'Assisted-suicide' rulings overturn Nuremberg precedent

by Linda Everett

With its June 26 "assisted-suicide" rulings, the U.S. Supreme Court has signaled its willingness to abandon the principles that led the United States to condemn euthanasia, the Nazi policy of killing those whose lives are deemed "not worthy to be lived," as a crime against humanity in the 1945 Nuremberg Military Tribunal.

With the ongoing British-orchestrated butchery of millions of Africans, or the barbaric financial policies that are denying medical treatment to millions of sick, elderly, or disabled Americans, it is obvious that the United States must again uphold that Nuremberg standard against genocide. But, the Supreme Court has chosen to use this historic moment to tell Americans to debate "the morality, legality and practicality" of carrying out genocide, while it abdicates its responsibility to protect the population from such Nazi policies and throws "to the states" the issue to be decided helter-skelter in a jumble of lawsuits, court precedents, state legislation, and voter referendums. In other words, a Confederate court has handed down a Confederate ruling that impugns any overriding national interest in halting the resurgence of Nazi policies.

As Michigan attorney Max Dean, who wrote the Schiller Institute's *amicus curiae* (friend of the court) brief to the U.S. Supreme Court, commented, "Instead of crushing the drive toward legalization of what the U.S. condemned at Nuremberg, the Supreme Court in its 9-0 decision invited guerrilla warfare in all 50 states as a 'laboratory' for its judicial supervision."

The narrow issue

For the record, the Supreme Court unanimously decided that there is, in general, no constitutionally protected right for Americans to kill themselves with a doctor's help. Moreover, the court's ruling provides a credible appraisal of the legitimate concerns and incalculable risks to a nation and population faced with a resurgence of Nazi euthanasia policies, euphemistically known today as "physician-assisted suicide."

The unanimous rulings, written by Chief Justice William H. Rehnquist, upheld criminal statutes in the states of Washington and New York which prohibit aiding or causing a suicide or self-murder. In each case, groups of doctors and terminally ill patients sued to overturn the laws in 1994, claiming that the state bans prevented their constitutional right to a physician's help in committing suicide.

In 1996, the U.S. Circuit Court of Appeals for the Second Circuit (in *Quill v. Vacco*) and the U.S. Circuit Court of Appeals for the Ninth Circuit (in *Washington v. Glucksberg*) overturned respective state prohibitions on suicide aid, claiming that the Fourteenth Amendment to the U.S. Constitution supported various "rights" to a doctor's lethal help in killing one's self. (The full text appeared in *EIR*, Nov. 21, 1996.) The Second Circuit, despite the Nazi precedent, wrote, "Physicians do not fulfill the role of 'killers' by prescribing drugs to hasten death"; the Ninth Circuit claimed that doctors, families, and hospital ethics committees can administer "assisted-suicide" via lethal syringe, to mentally ill, disabled, and comatose patients unable to request "assisted suicide."

Profound risks

The Supreme Court's decision unanimously reversed both opinions, ruling that neither state's law violates constitutional rights, and that suicide and "assisted-suicide," almost universally opposed by the states, were never "rooted" in this country's history or legal doctrine. In upholding the right of states to outlaw such assistance, the court found that state prohibitions "are long-standing expressions of the States'

commitment to the protection and preservation of all human life," and quoted the unanimous conclusion by New York State's Task Force on Life and the Law that "[l]egalizing assisted suicide and euthanasia would pose profound risks to many individuals who are ill and vulnerable. . . . [T]he potential dangers of this dramatic change in public policy would outweigh any benefit that might be achieved."

The court defined state interests in opposing "assisted-suicide" as being to "protect the integrity and ethics of the medical profession," or, to protect the lives of the vulnerable poor, elderly, and disabled against "the real risk of subtle coercion and undue influence in end-of-life decisions." Quoting the New York Task Force, the court found, "The risk of harm is greatest for the many individuals in our society whose autonomy and well being is already compromised by poverty, lack of access to good medical care, advanced age, or membership in a stigmatized social group." An "insidious bias against the handicapped," when coupled with this nation's cost-saving mentality, especially threatens those populations, the court said. Finally, the state's assisted-suicide ban "reflects and reinforces its policy that the lives of the terminally ill, disabled, elderly people must be no less valued than the lives of the young and healthy and that a seriously disabled person's suicidal impulse should be interpreted and treated the same as anyone else's," the court said.

