

LIBERTARIAN LIFELINE



Dr. Death and Jury Nullification

by Joe Zychik

The Dr. Jack Kervorkian saga should be called the right to life advocates v the state. I say right to life, because a right implies an option. A right means the legal recognition of one's primary choices. To have a choice about life means to have the options of what to do with your life, including to continue it or end it.

The Kervorkian saga was not about assisted suicide. It was about the government's attempt to take away the corollary of the most basic need - that is the need to survive. All rational rights are based on this need. The need to survive includes the need to end suffering and pain, because if you look at your quest for survival you will realize that it is based on increasing pleasure and joy and avoiding pain and suffering. How you choose to go about that and what you choose to define as pleasure and/or pain is up to you; however, the Kervorkian case was not about definitions of pleasure or pain. It was about the government's claim to prolong your pain and suffering. That's why Kervorkian was tried three times.

By the way, anyone who says that the Religious Right is not malicious, mean-spirited and anti-human truly does not understand what the right to "life liberty and the pursuit of happiness" means.

Personally I detest sacrificing the term "right to life" to the Religious Right simply because their agenda is at its base anti-choice, yet to be able to choose is to be able to live.

The state of Michigan upheld almost all of the "13 appeals by the prosecution" in this last trial. Says the NY Times, "The jury instructions as written by the judge" and then modified by the Michigan Court of Appeals "seemed to mandate a conviction as long as it was proved that Dr. Kervorkian 'by some act assisted' the suicide." Kervorkian not only assisted the suicide, he never once denied that he assisted.

Kervorkian's claim was that he helped people who had begged him to help them relieve their pain and

suffering; however, to relieve pain and suffering, Kervorkian assisted in suicide and was thus guilty according to the jury instructions.

After the Not Guilty verdict was delivered, Dr. Kervorkian said, "The jury saved me. . . For any enlightened human being this can never be a crime."

What we saw in Michigan was jury nullification in action. But, the political, legal and media oppressors don't want you to know it. Yet, on the NBC Nightly News, one juror, in effect, said, "I believe in assisted suicide." That, my friends, is jury nullification - the jury voting its conscience.

As Kervorkian said in court, "There ain't no law." He was responding to the trumped up common law charge that the state was bringing. Then he went on to say, "I only recognize laws passed by the legislature, not made up by the courts." I hope someone out there in Michigan sends Dr. Kervorkian a FIJA flyer, so he'll realize that he doesn't have to believe in the laws passed by the legislature, either.

Although the jurors were virtually instructed to bring a guilty verdict, they refused based on their own beliefs. The sentiment of some of the jurors can be summed up by two jurors' comments: Addressing the issues of the common law charge, one said she wouldn't convict on any law unless it was "written down in black and white." Another addressed the issue of bringing charges against Kervorkian on a trumped up legal theory three years after the fact. She came to her decision while raking leaves over the weekend. She didn't want "someone to come along three years from now and say that raking leaves back then was illegal, you just didn't know it."

In effect, the court had instructed the jurors to vote against their basic beliefs about life, due process, and legal responsibilities. The jurors told the court, "Drop dead." They did it nicely, but more importantly, they did it legally. □

This editorial originally appeared in *The Zychik Report*, a weekly on-line commentary by Joe Zychik.

Of Ants and Men

by L. Neil Smith

The war we're fighting is a war between ants and Men.

Ants scurry about their world at random in great numbers, leaving behind long sticky trails of pheromone, chemically commanding anyone and everyone, **"DO THIS! DO THAT! GO HERE! GO THERE! EAT! SLEEP! WORK! FIGHT! DIE!"**

The pheromone trails build up, one upon another, lapping, overlapping, tracing, back-tracing, up, down, sideways, overlay on grimy overlay, imperative after foul imperative, until the whole ant-world lies cloyed and covered in tarry, reeking, imperious filth.

Men speak, and as the words die cleanly in the air between them, they think about the words and speak anew. The surrounding environment of will, of choice, and of motivation is unpolluted. Their decisions, agreements, judgments, options, alternatives, preferences remain inside them, inside their individual minds. They do not clutter and befoul the physical space in which they all must live.

