

Reading 12A

THE DOCTOR'S TRIAL: A DRAMATIZATION

Reading 11B, "Legal Brief: Life Unworthy of Life," provides some background for this trial. The text for this exercise is based on the transcripts of the *Trials of War Criminals Before the Nuremberg Military Tribunals: "The Medical Case,"* Vols. I, II.

Participants:

Presiding Judge
Defendant (Dr. Schultz): person on trial
Defense Lawyer: represents the Defendant
Prosecuting Lawyer: represents the Allied Governments, which are accusing the Defendant of war crimes
A Witness (Dr. Bauer)
A Witness (Dr. Wald)
Jury Foreman (Teacher)
Jury (the rest of the class)

JUDGE: After the defeat of Germany in World War II, the Allies—France, Great Britain, the Soviet Union and the United States—decided to set up an international court or tribunal to bring the leading Nazi criminals to justice. The Nazis were accused of war crimes and crimes against humanity. The trials began in 1946 in the German city of Nuremberg. Some of those tried were doctors. Other trials took place in Germany in 1963, 1970, and 1980. We are here today to conduct a trial to determine the guilt or innocence of Dr. Schultz, a former Nazi doctor.

What I am about to read to you is from the Hippocratic Oath, an oath that all doctors take upon graduating from medical school. This oath will be used as one of the standards to judge guilt or innocence in this trial:

I swear that...I will keep this oath:

I will follow that method of treatment which, according to my ability and judgment, I consider for the benefit of my patients, and abstain from whatever is deleterious and mischievous. I will give no deadly medicine to anyone if asked, nor suggest any such counsel... With purity and with holiness I will pass my life and practice my art... Into whatever houses I will enter I will go into them for the benefit of the sick and will abstain from every voluntary act of mischief and corruption...

JUDGE: Dr. Schultz, you are accused of medical crimes—of participating in the so-called “Euthanasia Program” from 1939 to 1941 and of conducting medical experiments on human beings in 1942 and 1944, which caused their deaths. How do you plead to this indictment, that is, to these charges?

(Dr. Schultz stands and faces the Judge.)

DR. SCHULTZ: Not guilty in the sense of the indictment.

JUDGE: Could you explain, please?

DR. SCHULTZ: I conducted medical experiments at several concentration camps—Buchenwald {boo-khen-vald}, Gross-Rosen, Neuengamme {noi-en-gahm} and Auschwitz—but do not consider these experiments criminal. Nor do I consider my participation in the Euthanasia Program to be a crime.

(Dr. Schultz is seated.)

JUDGE: Mr. Prosecutor, you may begin your examination of the witnesses.

PROSECUTOR: I would like to call Dr. Bauer to the witness stand. *(Dr. Bauer takes the stand.)*

PROSECUTOR: Dr. Bauer, were you a physician at Auschwitz?

DR. BAUER: I was, and I was there at the same time as Dr. Schultz.

PROSECUTOR: Did you participate in selections on the platform at Auschwitz?

DR. BAUER: Even though the selections were always considered a medical matter, I did not participate in them. When I arrived at Auschwitz, my supervisor instructed me to observe a selection. I watched and vomited. I could not believe what was happening. I refused to take part in such duty.

PROSECUTOR: Were you punished?

DR. BAUER: No. At first, Dr. Wirths and then Dr. Mengele tried to convince me of the necessity of having doctors conduct the selections. I gave excuses—I said I had too much work, that emotionally I could not tolerate being a part of the selections. Finally, they let me be. The next doctor who arrived had a similar experience—getting sick and refusing. He was an ardent Nazi who believed in the inferiority of the Jews and saw them as

subhumans. But even he was upset. Yet, after two weeks under the teaching advice of Dr. Mengele, he was working the platform with the other doctors. To my knowledge, there were a few other doctors who successfully refused to participate in the selections and some who would not participate in the experiments.

PROSECUTOR: Did you participate in medical experiments on human subjects—on the prisoners of the camps?

DR. BAUER: I did not. I refused after voicing my objections to Dr. Schultz and the other SS physicians. I told him that I could not be a party to experiments that were governed solely by “biological thought.”

PROSECUTOR: Could you explain what you mean by that?

DR. BAUER: By biological thought, I mean that the physician sees the subject or patient as an object or thing. He does not see the patient as a human being. For him, the human relationship no longer exists, and a man or woman becomes a mere object—like a mail package. In that doctor’s judgment, the subject is a machine, a *biological* mechanical object—something like a living robot. But a physician is not supposed to make judgments. His task is to care for the sick.

