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Leo Alexander's Blueprint of the Nuremberg Code

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ABSTRACT

Background: Nazi Germany surrendered to the Allies on May 8, 1945. Six months later, the Allies tried the surviving leaders of Nazi Germany at the first Nuremberg trial. Later, the United States conducted 12 additional trials. The first one, The United States of America versus Karl Brandt et al., has been dubbed the Doctors' Trial. During the trial, the prosecution relied on the testimony of Dr. Andrew Ivy and Dr. Leo Alexander. At the end of the trial, Judge Sebring enunciated 10 principles needed to conduct human subject research—the Nuremberg Code. Authorship of the Code has been the subject of dispute, with both Ivy and Alexander claiming sole authorship.

Methods: In the summer of 2017, I visited Duke University Medical Center's Archives and surveyed the contents of boxes labeled "Alexander's papers." I also explored online databases with information on the Doctors' Trial. Pertinent documents were compared across collections, and against scholarly works on the topic.

Results: Box 3 of Alexander's papers at Duke University Medical Center's Archives contains a three-page document with six principles that, nearly word for word, were included in what is known as the Nuremberg Code. Alexander's name and appointment are typed at the end of the document.

Conclusions: Although the Nuremberg Code is likely to have been an unplanned collaboration among members of the prosecuting team and the judges, I present evidence suggesting that Alexander drafted the blueprint and was the main contributor to the final version of the Code.

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Introduction

On May 8, 1945, Nazi Germany surrendered to the Allies bringing an end to the European theater of World War II. Six months later, November 20, 1945, The United States of America, The French Republic, The United Kingdom of Great Britain and Northern

Ireland, and The Union of Soviet Socialist Republics brought to justice the surviving leaders of Nazi Germany at the Trial of the Major War Criminals before the International Military Tribunal - the first Nuremberg trial.¹

Following President Harry S. Truman's orders, and under the Control Council for Germany Law 10, the United States conducted 12 additional trials against members of professions that aided the Nazi regime before and during the war such as doctors, bankers, lawyers, and industrialists, the "subsequent Nuremberg Trials" (1946 to 1949). The first one of those trials, Military Tribunal I, Case 1, The United States of America versus Karl Brandt et al., has been dubbed the Doctors' Trial. The Doctors' Trial, December 9, 1946, to August 19, 1947, brought before justice 23 defendants, 20 of whom were physicians. During the Doctors' Trial, the prosecution brought forth evidence of torture and murder that, under the guise of medical experimentation, the defendants carried out on concentration and extermination camps' victims, as well as those held captive in other settings where schemes such as the Nazi euthanasia program "Aktion T4" took place.^{2,3} Among the aforementioned atrocities were freezing experiments, high-altitude experiments, mustard gas experiments, seawater experiments,

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Ethical declaration: The paper consists of original work that has not been published previously in print or electronic format, and it is not under consideration by another publication. As the sole author, I take full responsibility for the entire work. I have no disclosures to report. This work was deemed exempt from formal review by Nationwide Children's Hospital's Institutional Review Board. Permission was obtained from Ms. Emily Will to publish the results of her analysis of the handwriting on Fig. Finally, I have written authorization from Dr. Edward Buckley, Duke University's Vice-Dean for medical education, to use the figure included in this paper.

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sulfanilamide experiments, and experiments for mass sterilization.² To be sure, the so-called experiments bastardized science. The trial, however, was a murder trial—war crimes and crimes against humanity.^{2,4,5} That is, the defendants used inhumane acts such as torture and murder in a large number of imprisoned victims using “scientific pursuits” as weapons.

During the Doctors' Trial, Brigadier General Telford Taylor, the trial's Chief of Counsel, and James McHaney, the trial's Chief

Prosecutor, relied heavily on the testimony of two expert witnesses—Dr. Andrew Ivy and Dr. Leo Alexander.

