Approved February 2, 1984
Date

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE.

The meeting was called to order by Senator Jan Meyers at
Chairperson

10 a.m./p.m. on January 31, 1984 in room 526-S of the Capitol.

All members were present ~~except~~:

Committee staff present:

Emalene Correll, Legislative Research Department
Bill Wolff, Legislative Reseacy Department
Norman Furse, Revisor of Statutes Office

Conferees appearing before the committee:

Dr. John Randolph, Executive Director, Association of Community Mental Centers of Kansas
Ethel May Miller, Topeka, Kansas
Wayne Stratton, Attorney for Kansas Hospital Association
Joan Strickler, Executive Director, Kansas Advocacy and Protective Service for Developmentally Disabled, Inc.
Frederick J. Patton II, President, Topeka Pro-Life
Betty Stowers, President, Mental Health Association of Kansas

Others present: see attached list

SB 488 - Limitations on powers of guardians; Re Proposal No. 38

Emalene Correll, Legislative Research Department, briefly reviewed SB 488.

Dr. John Randolph, Executive Director, Association of Community Mental Health Centers of Kansas, testified that ACMHC is concerned about the likelihood that some wards have, in practice, been excluded from admission for inpatient psychiatric treatment. He said that the subsection dealing with admission of a ward to a facility for treatment of psychiatric disturbance, appears to be incomplete. Wards who do not have permission to voluntarily consent to admission and who cannot be shown to be a danger to self or others, do not appear to qualify for admission to a facility for treatment of a psychiatric disturbance. (Attachment #1).

Ethel May Miller, Topeka, Kansas, stated that the Kansas Association for Retarded Children has not taken a position regarding the technical aspects of SB 488, but their Board of Directors has supported the legislation pertaining to guardianship. Speaking as an individual, Ms. Miller testified in support of the proposed revision of the guardianship statutes. The revision would make it possible for disabled persons (as defined in the statutes pertaining to guardianship) to have exercised in their behalf the right to have withdrawn life-sustaining procedures. She urged approval of SB 488. (Attachment #2).

Wayne Stratton, Attorney, Kansas Hospital Association, distributed to the committee some changes to SB 488 and an amendment to KSA 65-28, 103(a), proposed by Maurice Copp, Attorney, Veterans Administration, Wichita, Kansas. Mr. Copp's testimony stated that Kansans would be doing its citizens a disservice by not allowing a guardian to sign, without court approval, the declaration required under the Kansas Natural Death Act, if the ward did not express contrary intent while mentally and physically capable. Mr. Copp also stated in his written testimony that he objected to Subsection (g)(7), relating to prostate surgery. There is no distinction between the procedure that is intended to cause sterilization and one that isn't. (Attachment #3).

Joan Strickler, Executive Director, KAPS, testified concerning SB 488, and said the technical amendments would clarify the language. She stated that their Board would not take a stand in support or against it.

Frederick J. Patton II, President, Topeka Pro-Life, distributed to the committee a memorandum summarizing his concerns regarding SB 488. Mr. Patton stated that he believes this law is a step toward euthanasia, and that by allowing this decision to be made in the guardianship format, this is, in essence, a grant of immunity to the decision makers, and there is potential for abuse. Mr. Patton also expressed concern over lack of definition of "incurable disease"; when "death of a ward will occur"; and "artificially" prolonging the dying process, and stressed that this wording is not very far away from inactive euthanasia. Mr. Patton asked that SB 488 not be passed. (Attachment #4).

Senator Meyers responded that the committee respected his concern about abuses, and said that what was desired was a situation where a person's wishes could be respected without any abuse.

Betty Stowers, President, Mental Health Association of Kansas, testified in favor of SB 488, and said that MHA supports the position taken by Dr. Randolph regarding minor children and guardians in admission to a psychiatric facility.

Senator Meyers announced that the committee would meet on Friday, February 3.

The meeting was adjourned.

