# New Jersey supreme court 'legalizes' the Nuremberg crime of euthanasia

by Molly Kronberg and Linda Everett

On Jan. 17, the Supreme Court of the State of New Jersey handed down a decision which "legalizes" the murder of comatose and terminally ill patients in the state. The Court ruled that removal of all life-sustaining equipment, including *food and water,* is acceptable medical practice. It has thus "legalized" crimes for which Nazis were hanged at Nuremberg—euthanasia, a crime against humanity.

The New Jersey Court ruled in favor of euthanasia six to one. The six judges who supported euthanasia are Chief Justice Robert Wilentz, and Justices Robert Clifford, Stuart Pollock, Sidney M. Schreiber, Marie Garibaldi, and Dennis O'Hern. Justice Alan Handler dissented.

Justice Schreiber wrote the majority opinion—and then promptly retired.

The case originated in 1983, when the nephew of Clair Conroy, a terminally ill elderly patient, sued to have her deprived of food. The Appellate Division of the New Jersey Supreme Court ruled that removal of her feeding tube would constitute homicide. The new ruling has reversed that decision, equating "artificial" feeding with medical treatment, which the ruling says may be stopped.

Thus the Court has raised to the status of law crimes of euthanasia and torture—forced starvation—for which Nazi doctors were executed at Nuremberg. Chief Justice Wilentz and his colleagues are flouting natural law, by creating the conditions for such euthanasia and torture.

To put it plainly: Under the principles developed by the Nuremberg trials, not only the doctors in the United States who commit euthanasia against their helpless patients, but the judges who establish it as legal, could be, and should be, indicted and tried for crimes against humanity.

## The plaintiff: civilization

The actions of the International Military Tribunal created at the close of World War II to define and deal with Nazi crimes yield two precedents which cover the New Jersey case. The Tribunal defined war crimes, crimes against peace, and crimes against humanity as its areas of jurisdiction. In the case of the Nazi doctors—*the United States of America v. Karl Brandt, et al.*—the Tribunal indicted, tried, and executed individuals found guilty of euthanasia, a crime against humanity. The trials of Hans Frank (Hitler's lawyer, "first lawyer" of the Reich, and Governor General of Poland) and Hermann Goering examined the issue of Nazi justice, and its perversion from natural law into a system of *Führerbefehl*, or Führer-order. Whatever Hitler said, was law.

U.S. Justice Robert Jackson formulated the conceptions on which the International Tribunal was based: "The real complaining party at your bar is Civilization," he told the Tribunal. The principles of natural law were to be the basis for the Tribunal's actions. Hence, actions which violated natural law were punishable, *whether or not they were specifically outlawed in the laws of any individual nation.*

Indictments before this Tribunal hinged on "Jurisdiction and General Principles," Article 6:

". . . The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility.

". . . (c) *Crimes against Humanity*: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecution on political, racial, or religious grounds in the executiion of or in connection with any crime within the jurisdiction of the Tribunal, *whether or not in violation of domestic law of the country where perpetrated.*

"Leaders, organizers, instigators, and accomplices participating in the formation or execution of a common plan or conspiracy to commit any of the foregoing crimes *are responsible for all acts performed by any person in execution of such plan* [emphasis added]."

The definition of euthanasia as such a crime derived from *United States of America v. Karl Brandt, et al.*, which charged:

"Defendants Karl Brandt, Blome, Brack and Hoven unlawfully, willfully, and knowingly committed crimes against humanity . . . in that they were principals in, accessories to, ordered, abetted, took a consenting part in, and were connected with plans and enterprises involving the execution of the so-called 'euthanasia' program of the German Reich, in the course of which the defendants herein murdered hundreds of thousands of human beings, including German citizens, as well as civilians of other nations.

"This program involved the systematic and secret exe-

cution of the aged, insane, incurably ill, of deformed children, and other persons. . . . Such persons were regarded as 'useless eaters' and a burden to the German war machine."

On Aug. 20, 1947, the chief defendant, Dr. Karl Brandt, was found guilty of crimes against humanity and sentenced to death by hanging.

## 'Humanitarian' cover not acceptable

The majority opinion of the New Jersey Court, written by Justice Schreiber, now makes Brandt's crimes the law. It cloaks this in "humanitarian" verbiage, as Brandt once did. Schreiber writes that the Court sought to establish a subjective standard, "the very personal right to control one's own life. . . ."

