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Federal courts proclaim assisted-suicide 'right'

by Linda Everett

In a stunning renunciation of the concept of the sacredness of individual human life, two federal appeals courts, in a matter of weeks, have struck down century-old laws in Washington State and New York State that prohibit aiding or causing suicides, claiming that terminally ill patients have a constitutionally protected right to receive a doctor's help in "hastening" their deaths.

On March 6, the Ninth U.S. Circuit Court of Appeals in San Francisco ruled that terminally ill patients—as well as physically or mentally ill or unconscious patients—have a fundamental right to be murdered by their doctors. While the 8-3 decision guarantees the right of "mentally competent, terminally ill individuals" to commit suicide with lethal drugs prescribed by doctors for that purpose, Judge Stephen Reinhardt, who wrote the opinion, delineates a far broader application of that suicide right by extending to legal guardians, family members, and third parties—such as doctors, ethics committees, hospitals, and other institutions—the right to murder a whole spectrum of mentally or physically disabled individuals who are incapable of "choosing" suicide for themselves!

On different constitutional grounds, the U.S. Circuit Court of Appeals for the Second Circuit in New York ruled on April 2, that physicians have the right to prescribe lethal drugs "to be self-administered by mentally competent patients who seek to end their lives during the final stages of a terminal illness." The unanimous decision, binding in three states, claims that "Physicians do not fulfill the role of 'killer' by prescribing drugs to hasten death."

The rulings are barbaric, given that it was this nation, as a leader of the civilized world, that stood alone in its insistence that Nazi doctors be brought to justice at Nuremberg for their abhorrent crimes of euthanasia against German civilians. Now, two generations later, just beneath the veneer of the many U.S. policymakers, clinicians, attorneys, ethicists, and others who cheer this ruling as a "celebration of basic civil and personal rights," we see a nation enforcing the same malthusian economic solutions that Adolf Hitler used (consider Newt Gingrich's Medicare and Medicaid cuts). We see a population brainwashed enough to believe that their "dignity" lies in their personal "choice" of the horrors behind the official motto of the Nazi Tiergarten 4 euthansia program: "The syringe belongs in the hand of a physician."

In October 1939, Hitler charged Reichsleiter Philip Bouhler and Dr. Karl Brandt "with the responsibility for expanding the authority of physicians . . . so that patients considered incurable according to the best available human judgment of their state of health, can be granted a mercy death." Nazi doctors, nurses, and panels of psychiatrists (just like today's hospital ethics committees) responded by systematically murdering over 100,000 mentally and physically ill German children and elderly citizens by lethal injections, drugs, poisonous gas, and starvation—all judged at Nuremberg to be crimes against humanity.

The Ninth and Second Circuit Court decisions locate the "right" to suicide assistance in two clauses of the Fourteenth Amendment to the U.S. Constitution. Section One of the Fourteenth Amendment reads, in part: 1) "that no State shall deprive any person of life, liberty, or property without due process of law; nor 2) deny to any person within its jurisdiction the equal protection of the laws. . . ." While the Ninth Circuit discovered the guarantee of doctor-assisted suicide within the right to due process, the Second Circuit located it within the equal protection clause.

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A demonstration by the National Democratic Policy Committee against euthanasia legislation in New Jersey in 1985. Federal appeals courts have now affirmed that it is legal for doctors to "help" their patients commit suicide—even if the patient is mentally or physically incapable of "choosing" suicide for himself.

We give first the background to each of the suits—the first ever "right to die" cases to be argued before federal appeals courts—and then analyze the arguments.

The Washington State case

The March 6 ruling of the Ninth Circuit Court of Appeals grew out of a January 1994 challenge to an 1854 Washington State law that prohibits anyone who "knowingly aids another person to attempt suicide." The suit was brought by a Seattle-based group called "Compassion in Dying," which "facilitates" suicides, on behalf of three (now deceased) patients and four doctors. They argue 1) that the state ban violates the Due Process clause of the Fourteenth Amendment, because it bars a terminally ill patient's constitutionally protected liberty interest to "end their suffering"; and 2) that the law violates the Equal Protection rights of these patients, because it distinguishes between those terminally ill patients who have a right "to end a painful and futile life" by letting doctors "remove life-support," and those patients who are not dependent on life-support, and therefore must depend on a doctor to prescribe a "life-ending drug."

U.S. Circuit Court Judge Barbara Rothstein agreed with the suicide facilitators in her May 1994 decision, and declared Washington's law unconstitutional. The state, along with several organizations, including the U.S. Catholic Conference, appealed her decision to the Ninth Circuit Court of Appeals. In March 1995, a three-judge panel of the Ninth Circuit shot down Rothstein's ruling in a 2-1 decision. The majority found that assisted-suicide has no basis in the "traditions of our nation," and, in a moment of sanity for that court, ruled that assisted-suicide is "antithetical to the defense of human life that has been a chief responsibility of our constitutional government." The suicide facilitators appealed for a rehearing of the issue before the 11-member Ninth Circuit Court of Appeals (en banc). Joining "Compassion in Dying" in their appeal for an en banc hearing were: the American Civil Liberties Union of Washington, the Hemlock Society of Washington, the National Organization for Women of Seattle, Americans for Death with Dignity, various AIDS advocacy groups, the Lambda Legal Defense and Education Fund, Inc., the American Humanists Association, and the Unitarian Universalist Assocation of Seattle.

