadvantaged by our Social Security and private pension systems. And more of them are entering old age every day. Elderly widows now significantly outnumber elderly widowers."[79]

The financial loss resulting from a spouse's death can also be physically and emotionally devastating.[80] Difficulties in meeting basic human needs of food, shelter, and clothing will have physiological consequences.[81] Moreover, personal self-esteem can be destroyed in the process when an individual must resort to state assistance for housing, food, and health care.[82] The negative financial consequences of widowhood can have a domino effect on every other area of a woman's life.[83] These factors contribute to depression and suicidal ruminations.[84]

C. Education and Earning Potential

It is widely known that women are second-class citizens compared to men in the economic arena. This phenomenon may be termed "feminomics" or the economic consequences of gen-

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77 *See id.* ("[T]he emotional attachment of divorcing spouses is less than that of spouses whose marriages end through death, and that therefore the trauma of divorce would be less.").

78 *See id.*

79 Keveny, *supra* note 1, at 19A (concluding that women have very little or no retirement income and are far more likely to end up poor than men).

80 *See* Osgood & Eisenhandler, *supra* note 32, at 371 (recounting the effects of financial hardships on a widowed elderly woman).

81 *See id.*

82 *See id* at 371. Osgood and Eisenhandler's study of Irene is quite telling.

> The loss of the family farm was the most devastating loss she and her husband had suffered. Financial loss was severe and they never recovered. She was destitute after her husband's death, and ashamed and embarrassed that she was forced to live on welfare to meet expenditures. Because she was unable to afford many new clothes, she made do and ate little to avoid a weight gain. As a Medicaid resident in the nursing home, she received less than $35 a month for necessary expenditures, and had little left over for extras. Unless her friends treated her to a night out, she could not afford that luxury she so enjoyed. As she put it: "I hardly ever have a nickel to my name. Who wants to waste their time and money on a poor old woman? Not even the children. I have nothing to leave them in my will. They must be ashamed of me *now.*"

Id. (emphasis added).

83 *See id.* (demonstrating that her financial straits effected her social life, self-esteem, confidence, independence and finally her health).

84 *See id.* Irene "viewed herself as trapped, and likened her feelings to those of a caged animal, stating, 'if they make me stay here, then my life is over. I might just as well be dead.'" *Id.*

> der. Men still make up the majority (59%) of top wealthholders (gross assets greater than $600,000), with a slightly greater edge over women (61% to 39%) in the highest wealth bracket (estates worth greater than ten million).[85]

In 1990, women received only seventy-one cents for every dollar earned by men.[86] Women professionals who are performing the same tasks as men are earning less,[87] creating a hardship for the single female who may (in 1998) have as much debt as the single male. This factor places even greater stress on the single working mother who must pay for child-care and maintain household expenses.

Furthermore, many married women may be forced to forgo professional level education when their husbands attend school and need the wife's income.[88] When both spouses work, a woman generally makes 57% of the salary that her husband makes.[89] Whether married or divorced (or sometimes even if single), it is evident that women are disadvantaged in the economic arena, and

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85 Guggenheimer, *supra* note 73, at 148.

86 *See id.* (citing the BUREAU OF THE CENSUS, U.S. DEPT. OF COMMERCE, CURRENT POPULATION REPORTS, HOW WE'RE CHANGING: DEMOGRAPHIC STATE OF THE NATION: 1992, at 3) (stating that this results in an average difference of $8,000 in income per year).

87 *See id.* (stating that "[e]ven the most highly compensated women . . . suffer from this gender gap in earnings."). Women dentists earned just over half as much as men, and women lawyers earned only $61,773, which is over $30,000 less then their male counterparts. *See id.*

88 *See, e.g.*, O'Brien v. O'Brien, 489 N.E.2d 712 (N.Y. 1985) (finding that a woman who supported her husband through medical school, foregoing her own premedical and medical educational opportunity, was entitled to a portion of the medical license since it was marital property); Morris v. Morris, 268 N.W.2d 431 (Neb. 1978) (allotting alimony for a woman who worked while her husband went to medical school and then left her job to raise their children even though she could have supported herself if she had returned to work); Moss v. Moss, 264 N.W.2d 97 (Mich. 1978) (holding that a wife can receive a higher divorce settlement to reflect her effort and financial support in a husband's medical education); Morgan v. Morgan, 366 N.Y.S.2d 977 (N.Y. Sup. Ct. 1975) (finding in a divorce proceeding that a wife was eligible to receive alimony to cover her medical school education since she halted her education to financially support her husband while he was attending law school).

89 *See* Guggenheimer, *supra* note 73, at 148.

> The economic disparities between men and women are only magnified upon marriage. In 1987, wives who worked full-time earned only 57 percent of what their husbands earned working full-time as well. Although some of this income differential is due to meta-level sex discrimination, it is also due to heavily entrenched gender divisions of labor within the home. This lower earning power translates into women being more economically dependent on their husbands than husbands are on wives. This means that at divorce, when most of the economic provisions of an antenuptial agreement are enforced, the wage gap will be even larger than when the spouses were single.

Id. Comparing wives to their husbands yields an even greater disparity (wives' salaries are 57% of that of their husbands) than comparing women to men (*e.g.*, women lawyers' salaries are 67% of that of men lawyers). *See id.*; *see also supra* note 87.

have little or no opportunities to improve their earning potential due to the limitations on their educational advancement.

D. Health Care

> Women, as a group, are recognized to need more health care services than either men or children both during their reproductive years and as they get older. Yet, in New Jersey and nationally, women who work receive fewer health benefits than men since women are more likely to work part-time, move in and out of the labor force, and more often work in the types of occupations and for businesses which do not provide health insurance.[90]

Without adequate financial, family, social and emotional support, many survivors of death or divorce are left to rely on public resources.[91] "The safety net constructed to take care of the poor, sick and weak is badly frayed. Medicare and Medicaid do not generally cover the costs of full-time at-home care. Hospitals provide less and less uncompensated care due to deep cuts in reimbursement."[92]

Statistics show that women are almost twice as likely to be underinsured, especially those women between the ages of 55 and 64.[93] The availability of government assistance will decrease as baby boomers age and as the elderly population increases. Women will be far more likely to live in poverty and be without healthcare.[94] "The very old population (over 85) more than doubled be-

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90 Caroline W. Jacobus, *Legislative Responses to Discrimination in Women's Health Care: A Report Prepared for the Commission to Study Sex Discrimination in the Statutes*, 16 WOMEN'S RTS. L. REP. 153, 165 (1995) (suggesting that employers should be forced by law to provide "pro-rated health care benefits for part-time workers").

91 *See, e.g.*, Osgood & Eisenhandler, *supra* note 32, at 371-72 (providing Irene as a prime example of someone relying on Medicaid since her family "refused to take responsibility").

92 Keveny, *supra* note 1, at 19A (claiming that women do not have sufficient income to have insurance so they have to turn to inadequate social support resulting in poor care or women becoming a burden on their children).

93 *See* Jacobus, *supra* note 90, at 166. "Women of all ages are approximately twice as likely to be underinsured as men in the United States. Women, between the age 55 and 64, are at greatest risk of under-insurance." *Id.* Current HMO trends may leave inadequately supported women with even less access to health care. *See id.* at 165 ("[T]he premiums which are charged for many individuals with pre-existing illnesses are so excessive as to be, for all practical purposes, exclusionary, particularly for women.").

94 *See id.* at 277 (considering that there is government pressure to lower health-care expenditures while the aging population is demanding more high and costly technology and treatment).

> The safety net of the Medicare system, enacted to provide necessary health care for the elderly, is stretching thin. It now only covers a portion of the services, leaving the elderly to pay almost as great a proportion of their incomes on health care as they did before Medicare. Unmarried women over 65 now pay nearly a fifth of their income for medical expenses.

tween 1970 and 1990, and will nearly double again by 2010. Demographic and related income factors have a significant impact on women's access to health services and their consequent health."[95]

Inadequate health care, finances, and familial support result for most women in a significant decrease in the woman's will to fight for life, and lead to increased acquiescence to the path of least resistance — death.

II. EMOTIONAL AND BIOLOGICAL FACTORS

> Women are twice as likely as men to suffer from major depression, for reasons more often cultural than biological[, such as p]overty, unhappy marriage, reproductive stress and sexual and physical abuse. . . . Depression afflicts about 7 million women, leads to 30,000 suicides annually and costs society an estimated $16 billion a year. . . .[96]

Women are nurturers by nature, and in American society, women predominantly care for the young as well as the elderly.[97] Being used to, or comfortable with, sacrificing oneself for others,[98] may often result in a discomfort with assuming the opposite role — that of being the recipient of such sacrifice.[99] Conversely, the emo-

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Id.

95 *Id.* at 278. Jacobus continues:

> Two-thirds of women aged 65 and over are widowed, divorced or single, compared to only a third of men aged 65 and over. Poverty is a major issue for elderly women. Nationally, the median income for women over 65 is $9,400. Median incomes for elderly women of color are even lower. One in four New Jersey women aged 65 or older lives at or near the poverty level. The incidence of poverty among men aged 65 and over is half that for women.

Id.

96 *Study Analyzes Women's High Depression Risk*, L.A. TIMES, Dec. 6, 1990, at A25 (reporting that women have a higher rate of depression than men "due to their experience being female in our contemporary culture. . . .").

97 *See* CAROL GILLIGAN, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT 18-20 (1982) (positing distinct male and female modes of thought and concluding that women's "relatedness" is a strength emphasizing the preservation of relationships, and further suggests that these characteristics remain with women throughout life). *See generally* NANCY CHODOROW, THE REPRODUCTOIN OF MOTHERING: PSYCHOANALYSIS AND THE SOCIOLOGY OF GENDER (1978) (discussing identity formation in children and the propensity of girls to develop their identities by perceiving themselves as their mothers during their youth which carries into adulthood).

98 *See* Leslie Bender, *From Gender Differences to Feminist Solidarity: Using Carol Gilligan and the Ethic of Care in Law*, 15 VT. L. REV. 1, 39-40 (1990). "Interpersonal caregiving is something women have specialized in for many years. We have special knowledges and insight to offer." *Id.* at 40. Bender continues with her analysis that women have been submerged in this "perpetuating disempowerment." *See id.* The authors acknowledge the drawbacks of caregiving, and point them out here. Ultimately, the authors desire to emphasize the need of societal respect and care for such women.

99 *See id.* These theoretical studies likewise show that men develop an identity distinguishing themselves from their mothers, promoting individualistic, competitive, and self-

tional unraveling that can accompany rejection from family and friends may magnify, or even create a desire for, the nearness of the end of life.[100] Being others-centered has its drawbacks. When a woman who has devoted her entire life to a certain group of people senses either a lack of appreciation from those people, or the painful reality of helplessness, her role may seem completely undefined. Essentially, she may feel as if she is no longer functionally valued.[101] Although others may or may not respond in ways that demonstrate this fact, a woman may perceive herself as a drain on the resources of others when her income is insufficient to meet her needs.[102] This sense contradicts the nurturing quality inherent in women.[103]

Children busy with their own lives, careers, marriages and children have little time, and likely less resources, to offer an elderly parent.[104]

> As social support shrinks, the burden of caring for the frail elderly (mostly women) will fall more heavily upon their grown children. And more working adults will be forced to balance the demands of caring for their aging parents with holding down jobs and taking care of their own children.[105]

The families of the elderly, as well as the medical profession, may begin to perceive treating the elderly as a burden. At least one medical professional has come forward recently and described the deterioration of respect that this country has for the lives of the

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centered behavior. *See id.* For obvious reasons, many feminists disagree with these theories. *See, e.g., Gender, Legal Education, and the Legal Profession: An Empirical Study of Stanford Law Students and Graduates*, 40 STAN. L. REV. 1209, 1212-18 (1988) (discussing the opposition to Gilligan's writings held by many feminist legal scholars who disagree with the conclusion that women are more caring and nurturing than men in the context of legal education and the legal profession). The analysis in this Article will somewhat echo the Gilligan *Ethic of Care* with the lives of the women analyzed.

100 *See* Osgood & Eisenhandler, *supra* note 32, at 371 (providing Irene as an example of family rejection). In Irene's situation,

> [n]either the children nor the grandchildren visited Irene very often during her residency in the nursing home. . . . Irene felt totally rejected and abandoned by the children she dedicated her life to. "I just want to be wanted. When you get old, your family just forgets you and you have no purpose in life anymore."

Id.

101 An example of a woman who felt as if she were no longer valued is Rebecca Badger. *See supra* note 2.

102 *See supra* notes 97-98 and accompanying text (discussing the empowerment and disempowerment of care-giving that yields no financial gains).

103 *See supra* notes 97-99 and accompanying text (discussing that women tend to sacrifice their well-being in order to care for others).

104 *See* Keveny, *supra* note 1, at 19A.

105 *Id.*

elderly.[106] This nurse describes two situations in which she observed elderly patients deprived of needed medical care because their lives were not considered to be of value.[107] Both of these patients were women.[108]

The role that women play in the family, the survival rate of women, and female emotional qualities contribute to the risk for women's increased vulnerability to acquiescent death.[109] A woman's nurturing ability allows her to freely pour her life into cultivating the development of the lives of her children.[110] Motherhood, requiring such a commitment, fosters a much greater fall from worthiness when a mother perceives that she is no

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106 *See* PJ King, RN, *Targeting the Vulnerable* (visited Mar. 20, 1997) <http://www.ohiolife.org/euth/target.htm>. In one of her articles placed on the Internet by the Ohio Right to Life, King describes actual circumstances experienced on her job which indicate that the health care profession and the public have taken a devastating turn toward judging the value of life before providing medical care to save the life of elderly patients. *See id.* ("The sanctity-of-life principle, a heritage from our Christian roots, has largely been replaced by the relativistic quality-of-life standard whereby we judge the merit of continuing existence on the basis of our estimate of what constitutes a good life."). This trend has been predicted by pro-lifers for years with warnings that a disrespect for the unborn will eventually evolve into a disrespect for those who no longer "contribute to society." *See generally* PETER KREEFT, THE UNABORTED SOCRATES: A DRAMATIC DEBATE ON THE ISSUES SURROUNDING ABORTION (1983) (describing the increased reliance on functionality for value of life). We believe this increased concern for the economic contributions that citizens make, as well as their function in society, coupled with the established belief, since abortion has been legalized, that life can be discarded if inconvenient, places the elderly at high risk for their own existence once they find themselves unable to work.

107 *See* King, *supra* note 106; *see also infra* note 108.

108 *See* King, *supra* note 106.

The first tale summarizes a doctor's perspective. One patient who King cared for was a 79-year old woman who had critically high blood level of sodium and was likely to die. She felt that this patient needed immediate treatment, but when she called the patient's son to inform him of the situation, he told her that extraordinary measures were not to be administered because she had lived a long full life, but he approved giving her intravenous fluids to correct the situation. King, feeling distressed at the thought of leaving this woman to die, then called the doctor. This doctor was belligerent and immediately asked the age of this patient; after telling him that she was 79 years old and been living in the nursing home for six years, he shouted "[*a*]*ny* treatment for someone that old and living in a nursing home is extraordinary treatment. . . . I'll see her in the morning!" *Id.*

The second tale summarizes an adult family member perspective. King describes another situation in which a family member made the decision to withhold all lifesaving medical assistance. An 83-year old patient had appointed her brother as power of attorney for her health care. After she suffered a stroke and was left disabled and unable to swallow, he ordered that the feeding tube no longer be continued. This 83-year old woman was left to starve to death even though she repeatedly asked the nursing home personnel for food. This case was brought to the attention of a local chapter of Right to Life who informed Florida's Health and Rehabilitation Services; the case was taken to court and the court ruled that this patient not be fed on the basis that she was incompetent and couldn't ask for food. *See id.*

King's description of this situation is not completely clear, particularly as to the rationale behind the court's ruling that the patient was incompetent, since the patient did ask for food. No report is available of this case.

109 *See generally* Osgood & Eisenhandler, *supra* note 32.

110 *See* GILLIGAN, *supra* note 97, at 20 (stating that women, as nurturers by nature, are natural childcare givers).

longer esteemed by her own children.[111] Moreover, women have been influenced by the idea that "[t]here has been a move, in our society, from relying exclusively on a sanctity of life or vitality principle, to relying as well, or sometimes alternatively, on a quality of life principle, which includes concepts of a life not worth living. . . ."[112]

> I wonder, how many will truly want to die? Is it possible that many of the elderly will choose "death with dignity" because their hearts are broken at the realization that children and society don't want to be bothered with the burden of caring for them? I wonder how many will opt for doctor-assisted suicide because of subtle — or not so subtle — pressure from selfish children who want their inheritance early? Many people who have worked hard and paid their own way all their lives would rather die than be a burden to others. In our culture of death, such people are encouraged and patted on the back for choosing the noble path of death with dignity. But what is the real reason they choose this path? Could it be that often it is because they know they are an unwanted burden? Could it be that they would rather die than live with that kind of rejection?[113]

An investigation of one woman's medical record and personal history "uncovered pertinent factors which contributed to depression and suicidal behavior. Chief among these was family rejection. Irene had spent her entire life caring for her children."[114] When medical personnel around her began to understand the heart of this patient's illness, they spent some time getting her response.[115] "Irene felt totally rejected and abandoned by the children she devoted her life to. 'I just want to be wanted. When you get old, your family just forgets you and you have no purpose in life anymore. Eleven children and no place to go in the end.'"[116]

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111 *See* Osgood & Eisenhandler, *supra* note 32, at 371 (providing an example of an ailing woman who felt as if her children no longer cared about her).

112 Margaret A. Somerville, *The Song of Death: The Lyrics of Euthanasia*, 9 J. CONTEMP. HEALTH L. & POL'Y 1, 27 (1993). Somerville suggests that euthanasia is an indirect way of talking about death. *See id.* at 18-21. Medicalizing euthanasia may be a clinical or antiseptic context for death in our death-denying society. *See id.* at 32-33.

113 Ron Sutton, *Why You Need a Pro-Life Doctor* (visited Mar. 20, 1997) <http://www.ohiolife.org/euth/pldoc.htm> (proclaiming that the elderly are encouraged by doctors to choose "death with dignity" since the "medical profession is shot through with 'compassionate killers' who no longer subscribe to the tenets of the Hippocratic Oath").

114 Osgood & Eisenhandler, *supra* note 32, at 371. Irene was the name used for the woman in the particular case study therein.

115 *See id.* at 370-71.

116 *Id.* (quoting Irene, who had eleven children). Irene entered a nursing home at her family's insistence. *See id.* at 370. She felt that the decision to place her in a home was made by others without her input making her feel as if she had no power or control over

Loneliness and depression are equally devastating to an individual's desire to continue living.[117] Those who are considering suicide are making a cry for help, even if only subconsciously, and they can be rescued.[118] Rescue attempts were in fact predominantly successful in one study in which 886 people were rescued from attempted suicides; five years after the attempts were made, only 3.84% carried out the suicide.[119]

The depression and anxiety that drives people to turn to suicide is most prevalent among women.[120] Researchers report that the increased depression rates among women are related to certain circumstances in their lives.[121] According to various studies, women who are married experience a higher rate of depression.[122] Researchers pointed out that these women were depressed, not simply because they were married and had children, but rather because of the social setting that accompanied this status.[123] Because most married men work outside of the home, and many of their

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her life. *See id.* at 372. "Irene's ability to leave the nursing home reinforced her feelings that her family did not care for her or have any use for her." *Id.*

117 *See id.* at 370-71 ("Irene was a very lonely, and depressed person, and at one point has attempted to end her own life by refusing to eat, drink, or take medication.").

118 *See What's Wrong With Making Assisted Suicide Legal?* (visited Mar. 20, 1997) <http://www.ohiolife.org/euth/why.htm> (objecting to the theory that the decision to commit suicide is a private one about which society should not interfere, since, the author argues, the people making these decisions are not competent people making rational decisions to die, instead they were mentally ill and do not really intend to end their lives). "A suicide attempt powerfully calls attention to one's plight. The humane response is to mobilize psychiatric and social service resources to address the problems that led the would-be suicide to such an extremity." *Id.*

119 *See id.* This study clearly shows that most people who attempt suicide are really making a statement to loved ones that they need help. This Article will show that women who are in need may make this cry for help by attempting suicide, but when they turn to a doctor whom they trust they only receive the actual suicide assistance rather than the medical and emotional assistance they hope for. Because women experience unique or magnified problems, they are particularly susceptible to the assistance, or lack of medical care that is really needed from such a doctor.

120 *See Women at Greater Risk for Mental Health Problems* (visited Apr. 6, 1997) <http://www.cmhc.com/articles/women1.htm> (discussing studies performed in various countries and in different social settings which show women suffer more often from depression and anxiety than men).

121 *See id.* (stating these circumstances include poverty, unemployment, job insecurity and inequity, divorce, violence against women, children and the elderly, and wars). The Authors have discussed the statuses of divorce and widowhood, but further evidence reports distress over marriage in specific circumstances.

122 *See id.* This may seem surprising to the single women who feel stigmatized by their marital status, but the particular studies reported by this source claimed that women did not feel the protective effect of marriage that men seemed to feel. *See id.* This was evidenced by the fact that their studies showed married women accounted for the higher overall rates of depression. *See id.* In addition, many married women have to deal with the conflicts and pressures of work and home responsibilities which can be extremely difficult and stressful. *See id.*

123 *See id.* (stating that the role of housewife leads to depression because of the constant routine, isolation, lack of income, and the devaluation of the role of housewife in modern society). This is also not to say that the authors necessarily agree with this viewpoint.

wives are mothers who stay at home, these women may feel a particular depression that men do not feel.[124] In many instances basing their self-esteem on their role as a housewife, these women feel frustration from the isolation and lack of income that often accompanies that role.[125] The roles of wife and mother, however, are highly valued by many women, and feminism has, in a sense, failed women by devaluing motherhood, marriage, and related responsibilities.[126]

An increase of domestic violence is also a contributing factor to the peculiar risk that women have for mental health problems.[127] Other reasons for a higher rate of suicide in women include pre-menstrual syndrome, and depression from hysterectomies, menopause, mastectomies, or multiple abortions.[128] Depression resulting from these factors is, by far, the greatest contributor to acquiescent death.

> Depression has been estimated to affect 15 million Americans at any given time; it is more widespread than cancer, heart disease or AIDS. Women are twice as likely as men to suffer its ravages. Particularly in elderly women, the problems it brings are not "all in the head." Depression can cause or exacerbate physical illness. Researchers have found that depression in breast cancer patients heightened their pain and the unpleasant side effects of their medication. Depressed patients stay in the hospital longer and are more likely to get sick again. Nonetheless, many people do not seek treatment for depression, in part because mental illness is still viewed as a stigma.[129]

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124 *See id.* (finding that married women with children are more likely to experience depression because of their confinement to the home).

125 *See id.* Married women with children who also maintain a part-time job which generates income are less likely to suffer from depression than women who remain at home. *See id.*

126 *See* Lynne Marie Kohm, *The New Paradigm of the Feminine Mystique: The Authentic Woman's Perspective*, 2 LIBERTY, LIFE & FAM. 259, 261 (1995) (establishing the fact that the feminist movement has failed women of today by devaluing motherhood, marriage, and responsibility); *see also Women at Greater Risk for Mental Health Problems, supra* note 120 ("[T]he role of the housewife has been increasingly devalued in modern society.").

