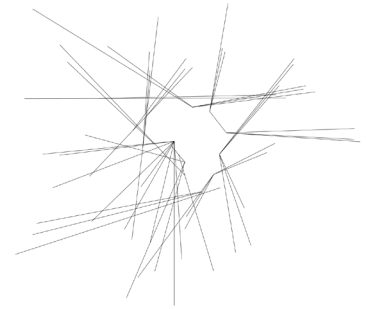


# WEBBER WENTZEL

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Advocate Shaun Abrahams  
National Director of Public Prosecutions

Per email: skabrahams@npa.gov.za

CC

Adv Torie Pretorius Sc

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Your reference

Our reference

Date

Mr M Hathorn  
3005789

8 July 2016

Dear Advocate Abrahams

## INQUESTS RE: THE LATE NEIL AGGETT AND THE LATE AHMED TIMOL

Our earlier meetings and correspondence between 2015 and this year in respect of the above matters refer. We refer more specifically to our meeting on 14 June 2016 with Adv. Torie Pretorius and our email to him dated 21 June 2016, a copy of which is attached for your easy reference.

At our meeting with Adv Pretorius on 14 June 2016, he agreed that both the Aggett and Timol inquests should be reopened without delay. He further advised us that he would be recommending such advice to you. He also mentioned that he would recommend that the inquests take place in the High Court.

In our aforesaid letter to Adv Pretorius we set out why these decisions should be taken as soon as possible. Essentially, we pointed out that key witnesses are old and sickly and their passing before the reopening of the inquests would have a devastating impact on the interests of justice, as well as generating a very poor public impression of the NPA.

Although we do not believe there is much more to be done in terms of further investigations we note that there will be some lead time before the inquests can be heard in the High Court and that any outstanding investigations can take place during this period.

Latter To NDPP 8\_7\_16(10373315.1)

**Senior Partner:** JC Els **Managing Partner:** SJ Hutton **Partners:** RB Africa NG Alp OA Ampofo-Anti RL Appelbaum AE Bennett DHL Booysen AR Bowley PG Bradshaw EG Brandt JL Brink S Browne MS Burger T Cassim RS Coelho KL Collier KM Colman KE Coster K Couzyn CR Davidow JH Davies ME Davis PM Daya L de Bruyn JHB de Lange DW de Villiers BEC Dickinson MA Diemont DA Dingley KZ Dlothi G Driver HJ du Preez CP du Toit SK Edmundson AE Esterhuizen MJR Evans AA Felekis GA Fichardt JB Forman MM Gibson H Goolam CI Gouws JP Gouws PD Grealy A Harley JM Harvey MH Hathorn JS Henning KR Hillis XNC Hlatshwayo S Hockey CM Hofeld PM Holloway HF Human AV Ismail KA Jarvis ME Jarvis CM Jonker S Jooste LA Kahn M Kennedy A Keyser PN Kingston MD Kota J Lamb L Marais S McCafferty MC McIntosh M McLaren SI Meltzer SM Methula CS Meyer AJ Mills JA Milner D Milo NP Mngomezulu VM Movshovich M Mtshali SP Naicker RA Nelson BP Ngoepe ZN Ntshona MB Nzimande L Odendaal GJP Olivier N Paige AMT Pardini AS Parry S Patel GR Penfold SE Phajane MA Phillips HK Potgieter S Rajah D Ramjettan NJA Robb DC Rudman M Sader JW Scholtz KE Shepherd DMJ Simaan AJ Simpson J Simpson N Singh MP Spalding L Stein PS Stein LJ Swaine Z Swanepoel A Thakor A Toefy PZ Vanda SE van der Meulen M van der Walt N van Dyk A van Niekerk JE Veeran D Venter B Versfeld MG Versfeld TA Versfeld DM Visagie J Watson KL Williams K Wilson RH Wilson M Yudaken **Chief Operating Officer:** SA Boyd

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We felt that the decision should have been taken within 2 weeks of our meeting with Adv. Pretorius. More than 2 weeks have elapsed since that meeting. Should a decision not be taken imminently our instructions are to take the necessary legal steps to secure such a decision.

Should you require further information or would like to meet with us again, we remain ready to assist you and to meet at any time convenient for you. We look forward to hearing from you per return.

