

Steve Biko and South African Medical Community

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Steve Biko a leading exponent of Black Consciousness was detained and tortured to death in September 1977 by the South African police. The doctors who were called in to examine the detained, although aware of the fact that he had been tortured failed to raise a protest. Nor did they ensure that the detainee was adequately cared for when at last he was moved to a hospital. Their role raised a controversy in the professional bodies in South Africa which has subsequently had an impact on the attitude and the functioning of these bodies and of individual doctors on the medical profession's ethics regarding the torture of prisoners.

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EARLY on the morning of September 7, 1977, Dr. Ivor Lang, a Port Elizabeth district surgeon¹ was summoned by Col. Goosen, head of the security police in the Eastern Cape, to examine a detainee, Steve Biko. A leading exponent of Black Consciousness—the mixture of ideas and action which emerged in the early 1970s to unite black people against apartheid and white supremacy—Steve Biko had been held in detention under Section 6 of the Terrorism Act since August 19.² On the morning of September 6, the detainee had been taken from Walmer police station cells to security police headquarters for interrogation. At 7.30 a.m. on September 7, Major Snyman, leader of the day interrogation team, had reported to Col. Goosen that Biko was acting strangely and was refusing to react to questions. Col. Goosen asked Dr. Lang to examine the detainee for a suspected stroke. In Goosen's presence Lang examined the detainee, who was lying on a mat, manacled to a metal grille in an office at security police headquarters.

During his examination, which was made at floor level, Dr. Lang found a laceration on the patient's upper lip which was edematous, a superficial bruise over the sternum at approximately the level of the second rib, a ring mark around each wrist, and edema of both hands, feet and ankles. The detainee also walked with an ataxic gait and spoke in a slurred manner. When asked by Col. Goosen for a medical certificate, Dr. Lang wrote:

This is to certify that I have examined Steve Biko as a result of a request from Col. Goosen of the security police who complained that the above-mentioned would not speak. I have found no evidence of any abnormality or pathology on the patient.³

The next day Dr. Lang was summoned again. This time he examined the detainee in the company of his superior. Dr. Benjamin Tucker, the chief district surgeon for Port Elizabeth. The patient, still shackled to the grille, was lying on a mat now soaked with urine. During the examination, Dr. Tucker observed a possible extensor plantar reflex in the patient,⁴ who also complained of a pain in his head. Tucker and Lang contacted Dr. Hersch, a specialist in private practice, who agreed to examine Biko

at Sydenham Prison Hospital. On September 9 Dr. Hersch performed a lumbar puncture, the results of which revealed bloodstaining in the cerebrospinal fluid. A neurosurgeon, Dr. Keeley, was consulted by phone. Although Keeley seemed not unduly worried regarding the patient's condition, he advised Dr. Lang to keep Biko under close observation.⁵

Apparently because the prison hospital had no observation facilities, Dr. Lang arranged for the patient to be transferred to the Walmer police station cells. As his final entry in the bed letter (medical record) at Sydenham Prison Hospital on September 10, Dr. Lang wrote: "No change in condition. Have informed him [Biko] that Dr. Hersch and myself find no pathology, that lumbar puncture was normal, and as a result I was returning him to the police cells."⁶

At the police station, the patient was left lying on a mat on the cement floor of the cell. Occasionally a police warden looked in on him. On the afternoon of September 11, Col. Goosen again called Dr. Tucker to the station. A police warden had found Biko collapsed, glassy-eyed, hyperventilating and frothing at the mouth. After a five-minute examination Dr. Tucker suggested that the patient be transferred to a provincial hospital in Port Elizabeth, but Col. Goosen refused to allow it. Tucker acquiesced in this and gave his permission to the police for the patient to be transferred by motor vehicle 750 miles to Pretoria.⁷

On the night of September 11 the semi-comatose patient, naked and handcuffed, was placed on some cell mats on the floor of a Land Rover and driven to Pretoria Central Prison. Biko was unaccompanied by any medical personnel during this long journey. No medical records on Biko's condition were sent with him. Several hours after his arrival at the prison Biko was examined by district surgeon Dr. A. Van Zyl. Without any information about the patient other than that he was refusing to eat, Dr. Van Zyl administered an intravenous drip and a vitamin injection. During the night of September 12, 1977, Steve Biko died lying on a floor mat and unattended.⁸

The Inquest

Three months later, spectator and reporters crowded daily into the large and ornate Old Synagogue building in Pretoria to hear the police and the doctors give evidence during the inquest into the death of Steve Biko. The proceedings attracted wide attention in South Africa and abroad, partly because of Steve Biko's political stature and also because of the notoriety gained by the police during the past year's student uprisings.

During the two weeks of evidence and intense cross-examination, the police witnesses were unable to explain the physical and mental deterioration Steve Biko underwent between the morning of September 6 when he entered the interrogation room and the morning of September 7 when he was first seen by a doctor. Their difficulty in providing a convincing explanation was dramatised when the counsel for Biko's family revealed in court a copy of a telex sent by Col. Goosen to police headquarters, in which he referred to an injury "which was inflicted on Mr. Biko at 0700 hours on September 7 after which he refused to speak".⁹ The inquest magistrate, nonetheless, concluded that the likely cause of death was:

Head injury with associated extensive brain injury, followed by contusion of the blood circulation, disseminated intravascular coagulation as well as renal failure with uraemia. The head injury was probably sustained during the morning of Wednesday, September 7, 1977, when the deceased was involved in a scuffle with member of the Security Branch of the South African Police at Port Elizabeth. Date of Death: September 12, 1977. The available evidence does not prove that the death was brought about by any act or omission involving or amounting to an offense on the part of any person.¹⁰

