

IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU NATAL PROVINCIAL DIVISION, PIETERMARITZBURG

Case no: INQ 01/2021  
Original case no: 951/77

In the matter of:

**REOPENED INQUEST INTO THE DEATH  
OF LATE DR HOOSEN MIA HAFFEJEE**

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**CLOSING ARGUMENTS ON BEHALF OF THE HAFFEJEE FAMILY**

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## INTRODUCTION

1. It is our submission that this Honourable Court will have little difficulty in reversing the finding of Magistrate T.L Blunden that Dr Hoosen Mia Haffejee “died by hanging on 3<sup>rd</sup> August 1977 and that his death was not brought about by an act or omission involving or amounting to an offence on the part of any person.”<sup>1</sup>
2. This inquest has come too late for Hoosen’s parents Fathima Haffejee, Mohammed Haffejee and elder brother Yusuf. They went to their graves without the dignity and closure they so deserved. South Africa has failed the Haffejee family and so many other families waiting for truth and justice from the apartheid era.
3. In 1997, Fathima appealed to the Truth and Reconciliation Commission (“TRC”) to put an end to her two decades of pain and suffering:

*“I know the truth about how my son died is going to come out one day.....*

*I want to know the truth about how my boy died. I am very heartsore, and I will not rest until I find out who the killers are. ....*

*I will never never believe my honest, home-loving and caring son took his own life.”<sup>2</sup>*

4. Fathima was correct that the truth would come out one day. She died in 2011, some 11 years before that day. Fathima’s daughter, Sarah Bibi Lall and son Ismail Haffejee continued with her struggle for truth and

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<sup>1</sup> Record: Volume A2, page 17, [lines 1 – 4](#).

<sup>2</sup> Volume K, item 4 at page 2641 (2681 of PDF).

justice. They are with us in court today, as are friends and comrades of Hoosen. Fathima's irrepressible spirit is no doubt with them today.

5. It has been more than 45 years since agents of the apartheid regime brutalised Hoosen Haffejee in security detention, and as we will demonstrate in these arguments, murdered him. It has been some 24 years since the TRC concluded that it was likely that Dr Haffejee died under torture.<sup>3</sup>
6. At least since the time of the TRC proceedings the roles of the key perpetrators have been known. If the authorities responsible for the administration of justice had complied with their duties under law and the Constitution the perpetrators could have faced justice in the years following the winding up of the TRC.
7. They failed to act, and most of the perpetrators have died in the ensuing years, thereby escaping justice and denying closure to the family.
8. The TRC referred hundreds of cases to the National Prosecuting Authority (NPA) in which amnesty was not applied for or denied, including the Haffejee case (the TRC cases). Until the last few years these cases were not pursued. The responsible institutions essentially sat on their hands, and pretended that investigations were proceeding, when they were not. We now know why the cases from our past have not seen the

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<sup>3</sup> TRC Final Report. Volume 3, Chapter 3, [page 179](#).

light of day in courts of law. It has emerged in recent court proceedings<sup>4</sup> that powerful elements in society have shamefully colluded to ensure the suppression of all cases referred by the TRC to the NPA.

9. The Supreme Court of Appeal, which recently dismissed former apartheid policeman Joao Rodrigues's bid for a permanent stay of his prosecution for the 1971 murder Ahmed Timol, said it was "perplexing and inexplicable" why these cases were suppressed:

*... the Executive adopted a policy position conceded by the State parties that TRC cases would not be prosecuted. It is perplexing and inexplicable why such a stance was taken both in the light of the work and report of the TRC advocating a bold prosecutions policy, the guarantee of the prosecutorial independence of the NPA, its constitutional obligation to prosecute crimes and the interests of the victims and survivors of those crimes.<sup>5</sup>*

10. Most of these cases cannot be revived. Suspects, witnesses, and family members have died. The harm visited upon the Haffejee family and other families is incalculable. It is unforgiveable. They deserve nothing less than a full, open and public commission of inquiry as to how and why justice was denied to them.
11. On 29 July and 15 August 2019 lawyers acting on behalf of the families of the late Neil Aggett and Hoosen Haffejee threatened the Minister of

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<sup>4</sup> [Thembi Nkadimeng v National Director of Public Prosecutions and Others](#) Case No. 3554/2015, Gauteng Division. *Rodrigues v The National Director of Public Prosecutions* [2019] 3 All SA 962 (GJ) at paras 21 – 23.

