

Nuremberg and the Issue of Wartime Experiments on US Prisoners

The Green Committee

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Defense attorneys at the Nuremberg Medical Trial argued that no ethical difference existed between experiments in Nazi concentration camps and research in US prisons. Investigations that had taken place in an Illinois prison became an early focus of this argument. Andrew C. Ivy, MD, whom the American Medical Association had selected as a consultant to the Nuremberg prosecutors, responded to courtroom criticism of research in his home state by encouraging the Illinois governor to establish a committee to evaluate prison research. The governor named a committee and accepted Ivy's offer to chair the panel. Late in the trial, Ivy testified—drawing on the authority of this committee—that research on US prisoners was ethically ideal. However, the governor's committee had never met. After the trial's conclusion, the committee report was published in *JAMA*, where it became a source of support for experimentation on prisoners.

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THE MOST famous document resulting from the Nuremberg Medical Trial is the Nuremberg Code, and the most celebrated element of this Code is the opening consent clause, which states that a research subject "should be so situated as to be able to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, over-reaching, or other ulterior form of constraint or coercion."¹ When one views this pronouncement in the abstract, the continuation—indeed, the vast expansion—of medical experimentation in US prisons during the quarter

century immediately following the trial can seem a mystifying contradiction. In this article, I will attempt to unravel an element of this mystery—if not resolve the contradiction—by examining another documentary product of the trial, which was first published in the pages of this *JOURNAL* 6 months after the Nuremberg Tribunal handed down its verdict.

DEFENSE THRUSTS; IVY PARRIES

The US prosecutors took several weeks as the Nuremberg Medical Trial began in late 1946 to present their case against the defendants. On January 27, 1947, near the end of this early phase in the proceedings, the prosecution team put Dr Werner Leibbrandt on the stand. Leibbrandt was a German physician and medical historian who had been persecuted by the Nazis during the war for "racial reasons."² The prosecutors in-

tended that Leibbrandt would testify on "the effect of the Nazi dictatorship on the German medical profession and medical standards."³

During much of Leibbrandt's examination by the prosecution, he labored to make a claim that the Hippocratic Oath contained implicit guidelines for medical scientists engaged in nontherapeutic research with human subjects.² The cross-examination of Leibbrandt by Robert Servatius, defense counsel for Dr Karl Brandt (who had been Hitler's personal physician), was the opening volley in an attempt by some of the defendants, and their attorneys, to equate US wartime research on prisoners with Nazi experiments on concentration camp inmates. In short, the German physicians on trial wanted to argue that they were no more guilty of experimental improprieties than US medical scientists who had relied on prisoners as research subjects during the war. (By exploring this episode, I am not endorsing the validity of the parallel that the Nazi medical defendants attempted to make during the trial.)

Servatius began by asking—in hypothetical terms—for Leibbrandt's thoughts on the use of prisoners as research subjects:

QUESTION: Witness, are you of the opinion that a prisoner who had over ten years sentence to serve will give his approval to an experiment if he receives no advantages there from? Do you consider such approval voluntary?

ANSWER: this is not basically being arranged. QUESTION: eight hundredous places. ANSWER: periment. QUESTION: whether damage. ANSWER: QUESTION: with malthemselv. that... a. ANSWER: such a depoint of vi they were

Servatius wanted to argue that Leibbrandt's testimony would be a time machine, taking the prisoner from the courtroom to the magazines. He recounted the story of the scientist by the name of Servatius, who had been described in the photograph.

At the time, the *Life* magazine's obvious question was whether you would admit Servatius did not do to escape consistency. Stateville cannot do before of the opinion are excellent thinking. Leibbrandt's "biological thinking" (the [his] into conclusion has become man relationship becomes age."^{1,2}

Concededly, could have ethical criticism. Short of being fined in research to the medical seem to

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ANSWER: No. According to medical ethics this is not the case. The patient or inmate [is] basically brought into a forcible situation by being arrested. . . .

QUESTION: Are you of the opinion that eight hundred prisoners under arrest at various places who give their approval for an experiment at the same time do so voluntarily?