If the magistrate failed to use his power under the Inquest Act to draw conclusions concerning the culpability of the police, he did make an implicit judgment on the conduct of the medical practitioners who had attended to Steve Biko during the last week of his life. At the close of the inquest, the magistrate sent a portion of the inquest record containing the evidence of Drs. Lang, Tucker, and Hersch to the South African Medical and Dental Council. In so doing, the magistrate was acting in terms of Section 45 of the Medical, Dental, and Supplementary Health Service Professions Act of 1974, which provides that:

Whenever in the course of any proceedings before any court of law it appears to the court that there is *prima facie* proof of improper or disgraceful conduct on the part of a registered person, or of conduct which, when regard is had to such person's profession, is improper or disgraceful, the court shall direct that a copy of the record of such proceedings, or such portion thereof as is material to the issue shall be transmitted to the South African Medical and Dental Council.¹¹

During the inquest, the magistrate had received the advice and assistance of professors I. Gordon and J. A. Olivier, both pathologists of high reputation. Professor

Gordon later stated that "at no time was there any doubt whatsoever in the mind of the presiding Judicial Officer or the two Medical Assessors, of whom I was one, that in terms of the Medical, Dental, and Health Professions Act... there was a *prima facie* case [of professional misconduct] against Dr. Lang and Dr. Tucker..."¹²

The results of the post mortem examination conducted by the Chief State Pathologist, Dr. J. O. Loubser, and the general autopsy performed by a neuropathologist, Professor N. S. F. Proctor, in the presence of two other leading pathologists including Dr. Jonathan Gluckman, were unequivocal in establishing that the cause of death was head injuries.¹³ The inquest magistrate found that the injury which led to the patient's death was probably inflicted just prior to Dr. Lang's first visit at 9.30 a.m. on September 7, 1977. Photographs of the patient taken after his death clearly and unmistakably revealed a large scab on the patient's forehead.

All of this notwithstanding, Dr. Lang failed, apparently, to see the injury on the forehead on the occasion of his first and subsequent examinations, according to a group of private South African doctors who submitted complaints to the South African Medical and Dental Council. Dr. Lang, they claimed, failed to attach any significance to the lip injury, or to other bruises and visible symptoms which Dr. Lang admitted in court having noticed. He failed to ask the patient for his account of how these injuries were sustained. He did not prescribe any treatment, carry out any routine blood or urine analysis tests, or take the patient's temperature at any stage. He did not recommend to the police that Biko should not be left lying on the floor or urine-soaked bedding. He failed to keep the patient under medical observation following Biko's transfer from Sydenham Prison Hospital to the Walmer police station. He did not keep Hersch and Keeley fully informed about the patient's condition or of actions taken which may have affected his condition. He failed to insist upon proper hospitalisation, or to oppose Dr. Tucker's acquiescence in the plan to send the patient to Pretoria. And only Steve Biko died did Dr Lang make any notes or reports of his findings.¹⁴

When counsel Sydney Kentridge pressed Dr. Lang during the inquest to explain his behaviour towards the patient, Lang stated that he believed the detainee was deliberately feigning illness. Col. Goosen had informed Lang that Biko had studied medicine for four years and that Biko had exhibited 'similar symptoms' during his previous period of detention. Lang claimed that Col. Goosen's comments had influenced his opinion. When questioned about his failure to ask Biko for his account of the lip injury and chest bruises, Lang stated that he had assumed they were sustained while the police were attempting to restrain the detainee, who, according to Col. Goosen, had gone into a rage on the morning of

September 7 and had attempted to assault an officer with a chair.¹⁵

On the issue of proper hospitalisation, Dr. Lang told the court that neither he nor Dr. Tucker had any option but to acquiesce in security police demands. Dr. Lang stated that he had the 'impression' that Mr. Biko could not be transferred to a non-prison hospital because he was regarded as "a security risk." Dr. Lang buttressed his defence by claiming that "we [district surgeons] are restricted in the sense that we cannot tell them where we wanted a detainee... You cannot buck the security branch"¹⁶.

The effect of this particular line of defense was vitiated when Dr. Lang later admitted to the court that he had not really pressed the issue of hospitalisation with Col. Goosen. Goosen, Dr. Lang said, could have interpreted his reference to hospitalisation as necessary for diagnostic rather than treatment purposes. When asked if he at any stage suggested to Goosen that Biko was a sick man in need of treatment in a hospital, Dr. Lang acknowledged: "No, I did not."¹⁷

The two most egregious instances of questionable behaviour raised against Dr. Lang during the inquest concerned his medical certificate and his final entry in the bed letter. Col Goosen told the court that his request for a medical certificate on September 7 was 'plain logic'. Dr. Lang's certificate was, he added, completely satisfactory for his purposes. In the certificate, Dr. Lang had recorded as the reason for holding the medical examination that Biko "would not speak". Yet, in his later report to the pathologist conducting the post mortem, Dr. Lang wrote: "The detainee had refused water and food and displayed a weakness of all four limbs and it was feared that he had suffered a stroke." But, when asked to explain the discrepancy between these two statements, Dr. Lang could only reply: "I cannot explain it. It is inexplicable"¹⁸

In the second part of Dr. Lang's certificate of September 7, he noted that he had found no evidence of any abnormality or pathology. Dr. Lang admitted that this claim was "highly inaccurate" as he had found evidence of bruising, a lip injury, and edematous swelling of the hands, feet and ankles. Counsel Sydney Kentridge then asked Dr. Lang if it hadn't occurred to him that, "if, at some later stage, Biko might appear in court and complain about the way he was treated while in security police custody, [his] medical certificate would be a most important piece of evidence"? The doctor agreed that it would be but added that the possibility had not occurred to him on the morning of September 7.¹⁹

Dr. Lang had similar difficulty in explaining the contents of the entry in the Sydenham Prison Hospital bed letter, dated 10 September. He admitted that the statement regarding the lack of evidence of pathology was false. He knew that the cerebrospinal fluid was blood-stained, and

Excerpt From the Inquest

Kentridge: Why didn't you stand up for the interests of your (Counsel for patient? Biko family)

Lang: I didn't know that in this particular situation one could override the decisions made by a responsible police officer.

