The Washington Association of Sheriffs and Police Chiefs has reported that Washington’s overall crime rate has continued to decline, and is down 8.2% from 1998 levels in every category of crime.\(^1\) The crime statistics for Seattle, available at http://www.pan.ci.seattle.wa.us/seattle/spd/criminfo/stats.htm, are as follows:

### PROPERTY CRIMES:

<table>
<thead>
<tr>
<th>YEAR</th>
<th>BURGLARY</th>
<th>LARCENY</th>
<th>AUTO THEFT</th>
<th>ARSON</th>
</tr>
</thead>
<tbody>
<tr>
<td>1997</td>
<td>8,139</td>
<td>36,417</td>
<td>7,082</td>
<td>217</td>
</tr>
<tr>
<td>1998</td>
<td>6,959</td>
<td>33,327</td>
<td>8,109</td>
<td>181</td>
</tr>
<tr>
<td>1999</td>
<td>6,469</td>
<td>30,485</td>
<td>8,640</td>
<td>163</td>
</tr>
</tbody>
</table>

### VIOLENT CRIMES:

<table>
<thead>
<tr>
<th>YEAR</th>
<th>MURDER</th>
<th>RAPE</th>
<th>ROBBERY</th>
<th>AGGRAVATED ASSAULT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1997</td>
<td>49</td>
<td>218</td>
<td>2,081</td>
<td>2,654</td>
</tr>
<tr>
<td>1998</td>
<td>49</td>
<td>242</td>
<td>1,728</td>
<td>2,456</td>
</tr>
<tr>
<td>1999</td>
<td>45</td>
<td>188</td>
<td>1,642</td>
<td>2,291</td>
</tr>
</tbody>
</table>

Experts are not certain why the crime rates have dropped. “Criminologists variously credit stiffer gun laws, a crackdown on drug sales, swelling prison populations, the aging of onetime youthful offenders and the fizzling of crack cocaine markets that had driven crime statistics skyward in the late 1980s.”\(^2\) Other possible contributions to Seattle’s lower crime rate are: improved lighting, block watch groups, increasing use of alarms, Drug Abuse Resistance Education Programs in schools, police department domestic-violence units, late-night basketball programs, and other youth programs.

In the mid 1990s, expectations were that gun-related youth violence was on the rise. Throughout the country crime among teens was rising sharply and the number of teens increasing. For instance, it was estimated that by 2010, there would be about 38,000 more teenagers in King County, ages 15 to 19, than there were in 1995.\(^3\)

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\(^1\)David Ammons, *Washington’s Crime Rate Drops 8 Percent*, SEATTLE TIMES, June 1, 2000.


\(^3\)Susan Byrnes, *County’s Juvenile Services Squeezed*, SEATTLE TIMES, May, 1, 1996.
From 1988 to 1993 there was also a 60 percent increase in the most serious juvenile offenses, such as robbery, assault and murder. Weapons offenses went from 32 a year to 425.4

However, more recent figures from the FBI demonstrate that youth crime continues to drop. The FBI figures show an 11 percent decrease in juvenile arrests for serious and violent crimes, even despite the concerns about violent episodes in schools.5 “Although juvenile crime has been dropping steadily since about 1993, federal officials say this is the most significant decrease in recent years - and the widest gap between arrests of youths and adults. The decline is even more impressive given that the juvenile population...has continued to grow, now numbering about 70 million people.”6

In a particularly controversial study, a Stanford law professor and a University of Chicago economist concluded the lower crime rates of the 1990s were directly related to legalizing abortion in the 1970s. Their research suggested that “those who would have been at greatest risk of criminal activity during the peak crime years of young adulthood—the unwanted offspring of teenage, poor and minority women—were aborted at disproportionately high rates more than two decades ago.”7 As imagined, this study produced a substantial outcry from communities of color.

Racial Profiling: During much of Spring and Summer 2000, the Seattle Police Department (SPD) was under scrutiny for racial profiling and disparate treatment of persons of color. This was sparked in part by the shooting death of David John Walker, an African-American man with a history of chronic mental illness, by an SPD officer. An inquest jury found that Walker was an “imminent threat” and exonerated the SPD officer, Tommie Duran, who shot and killed him.8 The family, however, filed a $5 million lawsuit against SPD claiming that the shooting was racially motivated.9

Forums discussing racial profiling have been part of the introduction of the new SPD police chief, Gil Kerlikowske, to the city.10 For instance, statistics show that African-Americans compose 9 percent of the driving population in Seattle but account for 18.6 percent of the traffic stops.11 The city intends to investigate this further. It will expand its data gathering to include not only those people cited or arrested, but also those who are stopped and let go, to look for profiling practices.