127 *See Women at Greater Risk for Mental Health Problems, supra* note 120. "[V]iolence against women, has been widely recognized as a growing public health problem. Certain studies have shown that up to 50% of women have been physically abused by their partners at some time in their lives. Half of the abused have been raped by their partners as well." *Id.*

128 *See* Laura E. Reece, *Women's Defenses to Criminal Homicide and the Right to Effective Assistance of Counsel: The Need for Relocation of Difference*, 1 UCLA WOMEN'S L.J. 53, 57 n.26 (1991) (citing Goleman, *Beliefs in Women Contradicted*, N.Y. TIMES, Jan. 9, 1990, at B5) ("[N]oting that women may suffer depression after childbirth, hysterectomy, mastectomy, and menopause, and the risks associated with postpartum depression and post-mastectomy depression are the most serious.")

129 Keveny, *supra* note 1, at 19A.

Added factors were uncovered in a 1984 study in St. Louis which revealed that 94% of those who had committed suicide had a mental disorder.[130] In another study in 1966-1968, one-hundred suicides were analyzed in the County of West Sussex and the County Borough of Portsmouth in Great Britain.[131] Of the one-hundred suicides studied, ninety-three of them were found to be mentally ill and given a diagnosis: 70 percent were diagnosed with depression, 15 percent with alcoholism, 3 percent with schizophrenia, 3 percent with phobic anxiety, and 1 percent each with barbiturate dependence and schizoaffective psychosis.[132] Because there was such a high percentage of depressed people who committed suicide, the authors evaluating this study compared the results to a sample of three hundred and eighteen patients with endogenous depression in order to make a distinction between those depressed people who attempted suicide and those who were actually successful.[133] Of the three-hundred and eighteen people who attempted suicide, twice as many women as men were referred to psychologists for the treatment of depression.[134]

> In the sample of 318 depressives, twice the number of women as men were referred for treatment of depression, but the ratio of women to men among the 64 depressed suicides was a good deal less, 34 to 30. This suggests that the suicide rate of male depressives is higher than that for female depressives, a phenomenon which may go some way to explaining the higher national suicide rate for men. This effect is to some extent counterbalanced, however, by the much higher prevalence of

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130 *See What's Wrong with Making Assisting Suicide Legal, supra* note 118. "There is a great body of psychological evidence that those who attempt suicide are normally ambivalent, that they usually attempt suicide for reasons other than a settled desire to die, and that they are predominately the victims of mental disorder." *Id.* A study found that less than one out of four people with a terminal illness expressed a wish to end their lives, and those who did suffered from clinical depression. *See id.* (citing James H. Brown et al., *Is it Normal for Terminally Ill Patients to Desire Death?*, 143 AMER. J. PSYCHIATRY 210 (Feb. 1986). Additional studies have shown that terminally ill patients do not want to die; there is, in fact, only a 2-4% suicide rate among persons with terminal illnesses. *See id.* (citing Flora Johnson Skelly, *Don't Dismiss Depression, Physicians Say*, AMER. MED. NEWS, Sept. 7, 1992, at 28).

131 *See* BRIAN BARRACLOUGH & JENNIFER HUGHES, SUICIDE: CLINICAL AND EPIDEMIOLOGICAL STUDIES 9 (1987). The two counties studied contained urban centers with a large working-class, a retirement community, a resort area, a country town, a rural farm community, and small towns and villages. *See id.* The population of 600,000 is representative of southern England. *See id.* Residents of the area who died outside the of the counties and visitors of less than six months were not included in the study. *See id.*

132 *See id.* at 12. "For 13 suicides there was more than one psychiatric diagnosis; in ten cases alcoholism coexisted with depression, and in three cases mood disorder, depression or anxiety, and barbiturate dependence were linked." *Id.*

133 *See id.* at 16-17 ("This comparison aimed to detect characteristics which distinguished depressed suicides from depressives who had not killed themselves" in order to determine which differences result in suicide.).

134 *See id.* at 17.

> depression among women in the general population, which places more women than men at risk for suicide.[135]

There are a great number of people today who live with anxiety and mood disorders, and a high proportion of them are women.[136] Disadvantage and resulting vulnerability can come in various forms. With the support of the cases of assisted suicide carried out by Dr. Kevorkian, our gender vulnerability hypothesis can be publicly supported based on numbers alone, as the great majority of his clients have been women. In fact, 71% of Kevorkian's reported cases of assisted suicide have been women, and several of them, as will be demonstrated, were not terminally ill, nor did their autopsies or medical records reveal explanations for their suffering from the illnesses with which they were diagnosed.[137] These women merely gave in to the despair they were experiencing. "Those who suffer have often been struggling for years to cope with the effects of severe illness upon their lives without diagnosis. Without proper medical care and emotional support, it is far too easy for those who suffer to give in to pain and despair."[138]

III. DEMOGRAPHICS

The two central demographic indicators are age and income.[139] "Women in our society are more likely to live longer than men. About 60% of the population that is older than 65 (years of age) is female; that number climbs to 75% in the over-80 age

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[135] *Id.* ("The effect of the prevalence of depression on the suicide rate is much greater in women than men, since a higher proportion of female suicides are depressed, 72 per cent compared with 57 per cent in this study.").

[136] *See Women at Greater Risk for Mental Health Problems, supra* note 120.

> Today, there are an estimated 400 million people with anxiety disorders and 340 million with mood disorders worldwide. A higher proportion of them are women. On the whole, one quarter of the world's population is estimated to be affected at any one time in their life by some kind of neuropsychiatric disorder, including mental, behavioral and substance abuse disorders. Three-quarters of those affected live in developing countries.

Id.

[137] *See infra* notes 157-459 and accompanying text. This percentage was derived by dividing the number of women aided by Kevorkian, 58, *see id.*, by the total number of reported women and men assisted to their deaths, 82. *See infra* note 154. Kevorkian himself admits that he has assisted in 100 suicides. *See Kevorkian Lawyer Reports 100th Assisted Suicide*, CHI. TRIB., Mar. 15, 1998, at 11.

[138] Brayden, *supra* note 40, at B9 (questioning whether assisted suicide should be legal when a fine line exists in such cases since some diseases are hard to diagnose but not fatal which lead women to commit suicide, but they may be containable or curable with medical care).

[139] *See* Keveny, *supra* note 1, at 19A (highlighting the importance of age and income in determining those who are most vulnerable to assisted suicide, while also considering other important factors).

group."[140] Furthermore, for persons 55 and older, there are 291 unmarried women for every 100 unmarried men.[141]

Age can be a factor that magnifies one's feelings of estrangement, disconnection and detachment, leading to isolation.[142] "Our analysis reveals that a particular kind of social world creates a milieu that has a profound influence upon older women and may, for some women, stimulate their quiet, sometimes unnoticed efforts to end their own lives."[143]

Life expectancy is commonly used to demonstrate women's immunity to suicide. Being survivors of aging, however, is not a valid indicator according to one suicide researcher.[144] "While far fewer women than men kill themselves, three times as many women as men try to kill themselves. . . . [W]omen generally choose less lethal methods, like pills. And, oftentimes, pills don't perform as expected."[145]

The lack of financial resources is often overlooked, yet it remains an important component that separates genders. "Women are far more likely to end up poor. At present, three out of four poor Americans over the age of 65 are female. The historic wage gap between men and women means that many females will end up with little or no retirement income."[146]

As we review cases of assisted suicide, the demographic of race may be important. "Now, as the nation debates physician-assisted suicide and other limits on life-sustaining care, some black leaders fear right-to-die choices are giving doctors new opportunities to victimize blacks."[147] Race, however, has not proved to be an issue in the demographics that relate to the assisted suicide work done by

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140 *Id.*

141 *See Census Bureau Facts for Features* (visited Jan. 30, 1998) <http://www.census.gov>.

142 *See* Osgood & Eisenhandler, *supra* note 32, at 366-67 (discussing that placing older women in long-term care facilities leads to self-destructive behavior and acquiescent suicide).

143 *Id.* at 367.

144 *See* Bard Lindeman, *Deal with Suicide Realities, But Discard the Myths,* RECORD (Northern New Jersey), Apr. 11, 1996, at H6, *available in* 1996 WL 6084193 (stating that women are not "immune" to suicide since they live longer).

145 *Id.*

146 Keveny, *supra* note 1, at 19A (stating that this gap is widened since many women gave up their professional careers to raise children).

147 Lori Montgomery, *Blacks Fearful of White Doctors Pulling the Plug* (Feb. 26, 1997) <http://www.freep.com/news/extra2/qsui26.htm> (stating that "the black community has long seen evidence that the U.S. medical establishment devalues black lives").

> Racial minorities . . . are far less interested in having doctors help them die. Research shows they feel more threatened when health professionals talk to them about living wills. And black patients, in particular, are far more likely than whites to say they want aggressive treatment and life support no matter how sick they become.

Id.

Jack Kevorkian. Every one of his female patients has been white, with the exception of one Hispanic — a woman.[148]

IV. KEVORKIAN'S INVOLVEMENT IN ASSISTED SUICIDE

A. Background

The individuals who committed suicide with the assistance of Jack Kevorkian provide an insightful, though not exhaustive, review that begins to analyze the phenomenon of assisted suicide among women. Of the 82 reported patients he has helped to their deaths, 58 have been women, and 24 have been men.[149] His initial nine assisted suicides were women, beginning with the first, Janet Adkins in 1990.[150] It took three years of work before he assisted a man to his death.[151] Currently, Kevorkian appears to have turned his attention to art, including oil painting and music composi-

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148 *See The Suicide Machine* (visited Apr. 9, 1997) <http://www.freep.com/suicide/suicide_stats.htm>. "Nationally, 90% of suicides are white people, 7% are black, 3% other. Of the 47 people known to have died with Kevorkian's help, the only non-white was a Hispanic women." *Id.* For further discussion of this woman, see *infra* notes 311-17 and accompanying text.

149 *See Patients Helped to Die by Dr. Jack Kevorkian* (last modified Jan. 15, 1998) <http://www.efn.org/~ergo/kevorkian.html> (providing a list of the names, sex, age, and diagnosis of the people Kevorkian has assisted). Additionally, Kevorkian has a homepage, see *Jack Kevorkian's Home Page: Dr. Death Lives Here* (last modified Mar. 27, 1997) <http://www.geocities.com/HotSprings/3444/#rollcall>. Geoffrey Fieger, Kevorkian's lawyer, has intimated that there have been other assisted deaths which have been kept private. *See Patients Helped to Die by Dr. Jack Kevorkian, supra* (stating that the list of patients on this website include those "cases which have been recorded in newspapers.").

150 *See Patients Helped to Die by Dr. Jack Kevorkian, supra* note 149.

151 Jack E. Miller was assisted in his suicide in 1993 by Jack Kevorkian. Miller had bone cancer and died at age 53. *See id.*

tion,[152] and has transferred some of his suicide work to Dr. Georges Reding.[153]

Research did not reveal evidence of the criteria used by Kevorkian in choosing his patients. However, details are available about some of the patients he has assisted in suicide. The focus of this Article is not on all of the individuals, but primarily on the women.[154] Of critical importance was the age of each patient, their marital status, and the nature of their illness.

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152 *Jack Kevorkian's Home Page: Dr. Death Lives Here, supra* note 149.

> It is not an obvious question, but provocative when posed: What kind of art would be produced by Dr. Jack Kevorkian, the outspoken advocate of assisted suicide who has helped 46 people take their own lives?
>
> The answer, at an exhibit that opened Saturday night in this Detroit suburb, is a collection of 13 oil paintings depicting severed heads, moldering skulls and rotting corpses.
>
> In the painting "Very Still Life," a blue flower blossoms through the gaping eye socket of a skull with a twisted lower jaw. In the "Coma" painting, bony fingers pull a bedridden man into the maw of a giant skull. In still another, "Paralysis," a man's brain and the upper end of his spinal column have been ripped from his body and hang from chains. . . .
>
> But visitors to the exhibit . . . , said the paintings presented a disturbing side of a man sometimes portrayed as a humanitarian trying to relieve the suffering of the terminally ill. "I used to respect what he did," said Frida Macki, a 30-year-old Detroit accountant.
>
> "These paintings changed my view," she said. "He's a sick person — how do I know he doesn't do what he does because he enjoys killing people?"
>
> Nada Nasser, 22, a Detroit engineer, agreed, saying, "It's terrible, it's morbid, it's a sick mind that created this."

Keith Bradsher, *Kevorkian is Also Painter. His Main Theme is Death*, N.Y. TIMES, Mar. 17, 1997, at A10. Kevorkian has put his music on the market, now in compact disc. *See Music to Soothe Assisted Suicides*, L.A. DAILY NEWS, March 19, 1997, at N2. The CD, titled "A Very Still Life: The Kevorkian Suite," features Kevorkian playing the flute with a Jazz quartet. *See* Bradsher, *supra*, at A10. The artwork on the jacket cover displays Kevorkian's painting, "A Very Still Life" and is available at most music stores. *See Music to Soothe Assisted Suicides, supra*, at N2.

153 Reding began his work with Kevorkian as a psychiatrist who conducted psychological interviews in order to determine the competency of Kevorkian's clients. *See supra* note 21 (noting that Reding evaluated Badger prior to her suicide). Over time, he became more directly involved with the assisted suicides. *See infra* notes 420, 425, 431, 435, 445, 448, 452 and accompanying text.

154 Although our focus is not on men in this Article, it is important to note each one by name, age and illness. In chronological order, ending with most recent, they are: Jack E. Miller, age 53, bone cancer; Stanley Ball, age 82, pancreatic cancer, blind; Hugh E. Gale Sr., age 70, emphysema, congestive heart disease; Jonathon Grenz, age 44, mouth and throat cancer; Ronald Mansur, age 54, bone and lung cancer; Thomas Hyde Jr., age 30, ALS; Donald O'Keefe, age 73, bone cancer; Ali Khalili, age 61, bone cancer; John Evans, age 78, pulmonary fibrosis; Nicholas Loving, age 27, ALS (Lou Gehrig's Disease); Austin Bastable, age 53, multiple sclerosis; Pat DiGangi, age 66, cancer, stroke; Jack Leatherman, age 73, pancreatic cancer; Richard Faw, age 71, colon cancer; Wallace J. Spolar, age 70, MS; Albert Miley, age 41, quadriplegia; Thomas Summerlee, age 55, multiple sclerosis; Natvarlal Thakas, age 78, Parkinson's disease; John Zdnaowicz, age 50, ALS; John O'Haria, age 54, stroke, gout, and kidney problems; and Franz-Johann Long, age 53, possible bladder cancer. *See Patients Helped to Die by Dr. Jack Kevorkian, supra* note 149. More recently, Kevorkian has aided Roosevelt Dawson, age 21, quadraplegia, *see* Brian Harmon, *Critics: Kevorkain Taking All Comers: They Claim Terminal Illness No Longer Only Standard for Suicides*, DET. NEWS, Mar. 1, 1998, at A1, *available in* 1998 WL 3815886; Waldo Herman, age 66, lung cancer, *see Kevorkian Deaths Total 100*, N.Y. TIMES, Mar. 15, 1998, at 18; and William Con-

> People have asked why, in the list of assisted suicides, only nine of the 33 people are men. Dr. Kevorkian told a National Press Club luncheon on July 29, 1996, "I find women stronger here too. They know the strength. Of course I knew that from my mother. She was a very strong woman. But women are, first of all, more practical than men. Men are — you know, their mind is boggled with a bunch of hair-splitting philosophy and idealism, and women wonder why they die for a principle. But women are very practical. And that's why I think they can face it better than men. And they are more in tune with nature than men are."[155]

Following is a brief synopsis of each of the women, in chronological sequence from earliest to most recent in time, who have already been assisted to their deaths by Jack Kevorkian, as of the last draft of this Article.[156]

B. The Women Who Turned to Dr. Kevorkian

1. Janet Elaine Adkins
   Age 54, married, Alzheimer's Disease[157]

Mrs. Adkins, a former college instructor on disability,[158] decided to commit suicide on the same day that she was diagnosed with Alzheimer's disease,[159] but the medical examiner declared after completion of the autopsy that she was not terminal.[160] Adkins, the first of Kevorkian's assisted suicide patients, died by lethal in-

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naughton, age 42, fibromyalgia. *See* Tim Cornell, *Kevorkian IDs West Roxbury Man He Helped to Die*, BOSTON HERALD, Mar. 9, 1998, at 6, *available in* 1998 WL 7339490.

155 *Dr. Jack Kevorkian* (visited March 20, 1997) <http://www.efn.org/~ergo/dr.k.html> (citing Dr. Kevorkian's speech before the National Press Club). This speech can be read in its entirety on The Kevorkian file on DeathNet. For the Kevorkian file on Deathnet and text of the speech to the National Press Club, see respectively <http://www.rights.org/deathnet/Kevorkian_one.html> and <http://www.rights.org/deathnet/NPC.html>.

156 This Article was accepted for publication in July of 1997. At that time 39 of the 50 patients Kevorkian had helped to die were women. The authors updated in January of 1998, and *17 more women had died in that short period.* Of the additional 21 people who were assisted in suicide by Dr. Kevorkian, 4 were men and 17 were women — a ratio of women to men being 4.25 to 1, or 81% women. This is astonishing. A final update was done in April of 1998, and 3 more men and 2 more women had been assisted to their deaths. Unfortunately, it is probably inevitable that more will occur during the final printing and publication that we will not be able to include in this research, but it is our hypothesis that any future cases will only continue to serve our conclusions, validating the gender vulnerability to acquiescent death.

157 *See, e.g, Janet Elaine Adkins* (visited Apr. 9, 1997) <http://www.freep.com/suicide/assisted/1.htm>.

158 *See id.*; *see also Kevorkian's Patients: More Details* (visited Mar. 20, 1997) <http://www.rights.org/deathnet/Kfiles_details.html>.

159 *See Janet Elaine Adkins, supra* note 157. Adkins was a member of the Hemlock Society, a pro-euthanasia group. *See Kevorkian's Patients: More Details, supra* note 158.

160 *See Kevorkian's Patients: More Details, supra* note 158.

jection of potassium chloride in Kevorkian's van.[161] Without meeting or speaking with Adkins personally, Kevorkian agreed to assist in her suicide.[162] He did speak with her husband,[163] and most likely, a psychological evaluation of Adkins was never conducted. There was no assessment or attempt to determine whether the source of her suffering was depression or any other mental illness that could be treated with psychotropic medication or counseling.[164] In fact, being an avid tennis player, she played a match against her son two weeks before her death — and won.[165]

2. Marjorie Lee Wantz
   Age 58, married, unexplainable and untreatable vaginal pain.[166]

For his next medicide, Kevorkian promised Sherry Miller and Marjorie Wantz "a beautiful setting on a little lake in a little woods." When the group — Kevorkian's entourage, Wantz's husband, Miller's best friend —convened at a state park near Detroit, they found production values worthy of a Hemlock Society self-deliverance brochure. The only false note in the bucolic scene (complete with rustic cabin, candles and last-minute exchanges of endearments) are the confused motives of the two middle-aged women involved. Both cases are as troubling in their own way as Adkins's: one woman seems to have been suffering from depression rather than organic disease, and the other from a particularly self-abnegating sense of the trouble her disease caused others.[167]

Wantz, an elementary school teacher's aid, had a history of depression and general psychiatric problems.[168] Wantz had been

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161 *See id.*

162 *See Janet Elaine Adkins, supra* note 157.

163 *See id.* There is the possibility that there was a period of marital discord between Adkins and her husband just before the call to Kevorkian. *See id.* Adkins' husband made the initial contact with Kevorkian, acted as the mediary, and appears to have spoken for his wife in the "pre-death conference with Kevorkian." Gutmann, *supra* note 5, at 32. Her husband did accompany her to Michigan where the suicide took place, but did not witness her death. *See Kevorkian's Patients: More Details, supra* note 158. Nonetheless, a psychological evaluation was not conducted, making any assessment of domestic discord from Janet Adkins' perspective now impossible.

164 "So many things are worrisome about Adkins's death: Alzheimer's is notoriously hard to diagnose, for one. Only an autopsy finally confirms it, and its early symptoms — confusion, clumsiness, memory problems — are identical to those of moderate to severe depression." Gutmann, *supra* note 5, at 32.

165 *See Kevorkian's Home Page: Dr. Death Lives Here , supra* note 149. Adkins' case is well-documented in the book by the former Detroit Free Press reporter, Michael Betzold entitled *Appointment With Dr. Death. See* Gutmann, *supra* note 5, at 32.

166 *See Kevorkian's Home Page: Dr. Death Lives Here , supra* note 149; *see also Marjorie Lee Wantz* (visited Apr. 9, 1997) <http://www.freep.com/suicide/assisted/2.htm>.

167 Gutmann, *supra* note 5, at 32.

168 *See Marjorie Lee Wantz, supra* note 166.

involuntarily admitted to psychiatric hospitals two times in the year preceding her death and had tried committing suicide many times at home.[169] She died with Kevorkian's assistance by lethal injection.[170] Although she had undergone surgical operations,[171] the autopsy showed nothing that could have caused her pain.[172]

3. Sherry Ann Miller

Age 43, divorced, multiple sclerosis[173]

Miller's illness had so debilitated her that she was unable to use her arms and legs.[174] Miller's physician, Dr. Stanton Elias, stated that he had referred her to a psychiatrist because she had been depressed for years.[175] The psychiatrist apparently also believed that Miller suffered from depression and prescribed Prozac for her.[176] Multiple sclerosis, said Miller's physician, can shorten the victim's life span, but he stated that Miller could have lived

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169 *See* Pamela Warrick, *Choosing Not to Die Alone Dying: To Some of His Patients, Dr. Jack Kevorkian was an "Angel of Death" Who Could Ease the "Pain of Deciding Whether to Live or Die," One Expert Says*, L.A. TIMES, Mar. 30, 1993, at 1, *available in* 1993 WL 2333872 (discussing the failed attempts to take her own life). Wantz made an attempt to shoot herself in the head but missed instead hitting a chair and sat for hours in the garage trying to kill herself by inhaling carbon monoxide, but did not succeed. *See id.* She admitted that "[she] just [could not] seem to pull it off on [her] own." *Id.*

170 *See id.* (stating that Wantz suffered from severe depression and "somatization syndrome" leading doctors to prescribe anti-depressants and psychiatric hospitalization); *see also Marjorie Lee Wantz*, *supra* note 166.

171 *See* Gutmann, *supra* note 5; *see also Kevorkian's Patients: More Details*, *supra* note 158. "Wantz . . . suffered from pelvic pain ever since a 1988 operation to remove non-cancerous growths from inside her vagina. Though she had many vivid explanations for her torments — third-degree burns, a needle left behind after the surgery — doctor after doctor could find no organic cause for them." Gutmann, *supra* note 5.

172 *See* Gutmann, *supra* note 5; *see also Kevorkian's Patients: More Details*, *supra* note 158; *Marjorie Lee Wantz*, *supra* note 166.

173 *See Kevorkian's Patients: More Details*, *supra* note 158; *see also Sherry Ann Miller* (visited Apr. 9, 1997) <http://www.freep.com/suicide/assisted/3.htm>. Miller left behind her two young children who were living with their father.