ANSWER: No.

QUESTION: You do not distinguish as to whether the experiments involve permanent damage . . . or whether it is temporary?

ANSWER: No. . . .

QUESTION: If such prisoners are infected with malaria because they have declared themselves willing[,] do you consider that . . . admissible?

ANSWER: No, because I do not consider such a declaration of willingness right from a point of view of medical ethics. As prisoners[,] they were already in a forced situation.²

Servatius had Leibbrandt just where he wanted him at this point. The crafty trial attorney then presented Leibbrandt with a copy of an article on wartime malaria experiments conducted on prisoners at Stateville Prison in Illinois from the June 4, 1945, issue of *Life* magazine. Servatius spent several minutes laying out the details of the article: He read aloud the entire text, which recounted in laudatory terms the work of the scientists and the sacrifices made by the prisoner-subjects, and he described in detail each of the several photographs accompanying the article.¹

At the conclusion of his review of the *Life* piece, Servatius had a simple—and obvious—question for Leibbrandt: “Now will you please express your opinion on the admissibility of these experiments?” Servatius had set a trap, and Leibbrandt did not demonstrate any particular effort to escape the snare; he maintained consistency with a blunt condemnation of the Stateville research: “On principle[,] I cannot deviate from my view mentioned before on a medical, ethical basis. I am of the opinion that even such experiments are a necessary and outgrowth of biological thinking.”² Earlier in his testimony, Leibbrandt had described his view of “biological thinking”: “Under biological thinking . . . a physician . . . does not take the [human] subject [of an experiment] into consideration at all . . . the patient has become a mere object so that the human relation no longer exists and a man becomes a mere object like a mail package.”^{1,2}

Conceivably, the prosecution team could have dismissed Leibbrandt’s criticism entirely by arguing that any ethical shortcomings that might be identified in the use of US prisoners as research subjects paled in comparison to the atrocities committed by the Nazi medical scientists on trial. It might also seem that prosecutors could have ig-

nored criticism of human experimentation in the United States as essentially irrelevant to a trial concerning medical research in Germany. But a closer examination of the prosecution’s case suggests that such responses would have been seen as problematic by the US attorneys.

The prosecution was burdened by a fundamental disadvantage in arguing its case: the absence of preexisting and widely recognized written rules for human experimentation. Without such clearly articulated standards, prosecutors attempted (with limited success) to claim that other codes of medical ethics, such as the Hippocratic Oath, provided unambiguous guidance to medical researchers working with human subjects. But, more importantly, the US prosecution team suggested that written rules were not really necessary because researchers outside Nazi Germany had for many years universally and unerringly followed an unwritten set of rules “by common agreement and practice” when experimenting with human subjects. This line of argument appears to have made it difficult for the US prosecution team to accept any ethical criticism of human experimentation in the United States.⁵

The specific challenge of Leibbrandt’s unexpected testimony prompted a particular—and involved—response. Exactly who masterminded this plan is not clear, but the central figure was indisputably Andrew C. Ivy, MD, a respected medical researcher and vice president of the University of Illinois in charge of the Chicago professional schools. The American Medical Association (AMA) had responded to a request from the Nuremberg prosecutors for expert advice on matters of medical science and medical ethics by naming Ivy as the official AMA consultant for the proceedings (Figure 1).^{6,8} A contemporary piece in *Time* magazine discussing Ivy’s role in the Nuremberg Medical Trial described him both as “one of the nation’s top physiologists” and as “the conscience of U.S. science.”⁹

Andrew Ivy was in the Nuremberg courtroom in late January of 1947 to hear Leibbrandt condemn prison research in Ivy’s home state of Illinois. Shortly afterward, Ivy returned to Chicago and proceeded to contact Illinois Governor Dwight H. Green with an idea. Ivy suggested that he would be willing to chair a committee to examine the ethics of the malaria research that had taken place at Stateville Prison during the war. Based on events that would unfold during the next few months, it seems likely that Ivy instigated the formation of this committee largely in anticipation of an opportunity that he would have to rebut Leib-