Gordon: Why didn't you say that unless Biko goes to hospital you would wipe your hands of it?

Lang: I did not think at that stage that Biko's condition would become so serious. There was still the question of a possible shamming.

Kentridge: Did you think the plantar reflex could be feigned?

Lang: No.

Kentridge: Did you think a man could feign red blood cells in his cerebral spinal fluid?

Lang: No.

Kentridge: In terms of the Hippocratic Oath are not the interests of your patients paramount?

Lang: Yes.

Kentridge: But in this instance they were subordinated to the interests of security?

Lang: Yes.

(Inquest into the death of Steve Biko, Proceedings, in Bernstein, *Biko*, p. 94).

that Dr. Hersch had reconfirmed the extensor plantar response. Nevertheless, Dr. Lang argued that the misstatement arose from the inadvertent omission of the word "gross" in front of "pathology".²⁰

In his testimony, Dr. Tucker, the chief district surgeon in Port Elizabeth, attempted to explain his behaviour towards the patient, both claiming that he had accepted Col. Goosen's theory of feigned illness and by alluding to constraints affecting district surgeons' activities in relation to political detainees. At one point Professor Gordon pressed Dr. Tucker to explain why he did not tell Col. Goosen that he would disclaim all responsibility as a doctor if Biko was not taken to a proper hospital. Dr. Tucker replied that he did not consider the patient's condition as serious, as "there was still this question of a possible shamming on his [Biko's] part." He did concede, however, that no one could feign an extensor plantar reflex or red blood cells in the cerebrospinal fluid. He also accepted that, in terms of the Hippocratic Oath, the interests of his patients should always be paramount. But in this instance, Tucker admitted, as had Dr. Lang, that they were subordinated to the interests of security. "I didn't know," he said, "that in this particular situation one

could override the decisions made by a responsible police officer.²¹

On several occasions during the inquest proceedings, Dr. Tucker contradicted himself. Although stating at one point his belief that Biko may have been feigning illness, Tucker claimed elsewhere in his evidence that the thought of head injury had occurred to him, yet he failed to ask the detainee the source of his lip injury or the police if Biko had received a blow on the head. Dr. Tucker initially denied that his reticence came from dealing with the security police. When Kentridge pressed him on this issue, however, Tucker repented. "I would say no, you don't [ask questions in that situation]." After a five minute court adjournment, Dr. Tucker, in resuming his evidence, retracted his statement. "Questions asked by the district surgeon," he said, "are not banned in the security offices." He further claimed that, "at all times I have always had all the co-operation necessary from the security police. When we require information and when we require things to be done, then they are done."²²

If Dr. Tucker's assertion about the co-operativeness of the police was correct, then it threw on onus of responsibility for the fatal pretoria journey directly on to his shoulders. Tucker's evidence shows that he deferred without protest to Col. Goosen's refusal to allow the detainee local hospitalisation. Dr. Tucker consented to Goosen's alternative proposal that the patient be transported to Pretoria by motor vehicle. The only aspect the arrangements he claimed to have insisted upon was the need for a soft mattress. Tucker stated later, however, that he neither saw it as his responsibility to check the vehicle used nor reassure himself that there was in fact a mattress, blankets, and a pillow for the patient. Furthermore, he did not consider it part of his responsibility to insist that Biko be accompanied by a medical attendant or his medical records.²³

On the crucial matter of the state of Steve Biko's health the day before his death, Dr. Tucker had written that he found no positive sign of organic disease and that the patient's condition was satisfactory. Under questioning Tucker admitted that he had found the patient lying on the floor with foam at his mouth and hyperventilating. He had found the patient weak in the left arm and apathetic. He admitted that he knew of the extensor plantar reflex. Nevertheless, when challenged to admit that "in this situation no honest doctor could have advised that Biko's condition was satisfactory," Dr. Tucker persisted. "In the circumstances, [I] though it was," he said.²⁴

In his final submission made to the court on behalf of the Biko family, Counsel Sydney Kentridge strongly criticised the indifference displayed by Drs. Lang and Tucker towards the patient. Their relationship to Col. Goosen, he charged, "was one of subservience bordering on collusion." And their behaviour carried a

Excerpt From the Inquest

Kentridge : Why did you not ask the obvious question, whether the man received a bump on the head?

Tucker : I did not ask it and that is all I can say.

Prins : Did you ask Biko?

(magistrate)

Tucker : No.

Kentridge : Was it not possible you were reluctant to embarrass Goosen?

Tucker : No.

Kentridge : Either from reading about it or from your own experience have you no knowledge that the police assault people in custody?

Tucker : I have. (Further answer inaudible).

Kentridge : But on that occasion you did not ask?

Tucker : No, I did not. Where persons are brought to me for examination my report is completed on a special form. This is all I am required to do. This history was given to Dr. Lang. . . The restraint [on the morning of 7 September] could have resulted in the damage.

Kentridge : You accept it as a fact, what Goosen told you?

Tucker : May I put it this way? If am called to see a patient and he has a cut on his head, then I am interested in treating him and not in how he got the cut.