Dr. Andrew Ivy (1893-1978) was a renowned physiologist and gastroenterologist. At the Doctors' Trial, Ivy represented the US Government's War Department.⁶ Ivy's nomination had been endorsed by the American Medical Association (AMA).⁷ During the trial, Ivy introduced three principles related to human subject research that, upon the request of the AMA's leadership, he had

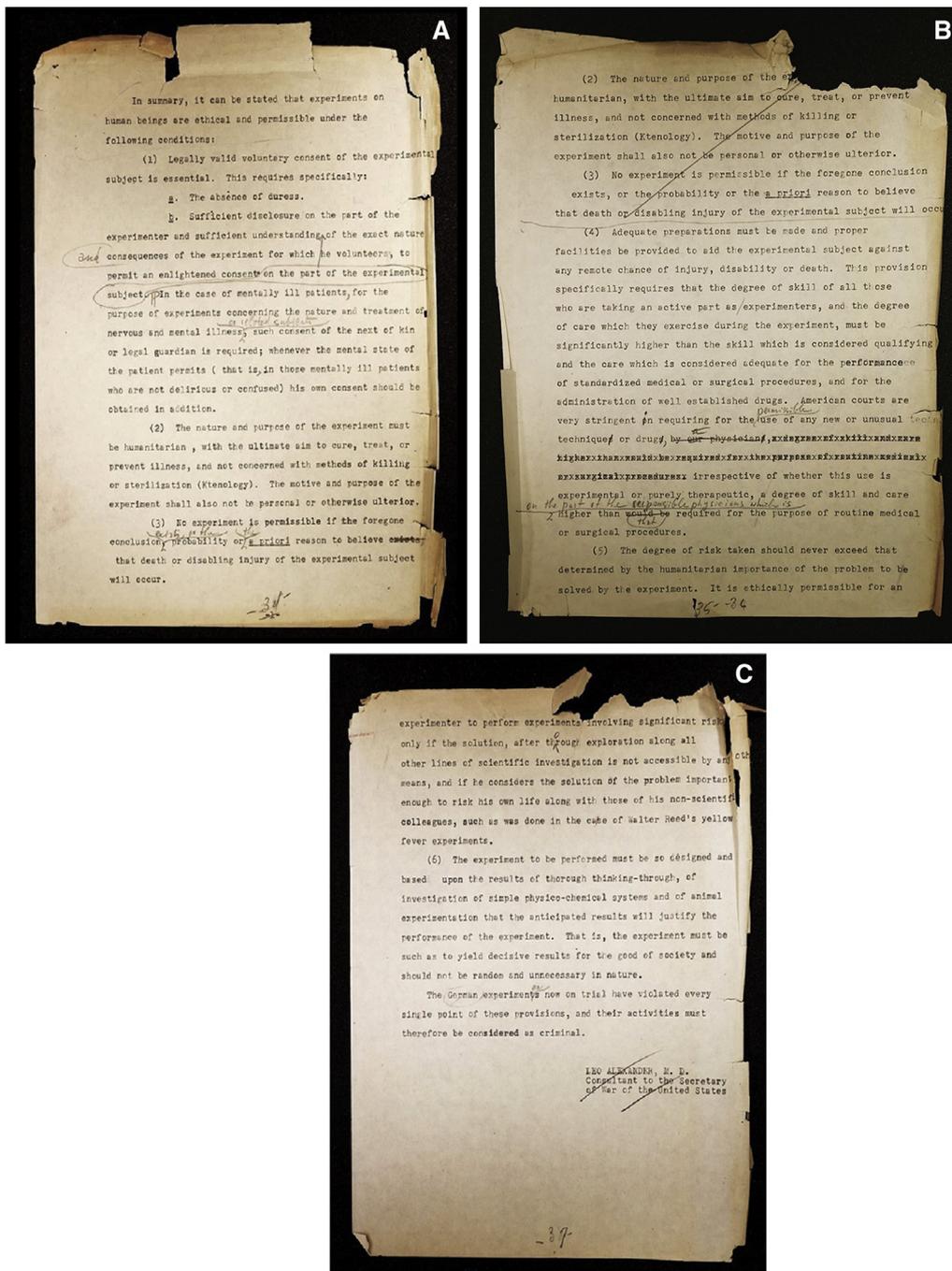


FIGURE. (A-C). Document found inside box 3 of Alexander's papers at Duke University's Medical Archives (65th General Hospital collection). The document lists the six principles included in Alexander's April 15, 1947, memorandum to Brigadier General Telford Taylor, the trial's Chief of Counsel. Although this text was not the final version that Alexander included in his memorandum to Taylor, his name, professional credentials, and appointment appear at the end of the document strongly suggesting that he was the author. The document has corrections made in pencil, amendments which, word-for-word, were included in Alexander's final version of the memorandum to Taylor, and eventually the Code. The editorial comments in pencil were not made by Alexander, the trial's Chief of Counsel General Telford Taylor, the trial's Chief Prosecutor James McHaney, or Andrew Ivy (please see text).

formulated.⁷ Those principles were adopted by the AMA in December 1946.⁷

The other medical advisor to the prosecution was Dr. Leopold—Leo—Alexander (1905–1985) whom Shevell has called “neurology’s witness to history.”⁸ Alexander was an Austrian-born neurologist-psychiatrist who trained under some of the most renowned neuroscientists of the early part of the twentieth century.^{8,9} At the end of his training, Alexander was awarded a grant to teach at Peking Union Medical College.⁸ Alexander’s intention was to return to Germany at the end of his tenure, but in 1933 he was advised against that plan.⁹ Alexander immigrated to the United States where he practiced neurology and neuropathology.⁸ In 1941, Alexander was appointed associate professor of neuropsychiatry at Duke University. During the war, Alexander joined the United States Army Medical Corps as part of the 65th General Hospital (US VIII Air Force).⁸ While on active duty, Alexander attained the rank of Major. Before the Doctors’ Trial, Alexander served as consultant to the US Secretary of War, gathering a vast body of information in preparation for the trial. During the Doctors’ Trial, Alexander served as chief medical advisor for the prosecution.

On August 19, 1947, following an eight-month trial, the three-judge panel, plus one alternate, rendered the verdicts finding most defendants guilty of war crimes and crimes against humanity.² As part of his closing remarks, Judge Sebring enunciated 10 principles needed to conduct “*medical experiments on human beings, [that] when kept within reasonably well-defined bounds, conform to the ethics of the medical profession generally.*”² [pp. 181] Those principles have come to be known as the Nuremberg Code.