The Ninth Circuit responded with a 154-page ruling on March 6. The majority declared that the segment of Washington's law that prohibits "the prescription of life-ending medication for use by terminally ill, mentally competent adults who wish to hasten their deaths, violates the Due Process clause of the Fourteenth Amendment." The court did not address the Equal Protection issue.

Reinhardt: suicide is an American 'tradition'

When the Supreme Court determines the existence of important rights or liberty interests, Judge Reinhardt argues, it examines whether those liberty interests are part of our history, experience, and societal attitudes. But, even if there once were a prohibition, or lack of support, for a claimed liberty

interest, like the right to assisted suicide claimed by the patients in this suit, Reinhardt says, that's not reason enough to reject the claim before the court. The court has also defined "fundamental" due process liberty rights as those rights that are "deeply rooted in this Nation's history and tradition." So, the question is: Was physician-assisted suicide ever part of our American tradition? Reinhardt determines that suicide is considered "commendable in literature, mythology and practice" and *is* part of our history. That's an assertion the Second Circuit Court flat-out denies, and it's a lie.

To bolster his belief that assisted suicide is part of the American "tradition" and "current societal attitudes," Reinhardt claims that the numerous public opinion polls on assisted suicide demonstrate "increasingly widespread support for allowing terminally ill patients to hasten their deaths and to avoid painful, undignified, and inhuman endings to their life." The only thing such polls really demonstrate is that Americans are, along with most of the Ninth Circuit Court, about as brainwashed as any pagan death cult on the issue. Is that cause for revamping the fundamental laws of our nation?

A liberty interest in death on demand?

Judge Reinhardt examines whether there exists a liberty interest in "determining the time and manner of one's death," by reviewing how the Supreme Court dealt with liberty interests in its *Planned Parenthood v. Casey* abortion ruling (1992), and its *Cruzan v. State of Missouri* "right to die" ruling (1990).

On *Casey,* Reinhardt writes: "The Court surveyed its prior decisions affording 'constitutional protection to personal decisions relating to marriage, procreation, contraception . . .' and [the court] then said 'That these matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. . . .' " Reinhardt adds what can only be called the Supreme Court's "New Age" quote from *Casey:* "At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under the compulsion by the State."

Reinhardt finds that that ruling applies directly to making decisions about "how and when to die." He writes: "Prohibiting a terminally ill patient from hastening his death may have even more profound impact on a person's life than forcing a woman to carry a pregnancy to term. . . . For such patients, wracked with pain and deprived of all pleasure, a state-enforced prohibition on hastening their deaths condemns them to unrelieved misery or torture. Surely, a person's decision whether to endure or avoid such an existence constitutes one of the most, if not the most, 'intimate and personal choices a person may make in a life-time'. . . ."

Reinhardt then reviews the Supreme Court's *Cruzan* ruling to determine whether choosing assisted suicide exists as a liberty right, as part of a whole spectrum of "right to die" acts, such as ending medical treatment. The court ruled in *Cruzan* that "a competent person has a constitutionally protected liberty interest in refusing unwanted medical treatment." Reinhardt cites Justice Sandra Day O'Connor, in her concurring opinion: "That a liberty interest in refusing medical treatment extends to all types of medical treatment from dialysis or artificial respiration to the provision of food or water by tube or other artificial means." Reinhardt concludes that *Cruzan,* "by recognizing a liberty interest that includes the refusal of artificial provision of life-sustaining food and water, necessarily recognizes a liberty interest in hastening one's death."

The abortion issue

In his attempt to determine whether Washington's ban "unconstitutionally infringes" on the liberty right to "hasten one's death," Reinhardt cites what he says are "compelling similarities" between right-to-die and abortion issues. "In the former as in the latter, the relative strength of the competing interests changes as physical, medical or related circumstances vary. In right to die cases, the outcome of the balancing test may differ at different points along the life cycle as a

Selling Americans on the 'right to die'

Who pays for all those polls that purport to show how the population "believes" assisted suicide is a right. Would it make a difference, if Americans knew that health insurance companies such as Blue Cross and Blue Shield use your premium dollars to pay for such studies?

In some cases, the rigged surveys are conducted by the same groups, like the Robert Wood Johnson Foundation, that are interested in profiling the population's acceptance of euthanasia and assisted suicide—as a prelude to getting you to accept rationing and limits on health care. The Robert Wood Johnson Foundation has also spent millions on developing guidelines that deny the elderly, sick, and disabled life-saving medical treatment. Judge Reinhardt's philosophy fits right in with that "post-industrial" perspective. Instead of promoting great science projects to conquer the scourge of AIDS or diseases of aging, he blames modern medicine and technology, and concludes that there is now an "exponential . . . need and capability to assist individuals to end their lives."

person's physical or medical condition deteriorates, just as in abortion cases the permissibility of restrictive legislation may vary with the progression of the pregnancy."