(Inquest into the death of Steve Biko, Proceedings, in Bernstein, *Biko*, p. 85)

significance beyond the present case. For "the medical profession's general reputation has led courts in the past, whenever an issue arose as to whether a prisoner seen by a doctor had been assaulted or not, to place great if not absolute reliance on the district surgeon's findings." Kentridge submitted that in this case "the proved facts show that not only can the court not rely on the evidence of Drs. Ivor Lang and Benjamin Tucker, but that an analysis of the evidence show that they joined with the security police in a conspiracy of silence." The very best that could be said, he argued, was that "they turned a blind eye." Kentridge concluded that the doctors' neglect of the patient's interests in deference to the requirements of the security police "was a breach of their professional duty, which may have contributed to the final result."²⁵

Response of South African Medical Dental Councils

The South African Medical and Dental Council (hereafter referred to as the Medical and Dental Council) is South Africa's principal regulatory body controlling the medical and dental professions. The thirty-four member

The Witwatersrand medical faculty noted in its resolution that the Medical and Dental Council, as the purported watch-dog of the ethics of the profession, had been zealous; even over-zealous, in the severity of the punishments meted out in the past for even minor infringements of medical ethics. Yet, in the present case, they found it difficult to accept "that the council [had] applied its collective mind to the problem of the Biko doctors in a purely objective and dispassionate way."³⁸

Despite these protests and the indications that medical associations in other countries were beginning to review their ties with South African medical organisations, the Medical and Dental Council announced in October 1980 that its dismissal of the complaints against the Biko doctors was final and irreversible.³⁹

The Medical and Dental Council's controversial decision forced critics to turn to the Medical Association of South Africa (MASA), a non-statutory professional organisation whose membership is purely voluntary.⁴⁰ On June 18, 1980 Dr. Jonathan Gluckman, a pathologist who had attended the post mortem on Biko on behalf of the deceased's family and a member of MASA's Federal Council, presented the association's secretary general, Dr. C. Viljoen, with a letter signed by 38 association members. The signatories called for an inquiry to determine whether Dr. Benjamin Tucker "... is a fit and proper person to continue to be a member of this Association." (Dr. Lang was not a member of MASA.)⁴¹

In accordance with MASA's Articles of Association, Dr. Viljoen referred the letter with copies of a portion of the inquest record to the Cape Midlands Branch of the association where Dr. Tucker held membership. Unlike the Medical and Dental Council, MASA lacked wide powers of inquiry and punishment. Its powers of censure over its members were limited to that of expulsion, with the initiative for this lying at the branch level and not at the national level. In this instance, the Cape Midlands Branch notified the MASA's Federal Council two weeks later "that a charge of unethical conduct against Dr. Tucker could not be sustained" and advised that "the case now be closed"

The executive committee of MASA's Federal Council met in August 1980 and accepted this recommendation. The committee also resolved that the findings of the Medical and Dental Council and its inquiry committee "be noted." Even so, the Federal Council's executive committee did raise questions concerning the conformity of the medical care received by Biko with the WMA guidelines in the Declaration of Tokyo. The executive committee acknowledged that the lack of conformity probably contributed to the "subsequent unfortunate course of events." Nevertheless, the executive committee shifted the focus of its questioning away from the conduct of the doctors to the possibly restrictive effects of existing laws and regulations upon doctors operating within the prisons.⁴²

Two additional resolutions adopted by the Federal Council's executive committee alluded to the growing domestic and international controversy surrounding the response of the medical establishment to the charges against the Biko doctors. The committee defended the 'integrity and bona fides' of the members of the Medical and Dental Council and its inquiry committee, and MASA's Cape Midlands Branch. They also expressed MASA's satisfaction that the decisions of these bodies "had in no way been subject to outside influence and that there had not been any attempt at a 'cover-up' with regard to the conduct of the practitioners concerned."

In contrast, the Federal Council's executive committee viewed the critics of these bodies as proceeding on the basis of flawed newspaper reports, "which were frequently incomplete, biased, or based on political rather than ethical or humane considerations." The executive committee concluded that if evidence of improper or disgraceful conduct could not be found by the Medical and Dental Council's inquiry committee, the members of the MASA executive committee "could not be expected to submit to pressure or to violate their own consciences by laying a charge simply to satisfy the demands being made."⁴³

To members of the South African medical community anxious to investigate fully the conduct of the Biko doctors, it appeared that the medical establishment had closed ranks. This impression was strengthened by statements published in September 1980 in the *South African Medical Journal*, the official journal of MASA.⁴⁴ The journal contained a statement by the Federal Council's executive committee recapitulating the discussion and resolutions passed at its August meeting. The chairman of the Federal Council, Dr. J. N. de Klerk, pointed out in the journal that three separate medical bodies independently had reached the same conclusion, namely, "that in light of the evidence available to them, and taking into consideration the particular circumstances surrounding this whole matter, the doctors were not guilty of negligence or of improper or disgraceful conduct." For those colleagues who still disagreed with these findings, de Klerk had only cold comfort. "Manifestly," he concluded, "the [Medical and Dental] Council itself is not able to reopen the matter, while the ethical committees of the MASA are substantially in agreement with its findings."⁴⁵

MASA's stance provoked a spate of resignations among its members most prominently that of Professor Stuart Saunders, then principal-designate of the University of Cape Town, and Professor Frances Ames, head of the Department of Neurology at the same university. In a 'letter to the editor' of the *South African Medical Journal*, Professor Saunders challenged MASA's Federal Council to state openly the implications of its position: namely, that medical doctors should acquiesce in decisions taken by the police and accept that there are considerations other

than the patient's welfare to be taken into account in treating a prisoner. Professor Gordon, in announcing his decision not to stand for re-election for the executive committee of the Federal Council after 25 years of service, characterised the actions of the Medical and Dental Council and the MASA executive committee in exculpating the doctors as "an act of impertinence and arrogance."⁴⁶

The resignations and negative publicity eventually produced a response from MASA's Federal Council. Dr. Jonathan Gluckman persuaded it to form a committee to inquire into the ethical issues raised by the medical treatment of Biko. The Federal Council also agreed to approach the government on the matter of the medical treatment of prisoners, especially those detained under the security laws, and to establish a code of conduct for medical practitioners working under these circumstances.

