The Voice of History?
Archives, Ethics and Historians

Julie Parle

Asylum

Church Street, Pietermaritzburg
25th July 1896

Honourable Attorney General

Sir,

I have the honour to approach you in the matter of my poor wife Emma L, presently confined in the Natal Govt Asylum with a view to her release therefrom.

On the 25th October 1894 she (my wife) did, under a fit of temporary insanity, take the life of her youngest child, which insanity, I attribute to a disease, commonly known amongst females, as "change of life" this disease having now passed off, and she, (my wife) being, I consider, in her right mind I now pray for her release from custody.

She has been in confinement for a period of 1 year and 9 months, and she feels so much at her confinement which parts her from me (her husband) and her children, that I am afraid if not released, she will continue to fret so, that her life will not be very long.

Under the circumstance I therefore ask that she may be medically examined as to her state of mind, and if found to be in a fit state, may be released from custody.

I may inform you that I am willing to take full charge of my wife and if need be, to remove her out of the Colony of Natal, to any place which the Govt may think proper to name.

I may state we have been married for over 28 years and during that time my wife has borne 13 children, 8 of which are still living, I have been in the colony for over 33 years, and during that time, have borne an unblemished character. My wife was born in the Colony and has also borne the best of characters and has always been a good wife and fond mother.

I pray Sir you will kindly bring this matter before the Govt and use your ablest abilities for the release from custody of my dear wife for which blessing I shall ever pray.

Your most humble and obedt Servant

Henry Debney L

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14th December 1896

Mrs Emma Mary B and her three sisters apply for the release of their mother at present an inmate of the Natal Government Asylum.

Attorney General's Office

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22nd December 1896

I am prepared to certify that Mrs L is in a condition to be discharged so far as her mental condition is concerned – the only difficulty, as I have previously pointed out … is connected with the murder of her child previous to her admission to the Asylum.

James Hyslop
Medical Superintendent, NGA

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29th December 1896

I advise the release of Mrs L from the Asylum in terms of Law 1, 1868.

I have enquired into the circumstances and believe it to be an honest attempt on the part of the children to make their mother as comfortable as they can. I think she will be safe in their hands.

Attorney General

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19th January 1897

Mrs B and Miss L daughters of Mrs L have called this afternoon and asked that the matter may be left in abeyance for the present. They also ask that the matter may not be mentioned to their mother for fear it may upset her.

Colonial Secretary

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10th February 1897

Mrs L attempted to commit suicide last night by swallowing what I believe to have been glacial Acetic Acid.

James Hyslop

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2nd February 1899

The petitioner Henry D L, husband of Mrs Emma L, presently confined in the Natal Govt Asylum, humbly wishes to shew,

1. *That Mrs L did on the 15th day of October 1894, whilst under a fit of temporary insanity take the life of her youngest child, for which act she was confined in the Natal Govt Asylum.*

2. *That Mrs L has now been confined in the Asylum since November 1894. And your petitioner is of opinion that Mrs L is now in her right mind.*

3. *That Mrs L has for some months past been in failing health, owing I consider to the constant confinement, which will, in the opinion of your petitioner, hasten the end of her life, if she be not speedily released there from.*

4. *That your petitioner is quite prepared to undertake the responsibility and care of Mrs L.*

5. *Your petitioner now prays for Your Excellency's kind consideration of Mrs L's case, and should the Medical Officer certify Mrs L fit for release, that you will use your clemency on her behalf and grant her release.*

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25th February 1899

In view of the medical opinion on the subject, I am unable to recommend to Your Excellency to authorise Mrs L's release from the Asylum.

Office of the Prime Minister

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17th January 1900

Petition of Emma L, wife of Henry L, at present an inmate of the Natal Government Asylum.

Humbly Sheweth

That your Petitioner is forty nine years of age. That in the month of October 1894 your Petitioner was sent to the Natal Government Asylum at Pietermaritzburg.

That your Petitioner only faintly remembers being brought up to Maritzburg from Durban; but was afterwards informed of the crime she had committed and the reason for her incarceration.

Your Petitioner cannot say what caused her to commit the dreadful act, and she has been ever since almost heart-broken over the sad affair, as she dearly loved her child.

Your Petitioner can only account for it by saying that she was not in her right mind at the time and she had been and was still ill and very weak.