Trying juveniles as adults: Numerous newspaper articles discuss the complexity of this social and political issue. Some of the more recent WESTLAW cites are as follows:

4Id.
5Eric Lichtblau, Youth Crime Plummetts 11 Percent, SEATTLE TIMES, October 18, 1999.
6Id.
7Karen Brandon, Drop in Crime is Linked to Legal Abortion, Scholars Say, SEATTLE TIMES, August 9, 1999.
9Id.
11Id.

7/14/00 Charleston Gazette & Daily Mail (WV) P1C, 2000 WL 2617635, Charleston Gazette HEADLINE: Fighting juvenile crime: State law to move youths to adult status is not used often.

4/26/00 Detroit News 09, 2000 WL 3475693, The Detroit News, Juvenile justice system rife with racial disparities Authors of report blame racism; critics say causes more complicated.

4/16/00 S.F. Chron. 1Z1, 2000 WL 6480064 The San Francisco Chronicle, Old Enough to Kill, Old Enough to Die / While the U.S. champions human rights abroad, back at home 73 young men are sitting on death row for crimes they committed when they were too young to smoke, drink -- or even vote. Why are our attitudes toward our troubled youth so out of step?

4/9/00 Columbian A1, 2000 WL 4478772 The Columbian HARD TIME, TENDER YEARS YOUTHFUL OFFENDERS PROGRAM GIVES INMATES UNDER 18 A RIDGID REGIMEN BEHIND BARS, BUT ALSO AN EDUCATION AND COUNSELING (discussing Clallam County, WA)

GANGS IN WASHINGTON
A survey released by the Justice Department in June 1996, found that gang activity is on the rise in 48 percent of both urban and rural communities across all 50 states and decreasing in just 10 percent. In Washington there has been increasing gang violence in the cities of Seattle and Tacoma, and in recent years gangs have reached into other communities. In 1994 Bellevue police reported 370 incidents they defined as gang-related, including assaults, brandishings, car thefts and vandalism. While Bellevue hasn't seen many of the drive-by shootings and turf wars that are common with inner-city gangs, some officials feel it will only be a matter of time.

Just as with the inner-city gangs, suburban gang membership may develop as a way for young people to feel a sense of belonging. Ken Wong, a violence-prevention specialist for Youth Eastside Services, says the transition from a clique, a group of friends or a "wannabe gang" into a criminal gang isn't always a deliberate decision. "The move into criminal activity is sometimes done subtly. They are having fun, goofing off. Involvement in gang activity gives them a high."

Reservations in Washington have also begun to see gang activity. The Puyallup

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12See lesson on gang clothing and first amendment rights in chapter six.
13SAN ANTONIO EXPRESS-NEWS, June 21, 1996.
15Id.
Reservation, alone, has close to 10 gangs. It is estimated that the gang members account for 30 percent of all the crime on the reservation. The reservation's location, crossed by Interstate 5 and neighboring Tacoma's Hilltop neighborhood, makes it an easy target for drug sales and gang migration. The problem has reached the rural reservations as well, and Police Captain Robert Flett, of the Bureau of Indian Affairs, fears it's going to grow. "We can barely keep one patrol officer on duty covering more than 155,000 acres of reservations in Eastern Washington."17

Recently, researchers have begun to focus on school shootings, separate from gang-activity, as a new form of violence. The Seattle Times reviewed national statistics showing "the number of violent-death incidents in both urban and suburban neighborhoods has dropped dramatically since 1992. But school shootings the result in numerous deaths are becoming more common and more lethal."18 The growing frequency of these incidents, and fears of "copycat" shootings, have prompted many local schools to increase their security personnel, perform more lockdown drills, and be conscious of the warning signs of troubled teenagers.19

**GANGS AND THE LAW**

Following are cases involving gang members that have reached Washington's highest courts in recent years:

Where two teenagers in a high crime area were slouched down in the front seat of their car driving around a parking lot, making no attempt to find a parking space, there were reasonable grounds for an investigatory stop. The behavior fit the Tacoma police department's profile of drive-by shooting activity. (See teaching strategy using this case later in this chapter.)

Where Seattle Police Officer saw the occupants of a car flash a gang hand signal at a rival gang member, it did not provide reasonable suspicion for an investigatory stop. The officers testified that flashing of hand signals would "sometimes lead to violence" but the state offered no evidence that violence would occur on the particular occasion. --In the absence of facts indicating that violence is imminent, one's status as a gang member does not provide reasonable suspicion for conducting an investigatory stop.