A patient has the "right to die," finds the Court, if he once expressed opposition to life-sustaining medical intervention, in writing, a "living will," or orally, to a family member, friend, or doctor. In fact, if the patient ever showed a *reaction* to medical treatment of others, or perhaps complained about his own medical care, that can be construed as his desire to exercise his "right to die."

In the case of incompetent patients (though they never uttered a death wish), the ruling permits the state "to withhold or withdraw life-sustaining treatment" in the patient's "best interests."

On just these points, the Nuremberg Tribunal decision in the Brandt case was emphatic: The *intent* of the person committing euthanasia is not an issue. A "humanitarian" cover is just that—cover for crime. The Tribunal decided:

"We have no doubt that Karl Brandt—as he himself testified—is a sincere believer in the administration of euthanasia to persons hopelessly ill, whose lives are burdensome and an expense to the state or to their families. The abstract proposition of whether or not euthanasia is justified in certain cases of the class referred to is no concern of this Tribunal. . . . The Family of Nations is not obligated to give recognition to such legislation [that is, legislation 'legalizing' euthanasia] when it manifestly gives legality to plain murder and torture of defenseless and powerless human beings. . . ."

That is, no matter what the "humanitarian" argument, euthanasia remains a crime. Legislation that purports to "legalize" it is not in conformity with natural law, and therefore cannot be tolerated by the human community.

Brandt's final statement, July 19, 1947, to the Tribunal differed little from Schreiber's "subjective standard." Brandt asserted: ."..When I said 'yes' to euthanasia I did so with the deepest conviction, just as it is my conviction today, that it was right. Death can mean deliverance. Death is life—just as much as birth."

Brandt took his cue from his Führer. In ordering euthanasia, even Hitler hid behind humanitarianism: ."..Persons who, according to human judgment, are incurable can, upon a most careful diagnosis of their condition of sickness, be accorded a mercy death."

Hitler's and Brandt's arguments carried no weight at Nuremberg. Nor would the New Jersey ruling have done so.

The Nuremberg Tribunals were not concerned only with Nazi murders of foreign nationals; that is, they were not concerned simply with war crimes or crimes committed in the heat of military operations. The Tribunals asserted a broader jurisdiction: that of crimes against humanity. Thus, they found *German* doctors guilty of the murder of civilian *German* patients. They found that the "very purpose of the concept of crimes against humanity" is to protect citizens of a state from "systematic commission of atrocities and offenses" against them by the state.

Further, definition of crimes against humanity does not rely on the laws of any particular nation. It relies only on natural law. It is thus not within the power of the New Jersey judges to make euthanasia "legal"—any more than it was judged within the competence of the Nazi courts to make Hitler's outlaw orders "legal."

## Nazi justice

The principles of Nazi justice were developed by Hans Frank, and the League of National Socialist German Jurists, as follows: 1) Hitler represented the "will of the people." 2) In "true democracy," the "will of the people" is law. Therefore, 3) Hitler's word was law.

Hence the Nazis claimed a truly "popular" judicial system, based on the *Volksgemeinschaft*, or folk-community.

But the Nuremberg Tribunal found that any law which violates the principles of natural law, laid out by Justice Jackson as the law of the civilized community of nations, *cannot be law*. So, today, if Wilentz, Schreiber, and the rest, argue that "norms have changed," that "euthanasia" is now accepted humane practice, their arguments mean nothing. Popular custom is not law.

## Worse than the Nazis

The six judges of the New Jersey State Supreme Court have gone beyond the Nazis in crucial respects. They knowingly seek to evade the principles established at Nuremberg. Thus, Judge Schreiber is careful to write that the Court does not authorize a "person in authority" to determine if a life is "worthy to be lived." Instead, the patient will die because it is in his own "best interest." The opinion reads:

". . . The standard we are enunciating is a subjective one, consistent with the notion that the right that we are seeking to effectuate is a very personal right to control one's own life. . . .

"We hesitate . . . to foreclose the possibility of *humane actions, which may involve termination of life-sustaining treatment,* for persons who never clearly expressed their desires about life-sustaining treatment but who are now suffering a prolonged and painful death.