SENATE

PUBLIC HEALTH AND WELFARE COMMITTEE

DATE 1-31-84

(PLEASE PRINT) NAME AND ADDRESS	ORGANIZATION
Ethel Mary Miller	Interested Citizen
R Haden	SRS
Eugene J Patton	Topeka Pro-life
Jan D. Rudolph	Assoc. of Community Mental Health Centers of Kansas
Jean Stubbs	KAPS
Marilyn Bradt	KINH
Frank Gentry	KS Hospital Assoc
KEITH R LANDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Gary Pelz	KDOA
Reid Stacey	Social and Rehabilitation Services
[illegible]	House of Rep.
Gail Hale	Haskell Co Commissioner
Norma Foster	Interested Citizen Haskell Co.
R. Kupper	KHA
Bill Anderson	Water Dist No 1 Jo Co
[illegible]	KHA
Norma L. Daniels	Senator
Paul M. Klotz	Assoc of CMHCs of Ks
Betty Stoner	MHMR Topeka
Kate Mettner	" "
[illegible]	KDOA
[illegible]	Intern
Bob Wood	Rep

H 1-1-31-84

Statement to the Public Health and Welfare Committee
on behalf of
Association of Community Mental Health Centers of Kansas
January 31, 1984
John G. Randolph, Ph.D.

In amending K.S.A. 59-3018, specifically the subsection dealing with admission of a ward to a facility for treatment of psychiatric disturbance, Senate Bill No. 488 appears to be incomplete. While a ward can be found mentally ill (including dangerous to self or others) and be subject to involuntary commitment, and while some wards may voluntarily consent to admission to a facility as allowed by court orders or letters (K.S.A. 59-3013,3014), other wards may have no access to inpatient psychiatric treatment. That is, wards who do not have permission to voluntarily consent to admission, through court dispositional orders or letters of limited guardianship, and who cannot be shown to be a danger to self or others, though they may experience considerable emotional suffering, do not appear to qualify for admission to a facility for treatment of psychiatric disturbance.

Under subsection (g)(1) of 59-3018, it's noted that "A guardian shall not have the power: (1) to place a ward in a facility or institution unless such placement has been approved for that person by the courts, with or without a hearing as the court may direct..."While this new reference to court approval of an admission may seem to solve the problem, we believe that, in practice, many courts will be reluctant to authorize admissions of non-dangerous wards, either informally (without a hearing) or formally, with some type of hearing, with no procedures set forth in the statutes.

The Association of Community Mental Health Centers is concerned about the likelihood that some wards have, in practice, been excluded from admission for inpatient psychiatric treatment.

Att. 1

H2 - 1-31-84

To: Senate Public Health & Welfare Committee 1/31/84
Senator Jan Meyers, Chairperson

From: Ethel May Miller, Parent Re: SB 488
Profoundly Retarded Daughter

Notes for testimony

Kansas Association for Retarded Citizens, which I usually represent in coming before you, has not taken a position regarding SB 488. We really feel unqualified to comment on the various technical changes proposed. Our Board of Directors has, however, supported the legislation pertaining to Guardianship, and certainly appreciated the study and report of the Interim Study on Special Care Services for the Mentally Retarded/Developmentally Disabled, through which needed clarifications and/or revisions are being proposed via SB 488.

As an individual, I would like to speak in support of the proposed revision which is more than a mere technical change. That is the revision which would make it possible for disabled persons (as defined in the statutes pertaining to guardianship) to have exercised in their behalf, thru a full due process hearing, a right that is accorded all other Kansas citizens. That is, the right, as authorized by the Ks. Natural Death Act, to have withdrawn life-sustaining procedures which serve only to artifically prolong the dying process.

As we testified last year, our support of the revision of the guardianship statutes was because we hoped guardians would be required to serve in a more personal way, with certain duties expected to assure more actual personal involvement. We view "guardianship" as an extension of our parental responsibility for the well-being of our daughter when we are no longer available to so serve. We also view

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guardianship as being a means of permitting certain decisions to be made in her behalf, decisions she cannot make for herself. We thought the purpose of guardianship was to enhance, rather than limit, the disabled person's ability to exercise his or her rights. We were concerned that the statutes as passed, effectively deprived someone else of the right to make a decision in behalf of our daughter, (exercising a "declaration" , or living will.)

However, because we recognized the tremendous value of the legislation overall, we certainly did not wish to press the issue. Thus we are especially grateful that this inequity has been brought to attention, with recommendation for solution as proposed in SB 488, page 3, lines 0099 thru 0110. As you will note, the procedures as specified are still much more stringent than are those for all other citizens. ("Pursuant to a court order," . ."a full due process hearing where the ward is represented by legal counsel" and a "finding by the court" of several specifications plus a "finding by the court that the application of life-sustaining procedures would serve only to artifically prolong the dying process.") But we respect and support these requirements as protective and in the best interests of the disabled person.

Someone has cautioned that we should not be over-zealous in in our efforts to "guard the guardians" by making it so difficult to act that we actually deprive people of rights instead of aiding people in having their rights fulfilled.