Figure 1.—Andrew C. Ivy, MD, being sworn in before testifying at the Nuremberg Medical Trial. (Courtesy National Archives, R.G. 238, OMT-I-W-60.)

brandt’s testimony in Nuremberg. Governor Green was probably not aware of this scheme, but he went along with Ivy’s suggestion. Green was more likely motivated by a desire to have some advice on the question of whether to pardon any of the Illinois prisoners who had participated in the research. He was almost certainly not worried about the morality of the research itself, as the use of US prisoners in medical research was generally held in high regard by the public at the time.¹⁰

On March 13, 1947, Governor Green wrote to several Illinois citizens to see if they would be willing to serve on a committee chaired by Ivy.¹¹ The opening of Green’s letter makes clear that establishing the committee was Ivy’s idea: “At the suggestion of Dr. Andrew C. Ivy, Vice-President of the Chicago Professional Colleges of the University of Illinois, I have decided to appoint an Advisory Committee. . . .”¹¹

On April 27, Ivy wrote his first letter to the 6 men who had agreed to join him on a committee that would advise the governor on “the ethical considerations involved” in medical experimentation with Illinois state prisoners.¹² The group included 2 physicians (in addition to Ivy), Robert S. Berghoff, MD, a prominent Chicago cardiologist, and Morris Fishbein, MD, then editor of *JAMA*; a Chicago rabbi named George Fox; Ralph A. Gallagher, a Catholic priest and chair of the Department of Sociology at Loyola University; Oscar G. Mayer, president of the large meatpacking company bearing his name; and Kaywin Kennedy, a prosperous lawyer from Bloomington, Ill. Ivy closed his letter to his fellow committee members with a promise to contact the group “within two to three

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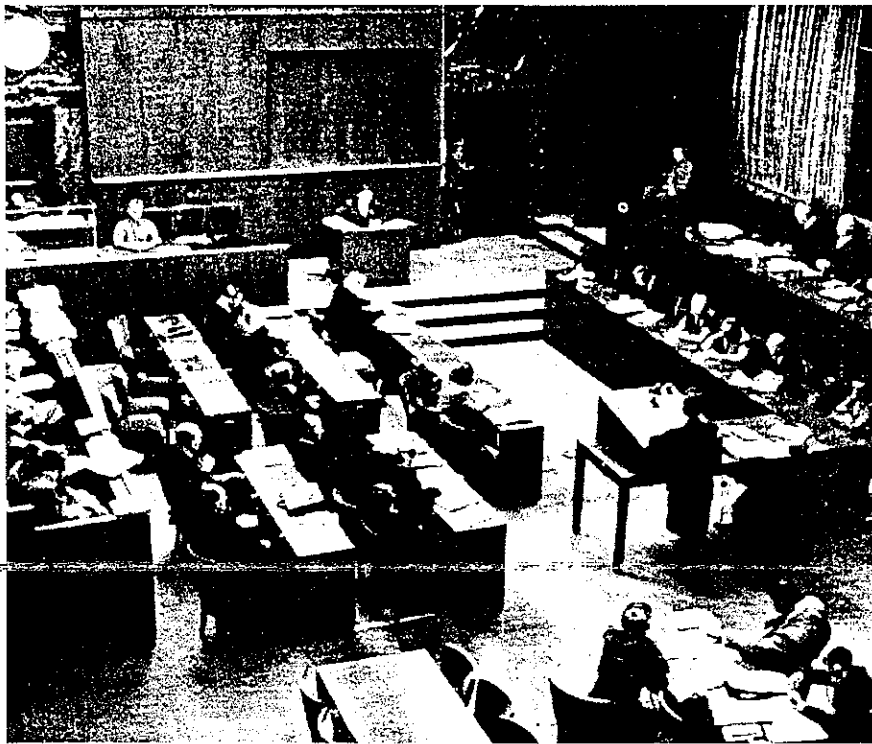


Figure 2.—Nuremberg Medical Trial with Andrew C. Ivy, MD, seated at center top while under cross-examination by the defense. (Courtesy National Archives, R.G. 238, OMT-I-GV-7.)