The defendant, a gang member, was sentenced to nearly 42 years--7 years more than the maximum sentence prescribed under standard sentencing guidelines--for a first degree murder conviction. Smith misinterpreted a teenaged girl's wave as a hand signal of a rival gang and fired more than a dozen shots into her vehicle. The trial court record showed that the defendant and a codefendant had set out that evening to

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17Id.
18Barbara Serrano, How can we know our schools are safe?. SEATTLE TIMES, May 2, 1999.
engage in a drive-by shooting. The judge applied the exceptional sentencing usually used in cases involving organized crime. The court considered the shooting to be in furtherance of a criminal enterprise to project the gang's power and drug empire through violence.

It should be noted that the sentence could not have been enhanced simply because the defendant belonged to a gang. That would have impinged on his constitutional right to freedom of association. However, the defendant fired the shots to further the gang's reputation, and because a court may consider a person's motivation when sentencing, it was found to be a proper basis.

After being kicked and punched by rival gang members at a party, defendant Riley, went to a location where he knew he would find members of the same rival gang. He then fired into the air. He was convicted of assault in the second degree and was given a sentence of 40 months--16 months beyond the standard range. The danger to the public through random, gang-related violence with a firearm in a public thoroughfare justified the exceptional sentence imposed.

The defendant was charged with assault after firing shots at vehicles driven by members of a rival gang. The sentencing court imposed an "exceptional sentence" of almost twice the standard range due in part to the fact that the offense was "gang motivated." Unlike an ordinary assault, the shooting was likely to provoke retaliation and thus an escalation of violence.

The defendant, Johnson, contended that even if he was attempting to raise his status within his gang, that there was no evidence that his motivation was to further the criminal activities of the gang. But the court moved one step beyond Smith in determining that a specific finding that a defendant acted in furtherance of a criminal enterprise is not necessary in sentencing, only that the offenses were "gang motivated."

The defendant, Brian Ronquillo, was charged with shooting and killing a Ballard high school student, Melissa Fernandes, in a drive-by shooting in 1994. The driver, Cesar Sarausad, was also charged under accomplice liability. This case became famous locally at the time because of the randomness of the killing and the community’s sympathy towards the victim’s family.

The Court of Appeals affirmed the trial court’s decline of juvenile court jurisdiction. It also affirmed the trial court’s introduction of expert testimony about gangs, since that was central to the facts of the case. The 17-page text of the case provides a great deal of information about how gang-related violence is addressed by the courts.

Defendant, a passenger in a car stopped for traffic violation, was convicted of obstructing a police officer for failing to cooperate. The Court of Appeals affirms, holding that seizure of the defendant was based on reasonable heightened awareness of danger, and thus did not violate State Constitution. The Court also held fact that original traffic stop was not justified did not relieve defendant of duty to cooperate with police officer.

Also of note is City of Chicago v. Morales, 527 U.S. 41 (1999) (gang loitering ordinance too vague, held unconstitutional).

**VICTIMS OF CRIME**

Washington has a Crime Victims Compensation Program that provides financial and medical benefits to innocent victims of violent crime. To qualify, the crime must be reported to law enforcement within 12 months of when a report could reasonably have been made after the crime. There is a toll-free number for victim assistance: 1-800-762-3716. Their website is [http://www.wa.gov/lni/insurance/cvc.htm](http://www.wa.gov/lni/insurance/cvc.htm).

The rights of victims of crimes are described in RCW 7.69.010 and 7.69.030. There is a move at both the state and national level to expand the rights of victims.

**CLASSES OF CRIMES**

In Washington, the most serious felonies are Class A, then Class B, then Class C. Gross misdemeanors are acts that are punishable by not more than one year confinement in jail or fines of not more than $5,000. Misdemeanors are punishable by not more than 90 days confinement in the county jail and/or a fine of not more than $1,000. Violations are acts or omissions punishable by penalties that do not include imprisonment.

**PARTIES TO CRIMES**

In Washington, a person is an accomplice of another person in committing a crime if the person solicits, commands, encourages or requests the other person to commit a crime or aids or agrees to aid that person in planning or committing the crime. So, for instance, one encourages the commission of a crime when their continued, knowing presence at the scene of an ongoing crime gives courage to the persons actually committing the crime. The accomplices would have to have the intent to encourage the persons committing the crime.

To end their role as an accomplice, the individuals would have to either give a warning to law enforcement authorities in time to prevent the crime or to make a good faith effort to prevent the crime from being committed.

Persons commit the crime of rendering criminal assistance when they, with intent to prevent, hinder or delay the apprehension or prosecution of another criminal:

1. conceal; OR
2. warn; OR
(3) provide money, transportation, disguise
(4) prevent an act by force, deception or threat that might discover the criminal; OR
(5) conceal or destroy any evidence that might lead to discovery; OR
(6) provides such person with a weapon.

Under some circumstances when the person providing the individual criminal assistance is a relative, the penalty is lower.
(See problem based on 1996 "trestle case" later in this section.)