<sup>5</sup> *Rodrigues v The National Director of Public Prosecutions and Others* (1186/2019) [2021] ZASCA 87 (21 June 2021) at para 26; see also the 2019 [Representations of Lukhanyo Calata](#) and other families to the Judicial Commission of Inquiry into Allegations of State Capture.

Justice with an urgent High Court application if he did not instruct the judge presidents of the Gauteng and KwaZulu Natal Divisions to reopen the inquests. Families should not have to take drastic steps like this.

12. On 16 August 2019 the Minister of Justice released a press statement announcing that the inquests into the deaths of Aggett and Haffejee would be reopened. James Taylor, the last surviving lead interrogator and torturer of Haffejee died 3 days later on 19 August 2019.
13. Indeed, none of the leading role players behind the torture and murder of Dr Haffejee are with us today. This is the terrible cost of delay.

## **EVIDENTIAL CONSIDERATIONS**

### ***The incomplete record from the 1978 inquest (“the first inquest”)***

14. The original record from the original inquest is incomplete. The state of the record of the original inquest needs to be considered by this Court.
15. During the hearing of the re-opened inquest, the family handed up a list of exhibits produced at the first inquest.<sup>6</sup> In this list, it was disclosed that approximately 66 exhibits were handed up and made part of the record during the first inquest. Of those 66 items, only the following exhibits were before this Court:

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<sup>6</sup> Record: Volume [L12](#), page 2914.

- 15.1. Exhibits C1 to C10, which are photographs of the different injuries on the body, legs, back, lumber area and arms of the Dr Haffejee;<sup>7</sup>
- 15.2. Exhibits N(i) to N(xix), which are photographs of Dr Haffejee taken during Dr Biggs' examination of his injuries at his home before the burial;<sup>8</sup>
- 15.3. Exhibit O.1, which are photographs of the injuries on Dr Haffejee's legs;<sup>9</sup>
- 15.4. Exhibit DD, which is the statement of Gilbert Oliver Hughes, Senior Professional Officer, Chemical Laboratories of the Department of Health;<sup>10</sup>
- 15.5. Exhibit EE, which is the statement of Ivor Colin White, Chief Professional Officer, Chemical Laboratories of the Department of Health;<sup>11</sup>
- 15.6. Exhibit FF, which is the identification of body form and statement by Yusuf Mohamed Haffejee;<sup>12</sup>
- 15.7. Exhibit GG, which is the statement of Sgt. Richard Phillip Law, South African Police Medico-Legal Laboratories.<sup>13</sup>

16. The investigating officer, Warrant Officer Kgamanyane ("Kgamanyane") received the index, findings of Magistrate Blunden and two versions of

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<sup>7</sup> Record: Volume [B2](#), pages 783 – 789.

<sup>8</sup> Record: Volume [B8](#), pages 822 – 829.

<sup>9</sup> Record: Volume [B6](#), page 788.

<sup>10</sup> Record: Volume [B11](#), page 842.

<sup>11</sup> Record: Volume B11, page 841.

<sup>12</sup> Record: Volume B11, page 843.

<sup>13</sup> Record: Volume B11, pages 844 – 845.

similar portions of the first inquest record from Dr Haffejee's sister, Ms Sarah Lall, around February or March 2018.<sup>14</sup> The index is in manuscript and contains only the details of the transcript from the first inquest.<sup>15</sup>

17. Kgamanyane further confirmed in his evidence in chief that these exhibits from the first inquest were indeed missing.<sup>16</sup> These exhibits are categorised as follows:

17.1. Statements:

- 17.1.1. Professor Isidor Gordon, Chief State Pathologist, Durban.
- 17.1.2. Lt James Borough Taylor.
- 17.1.3. Capt. PL du Toit.
- 17.1.4. Handwriting expert, Warrant Officer Pretorius.
- 17.1.5. Major van Eeden.
- 17.1.6. Constable Johannes Nicolaas Meyer, uniform branch member stationed at Brighton Beach Police Station.
- 17.1.7. Constable Hugh Derek Naude, uniform branch member stationed at Brighton Beach Police Station.
- 17.1.8. Constable Shadrack Madlala ("Madlala"), uniform branch member stationed at Brighton Beach Police Station.

