Will the U.S. Supreme Court allow Nuremberg crimes?

by Linda Everett and Nancy Spannaus

Early in the year 1997, the United States Supreme Court will hear argument on two cases involving the so-called right to assisted suicide. The outcome of these cases will determine whether this nation has abandoned the principles which it uniquely stood for in the period immediately following World War II: the defense of human civilization against Nazi crimes against humanity.

Both sides in this matter understand the historic nature of the issue. More than 30 *amicus curiae* (friend of the court) briefs have been submitted on the side of Washington State and New York State, which are petitioning the U.S. Supreme Court to overturn rulings by the Ninth Circuit Court of Appeals, and the Second Circuit Court of Appeals, respectively. The Circuit Court rulings, taken in the spring of 1996, had declared the states' bans on physician-assisted suicide to be unconstitutional. It is expected that many more *amicus* briefs will be filed on the side of respondents, who are the individual doctors who challenged the assisted suicide bans, as well as the organization Compassion in Dying.

Weighing in on the side of the petitioners—against assisted suicide—is none other than the U.S. government. Many religious denominations, associations for the disabled, and other pro-life groups have also submitted briefs arguing that the state must prevent active euthanasia, because of its potential abuses against the helpless, and the state's interest in the defense of life. The number of those arguing for the "right" to assisted suicide, now fewer than 10, is expected to grow as well, since the deadline for *amicus* briefs on that side of the issue is not until Dec. 10.

It is virtually certain, however, that only one of the *amicus* briefs will define the issue at stake in its full dimensions: the issue of Nuremberg crimes against humanity. That brief is the one we present, in full, in this issue. It was submitted by the Schiller Institute directly to the U.S. Supreme Court, because the State of Washington declined to accept it. Although no reason for the denial was given in writing, individuals at the Washington State Attorney General's office indicated that they were reluctant to tar the advocates of assisted suicide with the Nazi brush.

Nazi doctor Karl Brandt stands in the dock at Nuremberg after World War II, pleading "not guilty." He was convicted of, and hanged for, medical crimes including euthanasia.

This is precisely the same softness in thinking, which has permitted the U.S. courts, and medical practice, to walk systematically down the path to Nazi medical practice over the last three decades.

The Schiller Institute *amicus* puts the issue squarely before the court: Will the U.S. judicial system continue to uphold the principles established at the Nuremberg Military Tribunal, or not? If the court ruling in any way permits the practice of assisted suicide, it will have condoned Nazi-like crimes against humanity, no matter how vociferously its advocates argue that they just want to be "angels of mercy." That's precisely what the Nazi doctors said of their euthanasia program—and we all know what happened.

The cases at bar

The Supreme Court has consolidated the appeals to two Circuit Court rulings. The Ninth Circuit Court of Appeals ruling, taken in San Francisco in March 1996, said that terminally ill patients—as well as physically or mentally ill patients—have a fundamental right to be killed by their doctors. The Second Circuit Court of Appeals ruling, taken in New York in April 1996, said that doctors have the right to prescribe lethal suicide drugs to patients who request them.

These rulings overturned the laws of both states, which had banned assisted suicide, on the basis that they violated federal Constitutional rights.

The basis of both decisions was the Fourteenth Amendment to the U.S. Constitution, which was passed to eliminate racial discrimination after the Civil War. The first section of that Amendment reads as follows: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Ninth Circuit Court ruling said that patients could not be deprived of their "due process" right to doctor-assisted suicide. The case grew out of a 1994 challenge by a number of patients to the Washington State law which prohibits the prescription of life-ending drugs for use by terminally ill, mentally competent adults who wish to hasten their deaths. The court's decision, 154 pages in length, argues that previous Supreme Court rulings on abortion and the "right to die," provide "persuasive evidence that the Constitution encompasses a due process liberty interest in controlling the time and manner of one's death."