174 *See Kevorkian's Patients: More Details*, *supra* note 158; *see also* Gutmann, *supra* note 5 (stating that Miller was confined to a wheelchair at all times).

175 *See Woman Who Died With Kevorkian Could Have Lived For Years* (visited Apr. 9, 1997) <http://www.sddt.com/file/libraryw...4_96/DN96_04_22_la.html>.

176 *See id.* Prozac is an anti-depressant most often used for depression, but can have serious side effects. For a discussion on the effects and use of Prozac, see SCOTT NEUMAN & ARTHUR BORJA, PROZAC: AN ANTIDEPRESSANT THAT MAY END UP DEPRESSING ITS MANUFACTURER, 248-249 (1994).

> Dr. Martin H. Teicher, of Harvard Medical School, furthered the Prozac debate by conducting an authoritative study of the effects of the drug. He found that six patients who were free of suicidal tendencies before taking Prozac, later exhibited suicidal thoughts and behavior. Teicher estimates that "3.5 percent of people using Prozac experience intense and violent suicidal thoughts." Teicher postulated that between 1.9 percent and 7.7 percent of the people using Prozac "may be at risk for mania, obsession, suicide and violent behavior." Teicher remarked, "A lot of drugs can make people manic . . . There's nothing unique in Prozac in sometimes changing peoples' threshold for aggressive behavior. It all depends on the quality of care."

Id. (internal citations omitted)

years or decades longer despite her depression.[177] She was a divorced homemaker,[178] and with assistance from Kevorkian, died from carbon monoxide inhalation.[179]

4. Susan Williams
   Age 52, married, multiple sclerosis,[180] asthma, severe skin problems, legally blind[181]

Williams, also a homemaker, admitted that she was depressed.[182] She had complained that doctors never made a thorough examination of her when she made appointments and that the medical profession failed to meet her needs leaving her feeling "stressed, hopeless and abandoned."[183] Financial difficulties also plagued Williams; she lived on Social Security benefits, and was unable to obtain help from the National Multiple Sclerosis Society,[184] thereby forced to spend all of her income on prescriptions not cov-

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177 *See Woman Who Died With Kevorkian Could Have Lived For Years, supra* note 175 (stating that many patients experience this depression when in her condition, but most of them just "go on with their lives."). As a result of multiple sclerosis, Williams was legally blind and unable to walk. Her disease, however, was not terminal. She also suffered from other medical problems including cancer.

178 *See Kevorkian's Patients: More Details, supra* note 158. "Sherry Miller . . . was also roiled by powerful emotions — above all, one would assume, rage at the husband who had divorced her and taken her children just as her multiple sclerosis had worsened. But at 43, confined to a wheelchair and living with her elderly parents, Miller hardly discussed the recent divorce. . . ." Gutmann, *supra* note 5, at 32. She adds, "Instead she focused her formidable energies on persuading Dr. Kevorkian to help her die." *Id.*

179 *See Kevorkian's Patients: More Details, supra* note 158; *see also Sherry Ann Miller, supra* note 173.

180 *See Kevorkian's Patients: More Details, supra* note 158; *see also Susan Williams* (visited Apr. 9, 1997) <http://www.freep.com/suicide/assisted/4.htm>. Williams needed to use a catheter and endured muscle spasms due to her MS. *See* Patricia Anstett, *For Some, Kevorkian was the First Doctor Who Cared* (Mar. 4, 1997) (visited Apr. 9, 1997) <http://www.freep.com/suicide/qmed4.htm> [hereinafter Anslett, *For Some, Kevorkian was the First Doctor Who Cared*]. Williams also had suffered from cancer in the past. *See Susan Williams, supra.*

181 *See* Anstett, *For Some, Kevorkian was the First Doctor Who Cared, supra* note 180.

182 *See id.*

183 *Id.* She saw the same doctor for eight years. *See id.* Williams' son, Dan, always accompanied his mother into the examining room of her doctor's office. *See id.* He says her appointments never involved a physical exam with her clothes off and lasted no more than five to ten minutes. *See id.*

> Her experience with the health care profession, as recounted by her family, is similar to that of other people who asked Kevorkian to help them die. Interviews with friends and relatives, medical records, videotapes the people made with Kevorkian and other material reviewed by the Free Press point to failures of medicine that left people feeling stressed, hopeless and abandoned. The problems they describe paint a picture of doctors, home-care agencies and social services programs falling badly short of the needs of people with chronic and terminal illness. Some patients or their families even described Kevorkian as the first doctor they had encountered who seemed to care, and who listened to them.

Id.

184 *See id.* Even though Williams was a member of this society, she was unable to receive assistance because she was told that her family income was too high. *See id.* She could not even receive help for a wheelchair. *See id.*

ered by Medicare.[185] Kevorkian assisted her to suicide by carbon monoxide inhalation.[186]

5. Lois Hawes
Age 52, divorced, advanced lung cancer[187]

When her doctors told her that her lung cancer was so advanced that it had spread to her brain, she made the decision for suicide.[188] Hawes, another homemaker, refused to allow doctors to confirm a diagnosis of lung cancer, and she likewise refused life-prolonging treatment.[189] Hawes met with a psychiatrist, Dr. Baxter, who reported his findings to Kevorkian prior to her death.[190] Kevorkian and Dr. Baxter said that this divorced, unemployed mother of four requested Kevorkian's assistance because she had no money or health insurance.[191] Her mode of suicide was carbon monoxide poisoning.[192]

6. Catherine Andreyev
Age 45, single, cancer[193]

Andreyev was a school teacher and real estate agent who died of carbon monoxide poisoning.[194] Friends who commented on her decision to die all seem to agree that there was an emotional

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185 *See id.*

186 *See Susan Williams, supra* note 180; *see also Kevorkian's Patients: More Details, supra* note 158.

187 *See* Anstett, *supra* note 180; *see also Louis Hawes* (visited Apr. 9, 1997) <http://www.freep.com/suicide/assisted/5.htm>; *Kevorkian's Patients: More Details, supra* note 158.

188 *See* Anstett, *For Some, Kevorkian was the First Doctor Who Cared, supra* note 180.

189 *See id.* Dr. Baxter was dismayed that there was no biopsy to confirm the diagnosis. *See id.*

190 *See id.*

191 *See id.* Kevorkian and Baxter agreed that there were other factors that contributed to Hawes' decision, but they blamed the medical profession for "this tragedy" due to the fact that medical care is too expensive for many Americans to obtain. *See id.* It seems that all of the patients who sought the help of Kevorkian were praising him for understanding them and giving them a way out. *See id.* They further stated that he was the only doctor who will provide his services at a reasonable fee — free. *See id.* It is peculiar that these women find this man to be compassionate; he is killing them free of monetary charge, but he is costing them and their families an invaluable life. Unfortunately, there are millions of Americans who will be lured by physician assisted suicide. "Some 40 million Americans have no medical coverage at any given moment. Medical ethics experts have speculated that poor and uninsured people might be particularly at risk if physician-assisted suicide were legalized." *Id.*

192 *See id.*

193 Sources differ on the type of cancer that Andreyev actually suffered from. Some sources state that she had cancer of the lungs, liver, lymphatic system and bones. *See The Suicide Machine, supra* note 149; *see also Catherine Andreyev* (visited Apr. 4, 1997) <http://www.freep.com/suicide/assisted/6.htm>. Other sources state that she had breast cancer, which was in the terminal stage. *See Kevorkian's Patients: More Details, supra* note 158; *see also Patients Helped to Die by Jack Kevorkian, supra* note 149; *Kevorkian's Home Page: Dr. Death Lives Here, supra* note 149; Warrick, *supra* note 169, at 1.

194 *See Kevorkian's Patients: More Details, supra* note 158.

basis for her decision.[195] One longtime acquaintance alluded to the fact that Andreyev was secluded from the world: "In life, she was practically invisible. . . . There is no doubt that, because of Kevorkian, Catherine was larger in death than she ever was in life."[196] Catherine, because of her illness, had access to enough medication to commit suicide on her own, but she chose to call Kevorkian.[197]

7. Marguerite Tate
Age 70, divorced, Lou Gehrig's disease (ALS)[198]

Tate died of carbon monoxide poisoning right before a law was passed banning assisted suicide.[199] A computer operator by trade, Tate was a strong advocate of Kevorkian,[200] often accompanying him on talk shows and in court,[201] "proclaiming her intention to make use of his help."[202] Tate attempted suicide several times unsuccessfully before she was able to convince Kevorkian to

195 *See Catherine Andreyev, supra* note 163 ("One friend said Kevorkian exploited her at a weak moment; others said Andreyev was profoundly affected by her mother's agonizing death two years earlier."); *see also* Warrick, *supra* note 169, at 1.

196 Warrick, *supra* note 169, at 1. Catherine's neighbor, Diane Collins, hypothesized her decision to die with Kevorkian's help as well: "I think Catherine was saying 'I didn't have enough time to make anything out of my life, so I'll make something out of my death.'" *Id.*

197 *See id.* One psychologist and right-to-die advocate has stated that people prefer to call on the assistance of a "kind" doctor who will sit by their bedside while they die rather than the alternative of dying alone. *Id.*

198 *See Kevorkian's Patients: More Details, supra* note 158; *see also Marguerite Tate* (visited Apr. 9, 1997) <http://www.freep.com/suicide/assisted/7.htm. Sources differ on Tate's occupation. Some sources say she was a computer operator. *See Kevorkian's Patients: More Details, supra* note 158; *see also Marguerite Tate, supra.* Another source indicated that Tate was an owner of a cab company. *See* Bill Smith, *Law Stalling Kevorkian, 'Hero' or 'Serial Killer.' ACLU Seeks Order to Lift Ban*, ST. LOUIS POST-DISPATCH, Mar. 7, 1993, at 1A, *available in* 1993 WL 8006682 .

199 *See Kevorkian's Patients: More Details, supra* note 158; *see also Marguerite Tate, supra* note 198. "Through his attorney, Kevorkian said it was only a coincidence that her death came on the day that Gov. John Engler signed a law banning assisted suicide." George Kovanis, *Kevorkian Enables People to Take Final Command* (visited Apr. 9, 1997) <http://www.freep.com/suicide/qpol5.htm>.

200 *See* Kovanis, *supra* note 199 (declaring that "few have been as dedicated" to Kevorkian's cause).

201 *See id.*

202 *Id.* "In January 1992, Tate accompanied Kevorkian on 'Donahue' and spoke of her frustration over a court order forbidding him from assisting in any more suicides." *Id.* "In December 1992, Tate, sitting in a wheelchair and barely able to speak, showed up at a press conference with Kevorkian, who pointed to her and said: 'Marguerite Tate has no quality of life. Everyone can see that. Look at her!'" *Id.*

assist her own suicide.[203] "[S]hortly after scrawling 'My family stinks' on a piece of paper, Tate died with Kevorkian's help."[204]

8. Marcella Lawrence
Age 67, divorced, heart disease, emphysema, and arthritis[205]

Lawrence, a nurse, committed suicide with the assistance of Jack Kevorkian through the inhalation of carbon monoxide at the home of Marguerite Tate, on the same day that Tate committed suicide.[206]

9. Sue Weaver
Age 52, married, multiple sclerosis[207]

Weaver was one of six assisted to her death by Kevorkian in 1992.[208] She had been sick with various ailments since childhood.[209] Despite her illnesses, she had a happy life — she had a long successful marriage, a son, and had worked as an Avon lady.[210] But "[i]n 1980[,] Sue began to have trouble with her balance; her legs went numb. The eventual diagnosis was multiple sclerosis."[211] Her symptoms progressed rapidly to the point where she could not move without being pushed or carried.[212] She was being cared for by her husband, but he then suffered a stroke which left him incapable of caring for her.[213] Her symptoms also continued to worsen

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203 *See* Smith, *supra* note 198 (describing that Tate had attempted to acquire a gun to end her life and a friend took it away, and then she ran a hose from the tailpipe into the window of her car, but her car stalled). Tate had asked for Kevorkian's help on many occasions, but he had put her off. *See id.*

204 Kovanis, *supra* note 199, at 5. Tate was not only divorced, but estranged from her only child. *See Marguerite Tate, supra* note 198.

205 *See Kevorkian's Patients: More Details, supra* note 158. Lawrence was not in a terminal stage of any of these illnesses. *See id.*

206 *See id.* Lawrence, likewise, appeared at the news conference denouncing pending legislation to outlaw assisted suicide, and also died on the same day as Engler signed the bill into law. *See Marcella Lawrence* (visited Apr. 9, 1997) <http://www.freep.com/suicide/assisted/8.htm>.

207 *See Kevorkian's Patients: More Details, supra* note 158. Weaver was not included in a first researched list from this website, but the list did include her name when it was updated in January of 1998, as an addition to the 1992 victims. One wonders how many more lives, and their corresponding deaths, did not make the list.

208 *See id.* All the patients aided by Kevorkian in 1992 were female. *See id.*

209 *See* David Van Biema, *Sisters of Mercy. (Assisted-Suicide Patient Sue Weaver and Her Sisters)*, TIME, May 31, 1993, at 42, *available in* 1993 WL 2930821 ("She had a bodywide eczema starting in infancy, rheumatic fever and meningitis in childhood, a progressive eye ailment[,]. . . [and] a malignant tumor . . . on her forehead" which required 10 operations to "rebuild her eyebrow and part of her eyelid.").

210 *See id.* (saying that Weaver never pitied herself, had a ferocious will, and a great sense of humor).

211 *Id.*

212 *See id.*

213 *See id.* (stating that Weaver's husband had dropped her and could not lift her anymore).

which is what provoked her to contact Kevorkian.[214] Kevorkian made three videotapes of Weaver which included descriptions of her condition, her intent to commit suicide, and direct statements that she wanted to die.[215] By the third time they met, Kevorkian agreed to assist her.[216] She died by carbon monoxide with her family present.[217]

10. Mary Biernat
Age 74, widowed, breast (and possibly bone) cancer[218]

Biernat, a seamstress and homemaker,[219] who had watched her husband die of cancer, said that she wanted to die at the earliest opportunity.[220] With the assistance of Kevorkian, her mode of suicide was carbon monoxide inhalation at the home of Stanley Ball, who also committed suicide that day.[221]

11. Elaine Goldbaum
Age 47, divorced, multiple sclerosis[222]

Goldbaum, a jewelry salesperson, was particularly disturbed by the loss of her independence.[223] Her family reported that her loss of muscle control had driven her into depression.[224] Goldbaum, who was Jewish, wrote Kevorkian stating that she had been raised to believe that suicide was a mortal sin, but with his assistance she

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214 *See id.* (stating that she had become incontinent and "developed cellutitis, which attacked her skin"). One of her sisters helped her write a letter to Kevorkian, but her sister never really felt she would go through with it since there were so many conflicts with her Catholic beliefs. *See id.*

215 *See id.*

216 *See id.*

217 *See id.* ("Kevorkian had rigged a canister of carbon monoxide so that Sue, with the good hand, could push a lever to release the deadly gas."). According to her family, Weaver's death "'couldn't have been more peaceful[.]. . . Here was Sue, in her own bedroom, it was a beautiful sunny day, the birds were chirping outside, the back door was open, she had flowered sheets on her bed. It was just the way she wanted it.'" *See id.* (quoting her sister, Mary Weaver).

218 *See Kevorkian's Patients: More Details, supra* note 158.

219 *See Mary Biernat* (visited Apr. 9, 1997) <http://www.freep.com/suicide/assisted/11.htm>.

220 *See Kevorkian's Patients: More Details, supra* note 158 (recalling that Biernat had told her sister-in-law "[d]on't pray for me. I can't live with the pain.").

221 *See Mary Biernat, supra* note 219. Biernat and Ball "met the day before, and their families shared a duck dinner the night before the suicides." *Id.*

222 *See* Warrick, *supra* note 169, at 1.

223 *See Elaine Goldbaum* (visited Apr. 9, 1997) <http://www.freep.com/suicide/assisted/12.htm>.

224 *See* Warrick, *supra* note 169. "Still, Goldbaum was mobile enough to go out to have her hair done for her appointment with Kevorkian. At the end, her neighbors say, she seemed in high spirits. 'You'd never imagine she was getting all fixed up to die,' says one." *Id.* "In a letter to Kevorkian, Goldbaum said her loss of independence was 'atrocious.'" *Elaine Goldbaum, supra* note 223.

would be able to get into heaven.[225] She died of carbon monoxide poisoning.[226]

12. Martha Ruwart
Age 40, single, terminal duodenal and ovarian cancer[227]

Ruwart was a computer programmer who died of carbon monoxide inhalation with the assistance of Kevorkian.[228]

13. Merian Frederick
Age, 72, widowed, Lou Gehrig's Disease (ALS)[229]

Frederick was a homemaker and a political activist.[230] With the help of Kevorkian, her mode of suicide was carbon monoxide inhalation.[231] The Rev. Ken Phifer, who was a longtime friend of Frederick, said "I think that if Merian could have found . . . a way to live longer without the fear of not being given what she wanted — release from her suffering — when she wanted it, she would have chosen that."[232]

14. Margaret Garrish
Age 72, married, chronic non-terminal degenerative joint disease[233]

Garrish, a homemaker, had been unable to work for years as a result of crippling arthritis and she had lost both her legs to ampu-

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225 *See* Warrick, *supra* note 169, at 1. "[S]he believed she would be guilty of a mortal sin if she committed suicide on her own." Kovanis, *supra* note 199.

226 *See Elaine Goldbaum*, *supra* note 215; *see also Kevorkian's Patients: More Details*, *supra* note 158.

227 *See Kevorkian's Patients: More Details*, *supra* note 158; *see also Martha Ruwart* (visited Apr. 9, 1997) <http://www.freep.com/suicide/assisted/15.htm>.

228 *See Kevorkian's Patients: More Details*, *supra* note 158; *see also Martha Ruwart*, *supra* note 227.

> A single computer programmer, Ruwart suffered from terminal duodenal and ovarian cancer. She had tried a number of alternative treatments, including shark's blood enemas, before asking a sister to contact Kevorkian four weeks before her death. Three sisters accompanied her to her final appointment, at the home of Kevorkian's assistant Nicole. She inhaled carbon monoxide.

Id.

229 *See Kevorkian's Patients: More Details*, *supra* note 158. Frederick was not in the terminal stage of her illness. *See id.*

230 *See Merian Frederick* (visited Apr. 9, 1997) <http://www.freep.com/suicide/assisted/19.htm>. "[S]he had spent most of her life quietly pursuing social causes such as a ban on nuclear weapons." Kovanis, *supra* note 199.

231 *See Merian Frederick*, *supra* note 230; *see also Kevorkian's Patients: More Details*, *supra* note 158.

232 Kovanis, *supra* note 199. At the time of her death, Frederick had lost the ability to speak and had to be tube fed. *See Kevorkian's Patients: More Details*, *supra* note 158. In a statement, she said that "[she] want[ed] out, the earliest most humane way possible. . . ." *See id.*

233 *See Kevorkian's Patients: More Details*, *supra* note 158. Garrish also suffered from rheumatoid arthritis, colonic diverticulitis, osteoporosis, and had lost one eye and had her legs

tation.[234] Her husband was at her side, as was Kevorkian, when she died of carbon monoxide poisoning.[235] "Kevorkian had announced the previous March that he intended to help Garrish end her life unless a doctor came forward who could alleviate her chronic pain."[236]

15. Erika Garcellano
Age 60, divorced, Lou Gehrig's Disease (ALS)[237]

Garcellano escaped war-ravaged Europe when she was a child.[238] As an adult, she was a nursing home aide,[239] and shortly before her death, she was a resident in a nursing home.[240] She had problems breathing when she laid down, and therefore, was forced to spend nights on a recliner.[241] Her suicide by carbon monoxide inhalation was Kevorkian's only assisted suicide in the former hardware store which he had purchased for his intended clinic.[242] Garcellano's body was found on a shower curtain which was draped over the bottom mattress of a bunk bed.[243]

16. Esther Cohan
Age 46, single, multiple sclerosis[244]

Cohan, a former executive secretary who committed assisted suicide by carbon monoxide poisoning,[245] wrote a letter addressed "to all" before her death stating the following:

> The ultimate act of love in ANY relationship is knowing when to say 'good-bye,' . . . There is never a great time to go . . . but we all have to go sometime. The decision I made was for me! I don't expect others to live by my standards; nor can I live by

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amputated. *See Patients Helped to Die by Jack Kevorkian, supra* note 149; *see also Kevorkian's Home Page: Dr. Death Lives Here, supra* note 149.

234 *See Margaret Garrish* (visited Apr. 9, 1997) <http://www.freep.com/suicide/assisted/21.htm>.

235 *See id.*

236 *Id.*

237 *See Kevorkian's Patients: More Details, supra* note 158. Garcellano was not in a terminal, fatal stage. *See id.*

238 *See Erika Garcellano* (visited Apr. 9, 1997) <http://www.freep.com/suicide/assisted/24.htm>.

239 *See id.*

240 *See id.*

241 *See* Patricia Anstett, *For Some, It was a Party June 1995 - May 1996*, DET. FREE PRESS, Mar. 6, 1997, at 8A, *available in* WESTLAW, DET-FP database [hereinafter Anstett, *For Some, It was a Party*] (describing Garcellano's ailments, including her inability to talk or write).

242 *See Erika Garcellano, supra* note 238; *see also Kevorkian's Patients: More Details, supra* note 158.

243 *See* Anstett, *For Some, It was a Party, supra* note 241, at 8A.

244 *See Kevorkian's Patients: More Details, supra* note 158; *see also Esther Cohan* (visited Apr. 4, 1997) <http://www.freep.com/suicide/assisted/25.htm>.

245 *See Kevorkian's Patients: More Details, supra* note 158; *see also Esther Cohan, supra* note 244.

> others . . . As things went from bad to worse and I was nothing more than a 'bed vege,' I knew it was time to say 'See ya!' To those who disagree — so be it — I know the people who care understand and that's all that matters![246]

Cohan's sister accompanied her on the trip to Michigan to see Kevorkian, but her body still laid in a morgue for five days marked "Unknown Female #13."[247]

17. Patricia Cashman
Age 58, divorced, diagnosed with breast cancer[248]

It is believed that Cashman, a travel agent, teacher, world traveler and freelance writer, asked for Kevorkian's assistance because she feared losing her independence after being diagnosed with breast cancer.[249] Cashman, who lived alone in a mobile home, wrote a letter to Kevorkian expressing her fear and panic that she would wake up paralyzed and at the mercy of others.[250] She told Kevorkian that she was bitter about using her "golden years" caring for her father and now she was facing the same illness.[251] She died of carbon monoxide inhalation.[252]

An autopsy showed no traces of the disease,[253] but a radiologist confirmed that Cashman had breast cancer.[254] Nonetheless, Kevorkian's attorney, Geoffrey Fieger, stated that the cancer had

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246 Anstett, *For Some, It was a Party, supra* note 241, at 8A.

247 *Id.* (stating that her sister never came to identify or claim Cohan's body). "Kevorkian left her body in a car illegally parked just north of the emergency room entrance to William Beaumont Hospital in Royal Oak with a note that said 'URGENT!' stuck on the windshield. The body was not discovered for two hours." *Esther Cohan, supra* note 244.