Ants cannot live like Men and more importantly, men cannot live like ants. Yet that's precisely what

2 we've been trying to do. For two centuries, ten generations, we've endured ant-like accumulations of obsolete, discredited commands, ordinances, statutes, and decrees building up beneath our feet, slowing us, binding us, gluing us down like so much gum lying gooey on a sidewalk at high noon.

Keeping us from being what we might have been. Keeping us impoverished, hungry, and stultified. Keeping us from the one true destiny of Men, the stars.

As we've been told so often — by those who wish to live like ants — it's time to clean up the environment. To decide that we are Men, not ants.

Twenty years ago, when I first began pondering this subject, there were **FIVE MILLION FEDERAL LAWS** (and ignorance, I'd remind you, of the law is no excuse). Who knows how many now? Who knows how many state, county, and city laws? Who knows what they cost us — besides our future.

The Founding Fathers never meant the nation's legislatures to become full-time pheromone-factories. There's evidence that they envisioned Congress and the state assemblies as places Men would meet — occasionally — to deal with some emergency. And even then they may have been wrong. They must have been wrong, or we wouldn't be suffering all this clutter, this legislative pollution today.

I propose a Moratorium, a final Law, an Amendment to the Constitution creating a 100-year prohibition on legislative activity of any kind within the borders of the United States of America, during which the only thing a legislature could do would be to REPEAL old laws, mop up all the pheromones, clean up the environment.

Those who wish to live like ants, and they are many, will fight it, shrieking that they won't know what to do without their little sticky overlapping trails (desperately afraid, too, that they won't be able to tell others what to do any more) and won't know how to live.

Those who want to live like Men will champion it. And in that Century of Sanity, they will reach the stars.

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News & Events deadline: 15th of the month. Send to Editor, 240 Sybil Avenue, San Leandro, CA 94577 or call (510) 351-0973. Submit on paper, diskette, or internet e-mail to: Terry.Floyd@cmnsens.fidonet.org or upload submissions to the Lifeline File Drop area (Local.Politics.Lifeline) of the Common Sense BBS. For subscription info, see page 7.

L. Neil Smith is the award-winning author of 19 books including *The Probability Broach*, *The Crystal Empire*, *Henry Martyn*, *The Lando Calrissian Adventures*, *Pallas*, and (forthcoming) *Bretta Martyn*. An NRA Life Member and founder of the Libertarian Second Amendment Caucus, he has been active in the Libertarian movement for 34 years and is its most prolific and widely-published living novelist. Permission to redistribute this article is herewith granted by the author - provided that it is reproduced unedited, in its entirety, and appropriate credit given.

On the Bookshelf: *The Death of Common Sense: How Law is Suffocating America*

by Philip K. Howard, 202 pages, Random House

Best-selling management guru Peter F. Drucker once remarked, "There is nothing so useless as doing efficiently that which should not be done at all." Unfortunately, today's government does not operate on the management principles of private business, and has made its primary goal the achievement of uselessness, and in doing so, tries to convince its constituents that such uselessness is more vital to their lives than ever before. A bureaucracy is always far more concerned with *how* a task is done than whether that task accomplishes anything of significance.

Libertarians have been complaining for years about how politicians have regulated average citizens into helplessness and stifled innovation. It seemed for a very long time as though the population at large was completely blind to the ridiculous extent to which our government has subjugated its citizens by the mountains of red tape that surround even the most simple procedures involving a public bureaucracy.

More and more people, however, are waking up to this mess, thanks to the success of books such as this one. Author Philip K. Howard is a Manhattan attorney who has spent decades involved in public affairs work on New York City's Industrial Development Agency and the Mayor's Institute on City Design. He has seen the beast from the inside, and his observations are as plentiful as they are alarming.

