



Editorial

Health and human rights *A South African experience*

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Editor's note: Dr Orr presented the Carl Moore Memorial Lecture at McMaster University in Hamilton, Ont, on April 10, 2002.

I graduated from the medical school of the University of Cape Town in 1983. The South African apartheid health care system into which I emerged, young, inexperienced, and idealistic, was one in which human rights were denied, ignored, and actively abused—but we never spoke about that in medical school. Since I graduated, I have faced physicians' human rights dilemmas both personally, during my work as a prison and police doctor in Port Elizabeth in 1985, and more systematically and officially during my time as a Commissioner on the South African Truth and Reconciliation Commission (TRC), when I convened the 1997 TRC hearings into the role of the health sector in human rights abuses in apartheid South Africa.

Although I was not aware of it at the time, almost every aspect of my work in the prisons involved ethical and human rights challenges. What follows is a description of my duties compressed, with poetic licence, into "a day in the life."

Another day begins

After starting the day in the police mortuary with a number of autopsies, I travel to North End Prison (also called Rooi Hel or Red Hell) to perform "admission examinations" on all newly incarcerated prisoners. These examinations involve waving a stethoscope over the chests of dozens of men, lined up, sometimes in an open courtyard regardless of the weather, and stripped to the waist. They are then declared fit (for what, I do not know).

I travel alone to St Albans, a prison for medium- and long-term prisoners. In addition to another 50 or so admission examinations, I have to see about 30 people who have specific complaints—80

patients in less than 2 hours. For my own safety, I am told, I cannot see patients without a prison official as "chaperone." All medical records are kept at the prison and can be accessed by police and prison officials. I have to examine prisoners who are to receive various forms of punishment for minor misdemeanours, to declare them "fit for punishment." The punishment could be "spare diet" (bread and water), solitary confinement, leg irons, or caning.

Today I am told that prison regulations also require that a doctor be present during the caning of prisoners, supposedly to ensure that excessive injury is not caused. I have no idea what awaits me. The prisoner is led out into a courtyard, naked except for a pair of underpants. His underpants are removed, and he is strapped to a tilted wooden frame, with his arms and legs spread-eagled. A small cloth is spread over the prisoner's buttocks. The warder who is to administer the punishment then takes up his thick rubber whip. He stands about 50 m away from the prisoner, takes a run up and, as he approaches the frame, raises the whip over his head, bringing it down with a resounding, sickening crack over the man's buttocks, as he thunders past. "One!" shouts someone behind me, and I realize that there are still five more lashes to come. I feel as if I have become an unwilling, but unprotesting, participant in a pornographic film. I go directly from the prison to Dr Lang's office.

"I can't do this," I say. "It's absolutely horrific."

"Don't expect any special treatment in this department, just because you're a woman," he replies.

I refuse to watch any more canings, and the prison authorities ensure that canings are scheduled for days when I am not on duty.

Sense of despair and hopelessness

That night I am on call for police work, essentially to examine drunk drivers and rape victims (and I call them victims advisedly). Tonight, when I am informed that a teenager has been raped, I see

her at Livingstone Hospital (the “black” hospital serving the area). The conditions in the frantically busy Casualty Department are chaotic. Because seriously injured people are obviously given priority, we have to wait for an examination facility to be free—all the while surrounded by bloody mayhem. The examination has to take place on a trolley with only curtains separating the victim from the frantic attempts to resuscitate a gunshot victim on one side and an effort to control a drunk and obstreperous woman on the other.

I fall into bed with a sense of despair and hopelessness. I am 24 years old. I have spent 7 years studying and training to be a doctor, but what I am doing feels absolutely wrong. It feels like betrayal. But the other doctors I work with seem to find it acceptable. District surgeons all over the country do this every day. Who will understand my discomfort? Who will support me if I decide to abandon my contract?

So, long before I took a stand on the issue of torture and assault of political detainees, I was grappling with perhaps more mundane, less dramatic, but nevertheless deeply troubling infringements of human rights. I was young, I was inexperienced, I felt unsupported, I did not know what to do.