The court recognized the state of Washington's concern that, "If suicide is to be protected as a matter of constitutional right," then "every man and woman in the United States must enjoy it." The United States argued in its brief that: "Once a legislature abandons a categorical prohibition against physician-assisted suicide, there is no obvious stopping point"—as is borne out in the lower court's assertion that doctors may have to administer lethal medications to patients directly, and that "family members and loved ones, will inevitably participate in assisting suicide."

Finally, experts who have investigated the Dutch practice of assisted-suicide and euthanasia warn that even in the Netherlands, where there exists extensive government regulations and patient safeguards against abuse, one-quarter of Dutch doctors readily admit that they have killed patients who never asked to die—demonstrating the inevitable descent down a "slippery slope."

Assisted-suicide not foreclosed

But, at this point, the Justices, both in their main rulings and in the five concurring opinions, rush to narrow the impact of their unanimous decisions—disabusing one of any erroneous impression that these rulings have anything to do with upholding a principled concept of the sacredness of human life. Justice Rehnquist rips through the previous and, evidently, factitious concerns, by, at the very end of each ruling, reiterating Justice John Paul Stevens's concurring opinion that while the court cannot *now* find a general constitutional right to be killed with a physician's help, that "does not foreclose the possibility that an individual plaintiff seeking to hasten her death," under the "right" circumstances in the future, "could prevail." Also, the court said, it is not impossible that, at some future point, New York's prohibition on suicide aid may be found "to impose an intolerable intrusion on a patient's freedom."

But, that will be just the beginning, as Dr. Leo Alexander, the chief medical witness to the Nuremberg war crimes trial, would say. Through the concurring opinions of Justices Stevens, Sandra Day O'Connor, David H. Souter, Ruth Bader Ginsberg, and Stephen Breyer, the court opens several windows whereby states can provide "constitutional" protection for Nazi crimes under the rubric of providing "dignified death."

For example, in his separate opinion, Justice Stevens said, "A state, like Washington, that has authorized the death penalty and thereby has concluded that the sanctity of human life does not require that it always be preserved, must acknowledge that there are situations in which an interest in hastening death is legitimate." He added: "I am also convinced that there are times when it is entitled to constitutional protection."

Justice O'Connor, in her concurring opinion, noted that even when states ban suicide aid, those laws do not outlaw "terminal sedation," a practice in which doctors over-medicate a patient to the point of coma in order to "eliminate pain"—and often, to make witting use of its dual effect of causing death.

Small changes in attitudes

As Dr. Alexander, who established the moral, ethical, and legal principles defining crimes against humanity, emphasized to the Schiller Institute on numerous occasions: "The acceleration of the tendency nowadays to accept euthanasia, this time in the form of the right-to-die movement, parallels what occurred in Nazi Germany." In "Medical Science Under Dictatorship," an article in the July 14, 1949 *New England Journal of Medicine,* Dr. Alexander wrote that crimes against humanity can occur at any time, in any nation—as the Supreme Court decision demonstrates—starting with small changes in medical attitudes:

"Whatever proportions these crimes finally assumed, it became evident to all who investigated them that they had started from small beginnings. The beginnings at first were merely a subtle shift in emphasis in the basic attitude of physicians. It started with the acceptance of the attitude, basic in the euthanasia movement, that there is such a thing as life not worthy to be lived. This attitude in its early stages concerned itself merely with the severely and chronically sick. Gradually, the sphere of those to be included in this category was enlarged to encompass the socially unproductive, the ideologically unwanted, the racially unwanted. . . . But, it is important to recognize that the infinitely small wedged-in lever from which the entire trend of mind received its impetus was the attitude toward the nonrehabilitable sick."