After being confined in the Natal Government Asylum for about twelve months Your Petitioner grew stronger and began to realize what she had done and the reason for her confinement in the Asylum.

After Your Petitioner had been in the Asylum for about three years, her husband, who had constantly visited her, petitioned the Government for her release without success.

Your Petitioner is now quite sane and sees no reason why she should be kept in the Asylum.

Your Petitioner has suffered terribly for her unfortunate failing and offence, and if the Government think she should be further punished for her offence she would prefer to stand her trial rather than be kept in the Asylum indefinitely.

Your Petitioner may say that she has [had] nightmares more frequently in the Asylum than when she is at her own home, but she accounts for this by reason of her peculiar surroundings and the continual worry and anxiety about her husband who is now a cripple, and her children.

Your Petitioner has always worked hard since she has been in the Asylum, and she is sure no one will say that she has shirked work or her duty.

If released your Petitioner is quite prepared to live at any place appointed by the Government and her sister … has offered to take her and her husband in at her house, and she believes [they are] quite prepared to enter into a Bond or give an undertaking to the Government that [they] will look after her.

During the last three years Your Petitioner has been allowed to come into Maritzburg constantly. First of all with her brother in law Mr W and latterly with her nephews and husband.

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17th January 1900

I remember when my wife committed the act for which she is confined in the Natal Government Asylum. She had been very ill and at times delirious and for two or three months previously she had been carefully nursed by myself and my daughters.

On the day in question I was called on the jury, and my daughters were absent, Mrs L having been left alone with our young child.

There is no doubt but that at the time Mrs L was not in her right mind.

Since her incarceration in the Asylum I have constantly visited her and I have no hesitation in now saying that she is just as sane as ever she was, and repents of what she calls her great sin.

The authorities allow my wife to come out with me at all times, the only condition being that she must return to the asylum at night.

Although a cripple, if my wife is released, I will take every care of her and will be with her day and night, and my brother in law and sister in law have promised me every assistance.

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29th January 1900

OATH SWORN BY Mercy W, wife of Frederick W, Warder at Pietermaritzburg Gaol.

Mrs H L is my sister.

She is now perfectly sane and I cannot understand why she is detained in the Asylum.

I am quite prepared with the help of her husband and my husband to look after Mrs L, and we are prepared to allow Mr and Mrs L to live in our house, and if they remain in Pietermaritzburg, I am prepared to build rooms on the same ground as my house is situated on.

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14th February 1901

Having on occasions examined Mrs L, I dissent from the opinion of the majority of the Official Visitors as I consider that for some time past her mind has been so free from insane indication I would recommend her being released from this Asylum.

Charles Gordon
Official Visitor

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2nd May 1901

We the undersigned comprising husband, daughters and sons of Mrs Emma L now at the present time confined in the Asylum in Pietermaritzburg - humbly pray for the release of the said Mrs Emma L.

We know that she is well in health and mind - we would not say so if we did not know such was the case and we the aforesaid husband daughters and sons guarantee, if the prayer of our petition be granted, to look after her in an affectionate kindly and proper manner on her return home.

Doctors Campbell Watt and Taylor told the husband and Mrs L some time ago that she should be discharged from the Asylum, and Doctors Gordon and [?] said that he did not like to interfere with Doctor Hyslop's direction.

She has been confined for seven years and we the immediate members of the aforesaid family naturally feel it very hard.

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11th May 1901

I have the honour to inform you that His Excellency is unable to entertain the prayer of the Petition.

Principal Under-Secretary.

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8th December 1901

Just a few lines to ask you if you really cant grant our mothers release, as we feel it so very hard to be separated from our mother so long. We promise you we will look after her and do everything for her comfort. It seems so hard doctor to have a mother and have to be parted from her especially now her family have grown up and are quite able to look after her and we know it is our duty to do so and also as mother is getting an aged woman, we feel it is so hard on her to be there.

Jessie Cecilia L

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28th August 1901

[With] the majority of the Official Visitors, with which I may say I am in full sympathy, I suggest it as worthy of consideration whether Mrs L should not in terms of Sect 2, Law 1, 1868, be discharged on the certificates furnished by Drs Campbell Watt and Oddin-Taylor.

James Hyslop

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3rd February 1902

Mrs Emma L has been discharged.

James Hyslop

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15th May 1908

The patient herein referred to has been readmitted to the Asylum. I understand that she threw some hot water over her grandchild, and that the child has since died as a result of the injury sustained.