". . . This authority permits the state to authorize guardians to *withhold or withdraw life-sustaining treatment from*

*an incompetent patient if it is manifest that such action would further the patient's best interests* in a narrow sense of the phrase, even though the subjective test that we articulate above may not be satisifed."

## 'Best interest' tests

The Court establishes a "calculus of pleasure and pain" which stinks of vicious utilitarianism:

"We therefore hold that life-sustaining treatment may also be withheld or withdrawn from a patient in Claire Conroy's situation if either of two 'best interests' tests—a limited-objective or a pure-objective test—is satisfied.

"Under the limited-objective test, life-sustaining treatment may be withheld or withdrawn from a patient in Claire Conroy's situation when there is some trustworthy evidence that the patient would have refused the treatment, and the decision maker is satisfied that it is clear that the burdens of the patient's continued life with the treatment outweigh the benefits of that life for him.

"By this we mean that the patient is suffering, and will continue to suffer throughout the expected duration of his life, unavoidable pain, and *that the net burdens of his prolonged life (the pain and suffering of his life with the treatment, less the amount and duration of pain that the patient would likely experience if the treatment were withdrawn) markedly outweigh any physical pleasure, emotional enjoyment or intellectual satisfaction that the patient may still be able to derive from life*.

"In the absence of trustworthy evidence, or indeed any evidence at all, that the patient would have declined the treatment, life-sustaining treatment may still be withheld or withdrawn from a formerly competent person like Claire Conroy if a third, pure-objective test is satisfied.

"Under that test, as under the limited-objective test, the net burdens of the patient's life with the treatment should clearly and markedly outweigh the benefits that the patient derives from life.

". . . We expressly decline to authorize decision-making based on assessments of the personal worth or social utility of another's life, or the value of that life to others."

This does not differ from Hitler's claims for "mercy death," but the New Jersey judges want to achieve the same effects without *seeming* to create state authority for them.

Nazi "mercy killings" murdered about 275,000. In New Jersey, approximately 45,000 people are immediately threatened by the new ruling. Across the United States, about 1 million fall into the threatened categories.

The New Jersey judges have defined, as did the Nazis, the idea of "life not worthy to be lived"—no matter how tortuously they seek to cover this up. That idea is the basis of mass murder, as the International Monetary Fund is applying it on a world scale. It is the basis of the Carter administration's *Global 2000* document, which decrees the human race must be reduced by half by 1999.

# Administration beats

by Kathleen Klenetsky

Arizona Senator Barry Goldwater, who in December was insisting that crucial defense programs like the MX missile be cut to reduce the budget deficit, has reversed his position and is now maintaining that any freeze in military spending "could seriously damage the national security of the United States and compromise our ability to provide program management stability in the Pentagon."

Goldwater expressed this sentiment after a Jan. 11 meeting with Senate Republican leaders who were advocating the defense freeze that Goldwater had earlier espoused. Goldwater announced afterwards that such a freeze would send "a wrong and dangerous signal to our NATO allies and our adversaries," and that substantial reductions in procurement and research and development programs "would result in the very weapons program inefficiencies and waste which both the Pentagon and Congress have sought to eliminate." On Jan. 23, Goldwater announced that he fully supports the 6% real increase in defense spending sought by President Reagan and Defense Secretary Weinberger.

## Administration backs Pentagon budget

Goldwater's sudden 180-degree reversal testifies to intensive efforts by Reagan and Weinberger to protect the defense budget from further gouging by a Congress run amok. After agreeing to $8 billion in cuts in military spending for FY1986, they are making it clear that no further cuts will be tolerated.

Both men are personally twisting congressional arms, especially those belonging to the crowd around Senate Republican Majority Leader Bob Dole. This gaggle has been demanding that the Pentagon be subjected to major new cuts, in order to balance the budget. Weinberger visited the Hill Jan. 17 where he met with House Republican leader Bob Michel and other key Republican Congressmen to explain to them that defense budget-cutting would do "major injury" to U.S. national security and impede U.S.-Soviet arms-control negotiations.

Several days later, Weinberger met with Senate Republican leaders to deliver the same message—this time taking pains to demonstrate what damage the defense spending-freeze which many of them espouse would do to U.S. military capabilities.

The upshot has been that key advocates of such a freeze have been forced, albeit reluctantly, to concede that such a measure is probably unachievable—at least for now. Shortly after the Weinberger-Senate tête-à-tête, Budget Committee