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<sup>14</sup> [2021 Transcript Bundle](#), page 36.

<sup>15</sup> Record: Volume [A1](#), page 1.

<sup>16</sup> [2021 Transcript](#) Bundle, page 70, lines 16 – 18.

17.1.9. Captain H L Schourie, station commander at Brighton Beach Police Station.

17.1.10. Richard Browning Clarke.

17.1.11. Major Schutte, investigating officer in the first inquest.

17.1.12. Written statement prepared by agreement between Dr Simon, Dr Gluckman and Professor Loubser in the presence of Dr Lorentz.

17.2. Reports:

17.2.1. Report by Professor Gordon for blood for blood/alcohol, barbiturates, nail scrapings and for traces of marijuana or dagga analysis.

17.3. Photographs:

17.3.1. Dr Haffejee's vest.

17.3.2. Dr Haffejee's shirt.

17.3.3. Dr Haffejee's jacket.

17.3.4. Scenes of alleged events, such as the point of arrest, the parking area in the north pier and the pier itself.

17.4. Diagrams:

17.4.1. Diagram of the cell and courtyard – Brighton Beach SAPS.

17.5. Requests:

- 17.5.1. Request by Brig. Lothar Neethling for analysis of the presence of human blood on pieces of clothing cut from the deceased's clothing.
- 17.5.2. A key to the list of pictures.

17.6. Video or tape recordings:

- 17.6.1. Tape of Brig. Neethling reconstructing the hanging of Dr Haffejee

17.7. Documents:

- 17.7.1. Booklet titled "Our immediate task" which is described as an organisational guide, referenced by Magistrate Blunden as one of the "*photostats of the documents that had been temporarily abstracted from [Haffejee's] flat*".
- 17.7.2. Article titled "Histopathology of Healing Abrasions" by Robertson & Hodge.
- 17.7.3. Pamphlet titled "Man's Worldly Goods" by Leo Nurberman".
- 17.7.4. Three handwritten documents, the contents of which are not described.
- 17.7.5. A document allegedly on explosives.

17.8. Clothing:

17.8.1. Clothing of Dr Haffejee's such as his underpants, trouser, vest, handkerchief, powder blue safari suit top, pair of shoes, pair of socks and pieces of clothing cut out for the purposes of examination.

***The requirement of a record to be placed before a re-opened inquest court***

18. Section 17A(2) of the Inquests Act, 48 of 1959 (the Act) requires the record of the proceedings, “as far as possible”, to be placed before a court for inquest proceedings to be reopened and concluded. However, the Act does not prevent an inquest judge from making a finding in the absence of a complete record. The Act only requires that the record of the proceedings be supplied as far as it possibly can be supplied.
19. The record in these proceedings, to the extent that it can be supplied, is already before this Court. In addition, the first inquest record has been supplemented by considerable new evidence, which we submit has been of assistance to this Court.
20. While it is accepted that the record is incomplete, we contend that the available portions of the record are more than sufficient for a proper consideration of this reopened inquest. In *S v Chabedi*,<sup>17</sup> the Supreme Court of Appeal held as follows regarding the adequacy of records:

*“[5] On appeal, the record of the proceedings in the trial court is of cardinal importance. After all, that record forms the whole basis of the rehearing by the court of appeal. If the record is inadequate for a proper consideration of the appeal, it will, as a rule, lead to the*

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<sup>17</sup> *S v Chabedi* 2005 (1) SACR 415 (SCA).

*conviction and sentence being set aside. However, the requirement is that the record must be adequate for proper consideration of the appeal; not that it must be a perfect recordal of everything that was said at the trial. As has been pointed out in previous cases, records of proceedings are often still kept by hand, in which event a verbatim record is impossible*

*[6] The question whether defects in a record are so serious that a proper consideration of the appeal is not possible, cannot be answered in the abstract. It depends, inter alia, on the nature of the defects in the particular record and on the nature of the issues to be decided on appeal."*

21. In addition, it is trite that a party to any litigation proceedings must produce the original documents in court. The reason for this is that errors may be made in subsequent copies or documents may be falsified.<sup>18</sup> However, a party need only produce the original document when the contents of the document, and not the actual existence of the document, are in dispute.<sup>19</sup> Copies of the originals may be admissible if it can be shown that the original has been destroyed or that, despite a diligent search, the original cannot be located.<sup>20</sup>
22. None of the parties have raised a dispute regarding the contents of the available documents. The concern is that the available documents, from the original inquest are incomplete.