PROSECUTOR: Thank you, Dr. Bauer.

JUDGE: Mr. Defense Lawyer, do you have any questions?

DEFENSE
LAWYER: Thank you, Your Honor. Dr. Bauer, weren’t the experiments authorized by the state?

DR. BAUER: Yes.

DEFENSE:
: And isn’t it true that if the state authorizes certain acts, the individual should obey?

DR. BAUER: Between the state order and the doctor stands the human conscience. A doctor has taken the Hippocratic Oath, which insists that he uphold that conscience. The oath forbids him to harm his patient. Thus, for the doctor, the idea of people as individuals is more important than some concept of the nation or race.

DEFENSE: Do you agree that since the state authorized medical experiments, The state also assumed responsibility for the actions of a physician?

DR. BAUER: In this case, we are talking about the state—Germany—authorizing a medical program of murder—administered by doctors. They administered this program to protect what they called the *Volksgemeinschaft*. The people, the Aryan race. Safeguarding the racial community became a basis for doctors’ activities. They used this theory to justify a policy of medical extermination.

But I do not believe the state can assume the responsibility for a physician to his patients or to experimental subjects. The Hippocratic Oath is still the doctor’s Golden Rule.

DEFENSE: You may step down.

(Dr. Bauer is seated.)

PROSECUTOR: I call Dr. Schultz to the stand.

(Dr. Schultz takes the stand.)

PROSECUTOR: Dr. Schultz, could you tell me how the “ethanasia” decisions were made?

DR. SCHULTZ: At first, every German mental institution received questionnaires from the Reich Ministry of the Interior. These questionnaires were to be completed for each inmate of the institution and sent back to the Ministry. The doctors at the institutions had to fill out the questionnaires, and a panel of experts would examine the photocopies of them in Berlin. Each of three doctors on the panels received copies and independently decided which of the subjects should be treated.

PROSECUTOR: When you say “treated” you mean killed?

DR. SCHULTZ: Yes.

PROSECUTOR: Were only mentally ill patients killed?

DR. SCHULTZ: No. In 1940, the experts—the doctors—*we*—extended our procedures to inmates of concentration camps. Those inmates, like Polish prisoners of war and Gypsies, who were selected by camp doctors, were also sent to the euthanasia centers.

PROSECUTOR: What was a “ethanasia center”?

DR. SCHULTZ: Hospitals or medical centers that had been designated for the euthanasia treatments. They were especially equipped for this duty, some had gas chambers, others had drug facilities for special treatment.

PROSECUTOR: Were Jews and non-Germans included?

DR. SCHULTZ: Yes. The program also included homosexuals and mentally and physically deficient children. The questionnaires were filled out by doctors or officials of local health departments, heads of children's clinics, physicians, regular hospitals, etc. Later still, workers from Poland, Czechoslovakia, Hungary, Romania and other eastern territories who had become unfit for work were executed as part of the program, too. All those people were a burden to the institutions or the prisons or the labor camps. They served no function.

PROSECUTOR: How many questionnaires might a doctor review in a day?

DR. SCHULTZ: Oh, between two and three hundred.

PROSECUTOR: Let me draw your attention to Exhibit A, the Registration Form—the questionnaire you mentioned. Why was it necessary to include a category for “Race”?

DR. SCHULTZ: The Euthanasia Program was for the good of the *Volksgemeinschaft*, the German people. We had to know the race and nationality of each subject. Non-Aryans were potential threats to the purity and health of German blood and had to be removed—like an infection or a cancer.

PROSECUTOR: Let me draw your attention to the category of “Value of work.” Why was that included?

DR. SCHULTZ: In many cases, the decisions on life or death did not depend on the degree of insanity. Some were kept alive because they could do work. Productivity, after all, was a major goal—especially during the war. Patients who had tuberculosis, cancer or other weakening illnesses were included in the Euthanasia Program. They were in the category of “useless eaters” and were often starved to death because food was necessary for our soldiers and our healthy Aryans. Anyone unfit for work was a candidate for euthanasia.

PROSECUTOR: Did this category include sick children?

DR. SCHULTZ: Of course, because they could not work. We would often consult with patients and suggest to them that we could cure the child at our special institutions. They would be informed later that the child had died.

PROSECUTOR: How did you happen to be at Auschwitz and the other camps?

DR. SCHULTZ: Many of the staff of the Euthanasia Program were assigned to work on the “Final Solution.”