Material and Methods

During the summer of 2017, I visited Duke University Medical Center’s Archives and explored the contents of the 65th General Hospital Collection, nine boxes in all. In the ensuing years, I have explored the online contents of Harvard Law School Library’s Nuremberg Trials Project; The University of Washington’s Walter Beals’ Nuremberg Trials photograph collection; the Butler Center for Arkansas Studies, Central Arkansas Library System’s James M. McHaney collection; and Cornell University Law Library: Donovan Nuremberg Trials Collection. Pertinent documents were compared across collections, and against previous scholarly work on the topic. Finally, I contracted services of Ms. Emily Will, a Certified Forensic Document Examiner, to analyze the handwriting on the document presented in Figure.

Results

Duke University Medical Center’s Archives house nine boxes under the title “Materials of the 65th Base Hospital and the 65th General Hospital, 1917–2002.” The content of the boxes was collected by Dr. Ivan Brown. Dr. Brown was a surgeon in the United States Army 65th General Hospital, an Army Medical Corps unit stationed at Redgrave Park, Suffolk, England, between February 1944 and August 1945. The unit, staffed by Duke University Medical Center nurses and doctors, was designated a specialty center for neurosurgery, thoracic surgery, plastic surgery, and the treatment of individuals with burns and hand injuries.^{10,11} As a neuropsychiatrist, Alexander focused on the treatment of combat fatigue in bomber crews.⁸ Boxes 3, 4, 5, and 6 of the “Materials of the 65th Base Hospital and the 65th General Hospital” are labeled “Alexander’s papers.”¹² Among other documents, the aforementioned boxes contain personal materials such as Alexander’s letters to his wife, travel permits, and official correspondence. They also contain patient records, trial records, copies of Nazi records, photographs of the Nuremberg trials, photographs of the evidence presented at the

Nuremberg trials, photographs of the Polish women whom Alexander deposited at the Nuremberg trials, and signed copies of several of the Combined Intelligence Operative Sub-Committee’s reports authored by Alexander. Inside box 3, specifically, is the document presented in the Figure. As will be discussed in more detail later in this article, my assessment is that the document shown in the Figure is a blueprint of the document that eventually became the Nuremberg Code. Alexander’s name and rank while in active duty are typed at the end of the document.