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<sup>18</sup> Bellengère et al, *The Law of Evidence in South Africa – Basic Principles*, First Edition 2013 (Oxford University Press Southern Africa, Cape Town) at p60. ("Bellengère et al").

<sup>19</sup> Bellengère et al, p61. See also *Welz and Another v Hall and Others* 1996 (4) SA 1073 (C) at 1079C – E where Conradie J held: "As far as the best evidence rule is concerned, it is a rule that applies nowadays only in the context of documents and then only when the content of a document is directly in issue".

<sup>20</sup> *Ibid.*

23. We accept that the principle set out in *Chabedi* applies in respect of criminal appeals. However, an inquest is not a criminal trial, and a reopened inquest is not a criminal appeal. To the extent that this principle can be applied to inquests, we submit that the current record from the original inquest, as well as the new evidence presented in this inquest is more than sufficient to enable this Court to properly consider the facts and issues and reach a finding.
24. Although some of the missing documents (mainly the missing portions of the 1982 transcript and the photographs of the deceased) would have been of great assistance to this Court, the considerable body of new evidence led before this Court will assist it to make a just finding. The original judgment from the first inquest is available and it is this finding that the family seeks to set aside.

## **FACTUAL BACKGROUND**

25. In this section we set out an overview of the Dr Haffejee story, including his early years, political activity, arrest, interrogation, torture, death and the aftermath.
26. We refer this Honourable Court to the Detailed Chronology in Annex A which provides a day by day (sometimes hourly) account of the unfolding developments in this case.

27. We also refer the Court to Annex B, “Outline of the Evidence in the Reopened Inquest”, which provides a summary of the key evidence provided by each witness in the Reopened Inquest.

### ***Early years***

28. Dr Haffejee was born on 6 November 1950 in Pietermaritzburg, KwaZulu-Natal.<sup>21</sup> He had three siblings, Sarah, Ismail and Yusuf. His father, Mohammed Essack Haffejee died on 8 May 1986, while Yusuf died on 16 September 2009 and his mother, Fathima Bibi Haffejee, died on 19 April 2011
29. Dr Haffejee’s political activities were not known to his family. Dr Haffejee’s early life merged with the politics of the day.
30. According to the evidence of anti-apartheid activist, Hanef Bhamjee (Bhamjee), as early as in 1960, when Haffejee was 10 years old, he was already an active on the streets and keen to be involved in the struggle for freedom. They developed a close relationship from those days.<sup>22</sup> It was in this same year that the ANC and PAC were banned by National Party government.<sup>23</sup>
31. Bhamjee gave elementary Marxist books and pamphlets to Haffejee to read.<sup>24</sup> Bhamjee wanted to strengthen anti-apartheid groups and spoke

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<sup>21</sup> Record: Volume [B4](#), page 800.

<sup>22</sup> Record: Volume [G5](#), page 1417, para 16.

<sup>23</sup> Record: Volume [E13](#), page 7, line 19.

<sup>24</sup> Record: Volume G5, page 1416, para 13.

to Haffejee about the activities of Umkhonto we Sizwe, the armed wing of the ANC.<sup>25</sup>

32. In 1961 while in primary school, Haffejee met KV Moodley, who would later become a close comrade.<sup>26</sup> In 1962, KV Moodley was Bhamjee's first recruit. He worked with closely Haffejee and the ANC Youth League.<sup>27</sup> Later that year, KV Moodley was recruited into Umkhonto we Sizwe.<sup>28</sup>

### ***Political activity***

33. In 1963, Bhamjee invited 13-year-old Haffejee to join his "study group 29" – which was a political education group. According to Dr KV Moodley, Haffejee was one of the youngest who attending this "youth group". They met in the Pietermaritzburg library. The group worked with the Natal Indian Congress (NIC). According to Dr Moodley, it was generally understood that he and Haffejee were members of the African National Congress (ANC) and the South African Communist Party (SACP).<sup>30</sup>

34. Between 1962 and 1964 multiple arrests of political activists were taking place. At the study groups during this time Bhamjee explained to Haffejee

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<sup>25</sup> Record: Volume G5, page 1417, para 16.