Page 76--Problem 8
In Washington, Joe would be charged as a principal with burglary in the second degree and conspiracy to commit burglary. Mary would be charged as a principal to conspiracy and as an accomplice to burglary in the second degree. Carl would also be charged as an accomplice to burglary in the second degree. Fred would be charged with rendering criminal assistance in the second degree. David would not be charged with a crime.

In order for Mary or Carl to avoid accomplice liability they would have to give a timely warning to police or make a good faith effort to prevent the burglary.

Persons capable of committing crimes. Children under the age of eight years are considered incapable of committing a crime. Children of eight and under 12 years of age are presumed to be incapable of committing crimes, but this presumption may be resolved by proof that they have sufficient capacity to understand the act, and to know that it was wrong.

Additionally, in Washington, corporations can be guilty of crimes. An individual can be criminally liable for conduct that he or she performs in the name of the corporation. The individual who is an agent of a corporation is criminally liable for failing to fulfill duties imposed by law on the corporation for which the individual has primary responsibility.

Crimes of Omission
Page 77--The Case of the Drowning Girl
In Washington, the father could be liable for murder in the first degree, based on his omission to act in face of his duty to his daughter.

Depending upon Betty's intent, she could be liable for murder in the first degree if she premeditated the death and then caused it. Her conduct could amount to manslaughter in the first degree if her actions were reckless and to manslaughter in the second degree if they were only negligent. Under these circumstances it appears that Betty committed manslaughter in the second degree.

Chin and Doris would not be liable.

PRELIMINARY CRIMES
**Criminal Solicitation** occurs when a person, with intent to promote or facilitate the commission of a crime, offers to give or gives something of value to another to engage in criminal conduct. For example, Danny is in Washington State and he wishes to kill his wife Jean. He then pays Wally to kill her. Danny has committed the crime of solicitation.

**Criminal Attempt** occurs when a person, with intent to commit a specific crime, does any act that is a substantial step toward the commission of that crime. It is not a defense to criminal attempt that the crime attempted was factually or legally impossible to commit.

The substantial step required must strongly corroborate the actor's criminal purpose. This means that the step must strongly show that the actor intended to commit the crime. If the individual's actions are merely preparation to commit a crime, there is no crime committed.

**Criminal Conspiracy** occurs when a person, with intent to commit a crime, agrees with one or more persons to engage in or cause the performance of such conduct, and any one of them takes a substantial step in pursuance of their agreement.

**Page 78--Problem 9**
a. Same in Washington
b. Gilbert would be guilty of attempt to commit theft in the first degree, since he attempted to take property from the person of another.
c. In Washington, Rita and Anwar are not guilty of attempted robbery. The law requires that they take a substantial step toward the commission of robbery. This occurs when their conduct strongly corroborates the actor's criminal purpose. In order to be an attempt it has to approach completion of the crime sufficiently so as to stand as direct movement toward commission of the robbery after preparations were made.

Depending on the value of the car (first degree if valued at $1,500 or more; second degree if less than $1,500), Anwar can be charged with attempted theft.

d. Amy would be liable for attempted arson in the first degree, provided her store was worth at least $10,000.

**CRIMES AGAINST THE PERSON**

**Suicide, Euthanasia, and the Right to Die**

Three states have held referenda on proposals to allow physician-assisted suicide for the terminally ill. Voters in two states - Washington and California - rejected the proposal by margins of about 54 percent to 46 percent. Oregon voters are the only ones to endorse a decriminalization measure, by a narrow margin of 51 percent to 49 percent. Six state legislatures have recently rejected bills that would permit physician-assisted suicide, and no legislature has passed a decriminalization bill. A Washington State law, banning promotion or assistance of a suicide, was first enacted by the territorial government in 1854. U.S. District Judge Barbara Rothstein
ruled in 1994 that the law imposed an undue burden on people seeking to hasten their death with the help of a doctor. Her decision was later overruled by a three-judge panel of the 9th Circuit Court of Appeals. However, in March of 1996, an 11-judge "en banc" review was held. (Note: An appeal of a federal trial judge’s decision is first heard by three-judge panel. If a majority of the judges of a circuit agree to do so, a panel decision can be reviewed by all the judges in the circuit. However, the 9th Circuit, the largest in the nation, has 23 judges and has been authorized to have 11-judge panels hold "en banc" reviews.)