248 *See Kevorkian's Patients: More Details, supra* note 158; *see also Patricia Cashman* (visited Apr. 9, 1997) <http://www.freep.com/suicide/assisted/26.htm>. Cashman was not in a terminal stage. *See Kevorkian's Patients: More Details, supra* note 158.

249 *See Patricia Cashman, supra* note 248.

250 *See* Anstett, *For Some, It was a Party, supra* note 241, at 8A (describing the content of a letter Cashman sent to Kevorkian the summer before her death). Her fear was that she would become as dependent on others as her cancer-stricken father had become before his death. *See id.*

251 *See id.*

252 *See Kevorkian's Patients: More Details, supra* note 158. Cashman's body was found outside the Oakland County Medical Examiner's Office in the same car in which Esther Cohan's body was found. *See Patricia Cashman, supra* note 248.

253 *See Kevorkian's Patients: More Details, supra* note 158 (stating that Cashman was not terminal according to the autopsy); *see also Latest Kevorkian Assisted Suicide Said Cancer-Free* (visited Apr. 6, 1997) <http://cnn.com/US/9511/kevorkian/11-08/index.html>. "'The autopsy findings are that Mrs. Cashman died of acute carbon monoxide poisoning,' said Dr. Virani. 'The autopsy does not show any residual cancer in the breast or any metastatic cancer in major organs like the lungs, liver, kidneys or adrenal glands or lymph nodes." *Id.*

254 *See Kevorkian's Patients: More Details, supra* note 158. The radiologist stated that a routine autopsy would not necessarily detect the cancer. *See id.* He added that Cashman was not yet terminal. *See id.*

spread to Cashman's brain and bones and was causing her unbearable pain.[255]

18. Linda Henslee
Age 48, divorced, diagnosed with multiple sclerosis[256]

Henslee, homemaker and former computer programmer,[257] was a strong advocate for right-to-die legislation.[258] She was a very independent person, and she preferred suicide over the progressive debilitation she envisioned with multiple sclerosis.[259] Her decision to end her life was celebrated with her daughters over champaign, strawberries, and lottery tickets.[260] She died of carbon monoxide poisoning, with the help of Kevorkian, while her two adult daughters were hugging her.[261]

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255 *See* Anstett, *For Some, It was a Party, supra* note 241, at 8A; *see also Latest Kevorkian Assisted Said Cancer Free, supra* note 251.

256 *See Kevorkian's Patients: More Details, supra* note 158; *see also Linda Henslee* (visited Apr. 4, 1997) <http://www.freep.com/suicide/assisted/27.htm>. Henslee was not in a terminal stage. *See Kevorkian's Patients: More Details, supra* note 158.

257 *See Kevorkian's Patients: More Details, supra* note 158; *see also Linda Henslee, supra* note 256 (stating she was "[a] data communications manager for Georgia Pacific."); *Kevorkian Attends Another Death; Woman's Body Left in Van* (visited Apr. 9, 1997) <http://www2anndo.net/newsroom/ntn/nation/012996/nation9_13756.html> (stating she was a former computer programmer).

258 *See Linda Henslee, supra* note 256.

259 *See id.* ("I do things my way — always have."); *see also Kevorkian's Patients: More Details, supra* note 158 (stating that at her death Henslee was totally incapacitated by multiple sclerosis); *Kevorkian Attends Another Death; Woman's Body Left in Van, supra* note 257 (stating she had suffered from multiple sclerosis for more than 20 years and supposedly was at that point suffering great pain and large open ulcers).

260 *See* Anstett, *For Some, It was a Party, supra* note 241, at 8A.

> Henslee wanted to go out in style. The family celebrated her plans for several weeks and rented a white Cadillac to come to Michigan. They spent four days together, going over family photos and assembling a scrapbook. Henslee telephoned family and friends all over the country.

Id.

261 *See Linda Henslee, supra* note 256; *see also* Anstett, *For Some, It was a Party, supra* note 241, at 8A (recalling statements of Henslee's daughter that Henslee's death "wasn't an ugly death . . . [and w]e held onto her and talked to her until she was gone."). Her body was found in the same van where Janet Adkins died. *See Kevorkian Attends Another Death; Woman's Body Left in Van, supra* note 257.

19. Ruth Neuman
Age 69, widowed, diabetes, overweight and partially paralyzed by stroke[262]

Neuman, homemaker and retired bus driver, was known to be depressed after her husband died and she had a stroke.[263] She had been widowed for about one year when she decided to contact Kevorkian.[264] In June of 1996, Neuman checked herself out of a New Jersey nursing home and traveled with her son and daughter to meet Kevorkian.[265] Her method of suicide was carbon monoxide poisoning.[266]

20. Lona Jones
Age 58, married, benign brain tumor[267]

Jones' doctors were shocked by her death.[268] She did suffer occasional seizures, but the tumor they had found in her brain was benign.[269] Jones was a nurse who, assisted by Kevorkian, committed suicide by carbon monoxide inhalation.[270]

21. Bette Lou Hamilton
Age 67, divorced with no living relatives, syringomyelia[271]

Her mode of suicide was carbon monoxide inhalation and lethal injection of potassium chloride with the assistance of Kevor-

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262 *See Ruth Neuman* (visited Apr. 9, 1997) <http://www.freep.com/suicide/assisted/29.htm>. Neuman's medical problems were not terminal. *See Kevorkian's Patients: More Details, supra* note 158; *see also* Jim Irwin, *Kevorkian Attends Death of New Jersey Woman* (visited Apr. 6, 1997) <http://www.startext.net/news/doc/1047/1:NATION29/1:NATION29061196.html> [hereinafter Irwin, *Kevorkian Attends Death of New Jersey Woman*]. Irwin is the only source of the three who states that Neuman also had uterine cancer. *See id.*

263 *See* Irwin, *Kevorkian Attends Death of New Jersey Woman, supra* note 262 (stating that the stroke left her partially paralyzed on the left side); *see also Ruth Neuman, supra* note 262; *Kevorkian's Patients: More Details, supra* note 158.

264 *See* Irwin, *Kevorkian Attends Death of New Jersey Woman, supra* note 262; *see also Ruth Neuman, supra* note 262.

265 *See* Irwin, *Kevorkian Attends Death of New Jersey Woman, supra* note 262.

266 *See id.*; *see also Ruth Neuman, supra* note 262; *Kevorkian's Patients: More Details, supra* note 158 . Neuman had spent most of her adult life in Long Island, but had moved into the nursing home in 1993. *See id.*

267 *See Lona Jones* (visited Apr. 9, 1997) <http://www.freep.com/suicide/assisted/30.htm>.

268 *See id.* (stating that she had a tumor that was removed and then reappeared, but "her most recent treating physician said he was 'shocked' by her suicide."). Doctors say her condition was not terminal. *See Kevorkian's Patients: More Details, supra* note 158.

269 *See Lona Jones, supra* note 267. *But see Kevorkian's Patients: More Details, supra* note 158 (stating that Kevorkian's attorney claimed she had "recurrent uncontrollable seizures" and was in great pain).

270 *See Lona Jones, supra* note 267 (stating she died by carbon monoxide poisoning and lethal injection). Her husband, an official of the Virginia Department of Emergency Services, wheeled her body into Pontiac Osteopathic Hospital. *See id.*

271 *See Kevorkian's Patients: More Details, supra* note 158. Syringomyelia is a degenerative neurological disease. *See id.*

kian.[272] A friend of Hamilton's reported that Hamilton was worried she would no longer be able to live alone as a result of her illness.[273] Her occupation is unknown.

22. Shirley Kline
Age 63, divorced twice, terminal colon cancer[274]

Kline died of an injection of potassium chloride, secobarbital, and phenobarbital.[275] "[K]line . . . was always in control, through two failed marriages and a series of feuds with family members."[276] A retired high school administrator, Kline died only three hours after meeting Kevorkian.[277] Although Kevorkian's attorney stated that Kline was in extreme pain,[278] she bought an evening gown and went ballroom dancing only two weeks before her death.[279]

23. Rebecca Badger
Age 39, divorced twice, diagnosed with multiple sclerosis[280]

Badger, who ultimately suffered from multiple sclerosis, was unable to work after being diagnosed with cancer in 1985.[281] Her mode of suicide was injection of potassium chloride and morphine, secobarbital and phenobarbital.[282] "Badger had a history of drug and alcohol abuse, and psychiatric and emotional

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272 *See id.* (stating that the reason why both methods were used is unknown).

273 *See id.* "Hamilton was disabled by a spinal disorder and had little use of her hands as a result of a botched surgery in the 1950s, but she prided herself on being able to live independently in a condominium. She contacted Kevorkian as her condition deteriorated to a point where she was facing admission to a nursing home." *Bette Lou Hamilton* (visited Apr. 9, 1997) <http://www.freep.com/suicide/assisted/31.htm>.

274 *See Shirley Cline* (visited Apr. 4, 1997) <http://www.freep.com/suicide/assisted/32.htm> (stating that Cline's cancer was terminal and was spreading throughout her body). *But see Kevorkian's Patients: More Details, supra* note 158 (explaining that the colon cancer was not terminal). Discrepancies have been found in the spelling of her last name — both Kline and Cline have been used.

275 *See Kevorkian's Patients: More Details, supra* note 158.

276 Kovanis, *supra* note 199. "She was bossy with waiters and sent back food that wasn't prepared to her liking." *Id.* She contacted Kevorkian when she felt as if she lost control of her life and "doctors performed an ileostomy — attaching a pouch to her side to collect bodily waste." *Id.*

277 *See Shirley Cline, supra* note 274.

278 *See Kevorkian's Patients: More Details, supra* note 158 (stating that Kevorkian's attorney "said Cline 'was, in a tremendous amount of pain' from the illness" but the autopsy indicated that "while she may have had pain, "survival would have been measured in months or perhaps a year or two.'").

279 *See id.* She was "an active woman who loved to dance." Kovanis, *supra* note 199, at 1.

280 *See* McKee, *supra* note 2. For detailed facts regarding the life and death of Rebecca Badger, see discussion *supra* pp. 241-45.

281 *See Kevorkian's Patients: More Details, supra* note 158. An autopsy showed no traces of multiple sclerosis. *See id.* Although, Badger had also been diagnosed with cancer in 1985, she was declared cancer-free after surgery. *See id.*

282 *See id.*

problems."[283] Kevorkian assisted the suicide of this single mother of two.[284]

24. Elizabeth Mercz
Age 59, divorced twice, Lou Gehrig's disease (ALS)[285]

Mercz, a Hungarian immigrant, was a divorced mother of three who managed to raise and support her children alone while holding down her factory job as a supervisor in a pillow factory.[286] One of her daughters died several years before Mercz went to Kevorkian.[287] After she was diagnosed with Lou Gehrig's disease, she attempted suicide with the assistance of her son, but she was unsuccessful.[288] She died as a result of a potassium chloride injection by Kevorkian.[289]

25. Judith A. Curren
Age 42, married, chronic fatigue syndrome, muscle disorder, and depression[290]

Judith Curren was a registered nurse who had not worked in ten years as a result of her illness.[291] The autopsy report by Oakland County pathologist L.J. Dragovic showed no sign of a fatal illness.[292] Kevorkian's attorney agreed that Curren's illnesses were not fatal, but he argued that she had been ill for twenty years.[293] Dragovic stated that Curren's problem stemmed from depression as a result of her obesity.[294] Doctor's reports revealed that she was taking Percocet, Xanax, Tylenol 4, and blood pressure medication

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283 *Rebecca Badger* (visited Apr. 4, 1997) <http://www.freep.com/suicide/assisted/33.htm>.

284 *See Kevorkian's Patients: More Details, supra* note 158.

285 *See id.* The disease was not yet terminal. *See Elizabeth Mercz* (visited Apr. 9, 1997) <http://www.freep.com/suicide/assisted/34.htm>.

286 *See Elizabeth Mercz, supra* note 285; *see also Kevorkian's Patients: More Details, supra* note 158.

287 *See Kevorkian's Patients: More Details, supra* note 158.

288 *See Elizabeth Mercz, supra* note 285. "She had tried to kill herself in July by taking a tranquilizer overdose. . . ." *Kevorkian's Patients: More Details, supra* note 158.

289 *See Kevorkian's Patients: More Details, supra* note 158. Another source said "[s]he died from carbon monoxide poisoning and lethal injection." *See Elizabeth Mercz, supra* note 285.

290 *See Judith Curren* (visited Apr. 9, 1997) <http://www.freep.com/suicide/assisted/35.htm>.

291 *See id.*

292 *See* Jane Daugherty, *Letters Indicate that Judith Curren's Last Months Were a Blur of Drugs and Pain*, DET. NEWS, Aug. 21, 1996, at C5, *available in* 1996 WL 2928142.

293 *See* Jim Irwin, *Amid More Controversy, Kevorkian Attends Death of Texas Woman* (visited Apr. 6, 1997) <http://www.newstimes.com/archive/aug2196/nac.htm> (stating she was suffering from fibromyaglia, which is a painful muscle disorder, chronic fatigue, and immune dysfunction syndrome). Reports from doctors say she also suffered from fevers and an enlarged spleen, vomiting, incontinence, narcolepsy, and infections. *See id.*

294 *See* Judy DeHaven, *No Fatal Illness in Kevorkian Patient: Coroner Says Obesity Probably Sparked Depression*, DET. NEWS, Aug. 20, 1996, at A1, *available in* 1996 WL 2928013. Curren was five feet and one inch tall, weighing 269 pounds. *See id.* Other advocates for the obese

before her death.[295] She died of an injection of potassium chloride.[296]

There is evidence that Judith and her husband experienced marital problems, which may have contributed to her decision to contact Kevorkian.[297] During the ten year period that the couple lived in Winchester, Massachusetts, there were ten calls made to the police department, most of which were complaints of domestic violence and abuse.[298] Mr. Curren had been arrested on July 26 for allegedly assaulting Judith.[299] According to deputy director Kim Waldron of Haven, Oakland County's Domestic Assault and Child Abuse Center, battered women often have suicidal tendencies because many of them feel that it is the only way to end the abuse.[300] In addition to these factors, it was reported that the couple was deeply in debt.[301]

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expressed a concern that Curren committed suicide because of the social stigma that obese people face. *See id.*

295 *See* Daugherty, *supra* note 292. Daugherty gave descriptions of the drugs used by Curren from the 1996 edition of the Physician's Desk Reference:

> Benzodiazepine (a similar drug is know as Xanax): The medicine is prescribed for anxiety disorder ("unrealistic or excessive anxiety and worry . . . about two or more life circumstances, for a period of six months or longer") and/or for panic disorder (". . . there is some risk of dependence.").
>
> Percocet (the brand name for oxycodone and acetaminophen): A controlled substance prescribed "for the relief of moderate to moderately severe pain." The medicine "can produce drug dependence of the morphine type . . . and has the potential for being abused." Adverse reactions sometimes include dysphoria, which is a state of feeling unwell or unhappy.
>
> Tylenol 4 (the brand name for codeine phosphate): The strongest form of Tylenol, it can cause depression of the central nervous system if it is mixed with an anti-anxiety drug such as Xanax. The codeine in the medicine may be habit-forming. . . .
>
> Nifedipine (a generic drug marketed as Adalat and Procardia): The medicine is prescribed to reduce high blood pressure. Nifedipine can on a few occasions cause depression.

Id.

296 *See Kevorkian's Patients: More Details, supra* note 158; *see also Judith Curren, supra* note 290.

297 *See* DeHaven, *supra* note 294, at A1 (reporting that Curren had obtained a restraining order against her husband in 1993); *see also Judith Curren, supra* note 290 (stating that Curren had complained of physical abuse by her husband and that there were financial problems).

298 *See* DeHaven, *supra* note 294, at A1; *see also Kevorkian's Patients: More Details, supra* note 158 (stating that Curren's death became suspicious when it was discovered that her husband had been arrested twice and charged with assaulting his wife).

299 *See* DeHaven, *supra* note 294, at A1.

300 *See id.* "Experts in Michigan said the alleged abuse might have been a factor in her decision to commit suicide." *Id.* Abused women "can be suicidal. . . . Usually, the thoughts of suicide come after many years of abuse. It's when the husband has the ultimate power and control over her life." *Id.*

301 *See Judith Curren, supra* note 290.

26. Louise Siebens
Age 76, widowed, Lou Gehrig's disease (ALS)[302]

Siebens' disease forced this homemaker, avid golfer, and church member into a nursing home just a few months after she developed the disease.[303] Although her condition had worsened considerably in the last year of her life, her condition was not terminal.[304] Her manner of suicide was a potassium chloride injection assisted by Kevorkian.[305]

27. Patricia Smith
Age 40, married, multiple sclerosis[306]

Smith died by potassium chloride injection with the assistance of Jack Kevorkian.[307] She was a former nurse on disability because of the effects of multiple sclerosis, and left behind her seventeen-year-old daughter and husband only after her minister told her that she would not be barred from entering heaven by killing herself.[308]

28. Loretta Peabody
Age 54, multiple sclerosis[309]

This homemaker, who lived with multiple sclerosis for twenty-seven years, said on a videotape to Kevorkian that "[t]here is nothing I can do for myself, and I can't do this anymore . . . I've fought this as long as I could fight and if it wasn't for you I don't know what I'd do."[310]

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302 *See Kevorkian's Patients: More Details, supra* note 158. Siebens' illness was not in a terminal stage. *See id.*

303 *See id.*; *see also Louise Siebens* (visited Apr. 9, 1997) <http://www.freep.com/suicide/assisted/36.htm>.

304 *See Kevorkian's Patients: More Details, supra* note 158.

305 *See Louise Seibens, supra* note 303. "The Oakland County medical examiner believes she was too debilitated even to pull the switch that administered the lethal injection that Kevorkian arranged for her." *Id.*

306 *See Kevorkian's Patients: More Details, supra* note 158. She had "chronic-progressive" multiple sclerosis which is very debilitating, but her illness was not considered terminal. *See id.*

307 *See id.*

308 *See Patricia Smith* (visited Apr. 9, 1997) <http://www.freep.com/suicide/assisted/38.htm>.

309 *See* Justin Hyde, *Kevorkian Found Involved in Another Assisted Suicide*, PHILADELPHIA INQUIRER, Nov. 6, 1996, at 26, *available in* WESTLAW, PHILINQ database; *see also Loretta Peabody* (visited Apr. 9, 1997) <http://www.freep.com/suicide/assisted/39.htm>. According to sources, her method of suicide is not known. *See id.*

310 Hyde, *supra* note 309. Originally her death was listed as from natural causes, but after videos of a conference between Kevorkian and Peabody, made on the day of her death, were found where Peabody said to Kevorkian "[t]hank God you are here[,]" thereafter, it was known that Kevorkian was involved. *Loretta Peabody, supra* note 309. *See also* Hyde, *supra* note 309, at 26. Her body was cremated and there was no autopsy performed. *See id.*

29. Isabel Correa
Age 60, divorced, disabled from spinal cord condition[311]

Correa, a packer at a sunflower and nut company, was the first non-Caucasian person to receive assistance from Kevorkian; she was Hispanic.[312] Correa had surgery to remove a non-cancerous tumor at the base of her skull that would have rendered her a quadriplegic, but still suffered major pain sensations that worsened her condition.[313] Her spine was so distorted a year later that another surgery was performed, and for three months after that surgery she wore a metal frame halo screwed into her head for stability.[314] "Given only ordinary Tylenol for pain, Correa recuperated for a while in a nursing home that she found depressing and terrifying."[315] Correa and her husband reviewed her medical records after she returned to her home, only to discover that her doctors planned another surgery she was not yet aware of — and that's when, convinced that nothing would help her, she "sent her records to Kevorkian and asked for his help."[316] She died by carbon monoxide inhalation.[317]

30. Nancy DeSoto
Age 55, married, advanced Lou Gehrig's Disease (ALS)[318]

DeSoto, a retired homemaker and florist, had spent approximately $40,000 on medical care.[319] She was diagnosed with several other conditions before the doctors finally confirmed the suspicion she and her husband had — she had ALS.[320] DeSoto then wrote to Kevorkian and asked him to help her die after her daughter's wed-

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311 *See Isabel Correa* (visited Apr. 9, 1997) <http://www.freep.com/suicide/assisted/41.Htm>.

312 *See id.*

313 *See* Anstett, *For Some, Kevorkian was the First Doctor Who Cared, supra* note 180 (stating that she was in severe pain and her paralysis was getting worse when the operation was performed). After the surgery, she was noticeably weaker on one side of her body and experienced burning sensations and pain. *See id.* At discharge, records note that she was in worse condition than when she was admitted. *See id.*

314 *See id.* This surgery also included "fusing a chip of her hip bone into her neck and inserting a metal strut." *Id.* Eventually her pain was so severe she asked the doctors to remove the metal structure she had worn for months. *See id.*

315 *Id.*

316 *Id.*

317 *See Isabel Correa, supra* note 311.

318 *See Nancy DeSoto* (visited Apr. 9, 1997) <http://www.freep.com/suicide/assisted/44.htm>; *see also* Anstett, *For Some, Kevorkian was the First Doctor Who Cared, supra* note 180. ALS and Lou Gehrig's disease are synonymous.

319 *See* Nancy DeSoto, *supra note* 318.

320 *See* Anstett, *For Some, Kevorkian was the First Doctor Who Cared, supra* note 180. The DeSotos had researched her condition consisting of sore arms and dragging legs after physicians initially diagnosed her with such ailments as arthritis and a pinched nerve. *See id.*

ding and honeymoon.[321] He did so by carbon monoxide inhalation, after their initial encounter was interrupted by police who recognized Kevorkian's car outside the motel where they met.[322]

31. Barbara Ann Collins
Age 65, ovarian cancer[323]

Collins was a retired microbiologist who was assisted to her suicide by lethal injection.[324] Collins' neighbors stated that she was reclusive and was only seen outside her house when she was obsessively tending to her garden.[325] She was given several treatments for the cancer before she contacted Kevorkian.[326]

32. Lisa Lansing
Age 42, illness unknown[327]

Lansing, a medical malpractice attorney, complained for more than a decade of digestive system pain, but doctor's were unable to find a medical problem.[328] "One physician said he refused to treat [her] because she was interested mainly in obtaining prescription painkillers."[329] Her mode of suicide was by lethal injection with the help of Kevorkian.[330]

33. Elaine Day
Age 79, widowed, Lou Gehrig's Disease (ALS)[331]

Day also died by lethal injection with assistance from Kevorkian.[332] Day was a retired law office employee and an "avid golfer, dancer and swimmer who was being increasingly disabled by ALS."[333] Prior to her assisted suicide, she wrote this letter to the Los Angeles Daily News on December 27, 1996:

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321 *See id.*

322 *See Nancy DeSoto, supra* note 318.

323 *See Barbara Ann Collins* (visited Apr. 9, 1997) <http://www.freep.com/suicide/assisted/45.htm>. Our research did not yield Collins' marital status.

324 *See id.* Collins worked at the prestigious Marine Biological Lab in Woods Hole, Massachusetts. *See id.*

325 *See id.*

326 *See id.*

327 *See Lisa Lansing* (visited Apr. 9, 1997) <http://www.freep.com/suicide/assisted/46.htm>.