Yours sincerely

**WEBBER WENTZEL**

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Our reference

Date

Mr M Hathorn  
3005789

11 August 2016

Dear Adv. Pretorius,

## INQUESTS RE: THE LATE NEIL AGGETT AND THE LATE AHMED TIMOL

With reference to your telephone call to me on 18 July 2016 and your email dated 25 July 2016, were you able to meet with Roelf Venter on 2 August and with the Director of Public Prosecutions (Johannesburg), Adv Chauke, in the week of 25 July?

Has the recommendation to the Minister in terms of section 17A of the Inquests Act been transmitted? If so, we would be grateful if you furnished us with a copy for our records. If not, please advise when the recommendation will be made. We would also be grateful for an explanation for the delay.

We have previously set out why we regard the reopening of these 2 inquests as urgent. Kindly confirm by close of business on Wednesday, 17 August 2016, that the recommendation to the Minister has been made. Should we not receive such advice by that time our instructions are to take appropriate action.

Yours faithfully

**WEBBER WENTZEL**

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CC: The NDPP

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The DPP (Johannesburg), Adv. Chauke

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Your reference

Our reference

Date

Mr M Hathorn  
3005789

23 August 2016

Dear Adv. Pretorius SC

## Inquests re: The Late Neil Aggett and the Late Ahmed Timol

1. I refer to my discussion with you on 16 August 2016.
2. You informed me that you have spoken to Paul Erasmus and Roelof Venter and Piers Pigou. You mentioned that you are trying to contact Japie and Kobus Koch and Waal du Toit. You indicated that they might be able to confirm the notion that communists committed suicide rather than cooperate was deliberate propaganda advanced by the Security Branch to support the concocted version of suicide.
3. You said further that you are following up on 17 witnesses in the case of Neil Aggett and that you are doing your best, under heavy work pressure, to properly prepare submissions to the DPP, Johannesburg.
4. We first wish to point out that once requests are made for a hearing in the High Court there is likely to be a considerable time lapse, probably of several months, before the inquests actually happen. We point out that you do not have to finalize every last aspect of the investigations before these steps are taken.
5. We further point out that an inquest is not a criminal trial and is itself in the nature of an investigation. We have already placed on record our deep concern that witnesses are elderly and could pass away at any time.
6. We are of the firm view that there is already more than sufficient evidence to warrant the reopening of inquests in both matters. Indeed at our last meeting with you at your office

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on 14 June 2016 you agreed that both matters should proceed to inquests, without delay. We are accordingly surprised and concerned that you now advise that both matters require further investigation.

7. We respectfully place on record that such delay is prejudicial to the interests of justice in both cases.
8. We set out below our reasons why there is currently sufficient basis to seek the reopening of both inquests. We also set out suggested steps that we believe need to be carried out, which we assert can be done over the next few months, pending the hearings in the High Court.

**9. The Timol matter**

- 9.1 Ahmed Timol and Salim Essop were arrested after the vehicle they were travelling in was stopped and searched by police. Communist leaflets were apparently found in the boot.
- 9.2 The men were first taken to Newlands police station. After the arrival of Security Branch (SB) investigators they were separated and taken to the SB offices at John Vorster Square, where they were detained.
- 9.3 Both men were fit and injury free at the time of their arrest.
- 9.4 A few days later Timol was alleged to have jumped out of the 10th floor window and fallen to his death.
- 9.5 Numerous pre-death injuries were present on his body.
- 9.6 At about the same time as Timol's death, the District Surgeon was summoned to the 10th floor of John Vorster Square where he found an unconscious Salim. Salim was taken to hospital in the morning of 26 October 1971. Timol died in the afternoon of Wednesday, 27 October 1971.
- 9.7 Salim was secretly admitted to hospital and later to a prison hospital where he remained until his first court appearance about a year later. He appeared, together with three others, in a magistrate's court in Johannesburg on 8 March 1972, and was remanded in custody by the magistrate. He appeared, again together with the three, in the Pretoria Supreme Court on 13 June 1972, and was formally charged. His political trial ended on 31 October 1972, when the three others and him, were each sentenced to five years of imprisonment.
- 9.8 Salim was prosecuted and convicted on terrorism related charges and imprisoned for five years.

**10. The first Inquest**

- 10.1 Timol's family was represented by Advocates Issy Maisels and George Bizos at the Inquest.

- 10.2 They disputed the SB version that Timol had been well treated, not assaulted and had spontaneously committed suicide. They contended that he had been tortured and that this had caused his death – either directly or indirectly.
- 10.3 The SB presented a wall of silence and denied any wrongdoing. They specifically denied that they assaulted or tortured detainees and claimed that they treated detainees well and won their confidence.
- 10.4 The Magistrate rejected the evidence of pre-death injuries, assaults or torture and found the SB version credible.