The 9th Circuit review panel held by an 8-3 vote that the law, which makes physician assisted suicide a felony, is a denial of due process of law under the 14th amendment of the constitution. The court held that the liberty interest in the right to control "the time and manner of one's death" outweighs the state's duty to preserve the life of a terminally ill patient.20

The United States Supreme Court consolidated Glucksberg with Quill v. Vacco, 80 F.3d 716 (2nd Cir. 1996), and heard them in 1997. Unlike the Ninth Circuit en banc, the Second Circuit had rejected the due process claim but held that New York had acted "irrationally" and hence in violation of the Equal Protection Clause because it prohibited physician-assisted suicide while simultaneously permitting patients to withdraw life-saving equipment. The Supreme Court was not persuaded. The Court held that: 1) the asserted right to assistance in committing suicide was not a fundamental liberty interest protected by the due process clause; and 2) Washington state's ban on assisted suicide was rationally related to legitimate government interests.21

Page 84—Sample Lesson Plan
THE RIGHT TO DIE
Class Periods: 2
Objectives:
1. Students will learn the difference between facts and arguments.
2. Students will develop arguments and evaluate the efficacy of their arguments.

Activities:
1. Students will state the facts of the Cruzan case.
2. Students will extract and prioritize the arguments from the lower court decisions in the case.
3. Students will develop and write arguments in support of their position.
4. Students will conduct a moot court simulation, using arguments and questions they have formulated.

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20 Compassion in Dying v. State of Washington, 79 F. 3d 790 (9th Cir. 1996).
Materials:
Handouts 1-8

Procedures:
1. Pass out Handout 1, the facts of Cruzan, by Cruzan v. Missouri Department of Health.22 Either have a student read the facts out loud, or students may read it themselves. Then ask the following questions to check for understanding of the facts.
   a. Why was the artificial feeding tube inserted?
   Nancy was unconscious and could not feed herself. She appeared to be improving somewhat -- from a coma to an unconscious state. The tube was inserted to make feeding her easier.
   b. What will happen if it is removed?
   She will die for lack of food and water - some would say "starve" to death.
   c. What are the parents of Nancy Cruzan asking the court to do? Why did they have to go to court?
   They want the court to order the hospital to withdraw the feeding tube. The hospital will not do so without a court order.
   d. What does the state hospital want to do?
   The hospital wants to continue caring for Nancy in her present state.

2. Ask for a show of hands to indicate how many would rule in favor of the Cruzans, how many against. Do not discuss the case yet.

3. Tell students they will now prepare for and conduct a moot court argument to the U.S. Supreme Court on this case. Pass out Handout 2, descriptions of the Missouri trial court's and the Missouri Supreme Court's decisions in the case. Explain to students the procedural history--that the U.S. Supreme Court is reviewing the Missouri Supreme court decision. That decision reversed the trial court decision. Give students time to review the decisions. Ask them to think about which decision they agree with, and to prioritize the arguments listed by each court, from strongest to weakest. After students have reviewed the decisions, and prioritized the arguments individually, ask them what are the issues in this case? Put another way, what must the Court decide?

Students may need some help defining the issues. The U.S. Supreme Court issued 5 different opinions in the case, each of which saw the issues in a slightly different light. However, for purposes of this lesson, the major issues are 1) whether the state can require that evidence of Nancy's desire to take away life-sustaining equipment (the feeding tube) must be proved by clear and convincing evidence, such as in writing; and 2) whether Nancy's right to refuse medical treatment is outweighed by the state's interest in preserving life.
Once determined, write those on the board.

4. Assign 4-6 students to be attorneys for the Cruzans (the Petitioners), and 4-6 students to be attorneys for the Missouri Department of Health (the Respondents). Divide the rest of the class into groups of 4-6 students to be Supreme Court Justices.

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5. Give the attorneys the instructions in Handout 3 about appellate arguments. Explain that attorneys for the Cruzans will be arguing in favor of terminating the artificial feeding, and will use some of the Missouri trial court's arguments, and any others they can come up with. Attorneys for the state hospital will be arguing against removing the feeding tube, and will use some of the arguments advanced by the Missouri Supreme Court, plus any additional ones they can think of. Give the Justices copies of Handout 4.

Note: Handout 6 is a list of additional arguments for each side. Depending on the level of the class, you may want to give this to both sides to help them prepare for their arguments, if they are having difficulty. The Handout can also be used by the teacher to suggest additional arguments while circulating around the room, assisting the groups while they prepare, or in debriefing after the arguments.

6. Allow the groups to meet for the rest of the class period to prepare their arguments and questions for the next class. Attorneys should brainstorm as a group their best arguments and put them in order, from strongest to weakest. The Justices should prepare questions as a group to ask the attorneys during oral argument.

7. At the end of class, tell attorney groups to select one person to make their argument to the Court (unless you have divided the class into "P’s, R’s and J’s"). The teacher can either ask for volunteers or select 9 students to be Justices. Select one student to be timekeeper, and the Justices should select a Chief Justice to moderate.

8. The next day, tell those class members that do not have a role that they will be Observers. Give them a copy of Handout 5, which should be completed during the arguments.