James Hyslop

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5th June 1908

Field Cornet, Stanger

An enquiry has been held into the death of Jessie Violet B the grandchild of Emma L, and the papers are being sent to the Attorney General. The child's death was caused by Emma L throwing boiling water upon her.

Acting Under-Secretary.

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At the end of September this year, I submitted this story to the sixth annual 'Natal Witness True Stories of KZN' Competition.[1] The rules require that the story be entirely true and that it be told in two thousand words or less. This is a true story, and I have told it entirely in the words of those who were entwined with these tragic events in the life of Mrs Emma L. Or, rather, in the words of the documents they have left behind.

These documents and letters - which I have placed in chronological order, and taken excerpts from, but have not otherwise edited or changed in any way - can be found at the Pietermaritzburg Archives Repository.[2] They comprise, in the main, correspondence between various officials from the offices of the Colonial Secretary, the Attorney General, the Minister of Justice and Public Works, and Dr James Hyslop, Medical Superintendent of the Natal Government Asylum from 1882 to 1913. The file concerning Mrs Emma L also contains depositions,

[1] The *Natal Witness* is a Pietermaritzburg-based newspaper which has a history of independent publishing. I have made it clear that, if this story wins the competition, the cash prize should be donated to an appropriate welfare organization.

[2] Reference available on request. My reasons for not giving it here should soon become apparent. I thank Jeff Guy for directing me to these records in the first place. Thanks too to Heli Guy and Suryakanthie Chetty for transcribing these documents.

statements, correspondence to and from the legal firm appointed by the family of Mrs L, and a number of petitions, affidavits, and letters by several members of the family, most notably by Mr Henry Debney L and by Emma L herself.

These are all documents that are available in the public domain of the state archives. For the historian of mental illness and professional psychiatry, they represent a rare and deeply moving glimpse into the role of the family in caring for the mentally deranged and even, at times, dangerous. Although I have access to her patient records in the Natal Government Asylum Patient Case-Book for the periods after Emma L's committals, both in 1894 and in 1908, I have not made use of them here. I have, however, done so elsewhere, where in recounting the story of Emma L and her family, I have sought to illustrate an argument that colonial psychiatry and its institutions occupy a more complex place than most histories have allowed. I have also explored, in a chapter, the important role played by families in caring for the mentally ill, and in influencing the timing of and conditions under which the mentally ill were certified as being insane.[3]

More used to the demands of academia, writing this short story for publication in a different, and more public, writing space has been an experience that has been one both of being 'liberated' and of being exposed. Liberated from the need to provide, at every move, careful corroboration of evidence and the sustained development of a line of analysis (*my* interpretation; Emma L *as* an exemplar of an argument); and also in letting 'the documents speak for themselves'. But I have also had qualms about putting this story in the public domain in that I am aware that the terrible events here so starkly recounted are rooted in the history of this region, the city in which I live, and where - very possibly - descendants of Emma L live today. Is this my story to tell? Perhaps more significant for today's discussion, I have also had to question an argument which I make in the introduction to my manuscript, where I make a strong case for using the full names of the people about whom I write.

[3] J. Parle, *States of Mind: Mental Illness and the Quest for Mental Health in Natal and Zululand, 1868-1918* (PhD dissertation, University of KwaZulu-Natal, 2004, and unpublished mss).

This introductory chapter is titled '"The Voice of History?" Madness and South Africa's Past'. It is in part intended to justify the study of mental illness as one that can tell us much about changing social orders, and their definitions of normality and abnormality, of reason and insanity, and of right and wrong. I go on to make various plays on this title. I critique the Comaroffs, for instance, who in their article 'The Madman and the Migrant: Work and Labor in the Historical Consciousness of a South African People' write of a Tswana man whom whites regarded as mad but whom, it is likely, they say, was regarded by those culturally closer to him as 'an inspired healer.'[4] More than this:

> Even had he not been identified as a healer, for the Comaroffs, this 'madman', with his *bricolage* clothing that combined elements reflecting different aspects of his conflicted rural–urban, peasant–proletariat world conveyed a trenchant critique of colonialism and of capitalism: For these Western–trained anthropologists, he had 'a message to decipher', and in the very essence of his over–the–top, but out–of–kilter, assemblage of aspects of a changing world, could be seen as no less than 'the voice of history.'[5]

Madness, then, in this view is a delusion of the sane, and if properly understood can offer important insights into subaltern consciousnesses.