Finally, we noted in a 1981 report of a New Jersey Supreme Court ruling in connection with a related issue that altho the mentally retarded citizen could not make the choice herself, to deprive someone else of the right to make a choice in her behalf effectively denied her constitutional rights. Legal procedures were then authorized. We urge your approval of this proposed revision in SB 488 to restore the right indicated.

Respectfully submitted,
Ethel May Miller
Ethel May Miller

#3

1-31-84

Veterans Administration

Boulevard
Wichita KS 67211

January 13, 1984

In Reply Refer To:
452/02
L. C. 1984

Honorable Jan Meyers
Kansas Senate
Topeka, KS 66612

Re: Senate Bill 488, Amendment of K.S.A. 59-3018

Dear Ms. Meyers:

I have just read Senate Bill 488 and two important objections to it have been raised in my mind.

The inclusion of 59-3018(g)(3)(B) is to be applauded, however, I believe Kansas would be doing its citizens a disservice by not allowing a guardian to sign, without court approval, the Declaration required under the Kansas Natural Death Act where the ward has expressed no contrary intent during his or her lifetime and all interested parties, immediate family and medical personnel, are in agreement. This is the approach followed by the courts in New Jersey, Wisconsin, California, Washington, Massachusetts, Florida and New York.

This amendment, for purposes of clarity, would entail the amendment of K.S.A. 65-28,103(a) to include guardian under the term "person" as used in that statute.

The addition of a new subsection (g)(3)(B) and making the proposed subsection (g)(3)(B), subsection (g)(3)(C) would save our citizens thousands of dollars in medical and legal expenses.

A proposed change and amendment of Senate Bill 488 is attached and amendment to 65-28,103(a).

One other objection I have to Senate Bill 488 is subsection (g)(7) which requires a due process hearing for sterilization of a ward. I am in agreement with this except as it will apply to a commonly performed prostate surgery done on men known as transurethral resection (TUR). Retrograde ejaculation is a side effect of this procedure and for all practical purposes causes sterility in the patient.

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Honorable Jan Meyers

This particular procedure should be excepted from the operation of subsection (g)(7) but should require court approval under subsection (g)(2). Proposed changes of these two subsections are attached.

This office stands ready to assist in the passage of this bill and attorneys from this office are available as witnesses in any hearing. The widow of James T. _____, the ward in the Sedgwick County Probate Division case, has expressed her willingness to testify. We will also supply figures from the three Kansas Veterans Administration hospitals on the number of TUR's performed during 1983.

Sincerely yours,

JOHN A. BELL
District Counsel

BY: MAURICE D. COPP
Attorney

Enclosures

(2) To consent, on behalf of a ward, to psychosurgery, removal of a bodily organ, or amputation of a limb or to transurethral resection unless the procedure is first approved by order of the court or is necessary, in an emergency situation, to preserve the life or prevent serious impairment of the physical health of the ward.

(3) To consent on behalf of the ward to the withholding of life-saving medical procedures, except that a life-sustaining procedure, as such term is defined by K.S.A. 65-28,102 and amendments thereto, may be withheld:

(A) In accordance with provisions of K.S.A. 65-28, 101 to 65-28,109, inclusive, and amendments thereto;

(B) A guardian may sign on behalf of the ward the necessary declaration under K.S.A. 65-28,103 if the ward did not express a contrary intent while mentally and physically capable of expressing such intent, or

(C) Pursuant to a court order after: (i) A full due process hearing where the ward is represented by legal counsel; and (ii) a finding by the court that the ward has an incureble injury, disease or illness certified to be a terminal condition by two persons licensed to practice medicine and surgery who have personally examined the ward, one of whom shall be the attending physician as such term is defined in K.S.A. 65-28,102 and amendments thereto, and who have determined that the death of the ward

will occur whether or not life-sustaining procedures are utilized; and (iii) a finding by the court that the application of life-sustaining procedures would serve only to artifically (sic) prolong the dying process.

(7) To consent, on behalf of a ward, to sterilization of the ward, unless the procedure is first approved by order of the court after a full due process hearing where the ward is represented by a guadian ad litem. This subsection shall not apply to the medical procedure known as transurethral resection.