<sup>26</sup> Record: Volume [G13](#), page 1471, para 7.

<sup>27</sup> Record: Volume [G5](#), page 1415, para 11.

<sup>28</sup> Record: Volume G5, page 1420, para 22.

<sup>29</sup> Record: Volume G5, page 1416, para 13.

<sup>30</sup> Record: Volume [G13](#), page 1471, para 8.

and others that it was not the time to engage in sabotage, even though they had some knowledge of explosives.<sup>31</sup>

35. Haffejee's early commitment to the struggle was highlighted by Bhamjee.

35.1. Around 1963 or 1964, Haffejee, KV Moodley and Bhamjee organised a petition asking for a swimming pool for people of colour.<sup>32</sup>

35.2. In 1965, after KV Moodley moved to India and began his own study group,<sup>33</sup> Haffejee, Bhamjee and others organised a boycott of the Royal Show because the management said they would "limit the numbers of non-white children because of serious overcrowding by them in previous years".<sup>34</sup>

36. In August 1965, Bhamjee left for the United Kingdom.<sup>35</sup>

#### Studying in India

37. In June 1968, a few months before Dr Haffejee turned 18, he travelled to Bombay, India to study for a pre-medical degree at Bhavna's college.<sup>36</sup> He travelled, and studied this pre-medical degree, with Crumsun Nundkumar and Dr Abdul Kader Akoo.<sup>37</sup> Haffejee, Nundkumar and Akoo

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<sup>31</sup> Record: Volume G5, page 1418, para 17.

<sup>32</sup> Record: Volume [G5](#), page 1420, para 21.

<sup>33</sup> Record: Volume [G13](#), page 1472, para 9.

<sup>34</sup> Record: Volume G5, page 1419, para 20.

<sup>35</sup> Record: Volume G5, page 1419, para 20.

<sup>36</sup> Record: Volume [G14](#), page 1477, para 7.

<sup>37</sup> Record: Volume [G12](#), page 1465, para 9.

opted to study medicine in India because of the limited opportunity available to people of colour to study at medical schools in South Africa.<sup>38</sup>

38. Akoo took part in activist movements with Haffejee when they arrived in India in June 1968. They were roommates in the hostel.<sup>39</sup> According to Akoo, Haffejee was a determined anti-apartheid activist. He said Haffejee was widely read, and he had embraced socialism and communism.<sup>40</sup>

39. While in India, Haffejee began receiving copies of “Sechaba”, the newspaper of the Umkhonto we Sizwe. The newspaper was addressed to Akoo. Akoo suspected that it was Haffejee who “was behind” him receiving this newspaper.<sup>41</sup>

40. He recalled an event when their hostel was raided by right-wing nationalists.<sup>42</sup> Haffejee “galvanized (them) *into producing petrol bombs which (they) used to successfully thwart the mob when they attempted to repeat their shenanigans*”.<sup>43</sup>

41. Haffejee and Akoo met the ANC representatives in India. They had lunch with Mosey Moola and met with Mr Goolam and Mrs Amina Pahad.<sup>44</sup> At these lunches, students were lectured and persuaded to join the ANC.<sup>45</sup>

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<sup>38</sup> Record: Volume G12, page 1464, paras 1 – 2.

<sup>39</sup> Record: Volume G12, page 1465, para 9.

<sup>40</sup> [2021 Transcript](#) bundle, page 187, line 7.

<sup>41</sup> Record: Volume [G12](#), page 1465, para 9.

<sup>42</sup> 2021 Transcript bundle, page 187, line 23.

<sup>43</sup> Record: Volume G12, page 1465, para 11.

<sup>44</sup> Record: Volume G12, page 1466, para 12.

<sup>45</sup> 2021 Transcript bundle, page 188, line 19.

42. It was around this time that Akoo suspected that Haffejee had joined the ANC. Although Haffejee would never speak about his affiliation or membership because of the risk of being exposed to the Apartheid police. It was something you kept to yourself, Dr Akoo said.<sup>46</sup>

43. In 1968, Haffejee reunited with KV Moodley, and Moodley recruited him into his study group. Haffejee participated in all the activities, including the study of “political systems; theory of guerrilla warfare, sabotage and practical application of underground work”.<sup>47</sup>

44. In June 1970, Haffejee was not accepted into Natal University’s Medical School and decided to pursue dentistry.<sup>48</sup> He moved to Nagpur, India. In January 1971, Haffejee met Vinay Hazarey at the Government Dental College where they were both studying.