Whilst not claiming that the meanings of insanity can be decoded in any straight-forward manner, other historians of nineteenth and twentieth century Africa have extended our view of madness as protest to that of madness as a form of resistance. For instance, by paying close attention to the actual utterings, claims, boasts, threats, and actions of those detained and confined as lunatics in colonial Nigeria, Jonathan Sadowsky shows how madness as a *social* phenomenon constituted a form of political expression. 'The "symptoms" of Nigeria's lunatics', he explains, 'and the psychiatric labels that were affixed can be understood as

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[4] J. L. Comaroff and J. Comaroff, 'The Madman and the Migrant: Work and Labor in the Historical Consciousness of a South African People' *American Ethnologist,* 14 (May 1987), pp. 191–209. The phrase appears on p. 191.

[5] Parle, *States of Mind*, Introduction, quoting Comaroff and Comaroff, 'The Madman and the Migrant', pp.191 and 193.

inchoate articulations of the stresses of colonial society.' He adds: 'There is, frequently, a relationship between madness and resistance to social order, even if madness does not actually constitute resistance.'[6]

The late Roy Porter did much to restore patients' perspectives to the history of medicine. In his *A Social History of Madness* he argued that the writings of the mad 'can be read not just as symptoms of diseases or syndromes, but as coherent communications in their own right'. He was not, however, advocating any simple, straight-forward appropriation of the mad *en bloc* as folk heroes or radicals and rebels since:

> It would be mistaken and terribly sentimental to rush headlong into concluding that the voice of the mad is the authentic voice of the excluded, that somehow madness leads the chorus of protest against dominant elite consciousness, indeed sings the song of the repressed. … [Rather] the writings of the mad challenge the discourse of the normal, challenge its right to be the objective mouthpiece of the times. The assumption that there exist definitive and unitary standards of truth and falsehood, reality and delusion, is put to the test.[7]

The sources used by Porter are the writings - pamphlets, protests and autobiographies - of seventeenth, eighteenth and nineteenth century madmen and madwomen. He allows his subjects to 'speak for themselves', an impulse which social historians of many stripes share. He does so in part to challenge the enormous condescension with which posterity has treated the mad, but also because 'when we read the writings of the mad, we gain an enhanced insight into the sheer range of what could be thought and felt, at the margins.' [8] Following Foucault, Porter shows that in the West, from the Era of Reason, specialists in the identification and treatment of insanity - psychiatrists - had little interest in

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[6] J. Sadowsky, *Imperial Bedlam: Institutions of Madness in Colonial Southwest Nigeria* (Berkeley, Los Angeles and London: University of California Press, 1999), pp. 74-77, and Chapter 5. Quotations from pp. 76 and 77 respectively.

[7] R. Porter, *A Social History of Madness* (London: Phoenix: 1996), pp.2-3. There is insufficient space here to revisit the extensive debates about the 'meanings of madness' - nor is this my major concern in this paper. I do, however, discuss these often heated historiographical debates in *States of Mind*, especially in the Introduction and Chapter 1.

[8] Porter, *A Social History of Madness*, p.2.

deciphering the words and deeds of their patients, but instead 'commonly denied intelligibility to madness'. Nonsense had become insanity's *sine qua non.* With supreme irony, even as the words of the insane were carefully noted down and used as evidence of madness, the speakers were effectively silenced.

The paying of attention to the records of those who actually manifested madness is a relatively recent - and I think, welcome - historiographical turn, and one that seeks to peel away multiple layers of silence which have obscured the mad themselves from the public record.[9] It is, however, one which perhaps is fraught with even more difficulties than those faced by social historians working with the fragmentary documentary remains of other marginalized peoples. How, after all, does one ascertain the 'veracity' of the words and deeds of those who were deemed to be, well, crazy? What methodologies can determine truth or falsity when sanity itself is in doubt?

In the field of medical, and especially psychiatric, history not only have our subjects not been able to 'speak for themselves', their true identities have been deliberately hidden through the widely-accepted convention of obscuring the names of people who have been patients, so as to respect their confidentiality. Historical anonymity, it is argued, must be preserved since mental illness itself renders people innocent victims of their own madness, even if their acts would otherwise be deemed criminal - for instance, a double child murder, in the case of Emma L. In addition, there is a further underlying assumption behind the convention of not using the full names of people legally declared mentally disordered: a respect for the sensibilities of their descendants, so that they will not be embarrassed, or even perhaps frightened, by their association with the taint of insanity.