Exhaustively detailed and referenced, Howard's book is based on the premise that the rapid growth of laws drafted in reaction to real or perceived threats has robbed us of the ability to use our own personal judgment. Howard provides dozens of examples, from the Occupational Safety and Health Administration to the Environmental Protection Agency and notes that despite the billions of taxpayer dollars spent by each agency, neither our environment nor our workplaces are significantly cleaner or safer than they were thirty years ago before these regulatory behemoths were created.

Howard notes that in the twenty years between the Kennedy Administration and the Reagan Administration, the number of Federal Agencies doubled. And even though Ronald Reagan was elected on his prom-

ises to reduce the size and scope of government, during his eight years in office, the government itself, the federal budget and the federal deficit all grew at a pace never before seen in history.

"The Federal Register, a daily report of new and proposed regulations, increased from 15,000 pages in the final year of John F. Kennedy's presidency to over 70,000 pages in the last year of George Bush's. The Interstate Highway system, still the country's largest postwar public works program, was authorized by a 1956 statute that ran 28 pages. A transportation act passed by Congress in 1991, which almost none of you probably noticed, was ten times longer."

Austrian economist and Nobel Laureate Friedrich Hayek noted that law is not coercive if it permits one to adapt. Philip Howard observes, however, that "...if it tells you exactly what to do, it has all the characteristics of coercion. Coercion by government, the main fear of our founding fathers, is now its common attribute... The idea of a rule detailing everything has had the effect of reversing the role of law. We now have a government of laws against men."

Howard notes that the centralization of authority in strict and rigid government bureaucracies is one of the fundamental pillars of socialism and that, ironically, the American politicians who had the greatest role in designing the dictatorial rules that govern the most intrusive of our government agencies were themselves once counted among the most stalwart anti-communists of the McCarthy era. Unable to see the forest for the trees, these patriotic politicians have done everything in their power to inadvertently make their own country emulate the failed systems of the Soviet Union! He compares the record Siberian grain harvest of the 1950s (that rotted in the silos for lack of spare parts to repair the trucks that could have distributed it to the starving peasants in the Ukraine) to the 1992 flood of Chicago's downtown financial district. City officials were aware of a leak in an old railroad tunnel near the river, but not having the authority to spend the \$75,000 for repairs from one reputable bidder, instead decided to delay the contract for a year to find a lower bid. On April 13, 1992, two weeks after the leak was discovered and before the project was even open for bids, the masonry of the tunnel wall broke, flooding the basements of every building in the downtown loop and resulted in more than a billion dollars in damages.

The paternalism of modern government not only discourages individuals from exercising their own better judgment, in some cases, it criminalizes such actions. Howard recalls the story of the Carroll Street Bridge in Brooklyn, the nation's first retractable bridge, built in 1889. In 1988, the city budgeted \$3.5 million to refurbish

Continued on page 4

bish the bridge or demolish it. Under established procurement procedures, the competitive bidding would take two years and the actual work at least five years, involving six agencies and over thirty-five different procedural steps. "But with the bridge's 100th anniversary coming up, Sam Schwartz, the deputy commissioner responsible for bridges, had the idea that the Carroll Street Bridge should be fixed within the year, in time for a centennial party. Schwartz called in his chief engineer and asked him to draw up a repair plan, ignoring the contracting procedures... Without much trouble, notwithstanding all the oversight agencies supposedly checking up to make sure everything is done by the book, Schwartz got the money and let the contracts. Eleven months later, at a cost of \$2.5 million, the bridge was fixed up...[and] the centennial party, by all accounts a wonderful affair. For his leadership in completing the job in one seventh of the time and at 70% of budget, Deputy Commissioner Schwartz received an official reprimand."

Of course, many of the rules and regulations that have caused this fiasco were drafted with the best of intentions; however, author Howard reminds us:

"Precise rules, most people believe, close off loopholes. It happens to be the other way around. Loopholes only exist because of precise rules. The U.S. Constitution, a short document of general principles, has no loopholes. The tax law, all 36,000 pages of it, is practically nothing but loopholes. The more precise we try to make law, the more loopholes are created."

That this book has inspired great controversy and debate among non-libertarians is an encouraging sign. It is as if Philip Howard has shouted out to the crowd that the emperor is buck naked and slowly, people are beginning to acknowledge that there is a decided chill to the air as they recognize that there are many more naked citizens in the kingdom than just the emperor.