328 *See id.*

329 *Id.*

330 *See id.* Another woman delivered Lansing's body at Pontiac Osteopathic Hospital. *See id.*

331 *See Elaine Day* (visited Apr. 9, 1997) <http://www.freep.com/suicide/assisted/47.htm>.

332 *See id.* Her body was found in Kevorkian's van outside of the Oakland County Medical Examiner's office. *See id.*

333 *Id.*

I am writing this letter to bring the public's attention to the misery and suffering that patients with ALS (Lou Gehrig's disease) go through before dying an agonizing death.

Just going through all the exams to obtain a diagnosis is a frustrating and traumatic experience. The only way the diagnosis is made is by the elimination of every other possible cause. The anxiety and worry go on for months.

The symptoms vary with individuals, but most patients end up completely paralyzed and cannot swallow, so saliva has to be siphoned out of their mouths. They cannot speak, lose bladder control and eventually cannot breathe.

Actually, if patients had the comfort of knowing there was a way out when things got too bad, it would ease their minds to a point where they might find some enjoyment in their final years. It certainly would cut down on attempted suicides and, ironically, a "Dr. Jack Kevorkian" here in California might be prolonging people's lives.

I hope this letter will inspire those who are hopelessly ill, and others who agree, to write letters to our legislators. Letters from courageous doctors, who would be willing to help those of us who want an end to our suffering, would certainly be a great help.

— Elaine L. Day[334]

34. Helen P. Livengood
Age 59, married, severe arthritis pain, crippling esophagus problems[335]

Livengood, a married woman from Richmond, Virginia, was described by her husband, who accompanied her on the trip to Michigan to meet with Kevorkian, as a woman of "high moral character who suffered from a painful, crushing disease," and as someone who "was always trying to help people."[336] The Livengood's were married for 39 years, and upon Mr. Livengood's retirement, he cared for his wife in her failing health.[337] Livengood was found by the police in a hotel room accompanied by a note from Kevorkian's attorney, Geoffrey Fieger.[338]

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334 Editorial written by Elaine Day to L.A. Daily News, L.A. DAILY NEWS, Dec. 27, 1996, at N19, *available in* 1996 WL 6587781.

335 *See Patients Helped to Die by Dr. Jack Kevorkian, supra* note 149.

336 Carrie Johnson, *'She Was in Final Stages,' City Man Says of His Wife*, RICH. TIMES-DISPATCH, Mar. 9, 1997, at B3, *available in* 1997 WL 7612105 (noting that Livengood suffered from chronic rheumatoid arthritis and as a result could not walk, stand, or swallow, and weighed approximately 80 pounds at her death).

337 *See id.* (stating that her husband left work when his wife's health declined).

338 *See id.* (noting that Fieger stated he had been retained by the Livengood's that week, but he would not confirm nor deny Kevorkian's involvement).

35. Janette Knowles
Age 75, Lou Gehrig's Disease (ALS)[339]

The body of Knowles was found in a Detroit motel room with a note referring inquiries to Fieger's office.[340] No information was available as to her marital status.

36. Heidi Aseltine
Age 27, single, AIDS[341]

Aseltine's body was found in a Detroit motel room accompanied by a note directing the police to contact Geoffrey Fieger, on the same day Knowles' body was discovered.[342] "Aseltine's death . . . suggests a new field for Dr. Death: She is the youngest 'suicide' to be linked to him, and the first to have been facing death from AIDS."[343] Aseltine's mother, Patricia stated that she had just visited her daughter the prior weekend, and "[s]he said this is what she really wanted."[344]

37. Janis Murphy
Age 40, divorced, chronic fatigue syndrome, joint pain, and fibromyalgia[345]

A New York native, Murphy was likely assisted to her suicide the day the Supreme Court handed down its decision in *Vacco v. Quill,* the opinion that upheld New York's ban on assisted suicide.[346] "On June 26, the U.S. Supreme Court ruled that Americans have no constitutional right to physician-assisted suicide. Later that day, Janis Murphy's body was found in a Southfield motel near a note directing whoever found the body to call Fieger."[347]

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339 *See Kevorkian's Patients: More Details, supra* note 158.

340 *See* Laurence, *supra* note 36, at 6.

341 *See Kevorkian's Patients: More Details, supra* note 158.

342 *See id.*

343 *Id.* This story was carried on newswires and newspapers around the country.

344 Beth Krodel & Brian Murphy, *Kevorkian Lawyer Tied to Michigan Suicide,* DALLAS MORNING NEWS, Apr. 13, 1997, at 12A. Aseltine graduated from Michigan State University in 1992, was about to receive a masters degree in management, and was living in Indianapolis just before her death. *See id.* She was diagnosed with HIV in 1988, and it is unclear if the virus had developed into full blown AIDS by the time of her suicide. *See id.*

345 *See Kevorkian's Patients: More Details, supra* note 158.

346 *See* James Tobin et al., *Suicides Timed to Prove Point?,* DET. NEWS, Aug. 31, 1997, at B1, *available in* 1997 WL 5596263. This Article listed the facts demonstrating that assisting in another suicide is apparently Kevorkian's modus operendum in the face of legislation or case decisions prohibiting his work.

347 *Id.* In the case of Murphy's suicide, Fieger displayed some disgust with this surmise, stating, "You think we flew her out here from Vegas [her hometown was Henderson, Nevada] when the Supreme Court came out with its decision? You think we got them just standing in line? That's laughable if you think the patient plans her death on the day the Supreme Court rules." *Id.* Our point is that the patient is not necessarily the one who

38. Dorinda Scheipsmeier
Age 51, multiple sclerosis[348]

Scheipsmeier had reported on a videotaped interview that she had tried to commit suicide four times previously.[349] Her body was found in a Detroit-area motel.[350]

39. Lynne Dawn Lennox
Age 54, multiple sclerosis[351]

Lennox, a Lakewood, New Jersey woman, was also found dead in a Detroit-area motel room.[352] The bodies of Lennox and Scheipsmeier were identified by Geoffrey Fieger, Kevorkian's attorney.[353] Lennox had battled multiple sclerosis for nearly twenty years and had lived with immense pain.[354] Lennox's intent to die was well documented. Prior to her assisted suicide, she had attempted suicide with prescription pain killers on four different occasions.[355] In addition, Lennox's family stated that Lennox had wanted to die for years and Kevorkian showed a videotape Lennox made in 1993 where she stated "I've been getting worse every day, and I've already tried to commit suicide four times myself, very unsuccessfully."[356] Lennox's mother, who supported her daughter's

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plans her death. Rather, she acquiesces to the opportunity afforded by people like Kevorkian and fortuitous circumstances. "Murphy's father, James Linda, said in a statement read by Fieger that his daughter had 'intractable and unrelenting pain.' He said he hated losing his only child but 'there are things in this world worse than death.'" *Michigan Death Linked to Kevorkian*, FT. WORTH STAR-TELEGRAM, June 28, 1997, at 7, *available in* 1997 WL 11890156 (stating that Murphy suffered from severe muscle pain). This Article was submitted for publication on a Monday by post mail. One of the authors left for a litigation conference in Cancun, Mexico on Thursday, received an offer for publication on Friday, returned the offer call from Cancun, hung up the public telephone, and upon reentry into the hotel room turned on the news to discover Murphy's suicide — a young women, not yet terminally ill, depressed by her pain and circumstance, acquiescing to death. That series of events was strong vindication that this article needed to be in print.

348 *See Nationline: Assisted Suicides*, USA TODAY, July 3, 1997, at 3A, *available in* 1997 WL 7006830; *see also Patients Helped to Die by Dr. Jack Kevorkian*, *supra* note 149.

349 *See 2 More Women's Deaths Are Linked to Kevorkian*, VIRGINIA-PILOT, July 3, 1997, at A6.

350 *See id.* No information was available as to Scheipsmeier's marital status.

351 *See id.*; *see also Nationline: Assisted Suicides*, *supra* note 348, at 3A; *Patients Helped to Die by Dr. Jack Kevorkian*, *supra* note 149.

352 *See 2 More Women's Deaths Are Linked to Kevorkian*, *supra* note 349, at A6.

353 *See id.* "Dr. Jack Kevorkian's lawyer all but confirmed that the assisted-suicide advocate was involved in both deaths. . . . Kevorkian did not answer questions." *Id.* Fieger held a news conference, stating, "'There's no question about what happened here. . . . Everyone understands that Dr. Kevorkian provides assistance to end suffering.' . . . Kevorkian, 69, was at Fieger's new conference but answered no questions about the deaths." *Nationline: Assisted Suicides*, *supra* note 348, at 3A.

354 *See* Steve Chambers & Rudy Larini, *A Wish Fulfilled for MS Sufferer Kevorkian Aids Death of Lakewood Resident*, STAR-LEDGER (Newark, NJ), July 3, 1997, at 1, *available in* 1997 WL 8085682 (describing how aides would help Lennox out of her bed in the morning to ice her shoulders and feet to ease the pain).

355 *See id.*

356 *Id.*

decision, said "[t]he family had tried numerous medical remedies to no avail."[357] Lennox's marital status is unclear.[358]

40. Delouise Bacher
Age 63, married, multiple sclerosis[359]

There are conflicting reports of Bacher's mode of death; she either died of lethal injection or by a combination of drugs provided by Kevorkian.[360] Her body was also found in a Detroit motel room.[361] Her husband of 40 years, Ronald Bacher kissed her goodbye, and she died the next day.[362] He was questioned by police, and told detectives that she had wanted to commit suicide for some time.[363] There are reports that Bacher was depressed due to her husband's health problems which included poor circulation and a recent hernia operation.[364] Adding to her depression was the tremendous pain she experienced and her paralysis which confined her to a wheelchair due to multiple sclerosis.[365]

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357 *Id.* "Every time we heard something, we tried it. . . . But our hopes were always dashed. I thought [assisted suicide] was a good idea right from the beginning." *Id.* (quoting Shirley Colvin, Lennox's mother).

358 She was accompanied to Detroit by her son. *See id.*

359 *See Kevorkian's Patients: More Details, supra* note 158.

360 One Colorado newspaper reports she died by taking a lethal combination of drugs provided by Kevorkian. *See* Mike Patty, *National Disabilities Group Condemns Assisted Suicides,* ROCKY MOUNTAIN NEWS, May 9, 1997, at 42A, *available in* 1996 WL 6835122; *see also* Michael O'Keeffe, *Kevorkian Helps Arvadan Kill Herself Husband Accompanies Paralyzed Victim of Multiple Sclerosis, 63, to Detroit-Area Motel,* ROCKY MOUNTAIN NEWS, May 8, 1997, at 4A, *available in* 1997 WL 6834934 (stating she "killed herself with a combination of tranquilizers and sodium pentothal). Another newspaper reports she died by lethal injection. *See* Marilyn Robinson & Kieran Nicholson, *Arvada Woman Finally Turned to Dr. Kevorkian,* DENV. POST, May 9, 1997, at B1, *available in* 1997 WL 6073079. Bacher was from Arvada, Colorado. *See id.*

361 *See* Patty, *supra* note 360, at 42A. Bacher's body was found after Kevorkian's attorney, Geoffrey Fieger, released a statement to the press that he was representing the family in order to prevent any attempts by the Michigan government to "invade Delouise's rights of privacy." Robinson & Nicholson, *supra* note 360, at B1.

362 *See* Robinson & Nicholson, *supra* note 360, at B1 (stating that her husband was not present for her death but called the next morning to inquire). When her husband called to check that the suicide attempt was successful, he was told she went to sleep immediately and a person speaking for him remarked that "he felt this was the first peaceful night's rest she had in 12 years." *Id.*

363 *See* O'Keeffe, *supra* note 360, at 4A (exposing that Bacher had begged her husband to assist in her suicide for years); *see also* Robinson & Nicholson, *supra* note 360, at B1. A volunteer group that opposes physician assisted suicide decried Bacher's death, stating that she "should have been given suicide prevention services, support services, and appropriate health care, not assistance to die[.]. . ." *Id.*

364 *See* O'Keeffe, *supra* note 360, at 4A.

365 *See id.*

41. Karen Shoffstall
Age 34, divorced, multiple sclerosis[366]

Shoffstall was an account representative from Long Island, self-supporting, single, living alone, and suffering the ravages of multiple sclerosis.[367] On December 15, 1997, *Newsday* carried an article containing statements written by Shoffstall: "Looking back, I had a pretty good life, not too many regrets. . . . Looking ahead, the inevitable destination appears to include a bedridden, diapered, closed existence."[368] Some claim people such as Shoffstall turn to suicide because they feel it is the only alternative, and insurance companies generally do not pay for maintenance or "prevention."[369] Shoffstall was not terminally ill.[370] Rather, she was moderately disabled, terrified by future debilitation, causing her suicidal despair.[371] Family members were not happy with the assistance granted in her suicide.[372]

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366 *See Kevorkian's Patients: More Details, supra* note 158.

367 *See* Arnold Abrams, *The Life and Death of Karen Shoffstall: Her Disease, While Incapacitating, Did Not Threaten Her Life — So When She Chose to Die, The Debate Over Assisted Suicide Intensified*, NEWSDAY, Dec. 15, 1997, at B6, *available in* LEXIS, News Library, CURNEWS File (noting such symptoms as fatigue, memory loss, vision problems, lack of muscular coordination, lack of balance resulting in falls and the use of a walker, incontinence, and loss of feeling in her extremities).

368 *Id.*

369 *Viewpoints*, NEWSDAY, Dec. 31, 1997, at A39.

> A cure would be wonderful, but medicine does not know the cause, cannot predict the course and has no cure for MS. The medications offer limited success. There is documented evidence that physical therapy will prevent or postpone further disability. Yet, insurance companies will not pay for "maintenance" (read "prevention").

Id.

370 *See* Wesley J. Smith, *Are We Becoming Numb to Kevorkian's Actions?*, USA TODAY, Sept. 15, 1997, at 21A; *see also* Abrams, *supra* note 308, at B6 (stating that Karen's death was controversial because of the age and high quality of life at the time she committed suicide) "Although symptoms of her disease — vision problems, difficulties with manual dexterity and walking — began surfacing in the late 1980s, they went unrecognized until 1992, when medical tests determined that she has contracted MS." *Id.*

371 *See* Smith, *supra* note 370, at 21A; *see also* Abrams, *supra* note 367, at B6 ("Looking back, I had a pretty good life, not too many regrets. . . . Looking ahead, the inevitable destination appears to include a bedridden, diapered, closed existence." (quoting Karen Shoffstall's suicide note left beside her body)). "I'm leaving while I still have the strength to do it with dignity. . . . I will not allow my deteriorating body to become everyone's problem. Please remember all that was good. It's better that way." *Id.*

372 *See Not Really a Big Issue*, DET. NEWS, Sept. 12, 1997, at A10 (reporting that Shoffstall's family was not happy about Kevorkian's involvement in her suicide); *see also* Abrams, *supra* note 367, at B6 (stating that she asked for her mothers approval to have Kevorkian aid her suicide, but her mother responded that "she would never get it" since "nobody has the right to take life except God.").

42. Janet Good
Age 73, married, pancreatic cancer[373]

Good was a strong believer in assisted suicide. She founded the Michigan Chapter of the Hemlock Society in 1990, supported Kevorkian in his work assisting Janet Adkins to her death, became Kevorkian's personal assistant,[374] and ultimately his 58th reported victim.[375] "Good was supposed to be at death's door from pancreatic cancer. But an initial autopsy finding showed Good's cancer wasn't even in the terminal stage."[376] She was married and had two children.[377] She was considered a dedicated feminist, and chose Women's Equality Day as her date of death.[378]

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373 *See Kevorkian's Patients: More Details, supra* note 158.

374 *See* Smith, *supra* note 370 (stating that for "the last few years of her life [she was] helping Kevorkian decide which disabled, depressed and/or terminally ill persons he should help take out of this life."). During her life, Good had set up and included much of the information on her own home page or separate file in Kevorkian's web site where it is quite obvious that she worked tirelessly for the right to die. *See Janet Good: The Ultimate Civil Right* (visited Jan. 23, 1998) <http:// www.rights.org/deathnet/janet.html>. Good had assisted Kevorkian with many suicides and had arranged many more, including the suicide of Karen Shoffstall. *See Janet Good, 73, Ally of Kevorkian,* SUN-SENTINEL (Ft. Lauderdale), Aug. 29, 1997, at 7B, *available in* 1997 WL 11400033. Kevorkian had even requested that Good lead a nonmedical committee to draft guidelines for the use of assisted suicide since the medical profession had not done so. *See id.* Termed as "The Ultimate Civil Right," at age 72 Good, suffering with pancreatic cancer, was determined to fight for "the legal right to choose to die, *if and when they see fit.*" *Id.* (emphasis in the original). Perhaps she considered the absolute defense of her position to be putting herself permanently in the suicide corner. Kevorkian assisted in her suicide in 1997. *See Kevorkian's Patients: More Details, supra* note 158.

375 *See Kevorkian's Patients: More Details, supra* note 158; *see also* Smith, *supra* note 370.

376 Smith, *supra* note 370 (stating that since there was no cancer in organs which would have compromised vital functions, she may have had a year or more to live). "Good believed that assisted suicide promotes individual empowerment. But through the manner and circumstances of her death, she demonstrated that it is really the ultimate victimization." *Id.*

377 *See Janet Good, 73, Ally of Kevorkian, supra* note 374, at 7B

378 *See* Tobin et al., *supra* note 346 (demonstrating that many of Kevorkian's clients commit suicide on a day that makes a personal or political statement).

43. Carol Fox
Age 56, divorced, ovarian cancer[379]

The medical examiner stated that Fox was terminally ill.[380] She had been suffering pain from ovarian cancer for three years.[381] Fox died of an intravenous injection of poison.[382] According to her family, they respected her decision and noted that she wanted "to die with dignity . . . [and] wanted people to remember her the way she was. . . ."[383] Fox, a resident of Telford, Pennsylvania, was found in the same Detroit suburb motel which was previously raided by the police while Kevorkian counseled Isabel Correa.[384] She was divorced and had two adult children.[385]

44. Deborah Sickels
Age 43, divorced, multiple sclerosis[386]

Sickels' brother claims she was deeply emotionally disturbed by family problems, was not mentally competent, and that she had a history of emotional instability.[387] Another source stated that

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379 *See Kevorkian's Patients: More Details, supra* note 158; *see also* Eric Garcia, *Brother Questions Suicide: Kevorkian Attorney Says Death a 'Private Matter'*, DALLAS MORNING NEWS, Sept. 9, 1997, at 17A.

380 *See* Ron French, *Medical Expert: Last Kevorkian Victim Was Dying of Ovarian Cancer*, DET. NEWS, Sept. 5, 1997, at C3 (stating that the cancer had spread throughout her abdomen and she would probably live less than six months).

> Of the 33 other assisted suicide patients examined by Dragovic and his staff [the Oakland County, Michigan medical examiner], 29 were classified as having a chronic, incapacitating disease — "but nowhere close to being terminally ill," the official said. "I'm not saying these people did not suffer pain, but they weren't dying." Autopsies of the remaining four showed no disease.

Id.

381 *See State Woman with Cancer Died with Kevorkian Aid, Lawyer Says*, HARRISBURG PATRIOT & EVENING NEWS, Sept. 6, 1997, at A3, *available in* 1997 WL 7530176 (stating that the medical examiner concurs that she would have been experiencing extreme pain). Her pain was intensified, according to her daughter, by all of the treatments she had tried, including chemotherapy on several occasions which made her very sick. *See id.* She vowed after each treatment that she would not go through the painful side effects again. *See id.* Still her daughter stated, "I don't think she left any rock unturned. There's just no cure." *Id.*

382 *See* French, *supra* note 380, at C3.

383 *State Woman with Cancer Died with Kevorkian Aid, Lawyer Says, supra* note 381, at A3 ("I respect any decision she made because she was a wonderful, fighting person. She certainly made this decision on her own." (quoting Heather Mercon, Carol Fox's daughter)).

384 *See* Garcia, *supra* note 379, at 17A; *see also* French, *supra* note 380, at C3.

385 *See State Woman with Cancer Died with Kevorkian Aid, Lawyer Says, supra* note 381, at A3.

386 *See Kevorkian's Patients: More Details, supra* note 158.

387 *See* Smith, *supra* note 370. "He said correctly that Kevorkian should have referred Sickels to a psychiatrist rather than help kill her." *Id. See also Not Really a Big Issue, supra* note 372 (reporting that her family felt that aiding Shoffstall commit suicide was "irresponsible because of her history of emotional instability. . . ."). The brother did not elaborate on the extent of the emotional problems, but did indicate she had received treatment in the past. *See Sibling Blasts Kevorkian for Helping Women Die*, ST. LOUIS POST-DISPATCH, Sept. 9, 1997, at 11A, *available in* 1997 WL 3365074 (arguing that Sickels was not competent "to make the decision to end her life.").

Sickels also suffered from Hepatitis C.[388] Her mode of suicide was not disclosed.[389] Another brother said that "his sister's medical and financial struggles 'were difficult but manageable with the support of those who loved her.'"[390] She had two children.[391]

45. Kari Miller
Age 54, multiple sclerosis[392]

Miller was a resident of suburban Denver whose body was found in a Roseville, Michigan motel room.[393] She left a note addressed to her doctor, who was the President and Medical Director of the Rocky Mountain Multiple Sclerosis Center, saying she could no longer stand the excruciating pain.[394] The note detailed how her condition left her unable to put on make up or fix her hair,[395]

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388 *See* Garcia, *supra* note 379, at 17A.

> Debbie was not emotionally competent to make the decision to end her life . . . In our opinion, Dr. Kevorkian's assistance was irresponsible. Debbie had a history of emotional instability which had been heightened in recent months by family problems.

Id. (quoting statements made by her brother, Robert Allen of Wichita Falls, at a news conference at First United Methodist Church in Arlington).

389 *See id.*

390 *Id.* (expressing concern over whether she was really terminal). In contrast, Geoffrey Fieger, Kevorkian's attorney, said that she was confined to a wheelchair and was in tremendous pain. *See id.*

391 *See id.* "Since her diagnosis several years ago, Ms. Sickels lived alone in a one-room apartment, but rarely left her unit because she was in pain, neighbors and family members said." *Id.*

392 *See Kevorkian's Patients: More Details, supra* note 158.

393 *See* Kristin Storey, *In Macomb County: Kevorkian, Marlinga Work on Better Plan for Dropping Off Bodies*, DET. NEWS, Oct. 7, 1997, at D3. The reference to Miller was the final sentence of this story, almost as if her death was an afterthought to the troubles the Detroit motels were bringing to the attention of local officials. *See id.* The local county prosecutor and Kevorkian were working on an agreement to allow Kevorkian to leave the bodies of his clients at funeral homes or the medical examiner's office without being prosecuted. *See id.*

> Detroit-area hotel and motel owners say they're tired of finding bodies in rooms and notes to call Geoffrey Fieger. . . . "Frankly, it's selfish of Dr. Kevorkian and his folks to traumatize innocent victims" who work at these hotels. . . . [E]mployees must do a special post-death room cleaning and some employees may even need counseling.

Hotel Owners Ask Kevorkian to Stop Using Their Rooms, USA TODAY, Oct. 14, 1997, at 4A, *available in* 1997 WL 7016484 (reporting the concerns and complaints of the Hotel Association of Greater Detroit).