[9] For a recent commentary on the significance of including the 'voices of patients', see J. Harley Warner, 'Grand Narrative and Its Discontent: Medical History in the Social Transformation of American Medicine' *Journal of Health Politics, Policy and Law*, 29, 2004, pp. 757-780, which also has a helpful reference list.

And yet, there are, I believe, cogent reasons for making a counter-argument: that to obscure the names of those who suffered from mental illness is to add one more layer to their silence. My own study, for instance, covers the first phase of South African psychiatry, the fifty year period between 1868 and 1918, for which very few extant patient records exist. There are even fewer for the later decades, however. As I explain:

> For, while mental matters were of some concern to the new South African state, the records of individual psychiatric institutions were centralized and the statistics reproduced in the annual reports of the Commissioner of Mental Hygiene combine data from the different institutions around the country. Furthermore, medical practitioners increasingly claimed a respect for patient confidentiality, and so clinical records were deliberately destroyed. On the whole – saving the infrequent eruptions in the archive where patients, or former patients, or their families, requested release or challenged the state on grounds of wrongful committal – the stories of individual patients have largely disappeared.

The possibilities of patient testimony, protest, and indeed their own experiences of confinement, and of mental illness itself have thus been erased from institutional and state archives. No wonder such histories as we do have, then, privilege the realm of doctors, psychiatric professionals and others who have written about the mad.

Nonetheless, medical records are not the only ones that contain information about the mentally ill who came to the attention of the authorities who had the power to have them removed to a psychiatric facility. From the late nineteenth century, committal to an asylum or mental hospital was a legal procedure that required the authorisation of, at first, at least one magistrate and later, after the passing of the Mental Disorders Act of 1916, of an even higher ranking judicial authority. After 1916, the Reception Orders which served as the legal basis for such a committal were accompanied by supporting documentation by two medical officials, but these documents were not medical records *per se*. In KwaZulu-Natal, these Reception Orders and the supporting documentation - which sometimes has even more informal documentation attached, including letters and depositions supporting the case for committal - have been preserved in the records of the Registrar of the Supreme Court. Once more, in their details

of the behaviours which are described, we are permitted a glimpse into the world of the mentally ill and (often) their families in the time *before* they become legally certified and detained; in other words, before they become patients.

Of course, while these Reception Orders offer us fascinating glimpses into the social history of the quest for mental health after 1916, we must recognize their limitation for historians. This is for two main reasons: firstly, as with doctors' records, they represent a formulaic translation of the ambiguous and often conflicting presentation of chaotic behaviours and experiences into a coherent and self-justifying legalistic discourse intended to reinforce the authority of magistrates, judges and psychiatrists.[10] They are not transparent windows on the past. Nonetheless, running from 1916 through to the late 1950s or early 1960s, these records promise to be enormously valuable for historians of the social history of insanity, enabling us to look beyond the world of officials, professionals and institutions and into those of the private sphere and, possibly, into the inner worlds of the afflicted. Indeed, a preliminary survey of this collection charts the shifting nature of fantasies, fears and delusions that reflect many of the dominant anxieties of the times.

By and large, these documents are the only extant records we have about the thousands of people - from all backgrounds - who were committed as mental patients from 1916 until the 1960s. Hospital records, administrative as well as clinical, have been systematically destroyed.[11] It is unlikely that I will be able to continue my study into the second (1916-1973) - let alone the third - phase of South African psychiatry. But, and as I conclude my Introduction:

> Even were it possible, the question of whether their stories should be exposed remains a potentially controversial one. Scholars working from a

[10] See S. Swartz, 'Colonialism and the Production of Psychiatric Knowledge in the Cape, 1891-1920' (PhD dissertation, University of Cape Town, 1996), esp. Chapter 4, 'The Official Certificates and Forms: Categories of Lunacy Administration in the Cape', for a discourse analysis of the Summary Reception and Reception Orders required by law (in Natal after 1916).

[11] National Archives Repository, Pretoria, Director of Archives 14 C11/13/17: Destruction of Records, Department of the Interior, Mental Hospital, Pietermaritzburg, 1928-1938.

