USSR Letter

From the trial of a Soviet doctor

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On 31 December 1974 Dr Mikhail Stern, a Jewish endocrinologist, was convicted by a criminal court on trumped-up charges of bribe-taking and swindling. In fact, his "crime" consisted of failing to forbid the emigration of his two sons as he had been ordered to do by the local communist party secretary in the Ukrainian town of Vinnitsa. Sentenced to eight years in a corrective labour colony, he served over two years before the Soviet government was induced to release him and sanction his departure to the West, where public opinion had been mobilised by his sons. Relying mainly on tape recordings, they were able to compile a transcript of the trial and this document, now available in an English translation, provides a moving testimony to the physical and moral courage of one man in the face of collective tyranny.¹

At a less heroic level, this transcript also provides some fascinating insights into relations between the Soviet state apparatus and the country's practising clinicians. For example, one of the subordinate issues which attracted attention during the course of the trial was the question of Dr Stern's prescribing habits. As another endocrinologist testified in court, Stern's treatment had produced remarkable results in cases of hypogonadism. Unfortunately for him, however, the prosecution had seized on this success and linked it to the charges, going so far as to assert in the indictment that "Stern frequently established for himself the reputation of a 'sorcerer-physician' who was close to patients and responded to their needs. . . ."

Instructions or guidelines?

In so far as the accused had applied the "Stern method" (to quote a phrase used by the presiding judge), he had departed from standard practice. This became clear from witnesses' replies that referred to the exercise of hierarchical controls to limit the freedom of an individual clinician. The position was described as follows by the chief doctor of the unit where Mikhail Stern had worked: "Our professor came back from Moscow with directives which everyone is supposed to follow." And another witness (a paediatric endocrinologist) made the same point in a slightly different way when she said: "We don't have any special methods. There are guidelines and instructions."

Even so, the technobureaucrats of the Soviet health service cannot totally deprive doctors of opportunities to make individual (sometimes, perhaps, unique) decisions when treating their patients. Dr Stern was able to defend himself by

pointing out that the hormone preparations he used were all known and permitted for sale and that any doctor had the right to use combinations of these preparations if the drugs had been officially approved for use (in the USSR).

Spelling out the nature of his approach for the judge, Dr Stern pronounced what might be regarded as a classic justification of clinical freedom. He said that in treating each case of hypogonadism he applied a modification of known methods, using hormone preparations which he believed to be the most appropriate for a particular patient. Although the drugs were standard, the combination of them "was always the result of my personal creative approach to the treatment of the given patient." With an epigrammatic turn of phrase he went on to emphasise that "you have to treat a patient and not a disease," and that "the treatment cannot be based solely on instructions and directives."

The rule-bound character of Soviet medical practice also emerged from questions relating to another matter—the administration of injections. At one point the chief doctor of the endocrinological unit (who comes across as a lickspittle) informed the court that injections should be given by nurses. This statement was subsequently corroborated by another medical administrator with the categorical assertion: "Doctors don't do this."

Dr Stern was an exception to this rule and in his final plea to the court he justified his apparent aberration in the following words: "Only I could determine the patient's sensitivity to the preparations, comrade judges. Only through personal observation could I select the individual doses of combined hormones. Furthermore, hormonal preparations can frequently cause infiltrates of oil. Prevention of these infiltrates depended to a large extent on the fact that I myself, a doctor, injected the hormonal preparations." The result of his scrupulous concern, as he pointed out, was that the court had not heard of any complaint about side effects or complications. Indeed, it is pleasant to note that many of Dr Stern's former patients—who had been summoned to testify as prosecution witnesses—expressed their gratitude to him in spontaneous and touching tributes.

In a further respect it appeared that the accused had departed from the approved procedures of the Soviet health service by failing to observe a rigid distinction between private and salaried practice. The orthodox view on this matter was explained to the court by a medical administrator when he stated that a doctor is not permitted to treat in his own home a patient who has earlier attended his official surgery—even if the patient is critically ill. Nevertheless, Dr Stern was able to advance a convincing counterargument in defence of his actions: "There are no regulations that a patient who has begun treatment in a medical institution must complete it there and may not complete the treatment at the doctor's home." He went on to refer to the cases of two adolescent patients, both of whom preferred not to miss school and therefore

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went to his apartment on Sundays for injections. In one of these cases it is clear that no payment was made.

On the question of private practice, it is interesting that, for one reason or another, Dr Stern had not bothered to obtain authorisation from "the financial authorities." (Incidentally, this omission does not constitute a criminal offence and he merely received a reprimand from the court.) It is quite possible, however, that he acted no differently in this respect from many of his colleagues, and it is certain that he was in no way unusual in receiving gifts in cash or kind from patients who wished to show their gratitude. Indeed, the Soviet consumer expects to make transfers of some sort in return for many services—both when he has already paid the official price, and when he uses a service such as medical care which is free at time of use.

Allegations of bribery

The specific charges brought against Dr Stern were not those of malpractice or failure to obtain authorisation for private practice; the charges related to extortion and acceptance of bribes. According to the prosecution, Dr Stern had been guilty of these offences (which come under the criminal code) in various actions—of which the most prominent was selling drugs to the patients he was then treating. On cross-examination it emerged that he had indeed helped several people to obtain the drugs they needed.