Although reading this book is not a pleasant experience, Libertarians should find a wealth of ammunition in its pages, as well as an affirmation of our basic principles from an attorney who has through years of struggle, resigned himself to the foolishness of human nature. □

We only meant to make society better. Law would lay everything out for us. But law cannot save us from ourselves. Waking up every morning, we have to go out and try to accomplish our goals and resolve disagreements by doing what we think is right. That energy and resourcefulness, not millions of legal cubicles, is what was great about America. Let judgment and personal conviction be important again. There is nothing unusual or frightening about it. Relying on ourselves is not, after all, a new ideology. It's just common sense.

From the Chair

Do what thou wilt shall be the whole of the Law.

by Jeffrey R. Sommer

Victory is a thing worth savoring. A victory for freedom is the sweetest thing on Earth. It is my greatest pleasure to be able to report our second victory in our fight against the War on Drugs: the Compassionate Use Initiative will be on the ballot in November. We did it, folks.

It is the greatest thing in life to do what others say no one can do, to go where safer ones will not and win, to throw your entire being into a life-and-death struggle and coming out the victor. No mere drug can give a rush like that. The Libertarian Party, in combatting the encroaching power of the state to run our lives, is the arena in which these battles occur and will continue to occur as long as freedom is in danger.

While the Libertarian Party played a significant part in the attainment of this goal, it would be unfair if we did not recognize the superb leadership and tireless labor of one of our allies: The Cannabis Action Network.

Under the direction of Debbie Goldsberry, this organization was single-handedly able to take absolute command of a situation that was lackluster and seemed hopeless, and turn it into a highly disciplined, responsible group of enthusiastic volunteers. I am in personal awe of the sheer ability of Ms. Goldsberry, and want to point to her and the people she inspires as examples of both will and valor. Let us do likewise.

EFFORTS TO CENSOR THE INTERNET

EXPAND

U.S. a Miserable Role Model with Passage of Communications Decency Act

May 10, 1996 (New York) Governments around the world, claiming they want to protect children, thwart terrorists or silence racists and hate mongers, are rushing to eradicate freedom of expression on the Internet.

"The U.S. Congress and the Clinton administration, reacting to recent hysteria over cyberporn, led the way by passing the Communications Decency Act," says Karen Sorensen, Human Rights Watch on-line research associate. "It is particularly crucial now, in the early stages of vast technological change, that all governments reaffirm their commitment to respect the rights of citizens to communicate freely, and for the United States as the birthplace of the Internet, to be a model for free speech, not censorship," she adds. Human Rights Watch is a plaintiff in the lawsuit brought by the American Civil Liberties Union challenging the CDA on constitutional grounds.

The hearings in the lawsuit, which was filed in U.S. Federal District Court on February 8 (the day it was signed into law) end today in Philadelphia, Pennsylvania. The judges are expected to rule shortly thereafter.

In addition, Human Rights Watch is calling on the nations participating in the G7 Ministerial Conference on the Information Society and Development to be held in South Africa from May 13-15, 1996, to repudiate the international trend toward censorship and to express unequivocal support for free expression guarantees on-line. Among the G7 countries Britain, Canada, France, Germany, Italy, Japan, and the United States only the U.S. has actually passed legislation curtailing freedom of expression on-line. The trend toward restricting on-line communication is growing, according to *Silencing the Net: The Threat to Freedom of Expression On-line*, which documents restrictions that have been put in place in at least twenty countries, including the following:

- China, which requires users and Internet Service Providers (ISPs) to register with authorities;
- Vietnam and Saudi Arabia, which permit only a single, government-controlled gateway for Internet service;
- United States, which has enacted new Internet-specific legislation that imposes more restrictive regulations on electronic expression than those currently applied to printed expression;
- India, which charges exorbitant rates for international access through the state-owned phone company;

- Germany, which has cut off access to particular host computers or Internet sites;
- Singapore, which has chosen to regulate the Internet as if it were a broadcast medium, and requires political and religious content providers to register with the state; and
- New Zealand, which classifies computer disks as publications and has seized and restricted them accordingly.