In a statement to the press announcing these decisions, Dr. Gluckman expressed his personal distress at the position adopted by the Medical and Dental Council. He acknowledged, as a member of MASA's Federal Council, "that mistakes have been made by us in MASA in the handling of the Biko matter." Dr. Gluckman said that it was essential "in the public interest and in the interests of the reputation and the good standing of the medical profession as well as in the interests of the prisoners that these mistakes be rectified."⁴⁷

The Ad Hoc Committee appointed to consider certain ethical issues (hereafter referred to as the ad hoc committee) reported to MASA in June 1981. Investigations by the ad hoc committee were limited by its lack of subpoena powers and the fact that Dr. Lang and Dr. Tucker did not participate in any of the committee's proceedings.⁴⁸ In addition, the police denied the ad hoc committee permission to examine the Walmer police station cells where Steve Biko had been held. The ad hoc committee's report, however, critically reviewed the available evidence concerning the doctors' conduct and openly disagreed with the findings of the Medical and Dental Council.⁴⁹

The report of the ad hoc committee encouraged those doctors who were dissatisfied with the Medical and Dental Council's decisions. Five doctors subsequently lodged with the council a detailed series of charges and complaints concerning the conduct of Drs. Lang, Tucker, Hersch, and Keeley. Appended to the document was a list of sixteen cases, dating from 1974 through 1980, involving similar instances of improper or disgraceful conduct by medical practitioners, along with the sentences imposed by the council's disciplinary committees.⁵⁰ A month later, in March 1982, five other doctors, together with the Transvaal Medical Society (now the Health Workers' Association); a voluntary organisation of mostly black doctors and allied personnel, lodged a separate list of complaints against Dr. Lang and Tucker.⁵¹ Both sets of complainants referred extensively to the full record of the

inquest proceedings in detailing and motivating the charges against the doctors.

In March 1983 the Medical and Dental Council's inquiry committee met to consider the allegations. The inquiry committee resolved "that all material evidence which had been submitted in support of the present complaint had also been considered by the committee and the council previously, and that no new material evidence had emerged such as warranted the rescission of the council's previous resolution". Accordingly the inquiry committee resolved that no further action should be taken against the doctors. A month later the Medical and Dental Council confirmed this resolution, once again rejecting a motion proposed by Drs. Shapiro and Carlton to the contrary.⁵²

Faced with this rebuff, the complainants were forced to seek Supreme Court review of the matter. They petitioned the Court to set aside the resolutions of the Medical and Dental Council and its inquiry committee, and to direct the council to hold a new inquiry into the allegations of improper or disgraceful conduct on the part of Drs. Lang and Tucker. The petitioners argued that it was in the public interest and in the interest of South Africa that the applicants' complaint be properly heard. "The international reputation... of medical practitioners within the Republic," they noted, "has been tarnished by the fact that the [council] had failed properly to get to grips with an inquiry into the conduct of the medical practitioners whose conduct is in issue."⁵³

In January 1985 the Court ruled in the petitioners' favor. It found that the inquest proceedings did support the charges and complaints of the applicants, and that there was *prima facie* evidence of improper or disgraceful conduct on the part of Drs. Lang and Tucker. The presiding judge referred, *inter alia*, to Dr. Lang's false medical certificate which represented an apparent breach of one of the Medical and Dental Council's rules of ethics. The inquiry council and its inquiry committee, in concluding otherwise, had misdirected themselves. The Court also found that the applicants, as medical practitioners, did have *locus standi* to approach the Court, because the purpose of the 1974 Act governing the activities of the council was intended not only to protect the public vis-a-vis the medical profession but also the reputation of the medical profession itself.

The Court then issued an order repudiating the resolutions adopted by the Medical and Dental Council and its inquiry committee in 1983. It directed the inquiry committee to resolve "that the evidence furnished in support of the aforementioned complaints discloses *prima facie* evidence of improper or disgraceful conduct, or conduct which when regard is had to the respective professions of [Drs. Lang and Tucker] is improper or disgraceful." It further directed the council to establish a disciplinary com-

mittee to investigate the conduct of the doctors.⁵⁴

After seven years of evading its statutory responsibilities, the Medical and Dental Council was now forced to hold disciplinary proceedings against the doctors. In July 1985 a disciplinary committee, chaired by the president of the council, held hearings for four days. The committee found Dr. Lang guilty of improper conduct in 5 counts in that it (1) had issued an incorrect medical certificate and a misleading letter; (2) had failed to examine the patient properly; (3) had failed to inquire into and ascertain the possibilities of a head injury; (4) had failed to obtain a proper medical history of the patient; and (5) had failed to observe him and keep proper notes. Dr. Lang, who intended to continue practicing for a further five years, was given a caution and a reprimand.

The disciplinary committee found Dr. Tucker guilty of improper and disgraceful conduct on 3 counts: (1) he had failed to object to the patient's transportation by a Land Rover to Pretoria; (2) he should have insisted upon transportation by ambulance with proper medical attendants and the patient's medical records; and (3) he failed to make a proper medical check before stating that the patient's central nervous system had shown changes between examinations. The committee suspended Dr. Tucker, who was due to retire shortly, for three months from the medical rolls, but recommended that the enactment of the penalty should be suspended for two years conditional on his not being found guilty by the council or any other contravention during this period.