9. Arrange the class so that the Justices are sitting in front of the room, with attorneys facing them. Allow five minutes for the Petitioner/Cruzan attorney, five minutes for the Respondent/State Hospital, and up to two minutes rebuttal time for the Petitioner.

10. Then give the Justices five minutes to confer, in the presence of the rest of the class. The Chief Justice should then announce their decision, with supporting reasons.

11. After the arguments, debrief by asking the following questions, (from the Observers’ form):
   a. What were the strongest arguments presented by the Cruzans? Can you think of any good arguments they forgot? How could even the best argument be made stronger?
   b. What were the strongest arguments presented by the Hospital? Can you
think of any good arguments they forgot?
c. What questions from Justices were helpful in understanding each side's argument? Were there other questions you would have asked?
d. Do you agree with the Justice's decision. Why or why not?

12. Tell the students that the U.S. Supreme Court, in a 5-4 decision, decided that the Missouri Supreme Court's decision should be upheld, and Nancy Cruzan's feeding tube may only be withdrawn upon a showing of clear and convincing evidence of her wishes.

The majority opinion, written by Justice Rehnquist, decided that Missouri may require clear and convincing evidence of an incompetent person's wish to withdraw life sustaining equipment. The Court was careful to draw the question narrowly, and stated it as "whether the United States Constitution prohibits Missouri" from applying a clear and convincing evidence standard to decide whether another person may make a decision for an incompetent person about whether to withdraw life sustaining equipment.

The Court assumed for the sake of argument that competent persons have a liberty interest, under the Due Process clause of the 14th amendment, to refuse unwanted medical treatment. The Court found that an incompetent person, however, does not have the same right because they cannot make a choice. Their right must be exercised for them by someone else, who we will call a surrogate. To assure that the surrogate acts according to the patient's will, the state of Missouri may require clear and convincing evidence of the patient's wishes, such as a formal written request.

The court also said that the individual's liberty interest to refuse medical treatment must be weighed against the state's interest in the protection and preservation of human life. Since the state's interest in life is so great, it may apply the clear and convincing standard to assure the right decision is made. Since a wrong decision not to cut off life support will result only in the status quo (leaving Nancy as she is), that is preferable to a wrong decision for terminating life support, which is irreversible (since she would be dead).

The Court also stated that in protecting human life, the state of Missouri may decide not to consider the "quality" of life that a particular individual may enjoy, and simply choose to balance "an unqualified interest in the preservation of human life...against the constitutionally protected interests of the individual."

After losing their appeal in the US Supreme Court, Nancy Cruzan's parents introduced

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23 The Court's reliance on the due process liberty interest rather a right of privacy is important in terms of future decisions on the abortion issue. The right to an abortion before viability recognized in Roe v. Wade was based on a right of privacy, which the Court has limited in recent decisions, such as Webster v. Reproductive Health Services, the Court's 1989 decision that upheld a Missouri law banning abortions in public hospitals. The Cruzan decision contains arguments that are helpful to the "right to life" movement. The Missouri Supreme Court based its deference to the state's interest in preserving life on the Missouri abortion law considered in Webster.
new evidence to the Missouri trial court that heard their original request. They established that Nancy Cruzan had told friends she did not wish to "live like a vegetable." The court found the new evidence "clear and convincing" and granted the order to withdraw the feeding tube. Nancy Cruzan died in December 1990, after having spent nearly 8 years in a persistent vegetative state.

In 1991 the Patient Self-Determination Act was passed by Congress. This law requires hospitals to ask incoming patients whether they have a document stating their wishes about life-sustaining medical procedures -- and include it in the medical record if they do.

13. Is there any form of ADR that would be appropriate here? Why or why not?
FACTS OF THE CASE (Handout 1)

On the night of January 11, 1983, Nancy Cruzan lost control of her car as she traveled down Elm Road in Jasper County, Missouri. The car turned over, and the 25 year old woman was discovered lying face down in a ditch, not breathing and without a detectable pulse. An emergency medical team arrived at the scene and was able to restore her breathing and heartbeat. Still unconscious, she was taken to a hospital. At the hospital, neurosurgeons said that she had suffered significant anoxia (an extended period of lack of oxygen to the brain). Permanent brain damage generally results from 6 minutes without oxygen. It was estimated that Nancy Cruzan was without oxygen for 12 to 14 minutes.

Nancy remained in a coma for three weeks, then progressed to an unconscious state in which she could swallow. With the consent of her parents and then husband, the doctors surgically implanted a tube directly into her stomach to more easily provide her with food and water. Since that time, she has never recovered consciousness, can no longer swallow, and can only take in food and water through the artificial feeding tube. She has been cared for in a state rehabilitation hospital since October 1983. The doctors say there is no chance she will recover.