... asks" to arrange "a convenient date and time" for their first meeting.¹²

In mid June, near the end of the Nuremberg Medical Trial, Ivy appeared before the tribunal as a rebuttal witness (Figure 2). With him, Ivy had the report of the so-called Green Committee—a committee that had not yet found "a convenient date and time" for its first meeting.¹³ In introducing Ivy to the court, the prosecution was careful to establish him as Leibbrandt's equal in general and his superior in judging the particulars of US medical experimentation. Under friendly questioning by the prosecution, Ivy spoke in glowing terms about the experimentation that had taken place in US prisons during the war. He listed among his own qualifications to testify the fact that he was "chairman of the committee appointed by Governor Green in the State of Illinois to consider the ethical conditions under which prisoners and penitentiaries may be used ethically as subjects in the medical experiments."¹² Ivy implied that the Green Committee had carefully considered and approved the Stateville research; he never volunteered that the prestigious Green Committee had never met.¹⁴

Under the more pointed questioning of the defense attorneys, Ivy took on Leibbrandt more directly. At 1 point he stated plainly, "I do not agree with... Professor Leib[b]randt... he assumes that prisoners cannot be motivated to take

part in medical experiments by humanitarian incentives. This is contrary to our experience."¹⁴ Servatius, the attorney who had led Leibbrandt to condemn the wartime prison research in Illinois, attempted to ask Ivy some probing questions about the nature of the Green Committee's deliberations. Ivy avoided outright misrepresentation by responding—somewhat awkwardly—in the first-person singular:

QUESTION: In your commission [ie, the Green Committee] you probably debated how the volunteers should be contacted; is that not so?

ANSWER: Yes.

QUESTION: On this occasion was there not discussions of the question that you should assure yourself that no coercion was being exercised, or that the particular situation to which [sic] the person found himself who applied was being exploited?

ANSWER: Yes, I was concerned about that question.

QUESTION: There were discussions about that?

ANSWER: Not necessarily with others, but there was always consideration of that in my own mind.¹⁴

Servatius also raised questions about the origins of the Green Committee and the relation of the committee to the Nuremberg Medical Trial. In responding to these queries, Ivy flirted with perjury:

QUESTION: May I ask when this committee was formed?

ANSWER: The formation of this committee, according to the best of my recollection, occurred in December 1946....

QUESTION: Did the formation of this committee have anything to do with the fact that this trial is going on...?

ANSWER: There is no connection between the action of this committee and this trial.¹⁴

Under cross-examination by Servatius, Ivy also read the "conclusions" of the committee into the trial record:

Conclusion 1: The service of prisoners as subjects in medical experiments should be rewarded in addition to the ordinary good time allowed for good conduct, industry [sic], fidelity, and courage, but the excess time rewarded should not be so great as to exert undue influence in obtaining the consent of the prisoners. To give an excessive reward would be contrary to the ethics of medicine and would debase and jeopardize a method for doing good. Thus the amount of reduction of sentence in prison should be determined by the forbearance required, by the experiment, and the character of the prisoner. It is believed that a 100% increase in ordinary good time during the duration of the experiments would not be excessive in those experiments requiring the maximum forbearance.

Conclusion 2: A prisoner incapable of becoming a law abiding citizen should be told in advance, if he desires to serve as a subject in a medical experiment, not to expect any reduction in sentence. A prisoner who perpetrated an atrocious crime, even though capable of becoming a law abiding citizen, should be told in advance, if he desires to serve as a subject in a medical experiment, not to expect any drastic reduction in sentence.¹⁴

The first conclusion represented an early—perhaps the first—public enunciation by a prominent US medical researcher of the potential ethical problems associated with granting a prisoner a large sentence reduction in exchange for participation in an experiment. Ivy, in essence, conceded the possibility of coercion by excessive reward in prison research; he denied, however, Werner Leibbrandt's assertion that experimentation on prisoners was, by definition, unethical. In the second conclusion, Ivy captured the US public's most common concern about experimentation with prisoners up until the 1960s (which had nothing to do with exploitation or coercion): the worry that vicious felons might be rewarded too greatly merely for participating in an experiment.