MASA's secretary general Dr. Viljoen issued a statement welcoming the committee's judgment. Dr. Viljoen added that "as in the past the findings of the Medical and Dental Council were accepted by the MASA." The sentences, however, were strongly criticised by others as being "pathetically inadequate." Several months later, in October 1985, the council stripped Dr. Tucker of his medical qualifications.⁵⁵

The failure of the Medical and Dental Council and MASA to respond quickly and appropriately to the allegations against the Biko doctors had resulted in a bitter international controversy concerning MASA's membership within the World Medical Association. In 1981 a number of national medical associations, including the British Medical Association, withdrew from the world body in protest over MASA's continuing membership. Throughout 1985, international pressure on the WMA, combined with a campaign inside South Africa by a broad range of medical and health groups, led the WMA to alter its plans to hold its next annual meeting in Cape Town.⁵⁶

Amid this controversy over its international standing, MASA acknowledged that the "Biko case" had done irreparable harm to the South African medical profession. The association, however, maintains a defensive posture on the matter in its correspondence in professional jour-

nals, which has only deepened the growing polarisation within the South Africa medical community. During an interview in 1985, Professor Frances Ames, one of the petitioners in the Supreme Court case against the Medical and Dental Council, expressed her concern about "this polarisation amongst medical doctors." The formation of an alternative professional association, the National Medical and Dental Association (NAMDA), in 1982 concretely expressed the dissension within the medical community.⁵⁷

During part of an exchange with MASA on ethical issues which was published in the *South African Journal of Human Rights*, Professor Trefor Jenkins, one of the applicants in the Supreme Court suit, urged MASA to admit that it had made errors of judgment in the Biko case. Professor Jenkins argued that doctors, like other members of the society, have been intimidated by the police and the repressive measures used to implement and maintain *apartheid*. It was his firm belief that "the Council (and to some extent the MASA) [had] allowed itself to be influenced by irrelevant considerations when discussing the case of the Biko doctors." The case was, he felt, "one of straightforward and relatively simple medical ethics but the two bodies in question [had] allowed political (and, perhaps, what they perceived to be state security) considerations to cloud the issue." No good would be served, he said, by MASA persisting in the view that it did all it possibly could to ensure that justice was done in dealing with the unprofessional and even disgraceful conduct of the doctors who cared for Biko. Professor Jenkins suggested that MASA intensify its efforts to restore the image of the profession to one in which all doctors could feel proud and in which the public could feel confidence again. In a situation of deepening conflict in the country, the medical profession, Professor Jenkins urged, must be prepared to censure unequivocally any doctor who fails to expose police brutality or torture, lest irreparable harm be done to the trust relationship existing between doctor and patient, and the practice of medicine become impossible.⁵⁸

Notes

- 1 District surgeons and general practitioners employed by the Department of Health. Their responsibilities include the provision of medical care to prisoners under regulation 6 of the prison regulations promulgated in 1965 under Prisons Act 8 of 1959. About 26 localities in South Africa have full time district surgeons. Part-time district surgeons operate elsewhere. Interview with Mr. Filmlater, acting registrar of the South African Medical and Dental Council, by Eric Stover in Pretoria in December 1985; Gilbert Marcus, "Safeguarding the Health of Detainees," unpublished paper, Center for Applied Legal Studies, University of the Witwatersrand, April 1987, pp 6-9.
- 2 Biko had been detained on a number of occasions, including for a period of 137 days in 1975. He had also been subjected