PROPOSED AMENDMENT TO K.S.A. 65-28,103(a)

65-28,103. Same; declaration authorizing; effect during pregnancy of qualified patient; duty to notify attending physician; form of declaration; severability of directions. (a) Any adult person or their duly appointed guardian, pursuant to K.S.A. 59-3018(g)(3)(b) may execute a declaration directing the withholding or withdrawal of life-sustaining procedures in a terminal condition. The declaration made pursuant to this act shall be: (1) In writing; (2) signed by the person making the declaration, or by another person in the declarant's presence and by the declarant's expressed direction; (3) dated; and (4) signed in the presence of two or more witnesses at least eighteen (18) years of age neither of whom shall be the person who signed the declaration on behalf of and at the direction of the person making the declaration, related to the declarant by blood or marriage, entitled to any portion of the estate of the declarant according to the laws of intestate succession of this state or under any will of the declarant or codicil thereto, or directly financially responsible for declarant's medical care. The declaration of a qualified patient or declaration by the qualified patient's guardian when the qualified patient is diagnosed as pregnant by the attending physician shall have no effect during the course of the qualified patient's pregnancy.

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Veterans Administration
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Wichita, KS 67211
Phone: (316) 269-6213

IN THE DISTRICT COURT OF SEDGWICK COUNTY, KANSAS
PROBATE DIVISION

IN THE MATTER OF THE GUARDIANSHIP OF)
)
JAMES T. [redacted])
A DISABLED PERSON) Case No. 83-P-[redacted]
)

JOURNAL ENTRY

The Court accepts the stipulation of facts submitted by the parties; has received it in evidence; has considered Petitioner's Exhibits A through L and all medical evidence submitted to the Court. This Court in lieu of oral argument has received the suggested conclusions of law submitted by counsel for Petitioner and by the Court appointed counsel for James T. [redacted].

The Court, upon examining the files herein, including the pleadings and medical reports filed herein, Exhibits A through L, the Stipulation of Facts, and the suggested conclusions of law, and hearing the statements and arguments of counsel, finds as follows:

1. James T. [redacted] is a victim of Amytrophic Lateral Sclerosis, having been first diagnosed in July 1982. The disease process has rapidly debilitated Mr. [redacted]. There is no known cure or treatment for this disease and death usually occurs within two to five years. Mr. [redacted]'s condition was further severely affected by hypoxic encephalopathic insult on April 21, 1983. Since that time, he has been in a persistent vegetative state and without cognitive brain function. From that time he has been respirator-dependent. There is no known medical procedure or treatment that gives any hope for a change in his present condition.

2. Even if there would be a cure for ALS, the insult to Mr. [redacted]'s brain is irreversible.

3. James T. [redacted], like Karen Ann Quinlan, survives in a persistent vegetative state. The brain damage is distributed in such a manner that the patient is incapable of any cognitive function, but because some of his brain regions are possibly not damaged, there are brain waves and other neurologic indications of reflex although primitive. This brain damage is irreversible but in contrast to total brain death, from which most patients die within three to seven days because of the failure of the cardiovascular system, Mr. [redacted] may survive for months or even years without any chance for hope of recovery.

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4. James T. [redacted]'s condition does not meet the definition of death as set forth in K.S.A. 77-202.

5. During his lifetime, Mr. [redacted] did not execute the necessary documentation to comply with the Natural Death Act, K.S.A. 65-28, 101 et seq.

6. Mr. [redacted], due to his affliction with ALS, would have been eligible to make the election under the Natural Death Act. Due to the unexpected insult to his brain, he was unable to make the election and the Court is unable to determine whether or not he would have made the election.

7. The family of James T. [redacted] are in agreement that life support should be terminated.

8. All medical evidence is in agreement that no medical purpose can be served in keeping James T. [redacted] alive on the respirator.

9. A constitutional right of privacy exists. (Grizwold v. Connecticut, 379 U.S. 926, 85 S.Ct. 1678, 13 L.Ed.2d 339; Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147.)

10. Several state court decisions have held that the constitutional right of privacy encompasses the right to refuse medical treatment. (In the Matter of Karen Ann Quinlan (N.J., 1976), 355 A.2d 467; Superintendent of Belchertown State School v. Sakiewcz (Mass., 1977), 370 N.E.2d 417; In the Matter of Earle Spring (Mass. Sup. Ct., 1980), 405 N.E.2d 115; Satz v. Perlmutter (Fla. Sup. Ct., 1980) 379 So.2d 359, 362 So.2d 160.)

11. The constitutional right of privacy guarantees to a patient the right to determine the course of medical treatment, including refusal of artificial life sustaining procedures.