For instance, in the Supreme Court's *Roe v. Wade* (1973) abortion ruling, a mother's abortion "right" lessens as the child reaches viability. The closer to full term the pregnancy, the greater the state interest in protecting the life of the child. In *Casey,* the Supreme Court examined whether a Pennsylvania abortion provision "posed an undue burden on the exercise of that liberty interest" of choosing abortion. And, in *Cruzan,* Reinhardt says the Supreme Court crafted a "continuum approach," in which the court balanced the weight of the individual's liberty right-to-refuse treatment interests, against the state's interests in limiting or regulating those rights to protect its citizens.

Reinhardt writes, "The more important the individual's right or interest, the more persuasive the justification for [the state's] infringement would have to be." So, what, if any, state interests does the Ninth Circuit recognize when sick patients choose to "hasten death"? The more important question is, how could a state possibly protect vulnerable citizens, once suicidal mayhem is unleashed by a federal court fixated on death?

Reinhardt writes: "*Casey* and *Cruzan* provide persuasive evidence that the 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.' Our conclusion is strongly influenced by, but not limited to, the plight of the mentally competent, terminally ill adults. *We are influenced as well by the plight of others such as those whose existence is reduced to a vegetative state or a permanent and irreversible state of unconsciousness*" (emphasis added).

He writes that "laws in state after state demonstrate" that the state's interest in protecting its citizens' lives nearly evaporates, if the individual whom the state seeks to protect is "terminally ill or permanently comatose and has expressed a wish that he be permitted to die (or, if a representative has done so on his behalf)." Simply put, since the right to end a patient's treatment extends to the patient's court-appointed legal guardian, those same guardians now have the right to request a lethal injection for the incompetent and/or unconscious patient!

Again, we ask: Does the court not recognize any state protection of such vulnerable patients? There are an estimated 15,000 severely brain injured, comatose, or unconscious patients now cared for in U.S. nursing homes and institutions.

Can Reinhardt's decree be judged any different from Hitler's order to his Nazi doctors?

Reinhardt claims that assisted suicide is not an act of euthanasia, which he defines as "painlessly putting to death persons suffering from incurable and distressing disease . . . as an act of mercy, but not at the person's request." He explains: "[W]e should make it clear that a decision of a duly appointed surrogate decision-maker is for all legal purposes the decision of the patient himself." So, since the courts can appoint guardians to starve an unconscious patient, or, in fact, any patient deemed to be in a "permanent vegetative state" (PVS), the courts can appoint a guardian to inflict "suicide" on them.

While the Ninth Circuit rescinds all state protections of incompetent or unconscious patients, it extends protection to all those involved in carrying out their murder, including: "the pharmacist who fills the prescription; the health care worker who facilitates the process; the family memeber or loved one who opens the bottle, places the pills in the patient's hands, advises him on how many pills to take and provides the necessary tea."

If such patients do not have the right to state protection, how soon will it be before society will see fit to use unconscious or comatose patients, also labeled as existing in persistent vegetative states, in medical experiments like the Nazi doctors carried out? In early April, a British bioethics professor from Birmingham University, David Morton, proposed at the Edinburgh Internatonal Science Festival that PVS patients be used in medical research, instead of using chimpanzees. Morton says a debate has arisen as to whether these people could be called "people" any more.

Who qualifies as 'terminal'

The Ninth Circuit, along with the euthanasia mob, claims there is no danger of a "slippery slope" with this ruling, because it *only* applies to "terminally ill" patients. The problem

The Cruzan case

In the *Cruzan* case (*Cruzan v. Webster,* 1990), the family of the brain-injured patient, Nancy Cruzan, asked the Supreme Court to overrule a Missouri law that barred them from ending Nancy's feeding. Missouri, as do the states of New York and Michigan, requires "clear and convincing evidence" of what an incompetent patient's medical treatment wishes would be.

The U.S. Supreme Court ruled that a state, in its interest to protect life, may legitimately require "heightened evidence" of a mentally incompetent patient's treatment wishes, before allowing a family to remove life-sustaining treatment or food and water.

The Cruzans subsequently discovered an off-the-cuff remark allegedly made by Nancy some years earlier, which provided them with the state-mandated "evidence" that Nancy would have wanted to be starved to death.

is, that term, and this decision, are so elastic, that most of the population is a ready target for physician-induced suicide. Reinhardt develops the term according to existing laws—but, in reality, as we show below, far, far more Americans will increasingly fall into this category, as the country's economic crisis deepens. Note what the American Bar Association Commission on Legal Problems of the Elderly reported in 1992: "Seventeen years of experience with state living will statutes that have used terminal condition as a prerequisite to patient directives, have demonstrated that [the term] terminal lacks any truly objective operational definition. The terminal requirement is arbitrary and unworkable. . . ."

Reinhardt uses the term "terminally ill" as it is defined in a model statute, called the Uniform Rights of the Terminally Ill Act. He states: "The Uniform Rights of the Terminally Ill Act and in more than 40 state natural death statutes, including Washington's . . . defined the term without reference to a fixed time period. . . . [T]he Washington Act, like some others, includes persons who are permanently unconscious, that is in an irreversible coma or a persistent vegetative state (PVS). . . . Indeed, all of the persons described in the various statutes would appear to fall within an appropriate definition of the term."