PROSECUTOR: Can you explain why?

DR. SCHULTZ: We had learned much. We knew the most efficient ways to dispose of large numbers of useless beings. One of our doctors perfected the use of gas chambers. His plans were used in the construction of the gas chambers at Auschwitz and other camps. Adolf Eichmann, in charge of the Jewish Deportation Department, approved of the methods used in the Euthanasia Program. No one had any objections to doing away with those tested. Everyone seemed pleased that such medical efficiency could be brought to the important task of killing useless people.

PROSECUTOR: If killing was such an important task, why did you engage in medical experiments?

DR. SCHULTZ: These experiments were for the good of the people of Germany. I, myself, was involved primarily in typhus research and assisted in the sterilization program. I worked on mass sterilization experiments. These included X-rays and castration.

PROSECUTOR: No further questions.

JUDGE: Mr. Defense Lawyer, do you have any questions?

DEFENSE: Dr. Schultz, why did you participate in the Euthanasia Program?

DR. SCHULTZ: My task as a German physician was the well-being and health of the *Volksgemeinschaft*. What else could matter? I was engaged in strengthening the only patient that could matter to me—my *Volk*. Even if this were not my primary concern, we were entering an age in which defectives—useless people, life unworthy of life—would endanger all of us. These were not whole people—they were not full human beings. The future generations of the Aryan race—my grandchildren—were depending on me to do the right thing.

There is more to my involvement. Euthanasia was decreed by the *Fuehrer*. The law was passed in 1933. For a doctor to refuse to participate was to disobey the law and ignore his responsibility to the future. The law is the law.

DEFENSE: No further questions.

JUDGE: You may step down.

(*Dr. Schultz is seated.*)

DEFENSE: I call Dr. Wald to the stand.

(Dr. Wald takes the stand.)

DEFENSE: Dr. Wald, were you a member of the medical staff at Auschwitz?

DR. WALD: Yes.

DEFENSE: Did you take part in the selections?

DR. WALD: Yes.

DEFENSE: Did you feel any reservations about his activity?

DR. WALD: At first, yes. Auschwitz was like nothing I had seen before—a different world. The conditions were horrendous: filth, lack of sanitation, lice, disease (especially typhus), dysentery and almost every sort of skin disorder, along with vitamin deficiencies and malnutrition. I had been a part of one of the euthanasia panels of medical experts. The selections at Auschwitz were very much like the selections in that program—but instead of seeing just registration forms (Exhibit A), we saw patients in front of us on the platform. In a sense, it was more ethical to make judgments based on our physical observations of the subjects. When Dr. Mengele explained the purpose of the selections more completely, I put my reservations aside. Some of the leading people in the medical profession were there, so why not me? If they did not object, if the leaders of the state did not object, why should I?

DEFENSE: No further questions.

JUDGE: Mr. Prosecutor, do you have any questions?

PROSECUTOR: Thank you, Your Honor. Dr. Wald, did you also participate in experiments?

DR. WALD: No. When I realized the purpose of the experimental laboratories, and that the prisoners were not volunteers, and that many suffered greatly and almost all died, I simply refused to conduct such experiments.

PROSECUTOR: Were you punished in any way for this choice?

DR. WALD: No. I was allowed to make my own decision. I worked in the infirmary alongside some of the Jewish prisoner doctors. I considered them good colleagues.

PROSECUTOR: Yet, during the selections, you were willing to send them to their deaths?

DR. WALD: That was different. Besides, I did not send any doctors to the gas—at least not that I know about. These Jews were partly responsible for the horrible conditions in the camp because there were so many of them. They carried lice off the trains and even the disinfectant showers did not clear up that problem. They were a threat to us and to the other prisoners. Further, our goal was the same as it had been in the Euthanasia Program, to improve the Aryan race, guarantee the *Volksgemeinschaft* of its continued existence. We wanted to strengthen it. The Jews had clearly weakened the *Volk* and had brought about their own fate. Didn't they control the medical profession? Didn't they anger good Germans with their control of the economy, the banks, businesses and stock market? We were doing the will of the community—eliminating Jews.

PROSECUTOR: Did you know for certain that Jews controlled all those things? Did you know Jews who controlled banks and businesses?

DR. WALD: No, I didn't know any. I had several Jewish friends—mostly doctors. They were good men and excellent doctors.

PROSECUTOR: On what basis, then, did you think they controlled German society?

DR. WALD: Well, it was common knowledge.