12. This privacy right, founded on the federal constitution and applied to the states through the Fourteenth Amendment, extends only to situations where state action exists. In the case at hand, state action does exist due to the State's capability of imposing criminal sanctions on the hospital and its staff, by its required involvement of its judiciary in the guardian appointment process and by the State's parens patriae responsibility. (In re Colyer, 99 Wn.2d 114 at 121; In re Eichner, 73 A.D.2d 431, 426 N.Y.S.2d 517; Parham v. J.R., 442 U.S. 584, 61 L.Ed.2d 101, 99 S. Ct. 2493.)

13. The right to refuse treatment is not absolute. The State has a right to protect the sanctity of the lives of its citizens. The State's interest has been identified in four areas: (1) the preservation of life; (2) the protection of interests of innocent third parties; (3) the prevention of suicide; and (4)

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maintenance of the ethical integrity of the medical profession. (In re Sakiewicz, supra at page 741.) The interests of the State weakens in situations where continued treatment serves only to prolong an incurable condition. (In re Quinlan, supra at 41; In re Sakiewicz, supra at 742, 743 and 744; In re Colyer, supra at 123.

14. An incompetent's right to refuse treatment should be equal to a competent's right to do so. (In re Quinlan, 70 N.J. 10, 41, and 355 A.2d 647; Superintendent of Belchertown State Sch. v. Sakiewicz, 373 Mass. 728, 745 and 370 N.E.2d 417; In re Colyer, supra at 128.

15. The total intrusion of the medical care being received by Mr. [redacted] into his right to privacy is apparent. The care he is receiving is only prolonging the dying process with no realistic hope for a return to cognitive functioning. No compelling state interest exists which is paramount to Mr. [redacted]'s right of privacy in the case at hand.

16. K.S.A. 59-3018(g) provides what a guardian shall not have the power to do, and states in part as follows:

> ". . . (3) to consent on behalf of the ward to the withholding of life saving medical procedures, except in accordance with the provisions of K.S.A. 65-28,101 to 65-28,109, inclusive, and amendments thereto."

17. When Senate Bill No. 11, in the 1983 Legislature, was submitted, this particular provision relating to the power that a guardian would not have provided as follows:

> "3. To consent on behalf of a ward to the withholding of non-heroic, life saving medical procedures except as specifically authorized by the Court. . ."

18. The law as set forth by the Legislature does not give the Court discretion under the circumstances set forth in this case to grant the Guardian authority to withdraw or withhold life saving medical procedures.

19. Life is terminal and death is certain. James T. [redacted], from July 1982 until April 1983 was aware of his condition, and had the right to determine the course of medical treatment, including the refusal of artificial life sustaining procedures, which he did not do.

20. The Court finds the facts of the case would justify the termination of the life support procedure, however, there is no no Kansas statute which authorizes the Court to terminate a life. Our legislature, in defining death in K.S.A. 77-202, has provided when life sustaining procedures may be withdrawn, and in adopting the Natural Death Act, K.S.A. 65-28,101 through 65-28,109, sets out the procedure for a person to elect that life support systems may be withdrawn before the time defined in K.S.A. 77-202.

21. The Court finds the Guardian is not empowered under K.S.A. 59-3018 to execute, on behalf of the ward, the necessary declaration under the Natural Death Act, K.S.A. 65-28,101 et seq. in order that artificial life support be removed from the ward.

22. It is, therefore, the Order of the Court that the Court does not have the authority to issue an order authorizing withdrawal of life support systems from James T. [redacted]. Petitioner's request is denied.

23. The Court appointed counsel, Edgar Wm. Dwire, has performed services, research and court appearances exceeding 34.58 hours for which compensation of $2,593.00 is fair and reasonable, however, it cannot be approved because no funds are available.

24. The independent medical examination and report expenses of $290.00 for Dr. Mark Mandelbaum, M.D., are fair and reasonable, however, it cannot be approved because no funds are available.

25. The findings and orders herein are made the judgment of the Court this 15th day of November, 1983.

JUDGE OF THE DISTRICT COURT

APPROVED:

JOHN A. BELL, District Counsel
BY: MAURICE D. COPP, Attorney
Veterans Administration
901 George Washington Blvd.
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#4- 1-31-84

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FREDERICK J. PATTON, II
CYNTHIA J. PATTON
LYNN D. LAUVER

January 31, 1984

Public Health and Welfare Committee
Kansas Senate, Capitol Building
Topeka, Kansas 66612

RE: Senate Bill 488
Withholding Artificial Life
Sustaining Procedures

Dear Members of the Committee:

I hope to speak at your hearing with regard to Senate Bill 488, a Bill setting out guidelines for withholding artificial life sustaining procedures. This letter will serve to summarize in a brief form, some of my concerns with regard to the proposed piece of legislation.