It is not entirely clear how Duke University Medical Center’s Archives acquired Alexander’s documents. The most plausible explanation is that they were brought from Europe by Dr. Ivan Brown who eventually donated them to the Archives (Rebecca Williams, Archives Librarian for Research, Outreach, and Education, Duke University Medical Center Library and Archives, personal communication). As just mentioned, Dr. Brown was a surgeon in the 65th General Hospital, a Duke University Medical Center’s affiliated military medical unit.¹⁰ Dr. Brown, who eventually became a world-renowned cardiothoracic surgeon, was the unofficial historian of the 65th General Hospital. As such, he gathered and cataloged the general administrative and medical records of the unit, photographs, newsletters, memorabilia, artifacts, and oral history interviews. Other documents in Brown’s collection include the “Opie Norris Smith Papers, 1942–1992.” Norris was the Commanding Officer and Chief Medical Officer of the 65th General Hospital.¹²

On December 7, 1946, two days before the start of the Doctors’ Trial, Alexander gave General Taylor a memorandum titled “Ethical and non-ethical experimentation on human beings.”¹³ In the document, Alexander wrote that “...*experiments in human beings are permissible to be performed by a doctor if they fulfill certain requirements in three different spheres: (1) moral-legal requirements, (2) medical-ethical (Hippocratic) requirements, and (3) scientific requirements.*”¹³ [pp. 41–42] The aforementioned requirements can be succinctly summarized as follows: the experiments are forbidden unless the subject gives voluntary informed consent, the experiments are forbidden if there is a probability or an *a priori* reason to believe that death or disability will occur, and the experiments are forbidden unless the expectation exists that the results will be for the good of society.¹³ Echoes of the three requirements are present in the Nuremberg Code’s principles 1 to 5. In a memorandum to Taylor dated April 15, 1947, four months before the end of the trial, Alexander refined the aforementioned three elements and expanded them to six requirements “*to render experimentation on human beings ethical and legally permissible.*”¹³ [pp. 40] Elements of the six requirements, in some instances word for word, are present in the Nuremberg Code’s principles.

Discussion

Authorship of the Nuremberg Code has been the subject of debate and dispute.^{4,5,14} After all, being the author of the blueprint for all post–World War II codes on the ethics of human experimentation is a prize worth fighting or even lying for.¹⁴ General Taylor held that authorship rested with Judge Sebring.^{4,5,14} Years later, Ivy claimed sole authorship.^{14,15} In a March 19, 1964 letter to the authors of the book “Clinical Investigation in Medicine: Legal, Ethical and Moral Aspects. An Anthology and Bibliography,” Ivy wrote that he had accepted participation in the Doctors’ Trial with the intention of “*placing in an international judicial decision the conditions under which human beings may serve as subjects in a medical experiment, so that these conditions would become the international law on the subject*” [Andrew Gaw, personal communication]. At the end of the letter, Ivy wrote that the only difference between the version he submitted to the judges and the final

version of the Code was their insertion of the word “perhaps” in the Code’s fifth principle.¹⁴ For his part, Alexander claimed to have been the Code’s original author and to have been acknowledged for doing so.^{13,16,17} Alexander, however, recognized having been influenced by Ivy’s testimony.¹⁶ Alexander also acknowledged that the judges had made modifications and additions to his original “six proposed requirements to render experimentation on human beings ethical and legally permissible.”¹⁶ [pp. 15] Specifically, Alexander indicated:

*“The judges enlarged [the six] criteria to ten points by dividing my point number 4 into three separate points, and by adding two provisions for prompt termination of an experiment at the discretion of the investigator, or at the request of an experimental subject. These were incorporated in their final judgment as the basic principles which must be observed in order to satisfy moral, ethical, and legal concepts with regard to medical experiments. However, they omitted from my original point No. 1 provisions for valid consent in the case of mentally sick subjects to be obtained from the next of kin and from the patient whenever possible, probably because they did not apply in the specific cases under trial.”*¹⁶ [pp. 15–16; Fig A, entry 1b]