At this juncture it is relevant to emphasise (as I have done elsewhere²) that even official Soviet sources express concern from time to time about the inadequate supply of drugs to pharmacies and health-care units. The widespread shortages of new high-effectiveness preparations, along with the continued reliance on remedies that are antiquated (and perhaps useless), offer a telling comment on the order of priorities adopted by the Soviet authorities. Naturally enough, ordinary citizens attempt to circumvent the supply problem as best they can—by means of personal contacts and payment at "market" prices rather than the official prices charged in pharmacies.

I doubt whether the average Soviet doctor gives the patients much help in obtaining the most appropriate drugs, but Dr Stern was not the man to shrug off any aspect of what he perceived to be his responsibilities. For the benefit of the court he explained the nature of the moral imperative in question: "These drugs were not available in pharmacies. But there were people who had these drugs and didn't need them. Other people had drugs whose expiration date was approaching. But there were other people who had a vital need for them. I believed that it was my duty as a physician to help." One example of a drug which a patient found unobtainable even in the cities of Odessa, Kiev, and Moscow was choreogonin; Dr Stern had prescribed it for a case of moderately severe hypogonadism and eventually managed to buy at market price some choreogonin that had been manufactured in Hungary.

That no deception or abuse of confidence occurred in any case becomes evident from examination of witnesses. Much to their credit, many of these Ukrainian peasants effectively contradicted the original statements which the state investigator had "obtained" from them. Even the few who remained hostile to their former doctor gave evidence that was so confused and unsubstantiated that it would have been unacceptable almost anywhere except in a show trial. If the use of that term betrays some prejudice, it is worth reflecting on the appalling admission that the presiding judge (V Orlovski) made to the accused during a recess: "Doctor Stern," he said, "you are not guilty, but I am forced to convict you."

Few readers of the transcript will doubt that the accused was wholly truthful when he said that never once in 30 years' practice had he made medical care conditional on remuneration. But—a bitter irony—even if he had done so, apparently he would not have been liable for prosecution under criminal law. That was certainly the contention of his defence lawyer in a

courageously incisive appeal, the text of which is printed along with the transcript.

It was argued by Counsel D Axelbant that none of the charges preferred included actions that could have legal consequences. The crucial point here is that commentaries on the criminal code clearly distinguish between "official" and "professional" activities. Thus one source states that doctors "are regarded as officials when they are carrying out organisational-directive or administrative-economic duties. When they are carrying out their professional duties (treatment of patients) they are not regarded as officials and in connection with this activity of theirs cannot be the subjects of a malfeasance." Counsel was able to cite two instances where courts had ruled that there was no *corpus delicti* in the actions of surgeons who received gifts from patients on whom they operated. Under Soviet law, it seems, doctors who accept gifts in connection with the provision of treatment can be subject only to disciplinary measures and public persuasion.

According to defending counsel, during the course of his work Dr Stern was in principle unable to commit actions which entailed legal consequences. The reason was that he did not have the right to issue sickness certificates or issue a report concerning disability or fitness for military service. In other words, the part performed by Dr Stern did not entail "official" activities—which were the only ones that could render him liable to prosecution on a criminal charge.

If in this matter the court permitted "a blatant distortion of the facts" (to use Counsel's words), the Ukrainian health ministry had already gone one better; they found Dr Stern guilty even before the trial occurred. On 14 November 1974 the Minister of Health, V D Bratus, issued a circular with the title "special control" in which he deplored the fact that many directors of health-care institutions had failed to take "decisive measures to improve ideological education" and ordered action to be taken. The circular also stated that M Stern had engaged in extortion and demanded bribes from patients for treating them, and asserted that "this money-grubber sold drugs at inflated prices."

During the course of the trial, reference was made to the Ministry circular, and Dr Stern justifiably protested that he had been condemned before a verdict had been reached. It is striking that on this matter the presiding judge showed sympathy for the accused: "I agree with you," he remarked, "This was wrong."

As it happens, I met Bratus in Kiev in 1974 and I have no difficulty in seeing him as an unquestioning and over-zealous servant of the Soviet autocracy. (On a lighter note: having heard our group criticise standards in local hospitals he gave instructions for a rural unit to be repainted specially for our visit—as we discovered when the paint came off on our clothes.) It is possible that his action over the circular may have had some bearing on his departure from office at a later date, but the facts are unobtainable. Since that time no other Soviet doctor has been subjected to the same treatment as Dr Stern. Even so, show trials of peaceful dissenters have continued to cast a deep shadow over Soviet legal practice.

References

- 1 Stern A, ed *The USSR versus Dr Mikhail Stern*, Jonathan Cape, London 1978.
- 2 Ryan M *The Pharmaceutical Journal*, 10 February 1979, 110-112.

In my USSR Letters transliteration from the Cyrillic alphabet is based on the principle of keeping the appearance of words as simple as possible while preserving their basic form. This entails discarding a few conventions preferred by British Slavists—for example, the use of a diacritic comma to represent a soft sign. As a result, Russian words should present fewer difficulties for readers who have no knowledge of the Russian language.