

# Judge rules next week in Kevorkian murder exam

By Pat Murphy  
staff writer  
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The murder examination of Dr. Jack Kevorkian ended on a decidedly melodramatic note in Rochester District Court, with both sides claiming legal precedent — and justice — on their side.

But the fate of the so-called "Doctor Death" will not be known until later this month when a district judge rules that charges against Kevorkian are dismissed, or the retired Royal Oak pathologist must face trial in Oakland Circuit Court.

Judge James P. Sheehy Monday said he will take under advisement testimony and arguments heard over the three-day examination. He said he will issue a written opinion about Feb. 28.

In closing arguments, both sides made impassioned pleas. Assistant prosecutor Larry Bunting urged Sheehy to rule Kevorkian murdered Marjorie Wentz and Sherry Miller Oct. 23 in a remote cabin at the Bald Mountain Recreation area in Oakland Township.

Kevorkian admits helping the two women die. But the physician insists — and witnesses seemed to verify — he merely put suicide devices at the disposal of Wentz and Miller, and each knowingly and willingly took the final step to take her own life.

KEVORKIAN HAS become an internationally known advocate of assisted suicide, something he insists is an act of mercy for those like Wentz and Miller who suffered intractable pain.

The Oakland County prosecutor, however, insists assisted suicide is

murder, and prohibited under Michigan law.

Bunting cited parallels between the charges against Kevorkian and the 1920 Michigan Supreme Court case he says is the legal precedent making assisted suicide illegal.

In that case, *People v. Roberts*, the state's highest court upheld the murder conviction of a man who put poison within the reach of his sickly wife who eventually drank it and died.

The defendant put poison within reach of the victim, said Bunting. "Kevorkian put poison within reach of Marjorie Wentz," he said, referring to the fact that she was hooked up to the physician's so-called suicide machine.

In the 1920 case, the victim suffered from multiple sclerosis, said Bunting. "So did Sherry Miller," Bunting asked Sheehy, to follow

the law, rather than giving an activist interpretation to existing statutes. Issue an opinion that would "stop Kevorkian from going around killing people," he urged.

After the exam he expressed confidence. "If he (Sheehy) follows the law, a written opinion favors us," Bunting said.

KEVORKIAN'S LAWYER, Geoffrey N. Fieger, a West Bloomfield resident with offices in Southfield, urged Sheehy to disregard the 1920 decision. It was "made by judges born around the Civil War" and not appropriate in today's society.

That case does not apply, Fieger said. He cited other cases — more recent, but not decided by the Supreme Court — that he said are more appropriate and applicable.

Fieger, whose flair for the dramatic was honed when he studied theater at the University of Michigan, likened the case against his client to other famous proceedings, including the 1924 Scopes Monkey Trial in Tennessee. In that case a high school teacher was accused — and convicted — of wrongdoing because he taught evolution, rather

than the Biblical account of man's origin.

"Don't slip back into the dark ages," Fieger urged.

Fieger won something of a victory when he successfully argued against allowing Arthur L. Caplan, an ethics specialist from the University of Minnesota, to testify.

Caplan, who specializes in issues pertaining to organ transplants and the right to die, was prepared to testify that Kevorkian's actions were beyond the limits of medically accepted behavior, said the prosecution.

But that testimony has no relevance to this case, ruled the judge. He (Caplan) is a philosopher with an opinion, said Sheehy. "If we called 18 different (philosophers) we could get 18 different opinions."

"Our purpose here is to decide if a crime has been committed and whether or not there is probable cause to believe the defendant did it," Sheehy said.

"COUNTY COMMISSIONERS (who approve the prosecutor's budget) should take a look at this," said the judge, referring to the expenses

incurred flying Caplan into Rochester Hills from Minnesota.

"Commissioners obviously give the prosecutor more money than they give other departments," Sheehy chided Bunting.

"We have more people" and more responsibility, Bunting shot back.

Fieger also expressed confidence following the hearing. "partially if the judge issues a written opinion." He declined to elaborate.

In a similar case against Kevorkian, another district judge — Gerald E. McNally of Clarkston — dismissed a murder charge and ruled Michigan has no law against assisted suicide, despite the 1920 Supreme Court decision.

That ended proceedings against Kevorkian stemming from the June 1990, assisted suicide of Janet Adams, 54, of Portland, Oregon, who was suffering from advanced Alzheimer's disease.

Oakland County prosecutor Larry Bunting did not argue until that ruling, but declined to appeal it. Asked if the prosecutor would appeal a dismissal by Sheehy on Kevorkian's case, Bunting said he would evaluate that if it happens.

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