PROSECUTOR: So you decided to help kill them?

DR. WALD: I was engaged in a state-ordained policy. I, myself, would not kill anyone—I believe in the words of the great German founder of modern medicine, Paracelsus: “The doctor grows with his heart, he comes from God and is enlightened by Nature—the best of all drugs is Love.”

PROSECUTOR: So you killed Jews because you loved them?

DR. WALD: Of course not. I loved the most important patient—the German *Volk*. Besides, I did not personally kill anyone. And I refused to hurt anyone—I refused to aid in experiments, even though my career would have been greatly advanced if I had agreed to participate.

PROSECUTOR: Dr. Wald, what do you think of Dr. Schultz?

DR. WALD: An excellent scientist. He was formal but kind. He had a good reputation among doctors and was even respected by the prisoners. The children were fond of him.

PROSECUTOR: Did he kill children?

DR. WALD: He experimented with children—his typhus experiments.

PROSECUTOR: Tell us about those experiments.

DR. WALD: Thousands of prisoners were purposely infected with typhus bacteria. This was done by exposing open wounds to lice. The most successful method, however, was to inject already infected blood into a healthy patient. In fact, a supply of prisoners was kept in the infirmary just for the purpose of drawing their infected blood to give to subjects for the experiments.

PROSECUTOR: Did those suppliers live long?

DR. WALD: Of course not, but they were easily replaced. I could not bring myself to inject children nor healthy subjects, so I refused.

PROSECUTOR: What was the purpose of such experiments?

DR. WALD: To develop a vaccine for typhus.

PROSECUTOR: Was such a vaccine developed?

DR. WALD: No.

PROSECUTOR: Had it been developed, would you have approved of the method, that is, of using human subjects in that way?

DR. WALD: I did not participate. I do not condemn Dr. Schultz, but I personally would not have allowed such experiments. There is a limit to such research.

PROSECUTOR: You are excused. I call Dr. Schultz back to the stand.

(Dr. Wald is seated and Dr. Schultz takes the stand.)

PROSECUTOR: Dr. Schultz, how could you, as a doctor of medicine who swore the Oath Hippocrates, commit acts of murder in the so-called “Euthanasia Program” and in the death camps?

DR. SCHULTZ: I repeat: the state had ordered those programs. They were for the salvation of the German *Volk* and, in a sense, were self-defense. My goal was to obtain results. I did not consider the experiments or the euthanasia decisions to be murder. We were giving a special treatment to the ill, the lazy, the ugly, the useless eaters. This may be a radical solution to the problem of the health of the community—but it works. I did not deal with people, but with blood cells, with registration forms, with categories, just as doctors all over the world do. I see no contradiction between my actions and my oath. I had nothing against individual Jews; I am a doctor, after

all, and committed to healing and, as my colleague said, to love. The Jews were a potential help to curing typhus – or other diseases like tuberculosis. They were hanged after several weeks so their lungs could be dissected. The other doctor who conducted those experiments has saved lives since the war in his own private tuberculosis clinic. Although he killed twenty children during the war, he has saved at least twenty-one lives since then. Perhaps those he saved benefitted from his earlier experiments on people.

JUDGE: Do you think you have committed crimes?

DR. SCHULTZ: Absolutely not. I obeyed the state and my beliefs. We doctors were systematic, professional and organized. We even gave subjects injections of morphine so they would feel nothing. All we did was kill them.

Auschwitz gave us the opportunity to carry out a government policy that we believed in. We doctors were the rulers of the camp; professional, meticulous technicians authorized by the highest officials to conduct whatever experiments we saw fit. The only law in Auschwitz was work; if you could not work, what was the use of your life? A clean moral system. To survive at Auschwitz, you had to be worthy of life—able to work. Life unworthy of life—the useless ones, the inferior ones, the ones who would have polluted our race—were not allowed to exist.

PROSECUTER: You may step down.

(Prosecutor and Dr. Schultz are seated.)

JUDGE:
(TO THE JURY) You must now decide if the defendant, Dr. Schultz, is guilty of crimes against humanity. Your verdict must be based solely on the evidence presented in the “Legal Brief” and this trial. In reaching your verdict, consider whether or not Dr. Schultz had obligations toward the following:

- The Oath of Hippocrates
- Established moral principles, that is, generally accepted standards of right and wrong
- German Law

You may deliberate out loud, but your votes must be by secret ballot and be justified with a written argument. The Jury Foreman may now conduct the deliberations.