- to a five-year banning order. Concerning his life and political activities, see Hilda Bernstein, *No 46—Steve Biko* (London: International Defense and Aid Fund, 1978); Milard Arnold, ed, *Steve Biko, Black Consciousness in South Africa* (New York: Vintage Books, 1979); Gail M Gerhart, *Black Power in South Africa: The Evolution of an Ideology* (Berkeley: University of California Press, 1978).
- 3 Quoted in Bernstein, *Biko*, pp 76-78; Complaint by the Transvaal Medical Society Against Doctors Ivor Lang and Benjamin Tucker in terms of Section 41 of the Medical, Dental, and Supplementary Health Services Act, 1975, made to the South African Medical and Dental Council, March 18, 1982, pp 3-5.
 - 4 An abnormal reflex after infancy characterised by extension of the great toe with fanning of the other toes on sharply stroking the lateral aspect of the sole, *Blackiston's Gould Medical Dictionary* (New York: McGraw-Hill, 1972), 3rd ed p 168.
 - 5 Bernstein, *Biko*, pp 87-90; Complaint by Dr. Frances Ames and others involving allegation of improper or disgraceful conduct made to the South African Medical and Dental Council, February 17, 1982, pp 21-22, 31; Report to the Medical Association of South Africa by the Ad Hoc Committee appointed to consider certain ethical issues, June 1981, pp 3-4.
 - 6 Complaint by Dr. Frances Ames and others, p 26.
 - 7 Bernstein, *Biko*, pp 33, 90-96; Report to the Medical Association of South Africa, p 4; Lawrence Baxter, 'Doctors on Trial: Steve Biko, Medical Ethics and the Courts', *South African Journal on Human Rights*, Vol 1, Pt 2 (August 1985), p 139.
 - 8 Bernstein, *Biko*, pp 62-63.
 - 9 Report to the Association of Law Societies in South Africa by Sir David Napley, former president, British Law Society, in Bernstein, *Biko*, pp 137-147.
 - 10 Quoted in Complaint by Dr. Frances Ames and others, p 2. Following the inquest verdict, the Attorney General declined to pursue criminal proceedings and the Minister of Justice announced that the appointment of a Police Board of Inquiry was not warranted. Baxter, 'Doctors On Trial', p 149.
 - 11 *Veriava and Others v. President, South African Medical and Dental Council and Others*, 1985 2 (SA) 293 (TPD), p 297.
 - 12 Letter addressed to the Natal Coastal Branch of the Medical Association of South Africa, quoted in Complaint by Dr. Frances Ames and others, Annexure C, p 3. (The letter was also reported in *The Cape Times*, November 26, 1989.) Professor Gordon supplied an affidavit to the same effect in a Supreme Court action in 1984 (discussed below).
 - 13 Report by Dean Louis H. Pollack on behalf of the Lawyers' Committee for Civil Rights Under Law, in Arnold, ed, *Steve Biko*, pp 344-346.
 - 14 Complaint by Dr. Frances Ames and others, pp 18-38; Complaint by the Transvaal Medical Society, p 2-13; Bernstein, *Biko*, pp 76-95, evidence of Dr. Lang.
 - 15 Bernstein, *Biko*, pp 76-79, evidence of Dr. Lang.
 - 16 Complaint by Dr. Frances Ames and others, p 23, evidence of Dr. Lang.
 - 17 *Ibid*, pp 22, 24, evidence of Dr. Lang.
 - 18 *Ibid*, pp 25-26, evidence of Col. Goosen; Bernstein, *Biko*, pp 76-78, evidence of Dr. Lang.
 - 19 Bernstein, *Biko*, pp 76-78, evidence of Dr. Lang.
 - 20 *Ibid*, p 88.
 - 21 *Ibid*, pp 92-93, evidence of Dr. Tucker.
 - 22 *Ibid*, pp 83-85; Complaint by Dr. Frances Ames and others, p 49.
 - 23 Bernstein, *Biko*, pp 95-96; Complaint by Dr. Frances Ames and others, pp 40, 54-55, evidence of Dr. Tucker.
 - 24 Complaint by the Transvaal Medical Society, pp 22-26; Bernstein, *Biko*, pp 92-93; Complaint by Dr. Frances Ames and others, pp 43-46, evidence of Dr. Tucker.
 - 25 Counsel's submission on behalf of the Biko family, in Bernstein, *Biko*, pp 110-114.
 - 26 Established in terms of Act No. 56 of 1974, the Medical and Dental Council's members include: i) The Secretary of Health; ii) Ten members appointed by the Minister of Health who has the power to overrule any of the council's decisions, iii) Nine designated members, including the Director of Hospital Services, five medical and dental practitioners from university faculties of medicine and dentistry and designated by the principles of those universities, and three persons designated by the College of Medicine of South Africa, the South African Nursing Council, and the South African Pharmacy Board; and iv) Fourteen members elected by medical practitioners and dentists.
 - 27 South African Government Notice R2278 published in *Government Gazette* 5349 of December 3, 1976. Rule 25(2) prohibited the performance by medical practitioners and dentists of professional acts under improper conditions and/or surroundings, except in an emergency.
 - 28 *Veriava*, p 307.
 - 29 Baxter, "Doctors in Trial," pp 140-141; *Veriava*, pp 297, 298.
 - 30 The inquiry committee, created under Section 61(1)(a) of the 1974 Act, is appointed at the beginning of each year from the members of the Medical and Dental Council and is charged with the duty of conducting a preliminary inquiry into complaints.
 - 31 The plaintiffs brought an action for R90,000 damages against the security police, Drs. Lang and Tucker, and the Ministers of Health and Police. In July the Biko family accepted an out-of-court settlement of R65,000 from the State. The Minister of Police denied that the settlement amounted to an admission of liability. Lawyers' Committee for Civil Rights under Law, *Deaths in Detention*, pp 67-68.
 - 32 Judgment in *Tucker & Another v. South African Medical and Dental Council & Others*, 1980(2) SA 207 (TPD), pp 298, 213; Baxter, "Doctors on Trial," p 151. Judgment was rendered in December 1979.
 - 33 *The Cape Times*, November 26, 1980; *Veriava*, p 299.
 - 34 Quoted in *Veriava*, p 299.
 - 35 Professor Gordon withdrew from the proceedings because of his involvement in the inquest. A number of other council members were absent when the final vote was taken. *Veriava*, p 299; Baxter, "Doctors on Trial," p 142.
 - 36 Interview with Professor Phillip Tobias by Eric Stover in Johannesburg on December 11, 1985.
 - 37 Reported in *Nature*, Vol 286, No 5770 (July 1980), p 200; *The Lancet*, No 8205 (November 29, 1980), pp 1184-1185. See Appendix A for Declaration of Tokyo text.
 - 38 Reported in *Nature* (July 17, 1989); Trefor Jenkins, "The MASA Letter: A Rejoinder, The Organised Medical Profession on Trial," *South African Journal on Human Rights*, Vol 2, Pt. 2 (July 1986), p 236; "Biko Saga: The Ethics of Suppression," in *Critical Health* (Johannesburg), No 3 (July 1980), p 48; *Survey of Race Relations 1980* (Johannesburg: SAIRA, 1981), pp 570-572. In contrast to its response to the charge against the Biko doctors, the Medical and Dental Council moved quickly to organise disciplinary proceedings against Dr. Aubrey Mokoape, after he had served six years in prison for contravening the 1967 Terrorism Act. According to Amnesty International, Dr. Mokoape was interrogated, beaten, and held in solitary confinement during his