Does it matter that because of the results of recent studies, several U.S. and European experts now warn that a diagnosis of PVS is unscientific, that these patients can and do recover? These researchers found the cynical prognosis of "permanently unconscious" to be a self-fulfilling prophecy, because once a prognosis of PVS or a label of "permanently unconscious" is given, patients are denied the time, treatment, and aggressive rehabilitation they would need to recover. Too often, it is the pessimism and malthusian economic perspective of hospitals, doctors, and ethicists, that kill these patients—not a "terminal" medical condition.

Another problem for those who are diagnosed as "terminally ill," is the fact that health insurers and the Medicare program are promoting hospice care or "end of life" care—not curative medical treatment for them. How often do doctors give an incorrect terminal prognosis? Hospices, which provide only palliative care for terminally ill patients, complain

Robert Wendland: one case of a 'PVS' patient

Robert Wendland, 43, sustained head injuries in a 1993 auto accident that left him in a coma for 16 months. He awoke in January 1995 and steadily improved, through rehabilitation. He is now paralyzed on one side, but zips about the halls of the Lodi Memorial Hospital in California in an electric wheelchair. He communicates with nods, and therapists think he could soon be talking and eating on his own—except for the fact that his wife decided to end all his treatment, therapy, food, and water. Robert has significant cognitive difficulties, and is considered to be mentally incompetent, but he has communicated repeatedly that he wants to live and wants more rehabilitation.

Robert's wife is his duly appointed surrogate, decision-maker and fiduciary. The Lodi Memorial Hospital Ethics Committee is ready to accede to her request. Already, without consulting other family members or the hospital staff who worked daily with Robert, they have unanimously decided that it is "ethically and medically appropriate" to starve Robert. The committee made their decision after viewing a video of Robert carrying out complex tasks and responding appropriately to questions. Theynever observed him touring the hospital parking lot in his wheelchair,

An ombudsman, whose specific job it is to advocate Robert's interest, agreed with the starvation plan.

Robert's mother and sister have challenged his wife for conservatorship, as well as her starvation plans, in court.

Robert has been repeatedly moved to different wings of the hospital, isolating him from anyone he knew—a course of action known to be disorienting to people with cognitive disabilities, causing them to regress and withdraw.

How could the state protect the right to life of Robert, who is labelled as being in a "permanent vegetative state" (PVS), or near-PVS?

A June hearing is scheduled in the Superior Court of California to determine whether Robert will be starved to death or not. Judge Bob W. McNatt, who will hear the matter, repeatedly refuses to appoint an attorney to represent Robert's interests in court. Despite the fact that Robert can and does communicate, McNatt asserts that "Robert's inability to speak mitigated against providing him his own counsel because he would not be able to participate in his representation in a meaningful fashion."

Although the California Supreme Court has been petitioned on the issue of Robert's right to an attorney, that court routinely refuses to hear 96% of the appeals before it.

An attorney for the family told *EIR* that under the Ninth Circuit Court's ruling, Robert's wife, as his duly appointed surrogate, would be permitted to request, on Robert's behalf, that "suicide drugs" be administered to him.

of a "failure to die" syndrome, in which "substantial numbers" of so-called terminally ill patients live beyond their doctors' expectations of six months or less to live. Should Reinhardt's ruling stand, those patients, with their incorrect terminal prognosis, may soon be shuffled into the use of lethal prescriptions.

But, there's more. Reinhardt notes that the same model statute also declares a patient to be in a terminal condition "if the condition is incurable and irreversible, that is, *without* administering life-sustaining treatment, the condition, will, in the opinion of the attending physician, result in death in a relatively short time" (emphasis added). So, is the Ninth Circuit backing suicide as the only option for the millions who have asthma but can't afford treatment, or, for diabetics who can't afford insulin because of Medicaid cuts, or because insurers won't provide them coverage due to their preexisting condition?

What about those people with a severe but treatable illness or condition, who refuse treatment because they are depressed, and their depression has not been diagnosed and/or treated? They, too, would be considered terminally ill, and thus would qualify for suicide assistance. This is not an inconsiderable problem. Depression is typical when a person first learns that he or she has a serious or life-threatening disease or condition. The problem needs attentiveness, while the patient takes on the battle for life.

Court rules patients are better off dead

Despite massive evidence to the contrary, the Ninth Circuit claims that the poor, handicapped, elderly, and minorities would not be pressured more heavily into requesting physician-assisted suicide than any other part of society. However, the court says, "Faced with the prospect of astronomical medical bills, terminally ill patients may decide that it is better for them to die before their health care expenses consume the life savings they planned to leave for their families, or worse yet, burden their families with debts." The court assures us that the same state governments that are in a frenzy today to slash Medicaid, welfare, and other health care programs, will make sure that such patients "do not make rash decisions"!

Of course, most states won't have the resources to implement such guidelines. And, the court admits, "we are reluctant to say that, in a society in which the costs of protracted health care can be so exorbitant, it is improper for competent, terminally ill adults to take the economic welfare of their families and loved ones into consideration."

