**Letting the Public Decide About Assisted Suicide**
By DAVID J. GARROW
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# The Nation

# Letting the Public Decide About Assisted Suicide

By DAVID J. GARROW

THE two 9-to-0 decisions on assisted suicide last week saw the Supreme Court tell the American people to cultivate the issue themselves. "Throughout the nation, Americans are engaged in an earnest and profound debate about the morality, legality and practicality of physician-assisted suicide," Chief Justice William H. Rehnquist wrote in validating state criminal laws against the practice. By declining to find any Federal constitutional barriers to such laws, he wrote, "our holding permits this debate to continue, as it should in a democratic society."

## Politics and Litigation

Indeed, the decisions, in cases from New York and Washington State, represent just the first chapter of a struggle that could last for years. It will bring not only the political tussles the Court welcomes — like the statewide vote in Oregon next fall on a ballot initiative that would allow doctors to prescribe lethal doses of medication for terminally ill patients — but also much litigation, in both Federal and state courts.

That inevitability was poignantly highlighted, on the same day the decisions were announced, by a jury verdict in Sebring, Fla., where Dr. Ernesto Pinzon-Reyes, facing possible life imprisonment for first-degree murder in hastening the death of a terminally ill cancer patient, was acquitted of all charges.

The Supreme Court's fractured opinions resolved little. Its apparent unanimity belied the diversity of views visible in concurring opinions by Justices John Paul Stevens, David H. Souter and Stephen G. Breyer. And Justice Sandra Day O'Connor, who joined Chief Justice Rehnquist's opinions, insisted that the rulings did not decide "the narrower question" of "whether a mentally competent person who is experiencing great suffering has a constitutionally cognizable interest in controlling the circumstances of his or her imminent death." Justice Ruth Bader Ginsburg endorsed Justice O'Connor's stance.

For the Chief Justice, and for the others who signed his opinions — Justices Antonin Scalia, Anthony M. Kennedy and Clarence Thomas — the shadow of Roe v. Wade loomed over these cases. "By extending constitutional protection to an asserted right or liberty interest," Chief Justice Rehnquist wrote, "we, to a great extent, place the matter outside the arena of public debate and legislative action."

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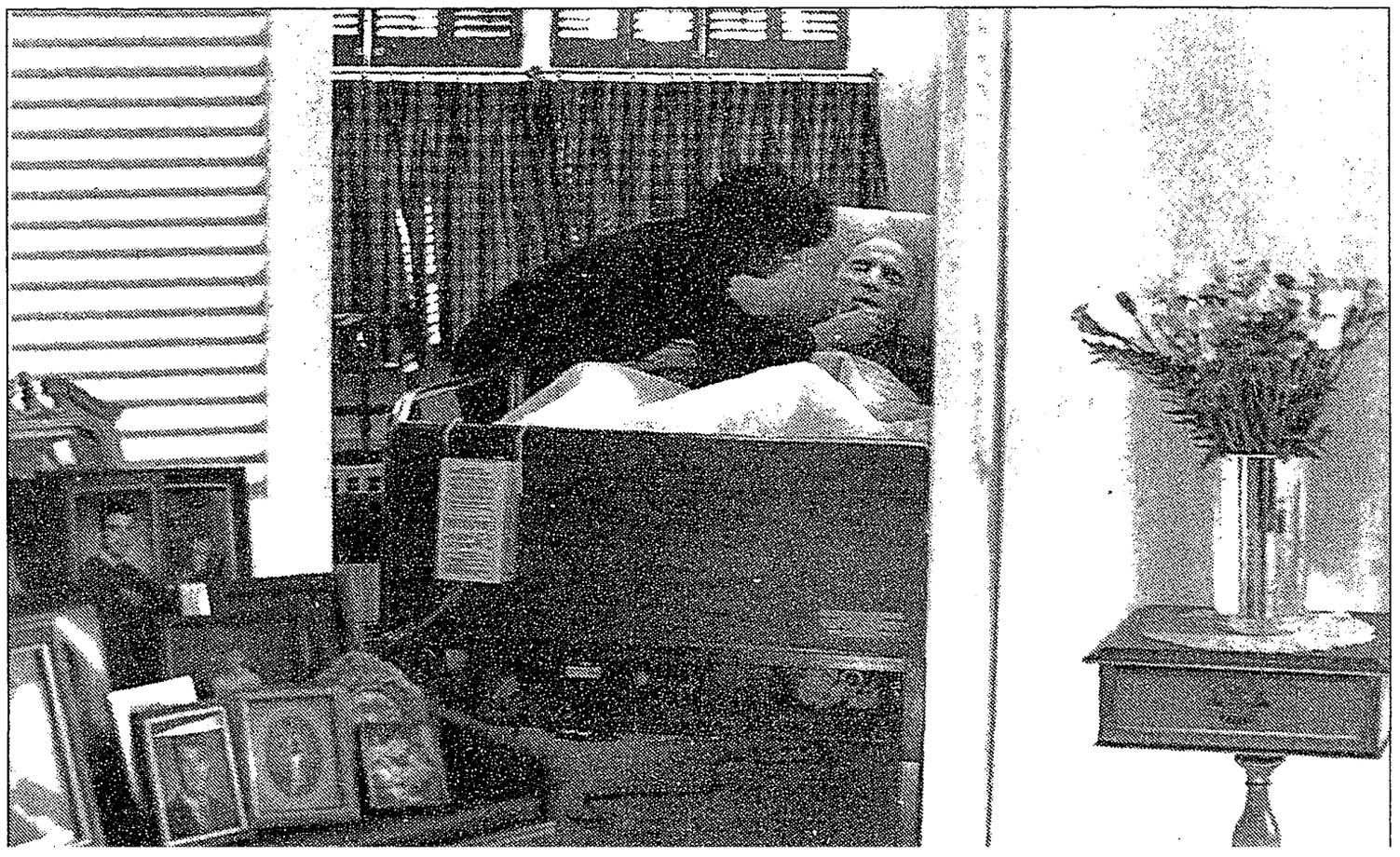