Nancy's husband dissolved their marriage. Her parents were appointed guardians for her in 1984. Finally, in 1987, more than four years after the accident, Nancy's parents gave up hope that she would ever recover. They asked the state hospital, (which is run by the Missouri Department of Health), to stop the artificial feeding. If the feeding is stopped, she will die. (The cost of Nancy's care, $130,000 per year, is paid for by the state of Missouri.) The hospital did not want to stop the feeding, and refused to do so without court approval. The Cruzans asked a Missouri trial court judge to order the hospital to stop the artificial feeding.

a. Why was the artificial feeding tube inserted?
b. What will happen if it is removed?
c. What are the parents of Nancy Cruzan asking the court to do? Why did they have to go to court?
d. What does the state hospital want to do?
The Missouri trial court heard three days of testimony from Nancy's family, her doctors, a court-appointed guardian ad litem (the guardian appointed just for the court proceeding, to investigate and advise the court what he found to be in Nancy's best interests), and nursing staff at the center where she is being cared for.

After hearing all the testimony, the judge decided that Nancy was in a "persistent vegetative state" (despite some conflicting testimony from some of the nursing staff that Nancy had responded in a limited way to her environment). A persistent vegetative state means that she may react reflexively to sounds, movements and normally painful stimuli, but she cannot feel any pain or sense anybody or anything. The judge also ruled that she will never recover the ability to swallow; that she is a spastic quadriplegic with irreversible muscular and tendon damage to all four of her limbs; that her brain damage is irreversible, permanent, progressive and ongoing; her muscles are atrophying (wasting away due to lack of use); her arms and legs are contracting, and her fingernails sometimes cut into her wrists because her hands are bent inward. She could live for another 30 years in this condition, if the food and water continue to be provided through the tube into her stomach.

After hearing testimony from Nancy's family and friends, the judge decided that, given her present condition, Nancy would not wish to continue with the artificial feeding. This was based on a serious conversation she had had with a roommate a year before the accident, when she told the friend that she did not want to live if she could not "live at least halfway normally." Other statements to family members suggested that she would not want to be maintained on life support equipment.

The trial court judge ruled that:
1) Giving food and water through a feeding tube is "medical treatment," because Nancy could not survive without it and the tube was surgically implanted.
2) Nancy's present existence is not God's will, but the will of man to forcefully feed her when she himself cannot swallow.
3) Based on the testimony of friends and family about statements she made before the accident, Nancy would not wish to continue her life in its present state.
4) Missouri law allows withdrawing of feeding tubes as long as no homicide or suicide occurs, no innocent third parties would be harmed, and good medical ethical standards are followed. None of these would prevent the removal of the tube.
5) Nancy has a fundamental right of liberty, under the Missouri Constitution and the federal Constitution to refuse or direct the withdrawal of "death prolonging procedures."
6) Since Nancy cannot speak for herself, her guardians have the authority to act in her behalf. To deny the guardians the authority to act in Nancy's behalf would deny Nancy equal protection under the law.

The court ruled that the guardians, Nancy's parents, had the authority to decide whether the feeding tube should be removed and directed the hospital to carry out their request to do so. The state appealed the case directly to the Missouri Supreme
THE MISSOURI SUPREME COURT'S DECISION

The Missouri Supreme Court, by a vote of 4-3, reversed the trial court's decision. The Supreme Court's decision was based on the following:

1) Nancy is not terminally ill, because she could live another 30 years. We would be responsible for starving her to death if the feeding tube is disconnected. The state of Missouri has a duty to protect her life and the many others in Nancy's situation.

2) This is not a case of life or death, but quality of life or death. To allow a person to refuse treatment because they don't like the quality of their life is to approve of suicide. The court cannot choose suicide for Nancy Cruzan.

3) The state of Missouri has an "unqualified" interest in preserving life. Therefore, no one can make a choice to withdraw life support for an incompetent person (someone unable to make the decision for herself, like Nancy) unless there is clear and convincing evidence of the incompetent person's wishes, such as a formal, written document. The statements made by Nancy to family and friends are not sufficient.

4) The state of Missouri recognizes a right to refuse medical treatment, but it does not apply in this case because the continued feeding through the tube is not a burden to Nancy because she is not in pain, and Nancy's individual right to refuse treatment is outweighed by the state's unqualified interest in preserving life.

The Cruzans appealed the Missouri Supreme Court's decision to the U.S. Supreme Court. The Court issued its ruling on June 25, 1990.

Which decision do you agree with? Rank the arguments in each decision from strongest to weakest.