Taylor’s suggestion that Judge Sebring, either alone or with input from the other judges, was the sole author of the Code is puzzling. As mentioned earlier, on April 15, 1947, Alexander wrote a memorandum to Taylor titled “Ethical and non-ethical experimentation on human beings.”¹⁸ On pages 7 through 10, Alexander listed six principles that were eventually entered—in some instances word for word—as part of the judges’ 10 principles. It is true that submitting a document is not akin to having the document read by its intended recipient. As such, it is possible that although Alexander submitted the document on or around April 15, 1947, the report never found its way to Taylor’s desk. Alternatively, Taylor could have forwarded the memo to Judge Sebring without reading the document’s 29 pages in detail. Such sequence of events could explain why Taylor did not recall Alexander’s six principles.

Ivy’s claim that, save for one word, he had been the Code’s sole author, is untenable. It is true that Ivy wrote a set of three “principles and rules” that were introduced during a meeting at the Pasteur Institute in July 1946.¹⁵ That collection, which Ivy presented to the AMA, has little resemblance to what eventually became the Nuremberg Code.⁷ Moreover, Ivy’s statement that at a lunch in late January 1947, the judges intimated that the prosecution had not made a case for conviction, and that presiding Judge Beals had asked him to return as a rebuttal witness in June to bolster the prosecution’s case, is inconceivable. The Nazi Doctors’ Trial was a “bench trial,” one adjudicated by judges. The panel of judges was to rule on the procedural and evidentiary issues, hear the evidence with impartiality, exonerate the innocent, convict the guilty, and as appropriate deliver sentences. To suggest that the judges would have made up their mind less than two months into a trial that lasted over eight months and that Ivy’s presence was needed to buttress the prosecution’s case would imply not only bias but also conspiracy.

Aware of the controversy regarding the Code’s authorship, and that, as mentioned in the Material and Methods section, Alexander had worked as a physician at Duke University, I requested access to the documentation available at Duke University Medical Center’s Archives. Alexander began work on the second memorandum to Taylor in April 1947, if not earlier.^{13,15} The Figure depicts an early draft of the six principles included in that memorandum.¹⁸ This document can be found inside box 3 “Alexander’s papers” of the “Materials of the 65th Base Hospital and the 65th General Hospital” collection at Duke University Medical Center’s Archives.

Although the text shown in the Figure was not the final version that Alexander included in his memorandum to Taylor, his name, professional credentials, and appointment appear at the end of the document making it evident that he either typed the document himself, or had it typed by someone under his direction. In addition, the document has corrections made in pencil, amendments which, word for word, were included in Alexander’s final version of the memorandum to Taylor, and eventually the Code.²⁰

Given the possibility that the pencil markings in the Figure were made by Alexander, or a different author, I sought the professional opinion of Ms. Emily Will, a Certified Forensic Document Examiner. In addition, I compared the handwriting in the document to publically available examples of the signatures of Alexander, Ivy, Taylor, and McHaney. Comparing the penmanship of Alexander, Ivy, Taylor, and McHaney, Will’s and my assessment is that the handwritings in the document do not share a common source (Emily Will, personal communication). Thus, the pencil corrections in the Figure do not belong to Alexander, Ivy, Taylor, or McHaney, they belong to an unidentified author. Furthermore, given his statements on the topic, it is unlikely that the markings on the document were made by Ivy.¹⁴

Conclusion

As indicated by Shevell “Anchored in international common law, but lacking an aspect of enforcement.”⁹, pp. 270 the Nuremberg Code has become the template for international directives on human research ethics. Authoring such document would assure one’s place in the pantheon of science and bioethics. Most likely, the Code is the result of an unplanned collaboration among members of the prosecuting team—Taylor, Ivy, and Alexander—and the judges.^{4,5} My research leads me to conclude, however, that Alexander drafted the blueprint and was the main contributor to the final version of the Code.

Acknowledgments

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