> background of medicine, including psychology and psychiatry, have usually observed a concern for patient confidentiality, and have deliberately omitted the full names of the people they written about. In other historical accounts, the names of individuals branded as mad have sometimes been subtly altered.[12] In a world where, paradoxically, self-help guides and groups abound and yet there is still considerable stigma and prejudice against mental illness or even the admission of psychological frailty, this is understandable.

And yet, and to continue:

> My study, however, is derived from many stories, with many names: with the exception of the single European Case-Book that has survived, all the records I have used have been public ones. In most instances, African and Indian patients are, in the sources, given only one name and their individual identities thus already obscured. Some of the stories – such as those of Livingstone Makanya and Thomas Phipson – have been told before, and it would have been pointless to attempt to disguise them. To alter the names of the dozens of people I refer to would have been cumbersome, and to reduce them to initials would have further stripped down their identity, compounding the translation of the complex experiences of people into psychiatric 'cases' that histories of medicine have sought to avoid. Arguably, if the 'voice of history' is a sympathetic retelling of the suffering borne by such people, and their search for solace, it can contribute to a lessening of the marginalisation of the mentally ill both in the historical record, and in the present.

And so, I have named names, identified town and street addresses, and recounted the deeds, words and sorrows of dozens of people whose lives - and those of those around them - were deeply disturbed and disturbing.

One reader of my work has remarked that this was 'a daring choice', but ultimately, one that is defensible, for the hiding or replacing of names bears a fundamental paradox, which is

[12] Sally Swartz and Jonathan Sadowsky both use first names and an initial for the surname of the psychiatric patients they refer to. Shula Marks, in her *Not Either An Experimental Doll: The Separate Worlds of Three South African Women* (Durban and Pietermaritzburg: Killie Campbell Africana Library and University of Natal Press, 1987), has given Lily Moya a name that is close to, but not, her given name. For Katie and Livingstone Makanya, see M. McCord's *The Calling of Katie Makanya* (Cape Town: David Philip, 1995); and for Thomas Phipson, see R.N. Currey (ed.) *Letters and other writings of a Natal Sheriff, 1815-1876, Selected and introduced and edited by R.N. Currey*, (Cape Town: Oxford University Press, 1968).

> that by wishing to protect particular people from stigma, those who conceal true identities promote stigma towards mental illness in general. By changing the names of mental patients, we treat them as a special kind of historical actor, due certain indulgences -- perhaps charity -- normally withheld by historians. [The reader continues] My argument here is not that Parle's choice is one that should necessarily be widely emulated. It is, rather, that Parle argues coherently that there is a serious trade-off involved in one's decision on this question, and that her decision warrants respect and attention from those who might decide differently.[13]

So far, so much solipsism and not a little hubris, it might seem. And, yet my own particular dilemma in this matter might, I hope, prove interesting ground for further discussion about that loose concept of professional ethics to which we aspire but which is often difficult to spell out in detail.

Of course, debates about the responsibilities of the historian with regards to oral history are well developed, and here we share much with our sister humanities and social sciences disciplines, especially anthropology and sociology. The principles of ethical research here require, at the least, acquainting the interviewee with the purposes and procedures of the project; acquiring the informed consent of the interviewees or their legal guardians; a guarantee of confidentiality should it be asked for; and an agreement on how and where the tape transcripts or other documentation are to be disposed of.[14] Similar strictures surely apply to access to medical records during a person's lifetime.

But these are not what interest me at this point. Rather, I would like to raise questions about the ethical use of archived documentary sources which have not been closed by state decree. Such records would include the Reception Orders

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[13] Jonathan Sadowsky, April 2004.

[14] Recently, the University of KwaZulu-Natal has required that all research - whether by staff or students - pass ethical clearance by the relevant Faculty Research and Ethics Committees. For the Faculty of Humanities and Social Sciences clearance research ethical forms, see http://www.ukzn.ac.za/research/extra.asp?id=20&dept=RESEARCH. Accessed on 3 November 2005 at 14:00.