- detention in 1974. He was convicted of two counts under the Terrosim Act, after a long trial in which the State attempted to prove a link between the Black Consciousness movement and political violence. Not a single act of violence was proved against any of the defendants. Two years after his release from prison Dr. Mokoape was informed that the Council's Medical Committee of Preliminary Inquiry had resolved that there was a *prima facie* case of improper or disgraceful conduct against him. The charge against him, relating solely to his conviction under the 1967 Act, represented the first occasion in which the council used a political conviction as ground for a disciplinary inquiry. One of the applicants in the Supreme Court suit initiated in 1984 against the council and the Biko doctors. Dr. Yusuf Veriava, attended the initial council hearing which he later described as making the council appear to be "an extension of the South African repressive machinery." The council eventually dropped the case after Dr. Mokoape's lawyers challenged the proceedings on technical grounds. Amnesty International, *Political Imprisonment in South Africa*, pp 59-60; summons issued against Dr. Mokoape by Mr. N. M. Prinsloo, Council Registrar, November 6, 1984; *Sunday Express*, January 13, 1985; *Sunday Tribune*, January 13, 1985; interview with Dr. Jerry Coovadia by author in Washington, D.C. on June 23, 1987.
- 39 *The Argus* (Cape Town), October 1, 1980.
- 40 According to Dr. Stuart Saunders of the University of Cape Town, about 70 per cent of the country's medical doctors are members of MASA. Dr. Jonathan Gluckman put the membership of MASA at between 10,00 and 11,000. Interview with Dr. Stuart Saunders by Eric Stover in Cape Town on December 14, 1985; interview with Dr. Jonathan Gluckman by Eric Stover in Johannesburg on December 9, 1985. Of 16,815 medical doctors in South Africa in 1983, 15,251 were white, 60 2343 'colored', 1,255 were Indian, and 249 were African (Department of Manpower figures for April 1983, quoted in Dr. M. Ramphele, 'Health and Social Welfare in South Africa Today', unpublished paper presented at AAAS annual meeting, Philadelphia, May 25, 1986, p 6).
- 41 Baxter, 'Doctors on Trial', p 142; private correspondence, Dr. Viljoen to Prof. S. J. Saunders, November 27, 1980.
- 42 Private correspondence, Dr. Viljoen to Prof. S. J. Saunders, November 26, 1980; Report to the Medical Association of South Africa, 1981, pp 7-8; *South African Medical Journal* (September 13, 1980), p 433.
- 43 Statement by the executive committee of the Federal Council, MASA, regarding the conduct of the doctors responsible for the treatment of the late Mr. S. B. Biko, in *South African Medical Journal*, (September 13, 1980), p 433.
- 45 The chairman of MASA's Federal Council, Prof. J. N. de Klerk, described the *SAMJ* as the "official organ and mouthpiece of MASA" which "must reflect the Association's policies;" in a letter to Professor Stuart Saunders, November 27, 1980.
- 45 *South African Medical Journal*, (September 13, 1980), pp 432-433.
- 46 Letter to the editor of the *South African Medical Journal*, (September 17, 1980). Professor Saunderson's letter was neither published nor acknowledged by the editor, although it appeared in full, without author's permission, as an agenda document for the Federal Council meeting of November 12, 1980. Private correspondence, Prof. Saunders to chairman of the Federal Council of MASA, November 14, 1980. Complaint lodged by Dr. Frances Ames and others, Annexure C. Apparently the journal editors also refused to publish the Witwatersrand Medical School statement on the case. Interview with Prof. Phillip Tobias by Eric Stover in Johannesburg on December 11, 1985. In the interview, Prof. Tobias criticised the then leadership of MASA for "dragging its heels in subservience to the government."
- 47 Press statement by Dr. Jonathan Gluckman, November 19, 1980.
- 48 The authors of the ad hoc committee report claimed that the Deputy Director of Health Services forbade the doctors' involvement in the proceedings. The Assistant Secretary of Health Services, according to Prof. Saunders, argued "why should my district surgeons take up rap for the police." Interview with Professor Stuart Saunders by Eric Stover in Cape Town on December 14, 1985.
- 40 Report to the Medical Association of South Africa by the Ad Hoc Committee appointed to consider certain ethical issues, June 1981; Baxter, 'Doctors on Trial', p 142.
- 50 Complaint by Dr. Frances Ames and others (see note 39). The complainants were Dr. Frances Ames; Dr. Edward Barker, senior surgeon, University of Natal Medical School; Dr. Trefor Jenkins, head of the Department of Human Genetics at the University of the Witwatersrand; Dr. Leslie Robertson, a medical general practitioner; and Dr. Phillip Tobias, dean of the Faculty of Medicine at the University of the Witwatersrand. Baxter, 'Doctors on Trial', p 142; Veriava, p 299.
- 51 Complaint by the Transvaal Medical Society and others (see note 37). The individual complainants were Dr. Dumisani Mzamane, head of the Renal Unit at Baragwanath Hospital; Dr. Yusuf Veriava, a senior physician at Coronation Hospital; Dr. Rasik Gopal, neurosurgical registrar at Baragwanath Hospital; Dr. T Wilson, a pediatrician; and Dr. E. Holland. Veriava, p 30.
- 52 Baxter, 'Doctors on Trial', p 143; Veriava, pp 301-303.
- 53 Court papers in Veriava; Baxter, 'Doctors on Trial', p 143.
- 54 Veriava, pp 311-318.
- 55 Baxter, 'Doctors on Trial', pp 150-151; *South African Medical Journal*, Vol 63 (August 3, 1985) p 131; *The Lancet*, No 8447 (July 20, 1985), p 136; *The New York Times*, July 6, 1985; *The New York Times*, October 17, 1985.
- 56 Baxter, 'Doctors on Trial', pp 150-151; *Survey of Race Relations 1985* (Johannesburg: SAIRR publication, 1986), pp 454-455; *The Lancet*, No 8462 (November 2, 1985), pp 1000-1001; *The Lancet*, No 8424 (February 9, 1985), pp 342-343; *Canadian Medical Association Journal*, Vol 130 (June 15, 1985), pp 1623-1624; Memorandum submitted to the World Medical Association by the National Committee of Health Organisations, South Africa, June 1985.
- 57 *The Lancet*, No 8462 (November 2, 1985), pp 1000-1001; *The Lancet*, No 8430 (March 23, 1985); *British Medical Journal*, Vol 292 (February 22, 1986), p 506; *JAMA*, Vol 254, No 22 (June 12, 1987), pp 3066-3067; interview with Professor Frances Ames by Eric Stover in Cape Town on December 17, 1985. Some 60 per cent of NAMDA's current membership of 1,000 doctors and dentists are black. The new association was created partly in reaction to MASA's behaviour over the Biko case and partly as an expression of concern about broader health issues which NAMDA members felt MASA was not properly addressing. Dr. Diliza Mji, 'The struggle for Health: The Struggle for Democracy', unpublished paper presented at the Institute of Social Studies, Amsterdam, December 1986; Memorandum submitted to the WMA by the National Committee of Health Organisations (including NAMDA), June 1985; interview with Dr. Jerry Coovadia by the author in Washington, D.C. on June 23, 1987.
- 58 Jenkins, 'The MASA letter', pp 234-240.