394 *Kevorkian Helped Another Suicide*, SALT LAKE TRIB., Oct. 1, 1997, at A5.

> By the time you receive this letter, I will have already died.
>
> The pain I was forced to live with and what the MS had done to me became intolerable. I no longer chose to live my life suffering with the constant pain or being so disabled.
>
> I could no longer sit. Or even lie down in bed. Sitting in my wheelchair or riding in my scooter was unbearable. Typing this letter took a long time.

John C. Ensslin, *Woman's Death Linked to Kevorkian Arapahoe Resident Found in Motel Room; Note Describes Agony of Multiple Sclerosis*, ROCKY MOUNTAIN NEWS, Oct. 1, 1997, at A.

395 *See* Ensslin, *supra* note 394, at 5A. Her note emphasized that putting on makeup and fixing her hair were "VERY important things to [her]" but she no longer had the strength to hold things. *Id.*

or walk outside to feed the birds.[396] Information on her marital status was unavailable.

46. Lois Carol Hawkins Caswell
Age 65, married, chronic pain syndrome[397]

Caswell, a resident of a Lexington, Kentucky suburb, died of lethal injection.[398] Her husband told local reporters that she had suffered constant pain for fourteen years from incurable nerve damage.[399] This pain had forced her to spend up to "21 to 22 hours a day in bed."[400] The medical examiner reported that Caswell was not terminally ill at the time of her death.[401]

47. Annette Blackman
Age 34, multiple sclerosis[402]

Blackman, a Michigan resident, was described as being "bubbly" and "beautiful," but multiple sclerosis had debilitated her to the extent that she could not perform daily functions and was in extreme pain.[403] Her illness forced her to reside in a nursing home for the last five years of her life.[404] Blackman's mother and

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> I cut my hair off, stopped wearing makeup, stopped feeding my birds, found a home for my cat because I could no longer care for him, got an aide several times a week to help me out around the house and to get me out and about. But it got to the point where I could no longer function alone even with all my help. . . . [Multiple sclerosis] had robbed me of my independence. . . . It has robbed me of all my dignity and my zest for life. It has robbed me of my independence, which was what I was all about and lived for and believed in so much.

Id.

396 *See* Ensslin, *supra* note 394, at 5A. "I could barely walk. I loved hearing my outside birds, but I got to the point where I couldn't even get out to my deck and feed them. . . . I would fall over after bending over just to get the seed." *Id.*

397 *See Kevorkian's Patients: More Details, supra* note 158; *see also* Seth Hettena, *Body of Kentucky Woman Linked to Kevorkian Found in Motel Room*, ASSOCIATED PRESS, Oct. 8, 1997, *available in* 1997 WL 4887232 (stating that she also had coronary disease and had already had a heart attack, but was not terminal).

398 *See Kevorkian May Have Helped Woman to Die*, S.F. EXAMINER, Oct. 9, 1997, at B9.

399 *See id.* Caswell had been taking more than three grams of morphine a day. *See* Hettena, *supra* note 397.

400 Richard Wilson, *Kevorkian Patient Came from Washington Woman Found Dead at Motel had been 'in Constant Pain,'* COURIER-J. (Louisville, KY), Oct. 10, 1997, at 1B, *available in* 1997 WL 6650324.

401 *See* Hettena, *supra* note 397; *see also* Wilson, *supra* note 400, at 1B (stating she was in no danger of dying within the next six months).

402 *See Kevorkian's Patients: More Details, supra* note 158.

403 *See* Steve Pardo, *Is Kevorkian Targeting Macomb?: Marlinga Fears Body was Left in County Out of Spite Over Failed Pact*, DET. NEWS, Oct. 15, 1997, at C2, *available in* 1997 WL 5601047. "Annette's brain was swelling, and she was in constant pain. She was on all kinds of medication and nothing was lessening her discomfort[.] . . . This wasn't a slow debilitating process. This was hitting her like a ton of bricks." *Id.*

404 *See id.*

sister were with her at the time of her death, according to Geoffrey Fieger, Kevorkian's attorney.[405]

48. Nadia Foldes
Age 72, cancer[406]

Foldes, who was from Queens, New York, wanted to die in a church, so she arranged to take her life in a Michigan church by inhaling carbon monoxide.[407] Fieger stated there was a "sympathetic priest" at the church whom he refused to name.[408] Her marital status was unavailable, but it was believed that her son, along with Kevorkian, delivered her body to a Pontiac hospital.[409]

49. Naomi Sachs
Age 84, divorced, osteoporosis[410]

As a result of severe osteoporosis, Sachs suffered multiple fractures throughout her body, was in continuous pain, and often thought about and talked of dying.[411] Sachs, an actress, social worker and Manhattan resident, divorced in 1950, had played a part on the daytime soap opera *The Guiding Light*.[412] She was survived by a daughter and her sister.[413]

50. Bernice Gross
Age 78, widowed, multiple sclerosis[414]

From West Palm Beach, Florida, Gross's body was discovered in a Farmington Hills Holiday Inn.[415] Bernice had suffered from

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405 *See id.*; *see also Body Found in Hotel With Note to Call Kevorkian's Attorney*, ASSOCIATED PRESS, Oct. 14, 1997, *available in* 1997 WL 4887976.

406 *See Kevorkian's Patients: More Details*, *supra* note 158.

407 *See* Leo Standora with Henri E. Cauvin, *Dr. Death Helps City Woman Die? She Takes Her Life in a Michigan Church*, N.Y. DAILY NEWS, Nov. 14, 1997, at 2 (according to Kevorkian Foldes had breast cancer that had spread throughout her body).

408 *See id.* (stating that the Detroit Cardinal had proposed meatless Fridays to protest assisted suicide). "Kevorkian's lawyer said Foldes wanted to die in the church and Kevorkian did not intend the suicide as a political message." *Id.*

409 *See id.*

410 *See Kevorkian's Patients: More Details*, *supra* note 158; *see also* Dave Saltonstall, *Pals: Actress Longed to Die Osteoporosis Pain Drove Her to Seek Kevorkian's Aid*, N.Y. DAILY NEWS, Nov. 23 1997, at 13.

411 *See* Dino Hazell, *Woman Spoke of Dying; Kevorkian Helped Lawyer Says She Was in Constant Pain*, RECORD (Northern New Jersey), Nov. 23, 1997, at A9, *available in* 1997 WL 6911793. Sachs was also a member of the Hemlock Society which advocates assisted suicide. *See* Saltonstall, *supra* note 410, at 13.

412 *See* Saltonstall, *supra* note 410, at 13.

413 *See* Hazell, supra note 411, at A9.

414 *See Kevorkian's Patients: More Details*, *supra* note 158; *see also Death Options Sought for Terminally Ill*, FLA. TODAY, Dec. 1, 1997, at 5B, *available in* 1997 WL 14144676.

415 *See* Hazell, *supra* note 411, at A9. The information about Gross was a brief reference in the article about Naomi Sachs. *See id.* Bernice went to Detroit because the option of assisted suicide is illegal in Florida. *See id.* It is now argued by supporters of assisted suicide that an alternative, known as passive attendance, is legal. *See id.* In this scenario, trained

multiple sclerosis for twenty-five years and was looking for a "quick relief from a painful death."[416] Her son signed her name in the register and prepaid the room with his mother's credit card.[417] She died of a self-injected lethal overdose.[418]

51. Martha Wichorek
Age 82, widowed, various ailments[419]

Wichorek died at her home in Detroit, leaving a "suicide note that she had problems with her eyes, hearing, speech, memory, feet, knees, legs and incontinence, but they were due to aging rather than illness."[420] She apparently "had no disease except the aches and pains of aging."[421] She left a letter for her three daughters: "I have never asked for anything special for myself. . . . Finally, I am asking for something special for myself and for any who cherish the liberty to choose this final gift: a peaceful, merciful, painless, swift, fail-proof, civilized, humane, death via euthanasia."[422] She also said: "I am not stressed, oppressed or depressed[.] . . . I don't have Alzheimer's and am not terminally ill. But I am 82 years old and I want to die."[423]

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counselors inform a client which drugs to purchase for an overdose and instruct on how to inject them. *See id.* They also could stay with the person to ensure death comes painlessly. *See id.*

416 *Death Options Sought For Terminally Ill, supra* note 414, at 5B. *See also* Diane C. Lade, *Groups Working to Ease Patient's Path to Suicide*, SUN-SENTINEL, Oct. 30, 1997, at A1, *available in* 1997 WL 16083858 (stating that Gross had to use a wheelchair and was no longer able to socialize).

417 *See Death Options Sought For Terminally Ill, supra* note 414, at 5B.

418 *See id.* Kevorkian provided barbituates, potassium chloride, and a mechanism so she could inject herself. *See id.*

419 *See Kevorkian's Patients: More Details, supra* note 158; *see also Kevorkian Joins Doctor Aiding Suicide*, NEWSDAY, Dec. 5, 1997, at A23. Geoffrey Fieger would not be more specific about her illnesses. *See Kevorkian Pal Aids in Suicide*, ROCKY MOUNTAIN NEWS, Dec. 5, 1997, at 62A, *available in* 1997 WL 14979804.

420 *Michigan Tries Again to Stop Suicide Doctor*, AGENCE FRANCE-PRESSE, Dec. 5, 1997, *available in* 1997 WL 3448950. This suicide is notable since it was the first time that Kevorkian's chief aide, psychiatrist Georges Reding, was the primary doctor assisting in the suicide. *See id.*; *see also Kevorkian Joins Doctor Aiding Suicide, supra* note 419, at A23 ("Kevorkian has 'decided that other doctors are going to be involved,' Fieger said. 'There'll be more.'").

421 *Michigan Tries Again to Stop Suicide Doctor, supra* note 420.

> Wichorek was a staunch supporter of Kevorkian who had lobbied politicians to allow assisted suicide for anyone over 80. But her friends and neighbors said she'd never spoken of suicide and had been active and vibrant at a Thanksgiving dinner last week. "If I knew she was thinking about this I would've done my best to talk her out of it," a friend, Beatrice Sardo, told reporters.

Id.

422 *Kevorkian Joins Doctor Aiding Suicide, supra* note 419, at A23.

423 *Kevorkian Pal Aids in Suicide, supra* note 419, at 62A.

52. Cheri Tremble
Age 46, breast cancer[424]

Tremble, a resident of Iowa City, Iowa and a graduate of the University of Northern Iowa, was assisted to her suicide by Kevorkian and his friend, Dr. Georges Reding.[425] Tremble had lived in New York City but returned to Iowa to be with family and friends, and establish a home for her daughters when she sensed that her time was limited after fighting breast cancer for three years.[426] Her body was left at a Pontiac, Michigan hospital.[427] The medical examiner said she was terminal and had less than six months to live.[428] There was no information concerning her marital status, but she did have two daughters, and her family supported her decision to take her life.[429]

53. Margaret Weilhart
Age 89, stroke, paralysis, blindness[430]

Kevorkian and Reding assisted in the suicide of Weilhart, a resident of Oceanside, California, whose body was found in an Allen Park, Michigan motel room.[431] Weilhart was described as a friendly, but private woman who was strong-minded, with a son and daughter-in-law who lived nearby.[432] People who knew her stated

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424 *See Kevorkian's Patients: More Details, supra* note 158.

425 *See Kevorkian is Present at Two More Deaths,* ST. LOUIS DISPATCH, Dec. 18, 1997, at A10; *see also Dateline Iowa,* DES MOINES REG., Dec. 20, 1997, at 3, *available in* 1997 WL 17235311. She died from a lethal injection. *See id.*

426 *See Iowan Fought Cancer to End, Her Mother Says,* OMAHA WORLD-HERALD, Dec. 20, 1997, at 18, *available in* 1997 WL 6325155.

427 *See Kevorkian is Present at Two More Deaths, supra* note 425, at A10.

428 *See Dateline Iowa, supra* note 425, at 3; *see also Iowan Fought Cancer to End, Her Mother Says, supra* note 426, at 18 (stating that Tremble was aware of her terminal condition and had arranged for her funeral months before).

429 *See Iowan Fought Cancer to End, Her Mother Says, supra* note 426, at 18. "She faced a tough battle. . . . She suffered as long as she could. She was loving, strong and a beautiful woman. I stand with her in all that she has done." *Id.* (quoting Roberta Baker, Tremble's mother).

430 *See Kevorkian's Patients: More Details, supra* note 158.

431 *See Kevorkian is Present at Two More Deaths, supra* note 425, at A10. It is interesting to note that five people who were residents of North County, California, sought and received Kevorkian's assistance at their suicides, all of them women, all of them listed among our research: Margaret Weilhart on December 16, 1997, Dorinda Scheipsmeier on July 2, 1997, Shirley Cline in 1996, Patricia Cashman in 1995, and Martha Ruwart in 1993. *See* Logan Jenkins, *The Eerie Allure of Dr. Death,* SAN DIEGO UNION-TRIB., Dec. 19, 1997, at B1, B6, *available in* 1997 WL 14541479.

> Dr. Death has a killer marketing campaign in North County. How else to explain the number of local women who have traveled to Michigan to die under Dr. Jack Kevorkian's piercing gaze? . . . So what would compel any woman to put her faith — her life — in this vulture's bony hands? . . . [One advocate says] Kevorkian's 1.000 batting average in his home killing field may have drawn the local women. . . .

Id.

432 *See* Jenkins, *supra* note 431.

that she was very independent and strong-minded, and that she probably committed suicide because she feared losing her independence.[433]

54. Mary Langford
Age 73, married, breast and lung cancer[434]

Langford, a Tampa resident, was assisted to her suicide by Kevorkian and Reding.[435] She had breast cancer which she battled for five years,[436] which eventually spread to her lungs.[437] Although she had one breast removed five years before her death, the cancer had returned.[438] This recurrence had resulted in a noticeable weight loss,[439] but besides that she appeared to be in good health.[440] Neighbors appeared shocked when they heard of Langford's death.[441] They remarked that her husband had had a stroke a few years earlier, and therefore they "had weathered more than their share of health problems," but one neighbor remarked that she "had no idea in the world she would do anything like this . . . [and that she] can't understand it at all."[442] She was survived by her husband and two sons.[443]

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433 *See* Patricia Dibsie & Dwight Daniels, *Kevorkian-Assisted Death Doesn't Surprise Local Woman's Neighbors*, SAN DIEGO UNION-TRIB., Dec. 18, 1997, at B2, B3, B7, *available in* 1997 WL 14540989 (stating that she even resisted going to the hospital with paramedics after she had a stroke).

434 *See Kevorkian's Patients: More Details*, *supra* note 158; *see also* Jim Sloan, *Woman's Use of Kevorkian Surprises Neighbors*, TAMPA TRIB., Dec. 30, 1997, at 1, *available in* 1997 WL 17613034.

435 *See* Doug Durfee, *Kevorkian at Another Suicide: Associate Also Attends Death of Woman, 81, Who Couldn't Care for Herself*, DET. NEWS, Jan. 8, 1998, at C1. Kevorkian was found wheeling Langford's body to a morgue. *See* Lama Bakri, *Kevorkian Deaths Anger Lawmakers: Senators Say Recent Assisted Suicides Show No Respect for the Law or Legislature*, DET. NEWS, Dec. 29, 1997, at B1. Kevorkian aided in her suicide only weeks after a bill was passed making such behavior a felony. *See id.* ("Kevorkian has no respect for the law . . . [and] feels he is outside the law."). Little to no further information is available on Langford. At this point it is becoming clear that Kevorkian and his cohorts are receiving the media attention over the women (and men) who have lost their lives in his presence.

436 *See* Richard Danielson, *Ill Woman Gave Little Hint of Wish for Death's Release*, ST. PETERSBURG TIMES, Dec. 30, 1997, at 1B, *available in* 1997 WL 14084968.

437 *See* Jim Sloan, *Woman's Use of Kevorkian Surprises Neighbors*, TAMPA TRIB., Dec. 30, 1997, at 1, *available in* 1997 WL 17613034.

438 *See* Danielson, *supra* note 436, at 1B.

439 *See id.*

440 *See id.* (stating that she was going to the hairdresser, socializing with friends and neighbors, and making plans to visit her son in Colorado right before her death).

441 *See* Sloan, *supra* note 437, at 1. The only indication of Langford's intent and unhappiness was a comment to a longtime friend: "Let me tell you something, . . . [d]o what you're going to do while you're young, because when you're older, you can't do it." Danielson, *supra* note 436, at 1B.

442 *Id.* One friend said that "[Langford] had her own way of thinking and her own way of doing . . . [and that w]hen she made up her mind, that was it." *Id.* Another friend said "I guess she just got tired of being sick." *Id.*

443 *See id.*

55. Nancy Ruth Rush
Age 81, lung cancer, emphysema, ulcers[444]

All information available on Rush are statements from Kevorkian lawyer, Geoffrey Fieger. He stated that she was terminally ill, weighed 85 pounds when she died, had at least one son, who "came down to witness the procedure," and was Dr. Reding's patient, with Kevorkian in attendance for consultations.[445] Rush had been institutionalized in a Michigan nursing home when she no longer could care for herself.[446] The results of the autopsy are unknown.

56. Rosalind Hass
Age 59, breast cancer[447]

Hass, who checked into a Romulous, Michigan motel with an unidentified woman, was assisted to her suicide by Kevorkian and Reding.[448] Neighbors noted that she had been sick,[449] and that they felt sorry for her since they thought she was lonely.[450]

57. Carrie Hunter
Age 35, AIDS[451]

Hunter, who was born male, was a transvestite suffering from AIDS, and died a women in early 1998.[452]

When psychiatrist Richard Balon heard Monday that a transsexual woman with AIDS died in an assisted suicide in Pontiac, he immediately wondered if depression played a role in her decision. Balon, a professor at Wayne State University, said AIDS

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444 *See Kevorkian's Patients: More Details, supra* note 158.

445 *See* Durfee, *supra* note 435, at C1 (quoting Geoffrey Fieger).

446 *See id.*

447 *See Kevorkian Supporter Aids Suicide,* GRAND RAPIDS PRESS, Dec. 13, 1997, at A5, *available in* 1997 WL 15628273. Hass' suicide is not included on the list provided by *Patients Helped to Die by Dr. Jack Kevorkain, supra* note 158.

448 *See id.* No further information is available on Hass. Regarding the cooperative efforts of Kevorkian and Redding, Kevorkian stated, "Our conviction and death will help future, more enlightened societies gauge the darkness of our plutocratic and theocratic age." Durfee, *supra* note 435, at C1.

449 *See* Tiffany Montgomery, *O.C. Life Ends in Assisted Suicide: Woman with Breast Cancer Gets Help from and Associate of Dr. Jack Kevorkian's,* ORANGE COUNTY REG., Dec. 13, 1997, at A1, *available in* 1997 WL 14889559 (stating she used to pace in her apartment until early morning and "[h]er neighbors could tell she was sick as she grew more frail and the light in her eyes dimmed.").

450 *See id.* (stating that only her sister arrived after hearing of Hass' death).

451 *See* Brian Harmon, *Doctor Questions Suicide: Woman in Latest Assisted Death May Have Been Depressed by AIDS, Psychiatrist Says,* DET. NEWS, Jan. 20, 1998, at D1, *available in* 1998 WL 3811348.

452 *See id.* Hunter was experiencing AIDS symptoms of nausea, an enlarged spleen, and lesions in her lungs, according to Kevorkian lawyers. *See id.* A note from Kevorkian was found by the body, but Fieger, an attorney for Kevorkian, was quoted saying, "It was all Dr. Reding." *Id.*

sufferers often are hit with psychological and physical depression. "One stems from feeling low about having the disease and the other comes from the disease's attack on the body's nervous system. Add a sex change to the mix, Balon said, and you have a real cause to be concerned over the woman's mental health."[453]

A sexual identity crisis and a fatal sexual disease may be indicative of this woman's search for meaning, intimacy, or purpose. Hunter, whose body was found in a Pontiac, Michigan motel, was from San Francisco.[454] Her death, which has been listed as a homicide, was induced by intravenous poisoning.[455]

58. Patricia Greyham
Age 61, Rheumatoid Arthritis[456]

Greyham, who was from Roanoke, Virginia, died of a lethal injection.[457] Her body was left at a Southfield, Michigan hospital with a note indicating that she suffered from rheumatoid arthritis.[458] She was not terminally ill.[459]

C. Summary

Throughout the remainder of 1997, and into 1998, Kevorkian has maintained an alarmingly active schedule of assisting suicides, to the point where less information is available on his most recent assisted deaths. It is apparent that the suicide physician has received the public attention to the great loss of the identites and stories of the suicide victims.[460] Many, if not most, of the women

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[453] *Id.* Another psychiatrist stated that "[t]ransexuals are not basically more disturbed than someone with any other type of psychological problem," in trying to explain that "it's [sic] possible that Hunter's illness and gender identity disorder did not induce a more depressive state than other Kevorkian clients." *Id.*

[454] *See id.*

[455] *See id.* Hunter's death gave further amunition to Kevorkian's opponents who argue that his clients are too depressed to make an informed decision on whether to continue living. "'Was there anything else that could have been done other than helping her with suicide?' Balon said. '. . . Being a transsexual is not an easy way of life. We do not know what her support system was.'" *Id.*

[456] *See Fieger Reveals Identities of 2 Dead Kevorkian Clients*, DET. NEWS, Mar. 9, 1998, at D2, *available in* 1998 WL 3816776.

[457] *See id.*; *see also* Cornell, *supra* note 154, at 6 (verifying this information, but listing Greyham's age as 62).

[458] *See Fieger Reveals Identities of 2 Dead Kevorkian Clients*, *supra* note 456, at D2.

[459] *See* Cornell, *supra* note 154, at 6.

[460] *See* Patrice O'Shaughnessy, *Death & Fame as His Grim Toll Hits 100, Kevorkian Lives the High Life*, N.Y. DAILY NEWS, Mar. 22, 1998, at 18, *available in* 1998 WL 11027951.

> Today, the wizened, white-haired retired pathologist is a dark American icon, part of the popular lexicon. He is a celebrity, posing with Hollywood stars such as Tom Cruise at Time magazine's 75th anniversary party. The 69-year-old Kevorkian dressed in black tie and escorted a lawyer from the firm that handles his cases. "All the people who we consider to be celebrities wanted to meet him," said his date, Rebecca Eaton.

listed in this Article suffered not only from one or more mental or physical ailments, but also suffered from at least one or more of the previously described factors. This composite presents a formidable vulnerability to acquiescent death.

Any combination of stress factors increases the tacit assent toward suicide. These women simply gave up on life. Financial limitations coupled with divorce were experiences by twenty-two women.[461] Every widow lacked education and earning potential.[462] Health care limitations and emotional disabilities presented a deadly combination. Twenty-eight women we cited had documented histories of depression,[463] emotional problems,[464] or loss of independence and control of their lives or their bodies,[465] and

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Id.