(and subsequent legal papers pertaining to the continued confinement in a mental hospital) mentioned above, but also legal records - especially trial transcripts - relating to crimes such as incest, and infanticide, for example.[15]

Perhaps it might be argued that criminal cases should be viewed in a different light in that the perpetrators of crimes automatically cede their right to privacy. This, however, does nothing to protect those accused who were later acquitted. Nor does this address the issue of descendants. If it is more shameful to be descended from an insane person than, say, a murderer or a poisoner, or even a traitor, then presumably this is because of the fear that mental illness is hereditary. (Even if this were wholly true, one might argue that it is ethically *more* correct to publicize the history of the mad so that their descendants are aware of this legacy, and can make informed choices about treatment and reproduction.) Furthermore, to isolate mental illness as a purely biological or chemical - "medical" - phenomenon is to reduce any aspect of agency and to divorce those found to be insane from the social and historical contexts in which they lived and which themselves may have been conducive of insanity.

One rule of thumb might be to been to observe the same period of restriction or closure of documents at public archives as stipulated by the state. (In Britain, there is no standard closure period for medical and hospital records, with such periods averaging around 100 years, though in Scotland there is a 75 year closure.[16] Other countries have shorter closure periods. In South Africa, we have a 20 year closure period on all but restricted records. When I contacted the National Archive in Pretoria, they informed me that they had 'no medical records', but were unclear about the status of legal records that contain medical information, saying that this is a 'grey area'.) In other words, historians have

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[15] See forthcoming PhD dissertation by Prinisha Badassy.

[16] 'A Critique of Case Notes Adapted from Gayle L. Davis, '"Lovers and Madmen have such Seething Brains": Historical Aspects of Neurosyphilis in Four Scottish Asylums, c.1880-1930', Ph.D. thesis, University of Edinburgh (2001), pp.14-19. Located at http://www.clinicalnotes.ac.uk/resources/main/historiography.html Accessed on 3 November 2005 at 14:27.

sometimes regarded documents relating to events and people living less than 30, or 60, or 75, or 100 years ago, as closed records, even if they are in fact, open in public archives, as the records pertaining to Emma L are. This is a convention, however, and one that is by no means uniformly observed.[17]

More important for my immediate purposes is that, as you will recall, one of the underlying reasons for the non-disclosure of the public records relating to the mentally ill relates not to a protection of their privacy - for the people I have written about are long dead - but the protection of their descendants in the hypothetical case that they should be embarrassed or troubled by the madness of their ancestors. But unto which generation should such protection be extended?[18] To what extent, as I suggested earlier, does such withholding of the names of those most afflicted contribute to further discrimination against the living?

We might also ask what difference it makes to point out that medical records themselves have a history. The rise of psychiatric record-keeping accompanied the rise of asylum medicine in the 1800s. The format of these notes varied considerably, becoming more regular only after mid-century. Moreover, the

[17] In the history of psychiatric institutions, there was a shift from the Case-Book format to loose leaf folders, a little before WW1. While many Case-Books have been preserved, individuals' folders have more usually been destroyed. For an exploration of case notes as a source, see J. Andrews, 'Case notes, case histories, and the patient's experience of insanity at Gartnavel Royal Asylum, Glasgow, in the nineteenth century', *Social History of Medicine*, 11, 2, 1998, pp. 255-81. Andrews makes use of the full names of the patients he discusses.

[18] The records of criminal lunatics held at Britain's famous Broadmoor prison, for example, are closed, probably in perpetuity. According to John Heritage, 'The problem of access to patient information is … complex and unresolved. Medical records seem likely to remain closed for ever except to bona fide medical researchers. Exceptionally, and subject to medical counselling, such information may be interpreted to genuine next-of-kin. As a policy, the hospital will not engage in any discussion of named patients with anybody on a routine basis. The hospital has an indefinitely long duty of care to its patients and their families, which it takes very seriously. There is a body of opinion which considers that criminal lunatic non-medical records are so sensitive that whereas lunatic or criminal records are opened after three generations this is not sufficiently long to protect the descendants of Broadmoor patients. Four generations (125 years) has been proposed informally as a minimum closure period but no formal consideration has yet takenplace.'http://wwww.berksfhs.org.uk/journal/Jun2002/jun2002BroadmoorHospitalArchives.htm Accessed on 3 November 2005 at 14:05.

notion of patient confidentiality is itself a relatively recent one, emerging in the late nineteenth century as a by-product of the corporate ownership of hospital records, and not as a consequence of concern for patient rights.[19] Not only were physicians and clinicians now denied the right to retain what had hitherto been their private property, patients continued to be denied access to their own records.