I believe this law moves us in the wrong direction and is a step toward Euthanasia. We have moved, in the State of Kansas, from no Euthanasia to voluntary passive Euthanasia in the natural death act, K.S.A. 65-28, 101 et. seq. in 1979. This Bills moves us one more step to involuntary passive Euthanasia.

By allowing this decision to be made in the guardianship format, we need to understand that this is, in essence, a grant of immunity to the decision makers. Although you may argue the relative merits granting immunity for this type of decision, it is clear that if we are going to remove the decision makers from the normal limits of legal liability we must be very sure that there is no room for abuse.

This particular statute does not guarantee input from a spouse or relatives. Conceivably a situation could arise in which those who love the patient the most do not have input with regard to this very vital and important

Atch. 4

decision. Another very important problem is one of definitions. There is no definition of incurable injury, disease, or illness. There is no definition of terminal condition. There is no definition of when a "death of the ward will occur". And, there is no definition of "artificially" prolonging the dying process.

Finally, in this area, we need to be extremely careful because we are giving Government sanction to this type of activity. We should keep in mind the German Euthanasia history as pointed out on page 37 of the Book "The German Euthanasia Program", by Fredric Wertham, M.D., a copy of which I have attached. Hilter gave no order to kill patients indiscriminately, rather he suggested that mercy death be granted to patients who are, "incurably ill", without providing a definition.

I suggest that you vote against this Senate bill.

Sincerely yours,

Frederick J. Patton, II

FJP/blc

Enc.

The evidence is very clear on this. The psychiatrists did not have to work in these hospitals; they did so voluntarily, were able to resign if they wished, and could refuse to do special tasks. For example, the psychiatrist Dr. F. Hoelzel was asked by the psychiatric director of the mental institution Eglfing-Haar to head a children's division in which many handicapped and disturbed children were killed (right up to 1945). He refused in a pathetic letter saying that his "temperament was not suited to this task," that he was "too soft."

Hitler gave no order to kill mental patients indiscriminately. As late as mid-1940 (when thousands of patients had been killed in psychiatric institutions), Minister of Justice Guertner wrote to Minister Hans Lammers: "The Fuehrer has declined to enact a law [for putting mental patients to death]." There was no legal sanction for it. All we have is one note, not on official stationery but on Hitler's own private paper, written in October, 1939, and predated September 1, 1939. Meetings of psychiatrists working out the "euthanasia" program had taken place long before that. Hitler's note is addressed to Philipp Bouhler, chief of Hitler's chancellery, and to Dr. Karl Brandt, Hitler's personal physician at the time and Reich Commissioner for Health. (Bouhler committed suicide; Dr. Brandt was sentenced to death and executed.) The note reads as follows:

> Reichleader Bouhler and
> Dr. Med. Brandt
>
> are responsibly commissioned to extend the authority of physicians, to be designated by name, so that a mercy death may be granted to patients who according to human judgment are incurably ill according to the most critical evaluation of the state of their disease.
>
> (Signed) Adolf Hitler

To kill patients (Hitler does not speak of mental patients), even if one were sure that they are incurable, is bad enough. But even if his wish, as the note clearly expresses it, had been executed, the number of victims would have been infinitely smaller and the whole proceeding could not have been carried out in the way in which it was carried out. Referring to this note, anyone could have refused to do what was later actually done. The note does not give the order to kill, but the *power* to kill. That is something very different. The physicians made use of this power extensively, ruthlessly, cruelly. The note is not a command but an assignment of authority and responsibility to a particular group of persons, namely, physicians, psychiatrists, and pediatricians. This assignment, far from ordering it, did not even give psychiatrists official permission to do what they did on a grand scale, *i.e.*, kill all kinds of people who were not at all incurable or even mentally ill, making no attempt even to examine them first. The assignment gives to the psychiatrist the widest leeway for "human judgment" and a "most critical evaluation." It certainly cannot be construed as an order to kill people with no serious disease or with no disease at all.

Even if the note was not meant to be taken literally, it was a formal concession to ethics and offered a loophole for contradiction or at least question. The psychiatrists in authority did not take advantage of this. Instead they initiated the most extreme measures and cloaked them in scientific terminology and academic respectability. No mental patients were killed without psychiatrists being involved. Without the scientific rationalization which they supplied from the very beginning and without their mobilization of their own psychiatric hospitals and facilities, the whole proceeding could not have taken the shape it did. They were responsible for their own judgments, their own decisions, their own acts. It helps us