The judges are endorsing the same malthusian policy that led Hitler to order the murder of Germany's elderly and infirm, in order to shift those resources to the war effort. The only difference today is that Newt Gingrich's Conservative Revolution has targetted the same populations for the alleged purpose of deficit reduction. Indeed, the Gingrich-Armey demands to "reform" Medicaid nursing home regulations, to eliminate national standards of care for elderly and disabled residents, and to gut federal laws that assure "reasonable" Medicaid reimbursement rates to nursing homes—are universally recognized as transforming these vital facilities into "warehouses for the dying."

Reinhardt admits that the state has an interest in preventing anyone from taking his own life out of depression, desperation, or "as a result of any other problem, physical or psychological, which can be significantly ameliorated." Is the court saying that state protection is unwarranted for those whose mental or physical difficulties cannot, yet, be "ameliorated"? And, how does the state protect vulnerable patients when the value of life is cheapened by the notion that it is permissible to eliminate it in any instance? During the lengthy public debate on assisted suicide in Oregon, before and during the campaign to promote a voter initiative to legalize assisted suicide there, the suicide rate among Oregon teens and others increased dramatically.

The Ninth Circuit claims that states would want to prevent deaths that might occur in error, once assisted suicide were legal; but, they add, "Should an error actually occur it is likely to *benefit* the individual by permitting the victim of unmanageable pain and suffering to end his life peacefully and with dignity at the time he deems most desirable" (emphasis added).

How will doctors be affected by suicide requests? Will they be forced to give lethal injections when patients fail to die after taking the prescribed suicide drugs? Will pharmacists have to study to find out the most lethal dosages—as doctors in the Netherlands did a decade ago—to satisfy a patient's requests for euthanasia?

The Ninth Circuit claims that, since doctors are already playing a much more active role in causing the deaths of patients—by doing everything from clamping feeding tubes so as to cause starvation, to turning off ventilators—there is "no threat at all to the integrity of the medical profession" by making it legal for doctors to prescribe lethal medication. Reinhardt writes: "[S]ince doctors are highly-regulated professionals, it should not be difficult for the state or the profession itself to establish rules and procedures that will ensure that the occasional negligent or careless recommendation by a licensed physician will not result in an uninformed or erroneous decision by a patient or his family."

'Do your dying relatively early'

Reinhardt manages to ignore the fact that medical leaders in the U.S. euthanasia/suicide movement flaunt their role in breaking existing laws by assisting in "suicide" deaths of their patients. In fact, a recent study of Washington doctors claims that U.S. physicians provide as much "aid-in-dying" to patients in the United States, where the practice is illegal, as Dutch doctors do in the Netherlands, where the practice is allowed.

Instead of reversing that situation, suicide proponents,

such as Margaret Pabst-Battin, are on national television with the claim that such studies demonstrate the "need" to legalize and regulate the practice—to protect patients from renegade doctors! Battin, who is enthralled with the Dutch system of death, told a Hemlock Society conference that with legalized euthanasia, "the normal, ordinary, expected thing to do, is to do your dying relatively early, relatively easily, in a way in which you won't impose a burden on others." In her writings, she asks if suicide can be morally correct, even obligatory. If it is, the philosophical claim "that the very old have 'had their time' or 'had their share' may be valid."

Reinhardt brazenly dismisses the crisis in the Netherlands, where the practice of euthanasia is heavily regulated, but where tens of thousands of abuses were found by the government's own 1991 "Remmelink Report." The report detailed how physicians and hospitals routinely killed thousands of patients without their knowledge or consent. Legalized killing *does* erode the integrity of doctors, such that the Royal Dutch medical association requires that physicians no longer directly kill patients with lethal injections, but only provide the deadly drugs which the patient, himself, administers.

The majority in the Ninth Circuit's ruling are so fixated on selling suicide as the alternative to "debilitating pain and . . . humiliating death," that they completely ignore the factor of compassion in medical science. Many, many doctors and researchers are so moved by their suffering patients, that they created a whole arsenal of pharmaceutical breakthroughs, sophisticated pain relief modalities, and adaptive technologies to help patients live and defeat many of their diseases or disabling conditions, even as we continue to search for a cure for them (see *EIR*, July 7, 1995, "Kevorkian's Victims Needed Medical Science, Not Suicide").

A dissenting opinion

In his dissent, Judge Robert R. Beezer holds that there is no fundamental liberty interest in physician-assisted suicide, because, as the lower court found, "there is no history or tradition supporting suicide," and because, however compelling the suicidal wishes of a patient, "it cannot honestly be said that neither liberty nor justice will exist if access to physician-assisted suicide is proscribed."

Beezer also finds that the Washington law does not violate the fundamental rights of the terminally ill, because it "rationally advances four legitimate government purposes": preserving life, protecting the interest of innocent third parties, preventing suicide, and protecting the ethical integrity of the medical profession—all state interests which the Supreme Court recognizes.

He notes that suicide is a leading cause of death in Washington State, and warns that "people at the margins"—"the poor, elderly, the disabled, and minorities are all at risk from undue pressure to commit physician-assisted suicide, either through direct pressure or through inadequate treatment of their pain and suffering."