The bureaucratization of medical record-keeping, not surprisingly, soon brought with it problems of storage, and, it soon became common practice for such records to be destroyed after a stipulated storage period. In South Africa in 1929, the Director of Archives instructed that records of mental institutions were to be destroyed after seven years. Where any have survived has been because of the neglect of hospital authorities to comply with this instruction, or the occasional act of preservation by administrators interested in institutional history. This means that these patients (and later their descendants) were denied access to the very records that inscribed their insanity, and which were presented as justification for their confinement in a psychiatric facility. The preservation of the Reception Orders, however, provides something of a counter-balance and their availability as public documents means that, for those with a will to pursue family history, some records remain.

In the last decade, in South Africa, as elsewhere, there have been important changes in the ways in which medical records are kept and there has been renewed debate about access and privacy, with requirements simultaneously for greater control over patient records *and* greater access to them by those who have appropriate authorization. The Patients' Rights Charter, for instance, unequivocally states that 'Everyone has the right to be given full and accurate information about the nature of one's illnesses, diagnostic procedures, the proposed treatment and the costs involved, for one to make a decision that

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[19] B.L. Craig, 'The Role of Records and of Record-Keeping in the Development of the Modern Hospital in London, England, and Ontario, Canada, c.1890-1940', *Bulletin of the History of Medicine*, 65, 1991, pp.39-393.

affects any one of these elements.' It also has an Informed Consent clause which states that 'Information concerning one's health, including information concerning treatment may only be disclosed with informed consent, except when required in terms of any law or an order of the court.'[20]

Confidentiality has, of course, become an issue of even more burning concern - legally as well as ethically - in the context of HIV/AIDS. On the matter of the preservation of records, digitization and other electronic forms of inscription are advocated as being the answer to storage issues. One argument in favour of the long-term retention of such records after the death of a patient would presumably lie in the great interest of descendants who may wish to examine their genetic inheritance for *bone fide* health reasons. Nor are family members the only ones with access to such records. States and medical insurance companies have begun to lay their claims to them too.

The ethics of patient record-keeping, then, are not fixed in time or meaning. Nor, it is to be hoped, are the objects of social shame. The twentieth century saw, for instance, a lessening - in some parts of the world at least - of some forms of social discrimination, against those who had cancer, or who were gay or lesbian, or of the physically disabled. The writing of the histories of such previously marginalized and often discriminated against people was, in part, aided by the telling of their histories. But, this brings us to a set of somewhat different ethical questions about the purpose of history-writing and the role of academics. To quote from a recent text on the history of medicine, 'history is not able to supply any easy lessons for present-day issues, but medical history can make a subtle

[20] Found at http://www.doh.gov.za/docs/legislation/patientsright/chartere.html. Accessed 5 November 2005 at 12:30. I have not been able to establish the period for the retention of patient records. Interestingly, the Promotion of Access to Information Act (2000) appears to exempt the privacy clause for a person who has been dead for longer than 20 years.

and powerful difference in people's lives... Relevance and responsibility go hand in hand.'[21]

My larger question, then, relates both to the tug between the oft-made injunction to historians to let documents and subalterns 'speak' and to the rights to privacy, confidentiality and - perhaps - ignorance, of their descendants; and to other questions about silences, closure and stigma.

In closing, I would like to point out that as far as these sorts of questions go, few answers are to be found in our current university ethics procedures which, in a further irony, are drawn from a biomedical or bioethics research model which, as many have pointed out, is unsuitable and unworkable in the humanities and social sciences context. Far from wishing to police or crimp historical research into potentially sensitive - or for that matter any - topics, I would like (as one of those tasked with vetting research proposals) to extend this discussion further so that we in the humanities and social sciences are able to propose workable ethics guidelines that serve our own professional practice well.

[21] F. Huisman and J. Harley Warner, 'Medical Histories' in F. Huisman and J. Harley Warner (eds) *Locating Medical History: The Stories and Their Meanings* (Baltimore and London: The Johns Hopkins University Press, 2004), pp. 23 and 24. In this edited collection, two articles in particular address the role of 'cultural historian as social activist'. They are A.D. Dreger, 'Cultural History and Social Activism: Scholarship, Identities, and the Intersex Rights Movement'; and A. M. Brandt, 'From Analysis to Advocacy: Crossing Boundaries as a Historian of Health Policy'.