461 Those women who suffered direct financial limitations include Hawes, who had no money or health insurance, *see supra* Part IV.B.5; Williams, *see supra* Part IV.B.4; Curren, *see supra* Part IV.B.25; Shoftstall who had insurance problems, *see supra* Part IV.B.366; and Sickels, *see supra* Part IV.B.44. Those women who suffered financial limitations indirectly from divorce include Miller, *see supra* Part IV.B.3; Hawes, *see supra* Part IV.B.5; Tate, *see supra* Part IV.B.7; Lawrence, *see supra* Part IV.B.8; Goldbaum, *see supra* Part IV.B.11; Garcellano, *see supra* Part IV.B.15; Cashman, *see supra* Part IV.B.17; Henslee, *see supra* Part IV.B.18; Hamilton, *see supra* Part IV.B.21; Kline, who was divorced twice, *see supra* Part IV.B.22; Mercz, who was also divorced twice, *see supra* Part IV.B.24; Correa, *see supra* Part IV.B.29; Murphy, *see supra* Part IV.B.37; Shoffstall, *see supra* Part IV.B.41; Fox, *see supra* Part IV.B.43; Sickels, *see supra* Part IV.B.44; and Sachs, *see supra* Part IV.B.49.

462 Widowed women included Biernat, *see supra* Part IV.B.10; Frederick, *see supra* Part IV.B.13; Neuman, *see supra* Part IV.B.19; Siebens, *see supra* Part IV.B.33; Day, *see supra* Part IV.B.33; Gross, *see supra* Part IV.B.50; and Wichoreck, *see supra* Part IV.B.51.

The only women with some sort of training or formal education beyond high school did not include any of the aforementioned widows. Some women did have professional expertise to rely on, including the most educated being Adkins, who was a college instructor, *see supra* Part IV.B.1; Collins, who was a microbiologist, *see supra* Part IV.B.31; and Lansing, who was a medical malpractice attorney, *see supra* Part IV.B.32. Others with professional training included Andreyev, a teacher and real estate agent, *see supra* Part IV.B.6; Cashman, a teacher, *see supra* Part IV.B.17; Lawrence and Jones who were nurses, *see supra* Part IV.B.8, Part IV.B.20; and Curren and Smith who were former nurses, *see supra* Part IV.B.25, Part IV.B.27. Additionally, Aseltine had a business degree, *see supra* Part IV.B.36; and Tremble was a graduate of Northern Iowa University. *See supra* Part IV.B.52. Those women with some sort of additional education included Tate, who was a computer operator, *see supra* Part IV.B.7; and Ruwart and Henslee, who were computer programmers. *See supra* Part IV.B.12, Part IV.B.18. Wantz was a teacher's aid, but we were unable to discover if she had any formal education beyond high school. *See supra* Part IV.B.2. The educational levels of Kevorkian's other female suicide patients were unavailable.

463 Those with documented histories of depression included Wantz, *see supra* Part IV.B.2; Miller, *see supra* Part IV.B.3; Williams, *see supra* Part IV.B.4; Badger, *see supra* notes 1-25 & Part IV.B.23; Curren, *see supra* Part IV.B.25; Bacher, *see supra* Part IV.B.40; and Neuman, who was also confined to a nursing home, *see supra* Part IV.B.19.

464 Those women with documented emotional problems included Andreyev, *see supra* Part IV.B.6; Tate, *see supra* Part IV.B.7; Kline, *see supra* Part IV.B.22; Collins, *see supra* Part IV.B.31; Lansing, *see supra* Part IV.B.32; Sickels, *see supra* Part IV.B.44; and Hass, *see supra* Part IV.B.56 Andreyev, Tate, and Lansing spoke about their family problems and Collins was reclusive. *See supra* notes 195, 204, 387, 325 and accompanying text.

465 Women who experienced a loss of independence or control included Goldbaum, *see supra* Part IV.B.11; Frederick, *see supra* Part IV.B.13; Cohan, *see supra* Part IV.B.16; Cashman, *see supra* Part IV.B.17; Henslee, *see supra* Part IV.B.18; Hamilton, *see supra* Part IV.B.21; Shoffstall, *see supra* Part IV.B.41; and Weilhart, *see supra* Part IV.B.53.

five more were confined to nursing homes.[466] Most shocking is the fact that our research yielded documentation for only three suicides of women who were terminally ill: Tremble,[467] Fox (discernable only after an autopsy),[468] and Rush, whose illness was terminal according to Fieger, Kevorkian's attorney.[469]

Age only added to the desire for assisted suicide among these women. Twenty were over 65 years of age,[470] while only five were under 40,[471] presenting age as a significant factor in increasing acquiescence to death. Wichorek, who was not even sick but elderly and experienceing the symptoms of aging said, "I just want to die."[472] Emotional factors were present in the vast majority of the women listed in this research, which, generally combined with another one or more of the factors we have described, ravaged the lives of these women. Over and over, and more so as the list of patient-victims has grown, the evidence is clear that women suffering from depression and emotional instability, often brought on by or coupled with a lack of financial support, combined with illness, pain and difficult circumstances turned to a seemingly understanding physician to end their anguish.

V. Case Law

The two central cases involving state regulation of assisted suicide are *Vacco v. Quill*[473] and *Washington v. Glucksberg*.[474] These

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466 Those confined to a nursing home included Garcellano, *see supra* Part IV.B.15; Neuman, *see supra* Part IV.B.19; Siebens, *see supra* Part IV.B.26; Correa, *see supra* Part IV.B.29; Blackman, *see supra* Part IV.B.47; and Rush, *see supra* Part IV.B.55.

467 *See supra* note 428 and accompanying text.

468 *See supra* note 380 and accompanying text.

469 *See supra* note 445 and accompanying text.

470 Women age 65 or over included Tate, age 70, *see supra* text accompanying note 198; Lawrence, age 67, *see supra* text accompanying note 205; Biernat, age 74, *see supra* text accompanying note 218; Frederick, age 72, *see supra* text accompanying note 229; Garrish, age 72, *see supra* text accompanying note 233; Neuman, age 69, *see supra* text accompanying note 262; Hamilton, age 67, *see supra* text accompanying note 271; Siebens, age 76, *see supra* text accompanying note 302; Collins, age 65, *see supra* text accompanying note 323; Day, age 79, *see supra* text accompanying note 331; Knowles, age 75, *see supra* text accompanying note 339; Good, age 73, *see supra* text accompanying note 373; Caswell, age 65, *see supra* text accompanying note 397; Foldes, age 72, *see supra* text accompanying note 406; Sachs, age 84, *see supra* text accompanying note 410; Gross, age 78, *see supra* text accompanying note 414; Wichorek, age 82, *see supra* text accompanying note 419; Weilhart, age 89, *see supra* text accompanying note 430; Langford, age 73, *see supra* text accompanying note 434; Rush, age 81, *see supra* text accompanying note 444.

471 Women under 40 included Aseltine, the youngest at age 27, *see supra* text accompanying note 341; Shoffstall, age 34, *see supra* text accompanying note 366; Blackman, age 34, *see supra* text accompanying note 402; Hunter, age 35, *see supra* text accompanying note 451; and Badger, *see supra* text accompanying note 2.

472 *See supra* Part IV.B.51. Wichorek was also widowed. *See supra* text accompanying note 419.

473 117 S.Ct. 2293 (1997).

474 117 S.Ct. 2258 (1997).

cases were perhaps the most closely watched cases of that year. Both were heard by the Supreme Court on January 8, 1997, and both decisions were rendered on June 26, 1997, with 9-0 unanimous votes.

In *Glucksberg*, the legal arguments focused on the Due Process Clause.[475] The Justices rejected the claim that the Constitution's Due Process guarantee of the Fourteenth Amendment is expansive enough to include a fundamental right of terminally ill people to have a doctor's assistance in dying.[476] The Due Process Clause states that "No state . . . shall . . . deprive any person of life, liberty, or property, without due process of law. . . ."[477] The lower court, relying on the fundamental right to privacy founded in the liberty interest of the clause and expanded upon in *Roe v. Wade*,[478] found in like manner a liberty interest in being assisted to one's own death by a physician.[479] That ruling was reversed by the Supreme Court.[480]

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475 *See id.*

476 *See id.*; *see also* Linda Greenhouse, *High Court Set Benchmarks For Law, Society, Politics*, ST. LOUIS POST-DISPATCH, July 6, 1997, at 1B, *available in* 1997 WL 3352348 (stating that the court ruled that there was no constitutional right to assisted suicide, but allowed for future legislative developments and cases in which terminal patients in extreme pain may have a right to have doctors assist in ending their suffering).

> The history of the law's treatment of assisted suicide in this country has been and continues to be one of the rejection of nearly all efforts to permit it. That being the case, our decisions lead us to conclude that the asserted "right" to assistance in committing suicide is not a fundamental liberty interest protected by the Due Process Clause.

Glucksberg, 117 S.Ct. at 2271. Justice Souter and Justice O'Connor concurred in the decision. Justice Souter seems to open the door to a future victory for the right to die, but very weakly, if at all.

> Whether that interest might in some circumstances, or at some time, be seen as "fundamental" to the degree entitled to prevail is not, however, a conclusion that I need to draw here, for I am satisfied that the State's interests described in the following section are sufficiently serious to defeat the present claim that its law is arbitrary or purposeless.

Id. at 2290 (Souter, J., concurring). In her concurrence, however, Justice O'Connor emphasized the liberty interest in alleviating suffering, pointing out the potential conflict in allowing a doctor to prescribe self-administered comfort drugs that could alleviate pain and hasten death, while a patient may desire such a prescription intending death. "There remains room for vigorous debate about the outcome of particular cases that are not necessarily resolved by the opinions announced today. How such cases will be decided will depend on their specific facts." *Id.* at 2310 (O'Connor, J., concurring).

477 U.S. CONST. amend. XIV, § 1.

478 410 U.S. 113 (1973).

479 *See* Compassion in Dying v. Washington, 79 F.3d 790, 816 (9th Cir. 1996) ("[T]he Constitution encompasses a due process liberty interest in controlling the time and manner of one's death — that there is, in short, a constitutionally recognized 'right to die.'"). For the circuit court's entire historical and legal analysis of the liberty interest guaranteed under the Due Process Clause, see *id.* at 799-816. The case is commonly referred to as *Compassion in Dying*, as the full and complete plaintiff named in the case is "Compassion in Dying, a Washington nonprofit corporation; Jane Roe; John Doe; James Poe; Harold Glucksberg, M.D., Plaintiffs-Appellees." *Id.* at 790.

480 *See Glucksberg*, 117 S.Ct. at 2275.

In recent years, the doctrine of substantive due process has been developed through case law. Out of cases like *Roe, Griswold v. Connecticut*,[481] and others, fundamental rights have been inferred from the liberty interest in the Due Process Clause.[482] "Thus 'liberty' now means not only the absence of physical restraint but the right to have an abortion, use contraception, marry and do other things not expressly stated in the Constitution. The court will invalidate essentially any state or local law which denies one of these 'rights.'"[483] The Washington statute ruled on in *Glucksberg* was one voted on by a referendum of the people of the State of Washington,[484] and plaintiff Glucksberg claimed that the law violated his liberty interest, which he asserted included the liberty to assist another in committing suicide.[485] The opinion written by Chief Justice Rehnquist warns courts against usurping the power of the people found in the democratic process:

> By extending constitutional protection to an asserted right or liberty interest, we, to a great extent, place the matter outside the arena of public debate and legislative action. . . . [T]he liberty protected by the Due Process Clause becomes subtly transformed into the policy preferences of the members of this court. . . . Throughout the nation, Americans are engaged in an earnest and profound debate about the morality, legality, and practicality of physician-assisted suicide. Our holding permits this debate to continue, as it should in a democratic society.[486]

The Court refused to harbor this issue from the democratic process.[487] By inferring that a liberty interest is found in controlling one's death, advocates claim that liberty should be protected

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481 381 U.S. 479 (1965).

482 *See* LAWRENCE H. TRIBE, AMERICAN CONSTITUTIONAL LAW §§ 16-6-13 (2d ed. 1988) (reviewing the nature and history of Due Process claims).

483 Bart Spung, *Ruling is a Victory for Democracy*, VIRGINIAN-PILOT & LEDGER STAR, July 8, 1997, at B8 (reporting that the Supreme Court decision in *Washington v. Glucksberg* refused to expand the Due Process Clause to include a fundamental right to assisted suicide).

484 The Washington statute states in pertinent part that "[a] person is guilty of promoting a suicide attempt when he knowingly . . . aids another person to attempt suicide." RCW 9A.36.060, *cited in Compassion in Dying*, 79 F.3d at 794.

485 *See Compassion in Dying*, 79 F.3d at 797.

> [Glucksberg and the other plaintiffs] challenge[d] th[e] provision both on its face and as applied to terminally ill, mentally competent adults who wish to hasten their own deaths with the help of medication prescribed by their doctors. The plaintiffs contend that the provision impermissibly prevents the exercise by terminally ill patients of a constitutionally-protected liberty interest in violation of the Due Process Clause of the Fourteenth Amendment, and also that it impermissibly distinguishes between similarly situated terminally ill patients in violation of the Equal Protection Clause.

Id.

486 Washington v. Glucksberg, 117 S.Ct. 2258, 2267-68, 2275 (1997).

487 *See id.* at 2267-68. This is also reflected in Souter's concurrence:

constitutionally under the Due Process Clause of the Fourteenth Amendment, as a substantive, rather than procedural, right.[488] In reference to the *Glucksberg* decision, one advocate writes that "[t]he appeals court whose decision the Supreme Court overturned had accepted that [liberty should be protected as a substantive rather than a procedural right] 8 to 3."[489] The Supreme Court had a very different view, stating, "[t]hough deeply rooted, the States' assisted-suicide bans have in recent years been reexamined and, generally, reaffirmed. . . . Public concern and democratic action are therefore sharply focused on how best to protect dignity and independence at the end of life[.] . . ."[490]

On the other hand, the decision in *Vacco v. Quill* held that New York's ban on doctor assisted suicide did not violate equal protection rights, even when the state allows advance medical directives by a patient to ease pain in the face of death which could indeed hasten death.[491] The plaintiffs, who consisted of New York physicians and three gravely ill patients who had passed away prior to the rendering of the decision, stated that New York's law effectively accorded different treatment to similarly situated citizens, and that this unequal treatment was not rationally related to any

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> We therefore have a clear question about which institution, a legislature or a court, is relatively more competent to deal with an emerging issue as to which facts currently unknown could be dispositive. The answer has to be for the reasons already stated, that the legislative process is to be preferred. . . . The Court should accordingly stay its hand to allow reasonable legislative consideration. While I do not decide for all time that respondent's claim should not be recognized, I acknowledge the legislative institutional competence as the better one to deal with that claim at this time.

Id. at 2293.

488 This was the plaintiff's assertion as well. *See id.* at 2261-62 ("The plaintiffs asserted 'the existence of a liberty interest protected by the Fourteenth Amendment which extends to a personal choice by a mentally competent, terminally ill adult to commit physician-assisted suicide.'" (quoting Compassion in Dying v. Washington, 850 F.Supp 1451, 1459 (W.D. Wash. 1994))).

489 Greenhouse, *supra* 476, at 1B (showing that many do believe that the Due Process Clause is expansive enough to cover the right of terminal patients to have doctor assited suicide).

490 *Glucksberg*, 117 S.Ct. at 2265 (outlining the history of American statutes outlawing assisted suicide and noting that, although many states allow living wills and have recently reconsidered their assisted suicide statutes, voters reaffirmed prohibitions on assisted suicide).

491 *See* Vacco v. Quill, 117 S.Ct. 2293, 2297-98 (1997).

> New York's statutes outlawing assisting suicide . . . neither infringe fundamental rights nor involve suspect classifications. . . . On their faces, neither New York's ban on assisting suicide nor its statutes permitting patients to refuse medical treatment treat anyone differently than anyone else or draw any distinctions between persons. Everyone, regardless of physical condition, is entitled, if competent, to refuse unwanted lifesaving medical treatment; no one is permitted to assist suicide. Generally speaking, laws that apply evenhandedly to all "unquestionably comply" with the Equal Protection Clause.

Id. (citing New York City Transit Authority v. Beazer, 440 U.S. 568, 587 (1979)).

legitimate state interests.[492] They sued the State Attorney General claiming that the state ban on assisted suicide violated the Fourteenth Amendment's Equal Protection Clause.[493] The Federal District Court disagreed,[494] but the Second Circuit reversed with a holding that New York did indeed accord different treatment to those competent, terminally ill persons wishing to hasten their deaths "by self-administering prescribed drugs" than it does to those who wish to do so by directing the removal of life-support systems.[495] The U.S. Supreme Court, however, held that "New York's prohibition on assisting suicide does not violate the Equal Protection Clause."[496]

New York's statutes outlawing assisting suicide affect and address matters of profound significance to all New Yorkers alike. They neither "infringe fundamental rights nor involve suspect classifications[,]" therefore, these laws are entitled to a "strong presumption of validity."[497]

On their faces, neither New York's ban on assisting suicide nor its statutes permitting patients to refuse medical treatment treat anyone differently than anyone else or draw any distinctions between persons. Everyone, regardless of physical condition, is entitled, if competent, to refuse unwanted lifesaving medical treatment; no one is permitted to assist a suicide. Generally speak-

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492 *See id.* at 2296 (stating that the physicians argued that "it would be 'consistent with the standards of [their medical practice[s]' to prescribe lethal medication for 'mentally competent, terminally ill patients' who are suffering great pain and desire a doctor's help in taking their own lives, [but] they are deterred from doing so by New York's bar on assisting suicide." (internal citations omitted)).

493 *See id.* ("They urged that because New York permits a competent person to refuse life-sustaining medical treatment, and because the refusal of such treatment is 'essentially the same thing' as physician-assisted suicide violates the Equal Protection Clause."). The Equal Protection Clause states that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1.

494 *See Vacco*, 117 S. Ct. at 2297 (noting the state's "legitimate interests in preserving life" and protecting vulnerable people). "[I]t is hardly unreasonable or irrational for the State to recognize a difference between allowing nature to take its course, even in the most severe situations, and intentionally using an artificial death-producing device." *Id.* (citing Quill v. Koppel, 870 F.Supp. 78, 84 (S.D.N.Y 1994)).

495 *Id.* at 2297 (contemplating that "[t]he ending of life by [the withdrawal of life support systems] is nothing more nor less than assisted suicide . . . " and is not "rationally related to any legitimate state interests. . . ." (citing Quill v. Koppell, 80 F.3d 761, 729, 731)).

> "New York law does not treat equally all competent persons who are in the final stages of fatal illness and wish to hasten their deaths," because "those in the final stages of terminal illness who are on life-support systems; but those who are similarly situated, except for the previous attachment of life-sustaining equipment, are not allowed to hasten death by self-administering prescribed drugs."

Id. (quoting *Quill*, 80 F.3d at 727, 729).

496 *Id.* at 2296 (citing to pages 3-14 of the bench opinion).

497 *Id.* at 2297.

ing, laws that apply evenhandedly to all "unquestionably comply" with the Equal Protection Clause.[498]

The Court's rationale drew the line on doctor-assisted suicide: "Thus, even as the States move to protect and promote patients' dignity at the end of life, they remain opposed to physician-assisted suicide."[499] Clearly the two acts are different. Thus, they may be treated differently: "By permitting everyone to refuse unwanted medical treatment while prohibiting anyone from assisting a suicide, New York law follows a long-standing and rational distinction."[500] Medically sanctioned suicide is not a protected liberty interest within the bounds of the Constitution.

The Supreme Court in both opinions recognized a litany of state interests. Those interests included among them were the need to prohibit intentional killing, to preserve life, to prevent suicide, to maintain "physicians' roles as their patients' healers[,]" to protect "vulnerable people from indifference, prejudice, and psychological and financial pressure to end their lives[,]" as well as to avoid "a possible slide towards euthanasia. . . ."[501] These are public concerns that do indeed bear a rational relation to a legitimate state interest.[502] The lives of women now deceased highlighted in this Article are clear evidence of the further legitimacy of these concerns.

Post-modern liberalism searches aspiringly, however, for a crevice in which to wedge the right-to-die stone. "In ruling that there is no constitutional right to doctor-assisted suicide, the court held the door open to future legislative developments and even,

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498 *Id.* at 2297-98.

499 *Id.* at 2300 (stating that "nearly all states expressly disapprove of suicide and assisted suicide either in statutes dealing with durable powers of attorney in health care situations, or in 'living will' statutes." (citing People v. Kevorkian, 527 N.W.2d 714, 731-32 & nn.53-54 (Mich. 1994))).

500 *Id.* at 2302. The Court stated:

> Given these general principles, it is not surprising that many courts, including New York courts, have carefully distinguished refusing life-sustaining treatment from suicide. In fact, the first state-court decision explicitly to authorize withdrawing lifesaving treatment noted the "real distinction between the self-infliction of deadly harm and a self-determination against artificial life support." And recently, the Michigan Supreme Court also rejected the argument that the distinction "between acts that artificially sustain life and acts that artificially curtail life" is merely a "distinction without constitutional significance — a meaningless exercise in semantic gymnastics," insisting that "the Cruzan majority disagreed and so do we."

Id. at 2299 (internal citations omitted).

501 *Id.* at 2302. *See also* Washington v. Glucksberg, 117 S.Ct. 2258, 2272-75, 2280-81 (1997).

502 *See Vacco*, 117 S.Ct. at 2302 ("These valid and important public interests easily satisfy the constitutional requirement that a legislative classification bear a rational relation to some legitimate end.").

somewhat surprisingly, to future legal claims on behalf of terminally ill people's right to control the timing and the manner of their death."[503] A close reading of the plurality opinion, however, even with the concurring opinions and distinctions, reveals the consensus conviction to uphold a dying patients desire to withhold life support and die naturally, rather than be poked full of tubes and needles in her final hours of life for experimental purposes.[504]

As the Supreme Court recognized in *Vacco*, when a physician increases a dosage of painkillers to ease the severity of the pain experienced by the patient, even though those drugs may indeed hasten death, the intent is not to bring about death, but to provide comfort to the patient.[505] This is in sharp contrast to legalizing assisted suicide.[506] The case of *Kevorkian v. Thompson* recognized a similar distinction between withholding acts that artificially sustain life, and promoting or permitting acts, such as physician-assisted suicide, that artificially terminate life.[507] Accordingly, the courts are concerned with whether the doctor intended to ease pain or to cause death. Consenting to, acquiescing to or succumbing to (a premature) death brought on by a lack of medical, moral, emotional, spiritual, familial and financial resources is not dying with dignity. That kind of death is not a vested right upheld by the Constitution. Neither is it a fundamental liberty interest to be preserved and protected by the state.

Nevertheless, there seems to be a clandestine ambition within modernity to salvage some sort of a fundamental legal right to die. Is this the correct response? Are we to move, on behalf of these women, to push for their early death, or might we consider alternatives that could lead to a better life? "While the [Supreme Court]

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503 Greenhouse, *supra* note 476, at 1B.

504 *See Vacco*, 117 S.Ct. at 2298.

> [A] physician who withdraws, or honors a patient's refusal to begin, life-sustaining medical treatment purposefully intends, or may so intend, only to respect his patient's wishes and "to cease doing useless and futile or degrading things to the patient when [the patient] no longer stands to benefit from them."

Id. (quoting Assisted Suicide in the United States, Hearing before the Subcommittee on the Constitution of the House Committee on the Judiciary, 104th Cong., 2d Sess., 368 (1996) (testimony of Dr. Leon R. Kass)). As an aside, it is interesting to note that Jack Kevorkian has advocated "using Death Row inmates for experiments, during which their organs would be harvested while they were alive and anesthesized." O'Shaughnessy, *supra* note 460, at 18.