Human Rights Watch recommends principles for international and regional bodies and nations to follow when formulating public policy and laws affecting the Internet, sets forth the international legal principles governing on-line expression, and, examines some of the current attempts around the globe to censor on-line communication.

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly.

The full 24-page report is available via e-mail at sorensk@hrw.org or from the Human Rights Gopher: URL: <gopher://gopher.humanrights.org:5000/11/int/hrw/general>. Paper copies of *Silencing the Net* are available from the Publications Department, Human Rights Watch, 485 Fifth Avenue, New York, NY 10017-6104 for \$3.60 (domestic), \$4.50 (international). Visa/MasterCard accepted.

Bite the bullet, pols: Cut Social Security

Michael Bertin

You can jump on the bandwagon and vilify the welfare state all you want. But balancing the federal budget by way of serious welfare reform is as mythical as spotting an ugly blonde riding shotgun in a Porsche.

For fiscal year 1994, Aid to Families with Dependent Children, the basic welfare program, cost about \$16.9 billion. That is just over 1 percent of the entire federal budget. (Combine that with food stamps, and that's still only 2.8 percent.) Eliminate the program altogether, and it will make only a small dent in annual spending. Last year our government spent roughly \$47,000 per second. At that rate, the government blew all the AFDC money in a spending spree that lasted just over four days. I've had hangovers that lasted longer than that.

In a recent survey co-sponsored by the Harvard School of Public Health, only 15 percent of the respondents correctly identified the largest item in the federal budget: Social Security. Most didn't know it costs \$321 billion annually and takes up 22 percent of the budget. The next costliest programs are, in order: defense, the interest on the national debt, Medicare and Medicaid.

While current projections do have Contract-waving Republicans proposing to trim 30 percent off Medicare and Medicaid, they have no plans to trim either defense spending or Social Security (They can't do anything about the interest on the debt.). Scoring political points and playing off of public perception is easy. But slashing welfare benefits will not do much good toward balancing the federal checkbook. The truth is, eventually Social Security must lose its untouchable status and go on the chopping block. As it stands, people who go on Social Security recoup all the money they put in, plus interest, in about 3 years. After that, the benefits they receive are essentially free money.

True, "welfare" is free money too, but Uncle Sam is giving away a lot less there than through Social Security. And it only gets worse. In the not-too-distant future Baby Boomers will be retiring en masse and collecting their Social Security checks. By then you and I will probably be responsible, working adult types, and the money for their benefits will come out of our paychecks. The problem is that there is an awfully large number of "them" and there are relatively few of "us." Those now entering the work force will have a greater percentage of their earnings siphoned off to support the retiring Baby Boomers. This could be as high as a 40 percent increase over what's being paid now.

Of course no politician who wants to get re-elected would even dream of suggesting that we cut Social Security. So it remains in the budget and grows like O.J. Simpson's legal expenses. If our new-and-improved elected officials in Washington really, truly want to balance the federal budget, they should start salivating over the sacred cow that is Social Security. And if they really, truly represent a new type of citizen-

legislator, they will make themselves the sacrificial lambs.



Bertin is a graduate student in philosophy at the University of Texas at Austin. This editorial originally appeared in The Daily Texan, the newspaper of the University of Texas.

Upcoming Events for Terry Savage and Greg Lyon Congressional Campaigns

Don't forget to make your plans to attend the June 15 fundraiser in Antioch for 10th Congressional District Candidate Greg Lyon. A fundraising dinner will begin at 6:30 p.m. at Humphrey's Restaurant located at One Marina Plaza in Antioch. No-host cocktails will be served beginning at 6:30 with dinner scheduled for 7:30 p.m. Cost is \$35 per person. Please RSVP to (510) 889-1544.