## **11. The Cover-Up**

- 11.1 The police and the State were obliged under law to present all relevant evidence to the inquest court. Salim was a material and important witness but he was deliberately hidden and not produced as a witness. Had he been produced as a witness he would have directly contradicted the SB version and their assertions of kindly treatment. Salim's account of vicious and sustained assault would have been corroborated by conclusive medical evidence.
- 11.2 Instead he was held incommunicado in secret under security laws. The fact that he was severely injured and had been removed from SB offices in an unconscious state at about the same time as Timol's death was never disclosed. Neither were Salim's medical reports disclosed.
- 11.3 The torture and assault on Salim contradict the SB version that they treated Timol with care and consideration.

## **12. Evidence of defeating the Ends of Justice**

- 12.1 We have provided the NDPP with the account by Salim (written by him) of what happened to him and to a lesser degree Timol. Salim will testify that from the moment that he and Timol were separated at Newlands he suffered continual and severe assaults from the SB until he lost consciousness and was admitted to hospital. There is absolutely no reason to conclude that Timol was treated differently.
- 12.2 At our meeting at the NPA in January, George Bizos related to the Deputy NDPP and to yourself the details of the Timol case – giving a first-hand account of how SB policemen presented a wall of silence, the medical evidence indicating assault on Timol and the failure to present/disclose the Salim evidence. He also highlighted weaknesses and contradictions in the SB version.
- 12.3 Accordingly, the NDPP has compelling evidence that the SB defeated the ends of justice in the Timol Inquest.

## **13. Suggested steps**

- 13.1 The following steps are set out below:
  - 13.1.1 make contact with Salim Essop and arrange for his affidavit to be obtained;

- 13.1.2 obtain the Inquest documents;
  - 13.1.3 cause an affidavit to be obtained from George Bizos (who offered to be a witness at our original meeting with the NDPP staff);
  - 13.1.4 review the important post mortem forensic evidence;
  - 13.1.5 follow up on medical records in respect of Essop;
  - 13.1.6 obtain the record and judgment of the interdict before Judge Margo to restrain further assaults and torture on Essop;
  - 13.1.7 determine who of the original witnesses are still available and their contact details;
  - 13.1.8 determine if there are additional witnesses who were not called during the first inquest and if there are such witnesses cause their affidavits to be recorded;
  - 13.1.9 carry out an in-depth consultation with our client Imtiaz Cajee concerning the information he has.
- 13.2 At this stage there is no need to re-investigate the entire inquest in order to present a watertight case. It only needs to be demonstrated that the version of the SB was false and the Inquest was corrupted. As we have indicated this can be done through the evidence of Salim and George Bizos.

#### **14. The Aggett Matter**

- 14.1 Neil Aggett was one of seventeen persons detained in connection with a list of activist's names found in possession of Barbara Hogan.
- 14.2 He was detained for several weeks. The initial SB investigating officer could not find anything incriminating concerning Aggett's activities. A young SB Lieutenant, Steven Whitehead (the son of a very senior officer in SB), said he disagreed with this conclusion and asked to be put in charge of Neil Aggett's interrogation. This was acceded to.
- 14.3 A period of torture and harsh prolonged sleep deprivation interrogations occurred.
- 14.4 Aggett made complaints of assault and ill treatment to visiting magistrates and fellow detainees during this period. Detective Sergeant Blom recorded his formal affidavit of assault.
- 14.5 One of the detainees (Maurice Peter Smithers) witnessed an assault on Aggett in the office next door to where he was kept through oblique glass.
- 14.6 Aggett remarked to one of the detainees that he had been "broken" and appeared dejected and miserable.
- 14.7 That night Aggett apparently hanged himself in his cell using a scarf.
- 14.8 Medical and other material evidence supported the contention that Aggett had committed suicide.