The Second Circuit Court of Appeals ruled that terminally ill patients who wish to have their doctors prescribe lethal suicide drugs, have a Constitutional right for such "equal protection" under the law. The court claimed that New York's statute "does not treat equally all terminally ill patients who are in the final stages of fatal illness and wish to hasten their deaths," and that the distinctions New York State law makes

among these patients "do not further any legitimate state purpose." In specific, the court agreed with the doctors who brought the suit (allegedly on behalf of their patients, now deceased), that, if the law would allow patients to have themselves killed by having medical treatment, and/or food and water, withheld, that it should also allow the same patients to be killed, more painlessly, by assistance of a doctor.

Both New York and Washington State appealed the overturning of their bans on assisted suicide, to the Supreme Court, and the court accepted the cases in the summer. The cases are now known as *State of Washington v. Glucksberg, Halperin, Preston, and Shalit,* and *State of New York v. Quill, Klagsbrun, and Grossman.*

The precedents

This will be the first time that the Supreme Court has agreed to rule on an assisted suicide case, but it is not its first "right to die" case. That occurred in 1990, when the court issued the so-called *Cruzan* ruling. In addition, the decision of the Supreme Court in the ground-breaking *Roe v. Wade* case, has often been cited in state courts as having established the precedent for a right to personal decisions over one's body, and a lessening of the state's interest in protecting life, that would permit the so-called "right to die."

The *Cruzan* ruling stated that "the United States Constitution would grant a competent person a constitutionally protected right to refuse life-saving hydration and nutrition." In addition, the court agreed that others, including families, have the right to terminate an incompetent patient's life-sustaining treatment, or food and water, by exercising that patient's right to privacy and self-determination *for* them, or allowing others to "make a decision that reflects [a patient's best] interests."

Under this decision, the family of Nancy Cruzan, who had suffered extreme brain injuries in 1983, was able to overcome the ruling of the Missouri Supreme Court, which had said that starving and dehydrating a person were not the same as withholding medical treatment. Under the U.S. Supreme Court ruling, the family had gained the right to kill their daughter by withholding food and water, but with one hitch: The U.S. Supreme Court said that state laws such as Missouri's could require families such as the Cruzans to demonstrate that they had "clear and compelling" proof that their daughter would have wanted to be killed, rather than be kept alive.

The *Cruzan* decision was a major step toward euthanasia, Nazi-style. Starvation had been ruled the same as withholding medical care, yet starvation clearly has no other purpose than to kill the individual. In addition, patients who were unable to communicate clearly, or whose wishes could be ignored, could be killed on nothing more than the memory and word of another, who said that they would have preferred not to live in a dependent, or "undignified," state.

The only roadblock which the *Cruzan* ruling left in the path of legalizing euthanasia, was the latitude which it left for the states. The states were given the right to set up procedural safeguards that demanded "clear and compelling" proof of a patient's treatment wishes, expressed when they were competent. That meant that it stopped short of saying that euthanasia was a fundamental civil right.

The argument presented

It is clearly possible that the Supreme Court will once again sidestep the issue of a Constitutional right to assisted suicide or euthanasia, and leave the matter up to the states to decide. This would only postpone a decision on the matter of principle which must be decided, and would not put a stop to the crimes of the euthanasia lobby.

It should be clear that it is the euthanasia lobby—not just some poor suffering individuals—who are pushing these cases. The original case in Washington State was brought by Compassion in Dying, which also spearheaded the challenge to New York State's ban on assisted suicide brought by Dr. Timothy Quill, who has a long record of promoting suicide aid and euthanasia.

Unfortunately, the standards of medical practice, and legal precedent, which have been established in the United States over the last 30 years, have been such, that, once you accept those standards, it is hard to make a principled argument against assisted suicide. This is even the case for organizations that are passionately pro-life, such as the Catholic Medical Association.

The guts of the standard argument, including that being made by the states of New York and Washington, is that there is a fundamental difference between "active" and "passive" euthanasia. Thus, those who want to prevent doctors from becoming killing agents, seek to define a qualitative difference between permitting yourself, or your dependent, to be starved or dehydrated to death, and having a lethal poison administered to bring on a quicker, more painless death. Yet, the reality is that, as soon as you have accepted the "right" to starve someone, you've accepted euthanasia. The language is even the same as the Nazis' in many of the states' legal cases; it is argued, and ruled, that it is in the "best interest" of the patient to die.