Next month, on July 13, 1996, a summer wine tasting and fundraising dinner for the 13th Congressional District Candidate Terry Savage will be held at the Westover Winery at 34329 Palomares Road in Castro Valley beginning at 4:00 p.m. Cost for this event is \$45 per person. Please RSVP no later than Tuesday, July 9 to the Savage for Congress campaign at (408) 262-7161.

Political Economy Summer Seminar to be presented by the Independent Institute

Oakland's Independent Institute will be presenting a summer seminar for high school students on Political Economy from July 29 through August 2, 1996. The course will feature Joseph Fuhrig, professor of business and finance and the Golden Gate University Fellow at the Independent Institute. Professor Fuhrig, you may recall, has been a speaker at several local Libertarian events over the past five years, and is an intelligent and engaging instructor.

The five-day course will be conducted Monday through Friday from 9:00 a.m. to 12:15 p.m. at the Independent Institute, 134 98th Avenue in Oakland. The \$95 registration fee includes admission to all sessions, refreshments, and a copy of the textbook, *New Ideas from Dead Economists*, by Todd Buchholz.

For more information about registration and availability, please call the Independent Institute in Oakland at (510) 632-1366.

Special Note: as this course is designed for high school students, the East Bay Libertarian Party will offer to pay the \$95 registration cost for the first high school student to contact the LP and express an interest in the course. To take advantage of this special offer, please call the LP Party Line at (510) 531-0760.

The legal experiment, we now learn for ourselves every time we encounter it, hasn't worked out. Modern law has not protected us from stupidity and caprice, but has made stupidity and caprice dominant features of our society. And because these dictates are supposed to be ironclad, we are prevented from doing anything about it. Our founders would wince; they knew that "the greatest menace to freedom," as former chief justice Earl Warren reminded us in 1972, "is an inert people."

from The Death of Common Sense, by Philip K. Howard

MEMBERSHIP APPLICATION **Libertarian Party**

(For those joining the LP)

*I hereby certify that I do not believe in nor advocate the **initiation** of force as a means of achieving social or political goals.*

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CALENDAR OF EVENTS **JUNE**

Saturday, June 15, 1996: Greg Lyon for Congress Fund Raising Dinner. Join our candidate for the 10th Congressional District for a gala fundraiser in Antioch at Humphrey's Restaurant, 1 Marina Plaza. Cost is \$35 per person. No-host cocktails at 6:30 p.m., dinner will be served at 7:30 p.m. For more information or to RSVP, call the LP Party line at (510) 889-1544.

Tuesday, June 18, 1996: Alameda County LP General Meeting. Ricky's Sports Lounge and Steakhouse at 15028 Hesperian Boulevard in San Leandro (near BayFair Mall). Formal business will begin between 7:30 and 8:00 p.m. For more information, please call the LP Party Line at (510) 531-0760.

Tuesday, June 25, 1996: Contra Costa County General Meeting. 7:30 p.m. at Fuddrucker's, 1975 Diamond Blvd., Concord, CA, located in the Willows Shopping Center (take the Willow Pass exit off Highway 680). For details, call the LP Party Line at (510) 531-0760.

July 2-7, 1996: Libertarian Party Presidential Nominating Convention. Hyatt Regency Capitol Hill, Washington, DC. Delegates should make arrangements by calling (215) 545-6994. For those of us who cannot attend, be sure to follow the convention on the C-SPAN Cable Network.

July 5-9, 1996: Habitat for Humanity annual Build-a-Thon. Once again, East Bay Habitat for Humanity urges Libertarians who are not delegates to the convention to instead spend their holiday framing five houses in five days at the 105th Avenue Construction site in East Oakland. The LP has pledged \$250 to the cause and needs as many volunteers as can be rounded up on a holiday weekend. For more information, contact Catherine Gentile at (510) 251-6304 and make sure she knows you are volunteering on behalf of the Libertarian Party.

Sunday Evenings, 8:30 p.m. to 9:00 p.m. On-Line Chat with Greg Lyon, Libertarian Candidate for Congress. America On-Line subscribers are welcome to join a weekly chat room with Libertarian Party Congressional candidate Greg Lyon every Sunday evening at 8:30. Just log on and go to LYON4CONGRESS.

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