Quoting the 1994 New York State Task Force on Life and the Law study on assisted suicide, Beezer writes: "[I]t must be recognized that assisted suicide and euthanasia will be practiced through the prism of social inequity and prejudice that characterizes the delivery of services in all segments of society, including health care. Those who will be most vulnerable to abuse, error, or indifference, are the poor, minorities, and those who are least educated and least empowered. . . . [M]any patients in large overburdened facilities serving the urban and rural poor . . . will not have the benefit of skilled pain management and comfort care. Indeed, a recent study found that patients treated for cancer at centers that care predominantly for minority individuals were three times more likely to receive inadequate therapy to relieve pain. Many patients also lack access to psychiatric services."

Furthermore, Beezer says these patients cannot be protected by any amount of procedural safeguards, "if the Dutch experience is any indication. The only way to achieve adequate protection for these groups is to maintain a bright-line rule against physician-assisted suicide." For all that, Beezer then claims that terminally ill, mentally competent adults have a nonfundamental right to assisted suicide, "rooted in the liberty to make intensely private choices," as is protected in *Casey*.

Circuit Judge Ferdinand F. Fernandez joins in Judge Beezer's dissent with one caveat: "Nothing in his opinion, or in that of the majority, convinces me that there is any constitutional right whatever to commit suicide. In my view, no one has an even nonfundamental constitutional right to become what our ancestors pithily denominated a *felo de se*"—a felonious, malicious act against oneself.

Circuit Judge Andrew J. Kleinfeld also joins in Beezer's dissent, finding that he doubts "that there is a constitutional right to commit suicide," because no substantive Due Process claim can be maintained "unless a claimant demonstrates that the state has deprived him of a right historically and traditionally protected against state interference"—which is not the case with suicide. He writes: "That a question is important does not imply that it is constitutional. The Founding Fathers did not establish the United States so that elected officials would decide trivia, while all the great questions would be decided by the judiciary."

Kleinfeld finds the majority opinion "exactly wrong," when it holds that there is no difference between providing pain medication for the purpose of relieving pain, knowing that at some dosage it could cause death, and providing medication for the specific purpose of causing death. "Knowledge of an undesired result does not imply that the actor intends that consequence," he states.

State promises to appeal

Washington Attorney General Christine Gregoire announced that the state of Washington would appeal this hid-

eous ruling to the U.S. Supreme Court, saying, "This is a significant issue for the nation. It is a watershed issue of public policy that requires the review and analysis of our nation's highest court." At least one Ninth Circuit judge agrees, since the court took the unusual step of asking both sides in the case to submit briefs on whether the full Ninth Circuit Court—all 25 judges—should review the case. The ruling is binding in Washington, Oregon, Idaho, California, Arizona, Alaska, Hawaii, Nevada, Montana, and Guam. However, the prohibition against assisting in suicide continues, until all appeals are resolved.

While it is uncertain whether Washington State will proceed with an appeal to the U.S. Supreme Court, there is little doubt that at least one of the three outstanding federal court challenges to state laws prohibiting assistance in suicide, will reach the country's highest court. Besides the Washington suit, an appeal concerning Oregon's new assisted-suicide law, known as Ballot Measure 16, is also before the Ninth Circuit Court. In a third case, New York State's Attorney General has already announced that he is prepared to go to the Supreme Court to appeal the April 2 decision by U.S. Circuit Court of Appeals for the Second District to overturn the state's criminal ban on assisting in suicide.

All of these challenges are proceeding against a backdrop of over a dozen state legislative proposals to decriminalize assisted suicide. In at least one state, Florida, a pro-suicide group is suing in state court to overturn that state's law against assisting or promoting suicides.

The New York State case

The suit challenging New York's two suicide statutes makes similar claims to those filed in the Washington suit, but the Second Circuit's response is significantly different.

Under New York law, a person is guilty of second degree manslaughter when "he intentionally . . . aids another to commit suicide"; he is guilty of a Class E felony "when he intentionally . . . aids another person to attempt suicide."

In July 1994, three New York physicians and several terminally ill patients sued the state of New York because, they claimed, the state's statutes that penalize suicide assistance prevent physicians from providing their patients with the help they request "in hastening death" (*Timothy E. Quill, M.D. et al. v. Dennis C. Vacco, Attorney General of the State of New York*). They contend that the Fourteenth Amendment guarantees 1) "the liberty of mentally competent, terminally ill adults with no chance of recovery to make decisions about the end of their lives," and 2) "the liberty of physicians to practice medicine consistent with their best professional judgment." This includes "hastening death with life-ending medication for the patient to self-administer for that purpose."

They also claim that New York's ban violates patients' rights to equal protection as guaranteed under the Fourteenth Amendment, because New York law recognizes a patient's right to choose to "hasten death" by "directing a physician to remove life-support equipment and take the additional steps necessary to bring about death," yet, it makes it a crime for doctors to comply with the request by patients not dependent on life-support, who need a lethal prescription to hasten their deaths.