THE GREEN COMMITTEE AFTER NUREMBERG

The attempt of defense lawyers at Nuremberg to parallel the experimental crimes of their clients with the research conducted by US scientists in prisons during the war almost certainly did not have a significant impact on the final outcome of the Nuremberg Medi-

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2. Leibbrandt of the Nuremberg Microfilm, pp 1961-20
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4. Prison disease sc 43-44, 46.
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cal Trial. There is no evidence that the 3 US citizens who constituted the judicial panel found this defense tactic compelling. However, evidence clearly demonstrates that Ivy perceived the strategy as a serious threat. Less than 2 weeks after testifying in Nuremberg, Ivy returned to Chicago and wrote a letter dated June 24, 1947, to the other members of the Green Committee. In the letter, Ivy explained, without apology, that he had prepared the committee report on his own because of the demands of his role at Nuremberg¹³:

I should indicate that it was necessary for me to prepare . . . the report . . . in my capacity as a rebuttal witness at the Nurnberg medical trials, since the German defense attorneys raised the issue of the conditions under which prisoners might be used as subjects in medical experiments and could be considered as volunteers. The German defense attorneys were attempting to develop the idea that when we in the U.S.A. used prisoners in the Federal and State prisons . . . we were doing the same thing which the Nazi physicians did during the War. That defense was, of course, refuted by my testimony, a part of which consisted in pointing out the conditions under which the use of prisoners is ethical and that these conditions have been exercised in all the work done in the U.S.A.

Ivy enclosed a copy of the report with his letter and suggested that "perhaps a formal meeting of the Committee may be considered unnecessary" after each member of the committee had read what he had already prepared.¹³

The members of the Green Committee were not, in fact, completely satisfied

with Ivy's report. Some committee members corresponded with Ivy through the summer and fall of 1947, and the group actually met twice—in November and December 1947—before submitting the report to the governor.¹⁵ The final report altered each of the 2 conclusions that Ivy had presented in Nuremberg in minor ways, but there is no evidence that anyone on the committee challenged the fundamental premise that the group was created to endorse: that prison research American-style was ethically acceptable. In fact, the final report of the committee judged the wartime research on Illinois prisoners as more than ethically acceptable. These experiments were cited by the group as "an example of human experiments which were ideal because of their conformity" with the highest standards of human experimentation, which included a proviso that "all subjects have been volunteers in the absence of coercion in any form."¹⁶

The final report also did much more than grant the experiments a stamp of approval within the confines of the Illinois state administration. *JAMA* editor Fishbein, who was a member of the Green Committee, decided to publish the report as a Special Article in the February 14, 1948, issue of *THE JOURNAL*.¹⁶ The Green Committee, which had begun as a response to an unexpected condemnation of prison research in Illinois during the Nuremberg Medical Trial, ended its work with an authoritative declaration that this same research had been "ideal." For years to come, advocates of prison experimentation in this country

could point to the Green Committee report as a strong source of support for the practice—almost certainly, none knew its true origin.

CONCLUSION

The Green Committee report arose from the Nuremberg Medical Trial because Ivy refused to concede even a remote moral similarity between the experimental atrocities committed in Nazi concentration camps and the medical tests that had been carried out in US prisons during the war. Indeed, Ivy held to this position so steadfastly in the trial that it seems he was willing to risk perjury—or, at least, avoid the truth—to hold his ground. Ivy's stance can be seen as a symptom of a broader refusal among US medical scientists to draw lessons about their own actions from the Nuremberg Medical Trial.¹⁷ But Andrew Ivy's posture was more than just representative; Ivy also helped to create this widespread attitude. His thoughts and deeds during the trial, especially as eventually reflected in the Green Committee report that appeared in *JAMA*, contributed to a widespread failure among US medical scientists to grapple with the difficult ethical questions about their own work that the Nuremberg Medical Trial might have raised. In effect, as Ivy assured the judges in Nuremberg that there was nothing ethically suspect about experimentation with prisoners in the United States, he sent the same message to his US colleagues.

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