

U.S. v. KARL BRANDT: THE DOCTORS' TRIAL AT NÜRNBERG

Karin W. Zucker, MA, JD, LL.M., Professor, Army - Baylor University Graduate Program in Health and Business Administration, Ft. Sam Houston, Texas; E-mail - ameddja@att.net
 Martin J. Boyle, JD, Adjunct Faculty, Army - Baylor University Graduate Program in Health and Business Administration, Ft. Sam Houston, Texas

ABSTRACT



The Doctor's Trial, known also as the Medical Trial, took place before Military Tribunal I, in 1947, in the Palace of Justice in Nürnberg. It was conducted in English and German and took 139 days. Twenty-three defendants were charged 1) with conspiracy to commit war crimes and crimes against humanity, 2) with war crimes, and 3) with crimes against humanity; ten of the defendants were also charged with membership in a criminal organization, specifically the Schutzstaffeln der National-sozialistischen Deutschen Arbeiter Partei (the SS). All but three of the defendants were doctors; two of those were administrative officers, and one was president of the Ahnenerbe Society. Fifteen of the defendants were found guilty and seven were sentenced to death by hanging. The English transcript of the case is 11, 538 pages long.

The war crimes count involved medical experiments, generally conducted upon members of the armed forces of nations at war with the German Reich. Many of these experiments were arguably connected to war-fighting; they included high altitude experiments; freezing experiments; mustard gas experiments; and bone, and muscle and nerve regeneration experiments. Others, such as the sterilization experiments did not have such a clear military purpose. The crimes against humanity count included "murder, extermination, enslavement, deportation, imprisonment, torture, rape or other inhumane acts. . . ."

U.S. v. Karl Brandt is known for giving us the Nürnberg Code, which was part of the summation in the case, and was introduced by the now famous statement that "certain basic principles must be observed in order to satisfy moral, ethical, and legal concepts." The Nürnberg Code is studied in health law and medical research courses as a foundational document, followed by the Declarations of Helsinki and by our Common Rule.



In addition, the case has left us with many questions that are especially pertinent today as we look at the law and ethics of war and terrorism. Under what conditions is it legal and ethical for the victor to try the vanquished? If there are such trials, under whose auspices should they be held, and how should they be constituted? How separable are the concepts of *ius ad bellum* (justice of war) and *ius in bellum* (justice in war)? Under what, if any, circumstances should war-fighters be held responsible for judging the justice of war?

* In the Army - Baylor Program, during the 2002 - 2003 academic year, a special study (i.e., a small clinical case) to a medical ethics. After reviewing medical ethnics within the Department of Defense, we formulated a list of legal cases that were identified and, after much discussion, debated several and added several others. We then gathered the full text of those cases, a total of 24, plus the complaint in *Proctor v. U.S.* (The Tuskegee Experiment) and prepared a script of such cases which included the gist of the law and more discussion of the ethical issues than we believed an average would typically include. Those cases became the monograph, *Foundations in the Law: Classic Cases in Medical Ethics*, Author: Alan R. Boyd, Boston, and jointly, which was printed at the Academy of Health Sciences, Ft. Sam Houston, Texas, and is now in its second edition. U.S. v. Karl Brandt (Military Tribunal I), Nürnberg, Germany, 1947. Is one of the cases in that monograph.