505 *See id.* at 2298-99 ("[I]n some cases, painkilling drugs may hasten a patient's death, but the physician's purpose and intent, is, or may be, only to ease his patient's pain.").

506 *See id.* at 2299 ("A doctor who assists a suicide . . . 'must, necessarily and indubitably, intend primarily that the patient be made dead.'" (quoting Assisted Suicide in the United States, Hearing before the Subcommittee on the Constitution of the House Committee on the Judiciary, 104th Cong., 2d Sess., 367 (1996))).

507 *See* 947 F.Supp 1152 (E.D. Mich. 1997).

scarcely created the debate over doctor-assisted suicide, . . . it was only after the justices undertook to decide the issue that the public tuned in."[508] The public did tune in, however, six years earlier when they voted against legalizing physician assisted suicide in the State of Washington in 1991.[509] Accordingly, it is time to rivet our attention not only to the debate over the issue of assisted suicide, but to the mounting evidence of gender vulnerability to assisted suicide and acquiescent death.

Furthermore, Jack Kevorkian himself has been the focus of tremendous legal (and media) coverage. For assisting people to their deaths, Kevorkian has been the subject of numerous prosecutions under state murder statutes. The case of *Kevorkian v. Thompson*[510] recognized, as have many courts, the distinction between acts that artificially sustain life and acts that artificially curtail life.[511] Furthermore, in *People v. Kevorkian*,[512] the court held that if a pa-

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508 Greenhouse, *supra* note 476, at 1B. Investigating the Due Process claim, Greenhouse continues:

> [In the] majority opinion by Rehnquist, . . . there is no general right to doctor-assisted suicide under the constitutional guarantee of due process. But in separate opinions, five justices suggested that, in a future case, they might find that terminally ill people in intractable pain have a more narrowly framed right to a doctor's assistance in ending their suffering.

Id. We fail to see this desire in the various opinions. What we do see is that the justices recognize that an individual has a liberty interest they can plainly state (and legally enforce) in a document routinely referred to as a living will, or an advance medical directive, that asks the physician to not artificially continue life support once death is imminent. This is not doctor assisted suicide, or even medically hastened death, but rather, wisdom in use of resources, reliance on a third party investigating the complete facts, and continuing life support only when there remains hope for recovery.

509 *See* 1992 Wash. Laws, ch. 98, § 10. This event was referred to in *Washington v. Glucksberg*. *See* 117 S.Ct. 2258, 2266 (1997).

510 947 F.Supp 1152 (E.D. Mich. 1997). For related references, see People ex rel. Oakland County Prosecuting Attorney v. Kevorkian, 534 N.W.2d 172 (Mich. Ct. App. 1995), *appeal denied* People ex rel. Oakland County Prosecuting Attorney v. Kevorkian, 549 N.W.2d 366 (Mich. 1996), *cert denied*, Kevorkian v. Michigan, 117 S.Ct. 296 (1996).

511 *See* Kevorkian v. Thompson, 947 F. Supp. at 1172-74 (holding that "[t]here is a rational basis for distinguishing withdrawal of life support from assisting at a suicide."). This case was referred to in *Vacco v. Quill:*

> [W]hereas suicide involved an affirmative act to end a life, the refusal or cessation of life-sustaining medical treatment simply permits life to run its course, unencumbered by contrived intervention. Put another way, suicide frustrates the natural course by introducing an outside agent to accelerate death, whereas the refusal or withdrawal of life-sustaining medical treatment allows nature to proceed, i.e., death occurs because of the underlying condition.

117 S. Ct. 2293, 2299 n.8. (citing People v. Kevorkian, 527 N.W.2d 714, 728 (Mich. 1994)).

512 527 N.W.2d 714 (Mich. 1994), *cert. denied*, 514 U.S. 1083 (1995). This was ultimately a consolidation of several actions. A direct history is *Hobbins v. Attorney General*, 1993 WL 276833 (Mich. Cir. Ct. 1993), order affirmed in part, reversed in part by 518 N.W.2d 487 (Mich. Ct. App. 1994), stay denied by *People v. Kevorkian*, 519 N.W.2d 890 (Mich. 1994), order amended by 519 N.W.2d 898 (Mich. 1994); *Hobbins v. Attorney General*, 518 N.W.2d 487 (Mich. Ct. App. 1994), appeal granted by *People v. Kevorkian*, 521 N.W.2d (Mich. 1994), and judgment affirmed in part, reversed in part by 527 N.W.2d 714 (Mich. 1994), cert. denied by *Kevorkian v. Michigan*, 514 U.S. 1083 (1995), and cert. denied by *Hobbins v. Kelley*,

tient ingests lethal medication prescribed by a physician, he is killed by that medication not by the act of the physician.[513] Defendant Kevorkian moved for dismissal of the murder charges against him concerning assisted suicides, but the court held that the Michigan murder statute did apply to the conduct of a defendant who assisted victims in voluntarily committing suicide, even though committing suicide was not a criminal act, and regardless of the fact that the defendant was a physician.[514]

Kevorkian v. Arnett[515] was the California action brought by Kevorkian and his terminally ill patient against the executive director of the medical board of California and the Attorney General of California.[516] The plaintiffs challenged the constitutionality of the California statute that criminalizes those who aid patients in committing suicide.[517] As widely reported in the media, in every instance where a charge was brought against Kevorkian for assisted suicide, he was acquitted of all charges by a jury.[518]

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514 U.S. 1083 (1995); *People v. Kevorkian*, 1993 WL 603212 (Mich. Cir. Ct. 1993), reversed by *Hobbins v. Attorney General*, 518 N.W.2d 487 (Mich. Ct. App. 1994), stay denied by *People v. Kevorkian*, 519 N.W.2d 890 (Mich. 1994), order amended by 519 N.W.2d 898 (Mich. 1994); and *People v. Kevorkian*, 517 N.W.2d 293 (Mich. Ct. App. 1994), judgment vacated by 527 N.W.2d 714 (Mich. 1994), cert. denied by *Kevorkian v. Michigan*, 514 U.S. 1083 (1995), and cert. denied by *Hobbins v. Kelley*, 514 U.S. 1083 (1995). Related references are *People v. Kevorkian*, 512 N.W.2d 317 (Mich. 1993), and *People v. Kevorkian*, 522 N.W.2d 630 (Mich. 1994).

513 *See, e.g.*, People v. Kevorkian, 527 N.W.2d at 728, *cert. denied*, 514 U.S. 1083 (1995) ("In letting die, the cause of death is seen as the underlying disease process or trauma [but i]n assisted suicide/euthanasia, the cause of death is seen as the inherently lethal action itself."). This case was also referred to in *Vacco v. Quill*. *See* 117 S.Ct. 2293, 2298 (1997) ("First, when a patient refuses life-sustaining medical treatment, he dies from an underlying fatal disease or pathology; but if a patient ingests lethal medication prescribed by a physician, he is killed by that medication.").

514 *See* People v. Kevorkian, 527 N.W.2d at 739 ("[A]bsent a statute that specifically proscribes assisted suicide, prosecution and punishment for assisting in a suicide would not be precluded.").

515 939 F.Supp 725 (C.D. Cal. 1995).

516 *See id.* at 725.

517 *See id.* at 728. When the parties cross-moved for summary judgment, the district court held that the patient, but not the physician, had standing, *see id.*, and that on its face the statute violated due process required by the Federal Constitution, *see id.* at 730-31, but did not violate the right to privacy, *see id.* at 732, or the right to equal protection under the California Constitution. *See id.* at 731.

518 *See generally* Janet M. Branigan, Note, *Michigan's Struggle with Assisted Suicide and Related Issues as Illuminated by Current Case Law: An Overview of* People v. Kevorkian, 72 U. DET. MERCY L. REV. 959 (1995). One other assisted suicide case that briefly discusses Kevorkian-style intentions worthy of note in some detail is *McIver v. Kirschner*, 1997 WL 225878 (Fla. Cir. Ct. 1997). Plaintiffs Dr. Cecil McIver and his patient Charles E. Hall sought a declaratory judgment and related injunctive relief on Florida's prohibition on assisting in suicide (entitled "assisting self-murder," FLA. STAT. ANN. § 782.08 (West 1997)) and a ruling on their rights under Art. I, Sec. 23 of the Florida Constitution (the "Privacy Amendment") as well as constitutional claims under the Due Process Clause and Equal Protection Clause of the Fourteenth Amendment, of course. The Court granted relief and declared "that Mr. Hall has a constitutional right under the Florida Privacy Amendment to make the decision to terminate his own suffering, and to seek and obtain his physician's assistance to do so,

VI. CONCLUSION

The brief portraits of the women assisted in their suicide by Jack Kevorkian are ominous, and provide compelling evidence for the gender vulnerability to acquiescent death. Unbridled emotions can distort an individual's outlook on life, and this is particularly evident in these women who have been assisted in their

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under the circumstances of this case; and that Dr. McIver is permitted to provide Mr. Hall with the assistance he requests." *Id.* at *5. The Court, however, stated that

> while convinced that competent, terminally ill, imminently dying patients have an interest in directing the course of their treatment it does not find it clear that such an interest rises to the level of a fundamental right even though the court in Compassion in Dying (Glucksberg) made a strong equitable and historical analysis in favor of such a right. This Court, therefore, denies that Mr. Hall does not have a Substantive Due Process right to terminate his own life with the assistance of a physician.

Id. In light of the U.S. Supreme Court's decision in Glucksberg, however, such "strong equitable and historical analysis" is not strong enough to overcome a legitimate state interest. In a footnote, the court wrote:

> It bears noting that Dr. McIver has approached this issue in the manner that is appropriate, by seeking a declaratory judgment while refusing to break the law. This demonstrates respect for the system, in contrast to the conduct, as reported in the media, of Dr. Jack Kevorkian, who plunges ahead based on his personal beliefs, with no oversight, and then dares the authorities to prosecute him. Dr. McIver's approach, unlike that of Dr. Kevorkian, has enabled this Court to fully determine the facts underlying his patients. Our society and legal system would certainly not be well served by forcing a person such as Dr. McIver to conduct himself in the manner of Dr. Kevorkian in order to obtain an adjudication of the constitutional issue Dr. McIver raises.

Id. at *5 n.4. On July 17, 1997, this decision was reversed in *Krischer v. McIver*, 697 So. 2d 97 (1997). The opinion immediately notes the Supreme Court's decisions in *Glucksberg* and *Vacco*, *id.* at 100, and clarified the law in Florida, stating that Florida's constitutional guarantee of privacy does not include a privacy interest in assisted suicide: "It is clear that the public policy of this state is expressed by the legislature is opposed to assisted suicide." *Id.* at 100.

> To give someone, including a physician, the right to assist a person with a severe disability in killing himself or herself is discrimination based on a disability. It lessens the value of a person's life based on health status and subjects persons with severe physical and mental disabilities to undue pressure to which they may be especially vulnerable. . . . Floridians with severe physical and mental disabilities, who are particularly vulnerable to being devalued as burdens of society, would be at grave risk. . . .

Id. at 101-02. The court continues with a wonderful summary of the central point of this article:

> Those who attempt suicide — terminally ill or not — often suffer from depression or other mental disorders. *See* New York Task Force 13-22, 126-28 (more than 95% of those who commit suicide had a major psychiatric illness at the time of death; among the terminally ill, uncontrolled pain is a "risk factor" because it contributes to depression). . . . Research indicates, however, that many people who request physician-assisted suicide withdraw that request if their depression and pain are treated. The New York Task Force, however, expressed its concern that, because depression is difficult to diagnose, physicians and medical professionals often fail to respond adequately to seriously ill patients' needs. Thus, legal physician-assisted suicide could make it more difficult for the State to protect depressed or mentally ill persons, or those who are suffering from untreated pain, from suicidal impluses.

Id. at 102-03 (some citations omitted).

suicide by Jack Kevorkian.[519] When viewed in successive order, the later suicides contain fewer cases of terminal or advanced illness.[520] There is extremely powerful evidence that depression leads to an acquiescence in favor of malapropos death.[521] Judith Curren fits this pattern almost exactly as she experienced chronic depression, and was not terminally ill.[522] Rebecca Badger was only 39 years of age.[523] Patricia Smith and Janis Murphy were likewise only 40 years of age.[524] At least seventeen of these women were divorced at least once,[525] and seven more widowed.[526] Twenty-eight of these women were known to be suffering from depression.[527] This is not to say that these women did not desire to die but that such a desire was not fully rational. Many of the others were faced with a loss of control over their own lives, desiring at least to control their own deaths in some way.[528]

In the absence of competitors, Kevorkian has attracted a broad spectrum of people seeking a physician-assisted way out. They have come from the proverbial all walks of life, from the trailer park and the manicured suburb. In many respects, the doctor's clients represent a pretty good sample of the general population — except for the fact that most of them are women.

Like the men, they are younger than you might expect — ranging from age 40 to early 80s — with a surprising number (or perhaps not so surprising, given mid-life crises, menopause, empty

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519 The Hale Bop Comet mass suicide, led by Cult leader Apple White, likewise included a greater proportion of women than men (18 women and 15 men). Mixed reactions to that occurrence reverberated around the nation, yet many used the opportunity to applaud the courage of individual choice in assisted suicide, rather than point out the great degree of acquiescence apparent in such cult followings. Kevorkian provides a link to the Heavensgate cult webcite and refers to them as "The Competition." *Kevorkian's Home Page: Dr. Death Lives Here, supra* note 149.

520 Specifically Curren, *see supra* Part IV.B.25; Newman, *see supra* Part IV.B.19; Bacher, *see supra* Part IV.B.40; Murphy, *see supra* Part IV.B.37; Lennox, *see supra* Part IV.B.39; Sheipsmeier, *see supra* Part IV.B.38; Peabody, *see supra* Part IV.B.28; Lansing, *see supra* Part IV.B.32; and Livengood, *see supra* Part IV.B.34. Actually only two of the women were officially declared terminal by a medical examiner — Fox, *see supra* Part IV.B.43, and Tremble, *see supra* Part IV.B.52. Rush was declared terminal by Fieger, *see supra* Part IV.B.55

521 Examples of women suffering from such extreme depression are Cohan, *see supra* Part IV.B.16; Cashman, *see supra* Part IV.B.17; Hamilton, *see supra* Part IV.B.21; and Hunter, *see supra* Part IV.B.57.

522 *See supra* notes 290-301 and accompanying text.

523 *See supra* note 280 and accompanying text.

524 *See supra* notes 306, 345 and accompanying text.

525 *See supra* note 461.

526 *See supra* note 462.

527 *See supra* notes 463-66.

528 Women who lost such control include Mertz, *see supra* Part IV.B.24; Peabody, *see supra* Part IV.B.28; and Day, *see supra* note Part IV.B.33. *See also supra* notes 465-66 and accompanying text (listing the women who experienced a loss of control over their lives and who were admitted to nursing homes).

nests) in their 50s. The most striking fact about the field, though, is how much what one might call the "objective despair index" differs by sex. Most of Kevorkian's men were declared terminally ill by their own doctors; they were in constant, severe pain from medically diagnosed causes and were often physically incapacitated. Whatever you think about suicide or physician-assisted suicide, these were easier calls.

Many of the women, on the other hand, had more ambiguous complaints: in a chart like the one compiled by Kalman Kaplan, director of the Suicide Research Center at Columbia-Michael Reese Hospital in Chicago, we see that most of the Kevorkian women were not diagnosed terminal and had not been complaining of severe or constant pain. We see conditions like breast cancer (for which there is now great hope), emphysema, rheumatoid arthritis and Alzheimer's (a condition that usually burdens relatives more than the people who have it). Reading the case histories it is clear that many of these women's lives were messy and unattractive. But in all-too-typical female fashion, the patient often seems to have been most worried about the disease's impact on others. Is it possible that a certain type of woman — depressive, self-effacing, near the end of a life largely spent serving others — is particularly vulnerable to the "rational," "heroic" solution so forcefully proposed by Dr. Death?[529]

Michigan has been the jurisdiction that has encountered much of the activity in the assisted suicide realm. The inclination for women to be candidates for assisted suicide by acquiescence is somewhat obvious to state residents. Oakland Circuit Judge Hilda Gage was recently nominated by the Republican party for a seat on the Michigan Supreme Court.[530] She is 67 years old and has multiple sclerosis.[531] She accepted the nomination, and "drew chuckles" with her acceptance comments: "'I don't let [the MS] consume me. I refer to it as an inconvenience — occasionally. . . .' She promised to campaign hard and asked delegates to do her a favor: 'Keep Dr. Kevorkian away from me.'"[532]

The fact that a disease like multiple sclerosis is not a terminal one is very noteworthy.

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529 Gutmann, *supra* note 5, at 20.

530 *See* Charlie Cain, *Engler's Pick for U-M Seat Denied: GOP Delegates Reject Pro-Choice Nominee for Board of Regents*, DET. NEWS, Sept. 8, 1996, at C1.

531 *See id.*

532 *Id.* Kevorkian's latest newsworthy effort at that time was assisting in the suicide of a woman — Nancy DeSoto — with multiple sclerosis. *See generally* Keveny, *supra* note 1, at 19A.

> If physician-assisted suicide is legalized, it will quickly expand beyond the terminally ill to cover anyone suffering from a serious and debilitating health problem. In our current social climate, many elderly women who need constant care may believe that choosing their own deaths is the last, best sacrifice they can make for their grown offspring.[533]

These considerations are alarming.

> What should be our response to this troubling scenario? Most of us, I hope, would say that our first obligation is to change the conditions under which such women live, not to help them die. Depressed women must be diagnosed and quickly provided with effective treatment. Families caring for elderly and ill parents and grandparents must be provided with assistance and support. This is challenging and expensive work. If we legalize physician-assisted suicide, we may have just the excuse we need not to do it.[534]

In early June of 1997, anticipating the Supreme Court's decisions in *Vacco* and *Glucksberg*, a two-volume report was released by the Institute of Medicine at the National Academy of Science entitled, *Approaching Death: Improving Care at the End of Life*.[535] Such a response is refreshing, and long overdue. Suffering is an extremely unpleasant part of life. Death may appear to be a terror more welcomed than living in suffering, yet glorifying its denial is anathema. Deliberate or acquiescent termination of one's existence may appear to be the way to master the final exit, but it is not. This Article suggests that death remains the master over life in suicide, and particularly in assisted suicide. Women, especially categories of women who, due to illness, life circumstances, voided relationships or poverty, may be at greater risk for depression, or mental health problems,[536] and much more vulnerable to losing their will to live.

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533 Keveny, *supra* note 1, at 19A.

534 *Id.*

535 *See Taking Better Care of the Dying*, A.B.A. J., Sept. 1997, at 51 (discussing the implications for medicine in seeking to relieve the pain and suffering of dying patients).

536 *See Women at Greater Risk for Mental Health Problems* (visited Oct. 11, 1996) <http://www.cmhc.com/articles/women1.htm> (verifying the elements laid out in this article as evident throughout the world, not just the United States).

> Various studies carried out in both developed and developing countries and in different social groups suggest, for example, that symptoms of depression and anxiety are more prevalent among women. . . . Worldwide, the female to male lifetime prevalence ratios for major depression and dysthymia (chronic depression) are in the ranges of 1.5-3.5 (women) to 1 (men) and 1.7-4.8 to 1 respectively. . . . Today, there are an estimated 400 million people with anxiety disorders and 340 million with mood disorders worldwide. A higher proportion of them are women. On the whole, one quarter of the world's population is estimated to be affected at any one time in their life by some kind of neurop-

We have endeavored to demonstrate this reality with research and the lives of women who have died with Dr. Kervorkian at their side in the decade of the nineties.

Suicide is the ultimate victimization. The example of Janet Good trumpets that.[537] "Good believed that assisted suicide promotes individual empowerment. But through the manner and circumstances of her death, she demonstrated that it is really the ultimate victimization."[538] Death is mastered by facing it bravely,[539] with the support of loved ones near, understanding each individual's inherent value regardless of functionality or gender.

If we are to significantly reduce the incidence of assisted suicide and acquiescent suicide among older women in America, we must do everything we can to educate and enlighten people about gender issues and suicide. We must change our attitudes about older women in this country. We must come to view older women as worthwhile human beings who have given much to society and who deserve the chance to live a meaningful and dignified life in their later years. It is time that we empower and socialize women in this country to see themselves as important and valuable people

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sychiatric disorder, including mental, behavioural and substance abuse disorders. Three-quarters of those affected live in developing countries.

Id.

537 *See* Smith, *supra* note 370, at 21A.

538 *Id.* The article mentions Good's assisted suicide advocacy, as well as small epithets to Karen Shoffstall and Deborah Sickels, all three of whom were not terminally ill, but suffering emotinal depression for various reasons.

> Not long ago, Kevorkian's particpation in these deaths would have been perceived rightly as a pernicious abandonment of three despairing women. It would have brought demands that the perpetrator be brought to justice. No more. That these deaths have barely raised the public's collective eyebrow illustrates how deeply our values are being eroded by assisted suicide advocacy. . . . The Good, Shoffstall and Sickels tragedies are the result.

Id. For more information on Janet Good, see *supra* notes 373-78 and accompanying text.

539 We state this not flippantly, but with all sincerity, knowing the Divine Comforter, who promises that "He will swallow up death for all time, And the Lord God will wipe tears away from all faces, And He will remove the reproach of His people from all the earth. . . ." Isaiah 25:8. "DEATH IS SWALLOWED UP in victory." I Corinthians 15:54 (emphasis in the original).

A formidable example of facing death bravely is Cardinal Joseph Bernardin of Chicago. Bernardin's death came on November 14, 1996, at the age of 68 from pancreatic cancer. *See* David Finnigan, *Late Cardinal was Friend to the Unglamorous, Unloved,* L.A. DAILY NEWS, Nov. 29, 1996, at N39, *available in* 1996 WL 6582931. Mourners at his funeral characterized the event as a celebration of a man's life and death. *See id.*

> Bishop Bernard Schmitt, shepherd of West Virginia's 106,000 Catholics, noted that the cardinal had become the opposite of suicide advocate Dr. Jack Kevorkian. "He loved life," Schmitt said of Bernardin. "Even in its suffering, even to the end." Death was Bernardin's final lesson. He studied it hard, then taught it better. Death consumed him. He counterattacked with life.

Id. Speaking of the "celebrity" status attributed to Bernardin, Finnigan added, "[h]e became a celebrity to the old, the lonely, falsely accused, cancer-stricken, the convicted, harassed, unborn-yet-aborted, HIV-infected, ugly and, now, the dead." *Id.*

who do not always have to sacrifice their own lives and happiness for the people in their lives and for their society.[540]

Women are indeed particularly vulnerable to acquiescent death. If the desire to live escapes *anyone* quickly, it is a person who lacks emotional, financial, social, familial and medical support. Statistics show the gender disparity in that the majority of individuals who fall into each of these categories are women. "Let us hope that, by recognizing the existence of gender differences, we can better understand each other and help to maximize each other's potential."[541] Assisted suicide, however, is not the solution to a despairing individual's life — assistance from a caring community is the answer we can all live with.

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[540] *See* Osgood & Eisenhandler, *supra* note 32, at 374.
[541] Johnson, *The Biological Basis for Gender-Specific Behavior, supra* note 31, at 293.