Against this central point, of course, the opponents of the Constitutional right to assisted suicide can make some strong arguments against the abuse of any kind of informed consent by a person who is either unable to communicate, or is otherwise dependent upon others. Such an argument was made in the original round of *amici,* when New York and Washington were seeking to get the Supreme Court to review the Circuit Court decisions. A group of former Civil Rights Commissioners of the United States presented a brief which argued that any decision declaring a so-called right to physician-assisted suicide, would have disastrous implications for the civil rights of the poor, persons with disabilities, and racial minorities. Their argument was summarized as follows:

"Based on their experience in striving to protect the civil rights of all Americans, *amici* find little comfort in the Second Circuit's express limitation of that right to competent, terminally ill adults or in its assurance that adequate safeguards can be crafted to prevent the abuse of that right. In their estimation, physician-assisted suicide, by its intrinsic nature and the reasoning offered in defense of its decriminalization, contains the seeds of both its expansion and its abuse. The Court of Appeals' decision should be reviewed by this Court and reversed because of that decision's fundamental illogic, its lack of sound constitutional or legal foundation, and its usurpation of a field of decision-making properly reserved to a state's citizens and their elected lawmakers. In addition, there is ample justification for New York's criminalization of all assisted suicide in the rational judgment that any exception to a thorough prohibition (such as an acceptance of physician-assisted suicide in certain instances) would pose an unacceptable risk to its citizens' lives, health, and access to uncompromised medical care—a risk that can only be heightened in the case of the most vulnerable members of society."

One of the more flagrant examples of how correct these Civil Rights Commissioners are in their judgment that safeguards will not work, is the fact that the Ninth Circuit decision, written by Judge Stephen Reinhardt, outright dismissed widespread and well-publicized euthanasia abuses in the Netherlands, in order to argue that assisted suicide can be safely "regulated" (see *EIR,* Oct. 25, "Assisted Suicide in the Netherlands: Nazi Policy Is No Model for the U.S.A.").

Only principle will stop it

As is typical in legal practice these days, some of the rulings—as in the case of the death penalty, and of Judge Reinhardt's Ninth Circuit decision—rely on the foundation of "public opinion" or "community standards" in order to support their conclusion. Supreme Court Justice Antonin Scalia, in particular, has supported extension of the death penalty to the mentally retarded, for example, on the grounds that this is an acceptable practice, in the view of the public (according to whatever polls have been taken). Judge Reinhardt argues that public opinion polls demonstrate that the population has already accepted assisted suicide as part of their "tradition" and "current social values."

This is another step in the full embrace of Nazi "justice." Not only have the legal precedents gone a long way toward accepting the Nazi idea that there are lives "not worthy to be lived," but also, the standard of determining whose life is worthy, is effectively left to the vagaries of public opinion. Law is no longer established by reasonable standards or principle, but by the power of the majority. Should such a standard be embraced as a justification for providing a so-called Constitutional right to assisted suicide, it would mean another giant step toward turning the United States into a fascist state.

That public opinion has reached this degraded point, is not very arguable—especially in the face of the major propaganda campaign waged on behalf of the death culture. In Oregon, for example, in November 1994, a referendum making it legal for physicians to prescribe lethal drugs for their patients, was voted up by a margin of 52 to 48%. John Pridonaff, then-executive director of the National Hemlock Society (the society devoted to legalizing euthanasia outright), said that the Oregon initiative was a start toward making euthanasia and physician-assisted suicide legal to end the lives of physically incapacitated people.

This was underscored by the fact that the state intended to provide Medicaid funds for suicide aid—while cutting those funds for mental health services to the poor!

It is a fundamental principle of our republic that the will of the majority is *not* the law; that law is based upon the principles established in the Declaration of Independence and the Constitution, principles that include a commitment to the Life, Liberty, and Pursuit of Happiness of all individuals, and to the General Welfare of the current generation, and our posterity. Under such principles, the Nazi concepts of utilitarianism, lives not worthy to be lived, and euthanasia must be rejected, not on a practical basis, but on principle.

EIR will continue coverage of this issue as the *amicus* briefs become more generally available. For now, we refer you to the Schiller Institute brief, reproduced below.