Defendant	THE ACCUSED				Verdict
	Physician	1	2	3	
Richard Freytag, Hermann Chief, Department of Aviation Medicine, Luftwaffe	Yes	X	X	X	Guilty: 30 Years
August Meiser, Wilhelm Consulting physician to the Luftwaffe	Yes	X	X	X	Guilty: 15 Years
Wolke, Hans Deputy of the Reich Health Leader and Representative to the Cancer Research	Yes	X	X	X	Acquitted
Frank Winter Chief Administrative Officer in the Charité-Clinic of the Führer	No	X	X	X	Guilty: To be Hanged
Karl Brandt Personal physician to Hitler	Yes	X	X	X	Guilty: To be Hanged
Brandt, Rudolf Personal administrative officer to Hitler	No	X	X	X	Guilty: To be Hanged
Fischer, Fritz Assistant physician to defendant - Dr. Gadowitz	Yes	X	X	X	Guilty: Life Imprisonment
Gadowitz, Karl Personal physician to Heeseler	Yes	X	X	X	Guilty: To be Hanged
Grawert, Hans Chief of the Medical Department of the Wehrmacht	Yes	X	X	X	Guilty: Life Imprisonment
Kandror, Siegfried Chief of the Medical Services of the Armed Forces	Yes	X	X	X	Guilty: Life Imprisonment
Jones, Wilhelm Chief Physician of Buchenwald	Yes	X	X	X	Guilty: To be Hanged
Hirszowicz, Joachim Chief Physician of the Reich Physician SS	Yes	X	X	X	Guilty: To be Hanged
Oberheuser, Hans Physician at Ravensbrück	Yes	X	X	X	Guilty: 20 Years
Heeseler, Adolf Physician specialist in skin and venereal diseases	Yes	X	X	X	Acquitted
Poppendieck, Helmut Chief of the Research Staff of the Reich Physician SS	Yes	X	X	X	Guilty: 10 Years
Brandt, Hans Physician on the staff of the Department for Aviation Medicine	Yes	X	X	X	Acquitted
Klein, Gerhard Physician in the Medical Service of the Luftwaffe	Yes	X	X	X	Guilty: Life Imprisonment
Heeseler, Adolf Chief of the Research Staff of the Reich Physician SS	Yes	X	X	X	Acquitted
Wolke, Hans Director of the Department for Aviation Medicine	Yes	X	X	X	Acquitted
Schaefer, Werner Physician on the staff of the Department for Aviation Medicine	Yes	X	X	X	Acquitted
Schneider, Oskar Chief of the Medical Service of the Luftwaffe	Yes	X	X	X	Guilty: Life Imprisonment
Wolke, Hans Deputy Chief of the Administration	No	X	X	X	Guilty: To be Hanged
Wolke, Hans Chief of the Institute of Aviation Medicine	Yes	X	X	X	Acquitted

* Count 1 was Conspiracy, Count 2 War Crimes, Count 3, Crimes Against Humanity and Count 4, Membership in a Criminal Organization



Nürnberg Code

- The voluntary consent of the subject is absolutely essential.
- The experiment should be such as to yield fruitful results for the good of society, unprocurable by other methods or means of study, and not random or unnecessary in nature.
- The experiment should be so designed and based on the results of animal experimentation and a knowledge of the natural history of the disease or other problem under study that the anticipated results will justify the performance of the experiment.
- The experiment should be so conducted as to avoid all unnecessary physical and mental suffering and injury.
- No experiment should be conducted where there is an *a priori* reason to believe that death or disabling injury will occur; except, perhaps, in those experiments where the experimental physicians also serve as subjects.
- The degree of risk to be taken should never exceed that determined by the humanitarian importance of the problem to be solved by the experiment.
- Proper preparations should be made and adequate facilities provided to protect the experimental subject against even remote possibilities of injury, disability, or death.
- The experiment should be conducted only by scientifically qualified persons.
- During the course of the experiment, the human subject should be at liberty to bring the experiment to an end if he has reached the physical or mental state where continuation of the experiment seems to him to be impossible.
- During the course of the experiment, the scientist in charge must be prepared to terminate the experiment at any stage, if he has probable cause to believe, in the exercise of the good faith, superior skill, and careful judgment required of him, that a continuation of the experiment is likely to result in injury, disability, or death to the experimental subject.

WAR CRIMES

- A. Experiments**
- High - Altitude Experiments** - "for the benefit of the Luftwaffe, to investigate the limits of human endurance and existence at extremely high altitudes"
 - Freezing Experiments** - "to investigate the most effective means of treating persons who had been severely chilled or frozen"
 - Malaria Experiments** - "to investigate immunization for and treatment of malaria"
 - Lost (Mustard) Gas Experiments** - "to investigate the most effective treatment of wounds caused by lost gas, commonly called mustard gas"
 - Sulfanilamide Experiments** - "to investigate the effectiveness of sulfanilamide"
 - Bone, Muscle, and Nerve Regeneration and Bone Transplantation Experiments** - "to study . . . regeneration and bone transplantation from one person to another"
 - Sea-Water Experiments** - "to study various methods of making sea water drinkable"
 - Epidemic Jaundice Experiments** - "to investigate the causes of, and inoculations against, epidemic jaundice"
 - Sterilization Experiments** - "to develop a method of sterilization which would be suitable for sterilizing millions of people with a minimum of time and effort"
 - Typhus Experiments** - "to investigate the effectiveness of typhus and other vaccines"
 - Experiments with Poison** - "to investigate the effect of various poisons on human beings"
 - Incendiary Bomb Experiments** - "to test the effect of various pharmaceutical preparations on phosphorus burns"
- B. Murder of civilians and nationals of countries at war with the Reich**
- C. Murder of 112 Jews to complete a skeleton collection for the Reich University of Strasbourg**
- D. Murder and/or mistreatment of Polish nationals, many of whom were purposefully infected with incurable tuberculosis**
- E. Euthanasia Program of the Reich and the mass extermination of the Jews**

CRIMES AGAINST HUMANITY

- Murder, torture, and other atrocities
- Murder and/or mistreatment of tens of thousands of Polish nationals
- Euthanasia program

JUDGES AND ATTORNEYS



The Judges were Walter Beals (Presiding or Chief Judge), Chief Justice of the Supreme Court of Washington; Johnson Crawford, former District Court Judge from Oklahoma; Harold Sebring, Associate Justice of the Supreme Court of Florida; and Victor Swearingen, former Special Assistant to the U.S. Attorney General.