Marilynn K. Yee/The New York Times

A life's last stage: Donna Rizzo caring for her terminally ill father, John Clause, at his home in Hasbrouck Heights, N.J., in March.

If the Chief Justice was implicitly referring to America's struggle with abortion, he overstated his point; the Roe decision's constitutional protection for a woman's right to choose, affirmed by the Court five years ago, certainly did not place abortion "outside the arena of public debate."

## History's Lesson

But the Chief Justice's further hope that future debates on assisted suicide will take place in state legislatures rather than in the courts is one that the Court's own history suggests is doubtful.

Roe and the abortion struggle — which was already a major national political issue by 1970, three years before the Court's landmark constitutional ruling — may be less the model for the development of the assisted-suicide issue than another, earlier battle, namely the fight to strike down state statutes criminalizing birth control.

Beginning as early as 1943 — 22 years before the Supreme Court's decision in Griswold v. Connecticut found constitutional protection for married people's use of contraceptives — birth control proponents brought legal challenges to the Court's door, only to be turned away.

Even as late as 1961, a Supreme Court majority ducked a substantive ruling, urging that a final resolution of the birth control battle be obtained from Connecticut's legislature. Only when a doctor and a Planned Parenthood executive were convicted of the crime of aiding and abetting married women in the use of contraceptives did the Court finally answer in the affirmative the fundamental constitutional question it had avoided for so long.

Advocates of physician-assisted suicide will no doubt try to develop further constitutional cases, most likely centered around terminally ill patients suffering severe physical pain, so that no doctor need face criminal prosecution and possible loss of a license to make the Supreme Court confront the issue. But the Griswold case demonstrated that proponents of legal change sometimes must risk their very liberty to force a constitutional resolution. Indeed, when the Justices agreed to address the constitutional status of abortion in Roe v. Wade, a Minnesota physician, Dr. Jane Hodgson, had already accepted a criminal conviction for performing a medically approved abortion in order to place an unavoidable challenge before the Court.

## A Case in Florida

There are other channels available to assisted-suicide proponents, too. In Florida, in a case that started well before Dr. Pinzon-Reyes's indictment, the state Supreme Court is now considering a challenge posed by a terminally ill AIDS patient, Charles Hall, and his physician, Dr. Cecil McIver, who contend that explicit right-to-privacy language in Florida's state constitution protects Mr. Hall's desire to have Dr. McIver provide a death-hastening prescription should Mr. Hall's final days prove excruciating. Similar cases could be brought in other states whose constitutions have similar provisions.

Public opinion and politics represent the most immediate arena for the debate, however. With a new Gallup Poll showing that 57 percent of Americans believe that such assistance should be legally available to the terminally ill, proponents are optimistic about their long-term prospects, though they acknowledge that they have minimal support among legislators.

> The Court couldn't duck abortion and contraception forever. This moral issue, too, will be back.

In Oregon, where an aid-in-dying measure approved by voters in 1994 has never taken effect because of court challenges by the National Right to Life Committee, supporters of the initiative are confident of winning this November's vote, in part because of voters' anger that the state legislature, for the first time in 90 years, has put back on the ballot a measure voters already approved.

But statewide initiative campaigns require millions of dollars, and such efforts in larger states like California may be beyond their proponents' resources. Justice O'Connor said in her opinion that "there is no reason to think that the democratic process will not strike the proper balance" as the debate progresses, but Justice Souter emphasized the possibility of "legislative foot-dragging."

Dr. Timothy Quill, the lead plaintiff in the New York case, said he viewed these opinions as just "one step in a very long process," adding: "I don't have a whole lot of faith in the legislative process. Other avenues are going to be much more effective."

History says he's right, that as in both Griswold and Roe, eventually the fundamental constitutional question will come right back to the Supreme Court, whether the Justices want it to or not.