In its December 1994 ruling, the U.S. District Court found no "fundamental" right to assisted suicide, because, the court said, "Such rights must be implicit in the concept of ordered liberty so that neither liberty nor justice would exist if they were sacrificed." It explained, "The Supreme Court . . . characterized such rights as those liberties that are deeply rooted in the nation's history and traditions"—but, the plaintiffs, Quill and company, made no attempt to substantiate that "physician-assisted suicide, even in the case of terminally ill patients, has any historic recognition as a legal right."

The District Court also found "a reasonable and rational basis for the distinction drawn by New York law between the refusal of treatment at the hands of physicians and physician-

Oregon's Measure 16

In November 1994, Oregon voters narrowly passed a physician-assisted-suicide law. But, before the law went into effect, several doctors and terminally ill and chronically ill patients sued to stop the state from enforcing the law because, they charged, it would deprive the sick of basic protections that the state would otherwise provide to the rest of its people (*Gary Lee v. State of Oregon, et al.*).

In August 1995, U.S. District Court Judge Michael Hogan found plenty of defects in the law, and ruled that it deprived terminally ill patients of their rights guaranteed under the Due Process clause of the Fourteenth Amendment. He urged Oregon voters to recognize the "deeply imbedded constitutional principle that certain fundamental rights may not be dispensed with by a majority vote."

The Attorney General of Oregon, along with Oregon Right to Die, the organization that ran the Measure 16 suicide campaign, appealed the decision to the Ninth Circuit Court of Appeals.

Although the Ninth Circuit has already voiced its opposition to Judge Hogan's decision in its March 6 Washington ruling, it is expected to issue a separate decision on Oregon soon. Either side in the Oregon case is likely to appeal an unfavorable decision to the U.S. Supreme Court.

assisted suicide. The finding states: "[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. The State has an obvious legitimate interest in preserving life and in protecting vulnerable persons. . . ." The court concludes that New York's laws do not violate patients' rights under the Fourteenth Amendment's Equal Protection clause.

Quill and company appealed the ruling to the U.S. Court of Appeals for the Second Circuit. That court agreed, in part, with the lower court ruling, but nevertheless, its April 2 decision largely handed the euthanasia mob the right to prescribe lethal drugs.

The Second Circuit found that New York's two statutes that prohibit suicide aid do not infringe unconstitutionally "upon any fundamental right or liberty." In fact, the three-judge panel arrived at a completely opposing judgment to that of the majority in the Ninth Circuit's Washington decision. They ruled that the right to suicide assistance "cannot be considered so implicit in our understanding of ordered liberty that neither justice nor liberty would exist if it were sacrificed. Nor can it be said that the right to assisted suicide claimed by plaintiffs is deeply rooted in the nation's traditions and history. Indeed, the very opposite is true. The Common Law of England, as received by the American colonies, prohibited suicide and attempted suicide. Although neither suicide nor attempted suicide is any longer considered a crime in the United States, 32 states, including New York, continue to make assisted suicide an offense. Clearly, no 'right' to assisted suicide ever has been recognized in any state in the United States."

With regards to a fundamental right, the court concludes: "The right to assisted suicide finds no cognizable basis in the Constitution's language or design, even in the very limited case of these competent persons who, in the final stages of terminal illness, seek the right to hasten death. We . . . decline the invitation to identify a new fundamental right."

Argument by Judge Miner

The unanimous Second Circuit ruling of the three-judge panel was written by Judge Roger J. Miner (with Justice Guido Calabresi concurring in a separate opinion).

The Second Circuit overruled the lower court in finding

Behind the New York suit

The three physicians who filed the challenge to New York's ban on aiding in suicide are Timothy Quill, M.D.; Samuel Klagsbrun, M.D.; and Howard A. Grossman, M.D.

Timothy Quill is the Rochester, New York physician whose main claim to fame is the publication of his article describing how he provided suicide aid to a depressed, suicidal, alcoholic patient who refused treatment to fight her leukemia (*New England Journal of Medicine,* March 7, 1991). Behind Quill's acclaimed "sensitivity" to the needs of dying patients, is his stated insistence that patients who are diagnosed as "dying" be accorded only palliative or hospice care. Too bad for them, should they want life-saving or life-sustaining medical treatment!

New York psychiatrist **Samuel C. Klagsbrun** was a long-time medical consultant to the Euthanasia Educational Council (EEC), a spin-off of the British-spawned Euthanasia Society of America, which promoted eugenics and the killing of "imbeciles" for the public good—years before Hitler ever did.

It was the EEC that charted out a strategy to have the United States embrace euthansia. In its 1971 conference in New York, the EEC planned to use what it called "tactics of emotional graduation." Just as the legalization of assisted suicide today is promoted only for "the end stage terminally ill patient," the Euthanasia Educational Council proposed a game plan in which they would first establish state laws that would permit euthanasia through the use of living wills "only" for the elderly and terminally ill, whose deaths the public would readily accept. Once that was accepted, the EEC would push on to "emotionally harder" cases, such as ending treatment for sick children (which they did), and eventually, as we see today, to murdering whole categories of vulnerable patients who never asked to be murdered.

Klagsbrun makes annual trips as a consultant to St. Christopher's Hospice in England, which, modeled in the tradition of the Hospitaller Knights of St. John, promotes death and dying as the practical answer to life-threatening diseases in a post-industrial economy such as England's. He says that with adequate pain treatment, very few patients (1-2%) would need physician-assisted suicide.