Job duties increase

The ongoing country-wide opposition and violent resistance to apartheid finally resulted in the declaration of a State of Emergency in July 1985, which allowed for detention, without charge, of anyone perceived to be a “threat to the safety and security of the State,” for an initial period of 14 days, subject to extension. Within a week, hundreds of people had been detained.

As part of my routine prison work, I now had to see hundreds of detainees for routine admission examinations and, if they had a specific complaint, as part of the daily sick parades. From the first day that I started working with detainees, I was overwhelmed by the number who showed me fresh injuries at their admission examinations: bruises, lacerations, sjambok marks, abrasions, ruptured eardrums, and swollen joints and limbs. When I asked them what had happened, they all, without fail, said they had been assaulted by the police either at the time of or immediately after arrest. Others had no complaints on admission but were removed by Security Police to police headquarters for questioning. They returned to prison with horrendous injuries and reported that they had been tortured during interrogation.

I duly recorded the injuries and allegations of assault and torture, prescribed appropriate treatment, and requested that the allegations be investigated. Nothing happened. I reported my concerns to Dr Lang. His attitude was that it was not our responsibility to do anything other than treat the injuries. I spoke to the head of the prison. His response was a remarkable comment (I paraphrase): “It’s the police who are beating these people up, not us; all we have to do is house and feed them.” He then showed me the State of Emergency regulations and said “They [the police] are hiding behind these regulations.” By the end of August that year, I could no longer bear the daily litany of suffering displayed to me at the prisons.

It became clear to me that complaints via conventional channels were unlikely to put a stop to the daily parade of pain and injury that I was seeing at the prisons. Looking back, I realize how frighteningly easy it would have been for me to stop there. I had tried, I had spoken to those in positions of authority, what else could I do? Nothing I had been taught had prepared me for this. Surely no one could have condemned me for going no further? If action really was required, why had no other district surgeons, anywhere in South Africa, done anything? Maybe I was being naïve in my belief that it was my duty to do something. The situation was exacerbated by the fact that, because district surgeons are often marginalized by their medical colleagues (and I certainly felt isolated and marginalized), it was tempting to adopt the culture of those who did affirm and support me, ie, prison and police staff. What made my position even more intolerable was that the detainees saw me as part of “the system” and viewed me with distrust and dislike. Thus, the patients, to whom I owed primary responsibility, displayed distrust and hostility; peers and colleagues to whom I might have turned for support and advice were disparaging; a natural response seemed to be to embrace those who were, in fact, intimately involved in the system that was the source of my clinical conflict: police and prison personnel.

I had two options

Through a serendipitous confluence of events and associations, however, I was put in touch with a well-known human rights lawyer from Johannesburg. He and I met, and I shared my experiences and concerns with him. He presented me with two options: I could continue being the “good” doctor, recording and treating injuries,

but doing nothing to prevent them, or I could do something that no district surgeon had done before (or has done since): take my evidence to the Supreme Court and seek an urgent interdict to prevent police from assaulting and torturing detainees. He left me to think about the options.

Once I had been offered what appeared to be an effective way of ensuring that the assaults and torture would diminish, I really had no choice. I could not abandon my patients to the brutality of the Port Elizabeth Security Police, believing that I had an opportunity to do something that could make a real difference. So, after a few days of reflection, I agreed to go ahead with the Supreme Court interdict.

I concluded my affidavit, which was submitted to the Supreme Court on September 24, 1985, with the following.

As a result of my experience, described above, I have felt morally and professionally bound to bring this application. The main considerations that have prompted me to do so are the following:

There seems to me to be an extensive pattern of police abuse upon detainees held under the emergency regulations. The overwhelming evidence presented to me in the St Alban's and North End Prisons, convinced me that detainees were being systematically assaulted and abused....

What disturbs me most is that detainees are being taken out of my care for the purposes of interrogation and, during the course of this interrogation, brutally assaulted. ...

