

NURSING HOMES: “TROUBLED AND TROUBLESOME”

In its landmark ruling “In the Matter of Claire Conroy”, New Jersey’s Supreme Court in 1985 was the first to rule that in certain situations life-sustaining food and fluids can be terminated from an incompetent hopelessly ill person. Ms. Conroy was an 84 year old nursing home resident who was barely responsive — in fact, she’d already died by the time the Court ruled in her case. Extensive deliberations during the trial considered various profound legal and ethical issues and in its lengthy final report, the Court cited a Senate Subcommittee’s conclusion that **“long term care for older people is perhaps the most troubled and troublesome component of our entire health care system.”** The Senate report continued:

In many cases [nursing home residents] have not even received humane treatment. And in an alarming number of known cases, they have actually encountered abuse and physical danger. Subcommittee transcripts are replete with examples of cruelty, negligence, danger from fires, food poisoning, virulent infections, lack of human dignity, callousness and unnecessary regimentation, and kickbacks to nursing home operators from suppliers. The net impact is that far too many patients have needlessly sustained injury and, in some cases, death.

New Jersey’s Supreme Court concluded that in the future, if withdrawal or withholding food and fluid was contemplated in a nursing home setting, a state appointed Ombudsman for Institutionalized Elderly should investigate to rule out potential “abuse.” After the statute empowering the Ombudsman’s authority was expanded, Governor Kean explained that there had been “unfortunate incidents in the past in which elderly patients in certain institutions or care facilities have been subjected to either physical or mental abuses...These incidents have either gone unreported or came to light many months later when it was too late to take official action. [The amendment would provide] protection for the patient and comfort for the patient’s family that he or she was receiving adequate care and was not being subjected to abuse of any kind.” *

Shortly after the Conroy decision, a New Jersey Bioethics Commission was established and, as then head of the state’s chapter of the American College of Physicians, I was appointed a member. Two years later (1987), I helped compose an *amicus curiae* brief for the Supreme Court in the case of Nancy Ellen Jobes that involved similar end-of-life issues. In later years I served as medical director of the

state's largest long term care facility so I had ample opportunity to understand why New Jersey's Supreme Court was sufficiently troubled about the industry for them to introduce a radical departure from usual clinical decision-making by requiring a *priori* government review and approval.

A recent *New York Times* (March 14, 2021) investigation by two of their reporters concerned the flawed rating system that had been introduced by CMS a dozen years ago as a way of evaluating quality of care provided in more than 15,000 nursing homes. Another recent analysis reported, "For decades...for-profit nursing homes have been robbing seniors of their dignity and their money...and where you find extraction of value and indifference toward horrors inflicted on human beings, you inevitably find a financier's spreadsheet."

In her 1974 exposé *Tender Loving Greed: How the Incredibly Lucrative Nursing Home "Industry" Is Exploiting America's Old People and Defrauding Us All*, Mary A. Mendelson wrote that "bad nursing homes seem to be contagious." She traced the origins of this devolution to about 1950, when an amendment to the Social Security Act allowed nursing homes to collect benefit checks and stipends from the Veterans Administration directly, on behalf of their residents. In turn, this generated a windfall for operators shrewd enough to appoint themselves middlemen between senile residents and their assets. Mendelson explained, "The entire nursing home system had by the late 1960s come under the near-total control of a predator class known in some corners as the Syndicate, a sprawling and incomprehensible collection of nursing home owners, front men, and ethically deficient mortgage bankers, doctors, and public officials made famous by an Orthodox Jewish rabbi who was its New York boss, Bernard Bergman."

Dubbed the "meanest man in New York" by the *Village Voice*, Bergman reputedly had built a nursing home empire worth \$100 million. Born in Rumania in 1911 and descended from a long line of Hasidic rabbis, his family immigrated to the United States in the 1920s and settled in Brooklyn where he grew up, was educated and eventually ordained. He cultivated relationships with influential people and contributed to philanthropic organizations. Bergman started to build his network of nursing homes during the 1960s and before long several of them became the center of federal and state fraud charges. Although claims were made that patients in the homes were abused and neglected, Bergman vigorously denied the charges, insisting that the homes he operated were well run.

The Moreland Commission, originally established in 1905 to investigate public corruption in New York State, was reinstated in 1975 in order to focus on the nursing home industry in general and, specifically, on conditions at the Willowbrook State Hospital on Staten Island. When it was decided that vulnerable children at dangerously overcrowded Willowbrook were to be transferred out, Rabbi Bergman was more than willing to accommodate them at one of his nearby properties. A sense of the times can be gleaned from the following extract from a TV interview of reporter Doug Dornan who had been investigating the Willowbrook scandal:

They [Bergman's people] have this hundred bed empty nursing home on Staten Island called Island Nursing Home, and they wanted to fill those hundred beds with Willowbrook residents and collect the Medicaid revenue for doing so. It went over my head to the director of Willowbrook. It went over his head and up to the governor's office, then Governor Rockefeller. Well, it turns out that Rabbi Bernard Bergman was the largest orthodox Jewish fundraiser for Rocky in his gubernatorial campaigns...and the governor's office directly ordered that this Dornan guy...has to step aside. We're going to move those hundred people out and they're going to fill this nursing home.