What are the issues in this case? Write two sentences stating what the Supreme Court will consider.
INSTRUCTIONS FOR ATTORNEYS (Handout 3)
Appellate Arguments:
In your small groups, identify what legal arguments to present to the Supreme Court. Arguments should be no more than seven minutes. If time allows, up to two minutes of rebuttal argument by the Petitioner may be allowed. The order of argument is Petitioner (Cruzans) first, Respondent (state hospital) second. Rebuttal only from Petitioner.

Write a clear, brief statement of your position in this case. Each group should consider what facts it might use to provide support, or prove, its arguments. Consider how those facts support your position.

Some tips on making a legal argument:

1. Begin your argument by stating what your position is and quickly summarizing the basis for that position.
2. Legal conclusions (such as "There is sufficient evidence that Nancy would not have wanted to be artificially fed") are generally dependent on facts to support them, so don't ignore facts in making your arguments.
3. Don't worry about "legalese" in your argument. Lawyers increasingly recommend using plain English. Figure out what your group wants to "win" in the case, what facts you feel support your goal, and argue accordingly.
4. Remember the time limitations. If you have many points you want to make, you may want to prioritize and emphasize in detail only the most important points. Tell the court your other points (perhaps listing them very quickly) have been covered in your written brief.
INSTRUCTIONS FOR SUPREME COURT JUSTICES (Handout 4)

When preparing to hear oral arguments from attorneys, Justices review the briefs (written arguments) submitted by the parties, and prepare questions for the attorneys. Since you do not have the briefs, review the facts, and the lower court decisions. Think about what facts you don't understand, and what questions you want answered before you decide this very important case.

As a group, think of at least 5 questions to ask the attorneys during their arguments. Everyone should make a list of the questions, which will be turned in at the end of class.

During the arguments, feel free to interrupt whenever you want. That's what the Supreme Court Justices do. Any interruptions should be civil.

After the attorneys have argued, you will have 5 minutes to confer about your decision. The Chief Justice will moderate, making sure that each Justice has an opportunity to speak. One way to assure this is to take a poll, allowing each person to speak in turn. You can then vote. The Chief Justice should announce the decision of the Court.
QUESTIONS FOR OBSERVERS (Handout 5)

a. What were the strongest arguments presented by the Cruzans? Can you think of any good arguments they did not make?

b. What were the strongest arguments presented by the Hospital? Can you think of any good arguments they did not make?

c. What questions from Justices were helpful in understanding each side's argument? Were there other questions you would have asked?

d. Do you agree with the Justice's decision. Why or why not?
ARGUMENTS FOR ATTORNEYS (Handout 6)
ATTORNEYS FOR THE CRUZANS
Consider the following points in making your arguments:
1. Nancy is going to remain a prisoner of advanced medical technology, for as much
   as another 30 years. Until recent advances in medicine, she would have died the
   night of her accident. It is a violation of her right to refuse medical treatment to keep
   her alive by continuing to feed her through a tube into her stomach.
2. The right to be free from unwanted medical treatment is so important that it
   outweighs the state's interest in the preservation of life.
3. Nancy Cruzan clearly stated to friends and family that she did not want to live if
   she could not "live at least halfway normally."
4. The Supreme Court has recognized that a competent person (someone who is
   able to express their wishes) has the right to refuse medical treatment. Therefore, an
   incompetent person should also have that right, which must be expressed by another
   person, such as the guardian or family members.
5. The Court should consider the quality of life of the patient when balancing the
   interest of the individual against the state's interests. We are not preserving her
   "life," but just her body.
6. If families think they might not be able to stop life support systems even after the
   patient is not responding, they will be reluctant to take advantage of all possible
   medical procedures. For example, a treatment that might save a life might not be
   started at all because the doctor or family is afraid they will find it difficult or
   impossible to stop the treatment, if it proves to be useless. This could result in lives
   lost that might have been saved.
7. Few people leave clear written instructions about whether they want to refuse
   medical treatment if they become incompetent. If the majority of persons' desires are
   to be considered, we must allow their wishes to be heard from their statements to
   family and friends.
ATTORNEYS FOR THE HOSPITAL (Handout 7)
Consider the following points in making your argument:
1. The wishes of Nancy Cruzan are unclear, so the hospital does not have the right to end her care.
2. Since Nancy's wishes are unclear, her parents as her guardians do not have the authority to decide on her behalf. Only the state has that right.
3. The Cruzans must show by clear and convincing evidence that Nancy would have chosen to end the feeding because the state has a duty to protect human life.
4. To remove the feeding tube would be to assist Nancy in starving to death, which would be the same as assisting her to commit suicide, which is a crime in Missouri.
5. Life is precious and should be preserved without regard to its quality. How can we say that Nancy's life as it is is not worth living or worthless?
6. Feeding Nancy food and water through a tube is not medical treatment, but providing a basic necessity of life, essential to all of us. To withdraw would be the same as killing Nancy by starving her.