The medical services of the prisons have been unable to cope with the vast numbers of detainees. They are, in my view, not getting the proper medical care to which they are entitled and which I feel professionally and morally bound to provide them.

It has become clear to me that the complaints of police assaults are not being investigated, as they should be. ...

I gain the impression that, because the police are acting under the emergency regulations, and because they apparently believe that they enjoy an immunity under those regulations, they or some of them are quite unrestrained in the abuses that they inflict upon detainees. ...

It ultimately became clear to me that, unless I made a stand and did something about the plight of the

detainees, I would be compromising my moral beliefs and my perception of my professional responsibility. My conscience told me that I could no longer stand by and do nothing....

I respectfully submit that this application is very urgent. The police are apparently engaged in a pattern of daily assaults upon detainees. For every day that goes by, those apparently unrestrained assaults continue.¹

What happened thereafter is now well-known: the interdict was granted, assaults and torture in that area were reduced dramatically, and I was completely sidelined and prevented from doing any work that could be interpreted as vaguely politically sensitive. I eventually resigned and moved to Johannesburg.

When I had agreed to participate in the Supreme Court application, I had had no idea of what would ensue. It changed my life forever. Overnight, I became worldwide headline news; a hero and a traitor; an object of praise and of vilification; a recipient of bouquets and of death threats. It also set me on the road to December 1995, when I would be appointed a Commissioner on the TRC.

I tell my story in some detail because the only aspect of it that has really received attention is the issue of torture and assault of political detainees. But long before the July State of Emergency, I was confronted on an almost daily basis with some sort of violation of the rights of my patients or some challenge to my own perspective on moral and ethical practice. I can articulate that now, but at the time, I felt uncomfortable, that things were not OK. I also felt unsure of my own discomfort. No one else I worked with seemed to have a problem; we had never talked about these issues at medical school, and there seemed to be no place I could go to discuss my concerns.

Over the last 17 years, the question that I have been asked most frequently is "Why did you finally act? What was it about you or your training that led you to take the steps you did?" That is not an easy question to answer. I suppose the visit from the lawyer was a catalyst. It forced me to confront my understanding of my responsibilities. There was also an element of this far and no farther. After 8 months of witnessing unethical and abusive practice, I could keep silent no longer. Undoubtedly my upbringing played an important role. I was raised in a fairly average white middle-class family, but one in which prejudice

and discrimination were constantly challenged; where we had a strong sense of right and wrong, a conception of justice and injustice; and the firm knowledge that apartheid was unjust and immoral. I cannot say that my medical education at the University of Cape Town had much to do with it—and that is a terrible indictment. Ultimately, though, I came terrifyingly close to not doing anything—and that thought still haunts me.

On the wall of my study, I have a copy (stamped Top Secret) of a report completed by a doctor who visited Steve Biko while he was in detention. These weekly visits were required by law for all Section 29 detainees. After the visit, a report was sent to the regional Police Commissioner and the Department of Justice. What purpose this served, I have no idea. Certainly government officials used the existence of this statutory requirement to maintain that detainees were well looked after. The standard reporting form has a section headed: “Die aangehoudende het die volgende klagtes geopper” (the detainee made the following complaints). In this particular report, Steve Biko is quoted as saying: “I ask for water to wash myself with and also soap, a washing cloth and a comb. I want to be allowed to buy food. I live on bread only here. Is it compulsory for me to be naked? I am naked since I came here.”

Long before Steve Biko was tortured and assaulted and killed by security police, his fundamental human rights were violated, his humanity denied. The doctor who saw him did nothing, although all that was required was to order that he be allowed to wash, dress, and eat.

And, ironically, it was this same Steve Biko, not long before his final detention, who had spoken of his vision for South Africa: “In time, we shall be in a position to bestow on South Africa the greatest possible gift: a more human face.” If Steve Biko’s doctors had shown him that human face, he would probably be alive today. We too can always hold in the forefront of our minds the need for that human face, for human dignity, to triumph. ❁

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Reference

1. Wendy Orr and others vs The Minister of Law and Order and others. Case No. 2507/85, para 28 and 29.