- 14.9 As is customary in an unnatural death which involves the authorities (in this case a detainee in the custody of the police) a formal inquest was held to inquire into the cause of death.
- 14.10 Aggett's family was represented by George Bizos SC and Denis Kuny. They took the position that they believed that Aggett had hanged himself, but that his death was unlawfully induced by the severity of the torture he endured at the hands of the SB – particularly Whitehead.
- 14.11 Evidence that supported their contention included:
- 14.11.1 the police records showing the lengthy periods during which Aggett was booked out of the cells for "*investigation*";
- 14.11.2 the fact that most of the detainees on the Barbara Hogan list said that they had suffered torture at the hands of the SB;
- 14.11.3 Aggett's formal complaints of abuse and assault;
- 14.11.4 **a detainee (Maurice Smithers) who said that he had witnessed an assault on Aggett.** Maurice Smithers witnessed an assault on Aggett while another detainee Ismail Mononait said he saw a bruise or mark on Aggett's forehead;
- 14.11.5 **marks on Neil Aggett's body, reported in the post mortem, which were consistent with assaults.** These marks and injuries were consistent with the injuries that Aggett reported he had sustained to the magistrate and to detective sergeant Blom.
- 14.12 The SB maintained a wall of silence, denying the assaults and the prolonged periods of interrogations.
- 14.13 The Inquest Court accepted the SB versions and rejected all the contentions and evidence put forward by the family.
- 14.14 The full and complete record of the police investigation and inquest is kept by Wits University and is available on-line.
- 14.15 We have provided you with the following documents in connection with William Smith and Roelof Venter:
- 14.15.1 **William Smith was a Warrant Officer in the SB and was involved in the interrogations of some of the Barbara Hogan detainees (but not Aggett).**
- 14.15.1.1 The affidavit he made in 1982 to police investigators denying assaults or torture of the detainees he interrogated. A copy was also provided to you.
- 14.15.1.2 The transcript of his evidence at the Aggett inquest on 12 October 1982 denying assaults as alleged by Pramanathan Naidoo and others.

- 14.15.1.3 The affidavit he made in 1997 in support of an amnesty application (which did not go ahead) in which he admitted assaulting Prima Naidoo and others during the Barbra Hogan investigation.
- 14.15.2 **Roelof Venter was a Lieutenant in the SB and was involved in the interrogations of some of the Barbara Hogan detainees.**
- 14.15.2.1 The affidavit he made in 1982 to the police investigators denying assaults as alleged by the detainees.
- 14.15.2.2 The transcript of his evidence at the Aggett inquest in October 1982 denying assaults as alleged by Pramanathan Naidoo, Ismail Mononait and others. His evidence is reflected on page 2488 of the record and was given on 12 October 1982.
- 14.15.2.3 The affidavit he made in 1999 in support of an amnesty application in which he admitted assaulting Prima Naidoo and other during the Barbara Hogan investigation.
- 14.16 Paul Erasmus was a SB member at John Vorster Square but was not involved in the interrogations or investigation of the Barbra Hogan cases.
- 14.16.1 He applied for amnesty for a number of matters including the breaking and entry into Aggett's parental home in an effort to find evidence that could support the police version i.e. records that Aggett suffered from depression. In his evidence to the Amnesty Committee he testified that:
- 14.16.1.1 The SB had bugged George Bizos in order to discover the direction of his cross examination and the evidence he would present on behalf of the family.
- 14.16.1.2 Whitehead was implicated in the breaking and entry into Aggett's parental home.
- 14.16.1.3 Top police commanders collaborated in the cover-up of the abuses perpetrated against Aggett as well as the break-in at the home of Aggett's parents.
- 14.17 The NPA accordingly has *prima facie* evidence (in the form of affidavits and transcripts of evidence under oath) that the SB conspired to and did defeat the ends of justice in the Neil Aggett Inquest.
- 14.18 George Bizos personally related to the Deputy NDPP and to yourself at our meeting during January 2016 the details of this case. He gave a first-hand account of how SB policemen perjured themselves during the Inquest hearing and the effect this perjury had on the outcome of the inquest.
- 14.19 This evidence set out above demonstrates how the entire inquest process in the Aggett matter was thoroughly corrupted.

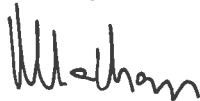
**15. Suggested steps**

15.1 We suggest the following steps be taken:

- 15.1.1 check the veracity of the documents that we have provided to you;
- 15.1.2 cause an affidavit to be obtained from George Bizos;
- 15.1.3 check the availability of all the Inquest records and documents and obtain copies;
- 15.1.4 determine who of the original witnesses are still available and their contact details; and
- 15.1.5 determine if there are additional, new, witnesses who were not called during the inquest and if there are such witnesses, cause their affidavits to be recorded.

16. In the circumstances we hereby demand that the necessary recommendations to the Minister of Justice in terms of section 17A of the Inquest Act 58 of 1959 to reopen the aforesaid inquests be made by no later than 30 September 2016. Our client's rights are reserved.

Yours faithfully



**WEBBER WENTZEL**

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