Why not, then, campaign for greater research in pain management—and not for usurping a nation's laws and the state protections of its citizenry?

"Compassion in Dying," the Seattle group behind the effort to invalidate Washington's ban on assisted suicide, also spearheaded and financed the challenge to New York's assisted-suicide ban. The suit, *Quill et al. v Vacco,* was written by Kathryn Tucker, the same Seattle-based attorney who argued the Washington case.

that New York's laws do violate the rights of terminally ill patients to Equal Protection. The Equal Protection clause of the Fourteenth Amendment simply requires that states treat in a similar manner all individuals who "are similarly situated." Where a distinction does exist, state law is required to meet various levels of scrutiny, proving that the distinction "rationally furthers" a legitimate state interest or a government's purpose. The Second Circuit Court finds that New York's statute 1) "does not treat equally all terminally ill patients who are in the final stages of fatal illness and wish to hasten their deaths"; and 2) the distinctions New York law makes among these patients "do not further any legitimate state purpose." Therefore, the laws violate the patients' right to Equal Protection.

Miner builds the case that New York, over a period of decades, steadily expanded the rights of patients to "hasten their deaths" by withdrawing or refusing life-support, all the while denying the same "rights" to patients not on life-support. According to Supreme Court Justice Antonin Scalia (in *Cruzan*), Miner says, there is no distinction between assisted suicide and withholding medical treatment: "[T]he cause of death in both cases is the suicide's conscious decision to 'pu[t] an end to his own existence.' "

Miner adds: "Indeed, there is nothing 'natural' about causing death by means other than the original illness. . . . The withdrawal of nutrition brings about death by starvation, the withdrawal of hydration brings about death by dehydration, and the withdrawal of ventilation brings about respiratory failure."

By ending or refusing life-support, the patient "hastens his death by means that are not natural in any sense," Miner writes. "The ending of life by these means is nothing more nor less than assisted suicide. It simply cannot be said that those mentally competent, terminally ill persons who seek to hasten death but whose treatment does not include life-support are treated equally."

When physicians are killers

Miner reiterates the Ninth Circuit Court's dismissal of any legitimate state concerns about suicide pressures and abuses of the elderly, handicapped, or others. It asks: "What interest can a state possibly have in requiring the prolongation of a life that that has all but ended? . . . And what business is it of the state to require the continuation of agony when the result is imminent and inevitable?" Like Reinhardt before him, Miner reduces the value of individual human life to an amalgam of physical sensibilities.

He asserts: "Physicians do not fulfill the role of 'killer' by prescribing drugs to hasten death any more than they do by disconnecting life-support." But, that's exactly the role doctors do fulfill in both instances—no matter how much judicial support the courts or the euthanasia lobby provides for either. The Second Circuit claims that a few state regulations are all that is needed to protect the vulnerable from abuses, but they specify none.

The problem is that, despite existing regulations, laws, and patient safeguards, patients who are not "terminally ill" or "PVS" are murdered daily (and, many against their will). In fact, attorney Kathryn Tucker, who argued both the New York and Washington State cases, has represented patients who, although severely brain injured, have expressed their wish to live and to receive full treatment and rehabilitation—but, whose families are hell-bent on killing them because doctors and euthanasia attorneys convince them that the patient is now nothing but a "shell," a "vegetable."

These are the patients who are targetted to have their life-sustaining treatment ended, or food and water removed. As one group of genocidal doctors and social planners around former Colorado Gov. Richard Lamm explain it: Society can make better use of these costly resources by providing preventive care, like immunizations to poor children.

This is exactly the argument that Hitler and his economists used.

Miner recognizes that there have been serious abuses in the Netherlands euthanasia policies, noting, "It seems clear that some physicians there practice involuntary euthanasia, although it is not legal to do so." But, that won't happen here, he claims, because the plaintiff doctors are not asking for euthanasia, but for assisted suicide for terminally ill patients to self-administer lethal drugs.

So, he claims, there is little chance for abuses such as those Dutch patients face.

The Second Circuit ends: "The New York statutes criminalizing assisted suicide violate the Equal Protection Clause because, to the extent that they prohibit a physician from prescribing medications to be self-administered by a mentally competent terminally ill person . . . they are not rationally related to any legitimate state interest."

The New York Attorney General is prepared to go to the U.S. Supreme Court to appeal the ruling.

That action, alone, will not turn the tide of crisis facing the country today, caused by both these recent murderous rulings by the federal courts, and the malthusian economics behind them. Western civilization as we know it, will not continue, should we allow these rulings to stand—no matter what alleged patient safeguards are guaranteed in them. They deny the very notion of the republican nation-state—that the citizen, made in the image of God, is worthy of being protected through the nation's economic, social, and infrastructure development policies; that the citizen's creative efforts will further advance our capabilities over nature's limitations. Should we endorse these rulings, we condemn ourselves to a new Dark Age. The issues raised here can only be resolved when this nation returns to its senses, does battle against malthusian Nazism—in all its modern-day economic incarnations.