The prosecution was headed by Telford Taylor, Chief of Counsel for War Crimes. The Chief Prosecutor was James McHany, and there were six additional attorneys.

There was no lead defense counsel. All defendants were represented by counsel. Most had an individual lawyer; but, in some cases, the same attorney represented several defendants. A number of defendants, including Karl Brandt, had more than one lawyer. In total, there were 27 defense counsel.

"The mere punishment of defendants, or even of thousands of others equally guilty, can never redress the terrible injuries which the Nazis visited on these unfortunate peoples. For them, it is far more important that these incredible events be established by clear and public proof, so that no one can ever doubt that they were fact and not fable. . . ."



Telford Taylor,
Chief of Counsel for War Crimes

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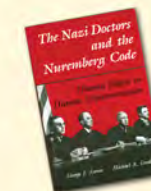
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Defendant	THE ACCUSED					Verdict
	Physician	Charged (Count)*				
		1	2	3	4	
Becker-Freyseng, Hermann <i>Chief, Department of Aviation Medicine, Luftwaffe</i>	Yes	X	X	X		GUILTY: 20 Years
Beigboeck, Wilhelm <i>Consulting physician to the Luftwaffe</i>	Yes	X	X	X		GUILTY: 15 Years
Blome, Kurt <i>Deputy of the Reich Health Leader and Plenipotentiary for Cancer Research</i>	Yes	X	X	X		Acquitted
Brack, Viktor <i>Chief Administrative Officer in the Chancellery of the Führer</i>	No	X	X	X	X	GUILTY: To be Hanged
Brandt, Karl <i>Personal physician to Hitler</i>	Yes	X	X	X		GUILTY: To be Hanged
Brandt, Rudolf <i>Personal administrative officer to Himmler</i>	No	X	X	X	X	GUILTY: To be Hanged
Fischer, Fritz <i>Assistant physician to defendant - Dr. Gebhardt</i>	Yes	X	X	X	X	GUILTY: Life Imprisonment
Gebhardt, Karl <i>Personal physician to Himmler</i>	Yes	X	X	X	X	GUILTY: To be Hanged
Genzken, Karl <i>Chief of the Medical Department of the Waffen SS</i>	Yes	X	X	X	X	GUILTY: Life Imprisonment
Handloser, Siegfried <i>Chief of the Medical Services of the Armed Forces</i>	Yes	X	X	X		GUILTY: Life Imprisonment
Hoven, Waldemar <i>Chief Physician of Buchenwald</i>	Yes	X	X	X	X	GUILTY: To be Hanged
Mrugowsky, Joachim <i>Chief Hygienist of the Reich Physician SS</i>	Yes	X	X	X	X	GUILTY: To be Hanged
Oberheuser, Herta <i>Physician at Ravensbrück</i>	Yes	X	X	X	X	GUILTY: 20 Years
Pokorny, Adolf <i>Physician specialist in skin and venereal diseases</i>	Yes	X	X	X		Acquitted
Poppendick, Helmut <i>Chief of the Personal Staff of the Reich Physician SS</i>	Yes	X	X	X	X	GUILTY: 10 Years
Romberg, Hans <i>Physician on the staff of the Department for Aviation Medicine</i>	Yes	X	X	X		Acquitted
Rose, Gerhard <i>Physician in the Medical Service of the Luftwaffe; Professor of Tropical Medicine</i>	Yes	X	X	X		GUILTY: Life Imprisonment
Rostock, Paul <i>Chief Surgeon of the Surgical Clinic in Berlin</i>	Yes	X	X	X		Acquitted
Ruff, Siegfried <i>Director of the Department for Aviation Medicine</i>	Yes	X	X	X		Acquitted
Schaefer, Konrad <i>Physician on the staff of the Institute for Aviation Medicine</i>	Yes	X	X	X		Acquitted
Schroeder, Oskar <i>Chief of the Medical Service of the Luftwaffe</i>	Yes	X	X	X		GUILTY: Life Imprisonment
Sievers, Wolfram <i>Reich Manager of the Ahnenerbe</i>	No	X	X	X	X	GUILTY: To be Hanged
Wetz, Georg <i>Chief of the Institute of Aviation Medicine</i>	Yes	X	X	X		Acquitted

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