At that point, a friend of mine named Rick Turpin and I began on our own time researching who Bergman was and where he got all his power...It turned out that he [Bergman] was the head of a syndicate of 62 nursing homes in the New York metropolitan area and had sweetheart relationships for the providing of furniture from sister companies. So we put this whole story all together, and we took it first to Andrew Stein, who was the city councilman at the time, and he held a public hearing about it. And that got some attention in Albany. Simultaneously, we took it to the New York Times, and a reporter for the Times named John Hess ran the story front page only from the point of view of Medicaid fraud — not the actual conditions that people were living under, but Medicaid fraud and the abuse of taxpayer dollars.

That resulted in the creation of what's called in legal statute the Moreland Commission investigation of nursing homes...and I was the lead witness in that investigation. It was on the front page of the Times and broadcast on PBS all day long. It was this whole big deal that frankly scared the hell out of me....because there were threats on my life [when] word got out that I was the key witness. The Willowbrook class action suit and the actions of the

Moreland Commission investigation fused together, pointing to corruption at the top and...to the inhuman conditions under which people were living, and the abuse of taxpayer dollars.

Moreland Commission chairman Morris Abram described this affair as “a classic case of political interference.” As reported in the *NYTimes* (July 24, 1975): “When Bergman found out that his operation of the Danube [Bergman’s nursing home] was being frustrated by honest officials, he went to political friends and there was a mobilized effort to overthrow the refusal [of patient transfers] by a spectrum of political power from the Governor on down.... The Bergman people were willing to play with the lives of more than 200 ‘defenseless and helpless kids [at Willowbrook] to add to their already swollen funds’ Mr. Abram asserted.”

Rabbi Bergman also had defenders, including an endless string of attorneys. Among them was a youthful Alan Dershowitz who devoted a chapter in his 1983 memoir, *The Best Defense: The Courtroom Confrontations of America's Most Outspoken Lawyer of Last Resort*, to his defense of Bernard Bergman whom he believed had been victimized by political operatives and vilified by the press. In the public mind Bergman had come to personify all the evils of a corrupt industry.

This is not to say that Bergman’s homes were models of cleanliness and compassion or that his accounting methods were above criticism. But it was demonstrably true that other nursing home operators — with more homes and greater abuses — received fewer headlines.... I decided to take the case because I believed, and still believe, that Bernard Bergman was being made a scapegoat for an entire industry and, indeed, for the entire guilt-producing process by which busy Americans dispose of their aging parents and grand parents. I believed that his ostentatious Jewishness — his rabbinical degree, his organizational affiliations, his beard and his yarmulke — had contributed to this scapegoating by Jews and non-Jews alike, I believed that the legal system had been distorted, perverted and abused in order to GET Bergman. (Best Defense, p. 74).

In 1976 Bernard Bergman pleaded guilty to Medicare and tax fraud charges and after intensive plea bargaining he served eight months in Federal prison. By 1989, New York State's special nursing-homes prosecutor had received almost \$1.4 million as final payment of penalties and interest that Bergman was obligated to pay. No wonder that a decade after his conviction for Medicaid fraud and patient

abuses, New Jersey's Supreme Court still was "troubled" when ruling in the case of Claire Conroy.

Bernard Bergman was hardly the only Syndicate boss who profited from the nursing home business. Another was former duffel bag manufacturer Joseph Kosow, known in New England as "King of the Nursing Homes." Like Bergman, Kosow had his own endless network of associates, shadowy front groups, and highly placed regulatory and law enforcement officials. Kosow also had troubles with the feds but, unlike Bergman, he never served any time. Both moguls died in 1984 but wealthy protégés soon brought their business model into the modern era. Abe Gosman, a longtime associate of Kosow repeatedly sold, bought and repackaged the same group of nursing homes and psychiatric facilities. When Gosman died in 2013, his assets amounted to nearly a half billion dollars, including a 143-foot yacht named *The Octopussy* and a six acre oceanfront palace in lush, plush Palm Beach that he'd bought from Leslie Wexner. At public auction Donald Trump outbid Jeffrey Epstein for the estate (not Mar-a-Lago) for the bargain price of \$41.35 million.

On the very same day that I began this essay, four things occurred which suggested that although much has changed for the better since the heyday of Bernard Bergman, some things haven't. I began the day by reading the aforementioned investigation by *Times* reporters about how nursing homes often manipulate data in order to score well on CMA surveys. There also was ongoing news about how Governor Andrew Cuomo had misled the public about the locations of Covid deaths so as to minimize the appalling mortality rate of institutionalized elderly people. Later in the day I learned how a senior living complex in North Dallas was being sued by family members of more than 18 people who'd been smothered and robbed by an employee in 2019. The facility has been concealing details of the crimes in order to avoid bad publicity. And that afternoon I attended my first movie in more than a year, *The Father*, a harrowing film (later that same day nominated for an Oscar as Best Picture of 2020) about a demented elderly man who was resisting his family's efforts to place him in a nursing home. Evidently, the more things change, the more they are the same.

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* My analysis of the Claire Conroy case appeared in the *Journal of the American Geriatrics Society*, 34: 140-143, 1986.