45. In 1971, Haffejee met Fathima Sacoor (Sacoor) and AB Gangat (Gangat) who were also studying dentistry and they developed a friendship.<sup>49</sup> According to Dr Sacoor, Haffejee was knowledgeable about the politics of the South African struggle. They spoke much about struggle icons such as Yusuf Dadoo, Ismail Cachalia and Nelson Mandela.<sup>50</sup>

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<sup>46</sup> 2021 Transcript bundle, page 189, line 10.

<sup>47</sup> Record: Volume [G13](#), page 1472, para 9.

<sup>48</sup> Record: Volume [G14](#), page 1477, para 7.

<sup>49</sup> Record: Volume [G20](#), page 1509, para 7.

<sup>50</sup> [2021 Transcript](#) Bundle, page 409, line 22.

46. Between 1973 and 1974, Haffejee was the General Secretary of the Dental College and Hospital's student association and became its president during 1974 and 1975.<sup>51</sup>

47. In 1973 Dr Haffejee became a member of the Bombay ANC cell structure and attended ANC/SACP training school in Bombay.<sup>52</sup> According to Bhamjee, these structures discussed the history of South Africa, Marxism, Leninism, underground work and urban guerrilla warfare.<sup>53</sup> All who went through the training were asked to consider smuggling the information back to South Africa by having it reduced to tiny print and then sewn into the lining of their clothing.<sup>54</sup>

48. According to Bhamjee, Haffejee must have taken his original notes to South Africa because at his inquest they were exhibited.<sup>55</sup> They were not available at the time of the re-opened inquest.

49. Bhamjee said that he learned from Yusuf Haffejee and KV Moodley about these notes at the first inquest. According to Bhamjee, this was a serious mistake and contrary to the security measures.<sup>56</sup>

50. In 1976, after qualifying with his degree in dentistry, Dr Haffejee went to London to see his aunt, Rabea Rahim. He thereafter went to Cardiff to

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<sup>51</sup> Record: Volume [G17](#), page 1499, para 7.

<sup>52</sup> Record: Volume [G5](#), page 1421, paras 24 and 27.

<sup>53</sup> Record: Volume [G5](#), page 1421, para 23.

<sup>54</sup> Record: Volume [G5](#), page 1422, para 25.

<sup>55</sup> Record: Volume [G5](#), page 1422, para 26.

<sup>56</sup> This was submitted in oral evidence. It is regrettable that the transcript could not be retrieved due to a technical error.

see Bhamjee. While there, and around August 1976, he and Bhamjee attended the ANC/SACP training school in Dublin, Ireland.<sup>57</sup>

51. In September 1976, Dr Haffejee completed his studies and left India to practice dentistry in South Africa.<sup>58</sup>

Return to South Africa: Relationship with Ms Matheevathinee Benjamin

52. Dr Haffejee began working in Durban at King George V hospital.<sup>59</sup> In January 1976, Haffejee met Ms Matheevathinee Govender.<sup>60</sup> At the time her surname was Govender, which changed after she married Major Joseph Benjamin. At the time, she was a nurse (dental assistant) at the hospital.<sup>61</sup> Around March 1977, she started a relationship with Haffejee.<sup>62</sup>

53. Ms Benjamin admitted to being quite taken by Dr Haffejee.<sup>63</sup> She considered the relationship as “*not exactly romantic*”<sup>64</sup> but admitted that she did harbour deep feelings for him.<sup>65</sup>

54. From Haffejee’s perspective, he did not see the relationship as a serious one.<sup>66</sup> This was because he had an interest in another woman, who happened to be Muslim.<sup>67</sup> Ms Benjamin found this to be insulting and

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<sup>57</sup> Record: Volume G5, page 1422, para 27.

<sup>58</sup> Record: Volume G5, page 1423, para 28.

<sup>59</sup> Record: Volume [G12](#), page 1466, para 14.

<sup>60</sup> Record: Volume [G11](#), page 1450, para 10.

<sup>61</sup> [2021 Transcript](#) bundle, page 524, line 21.

<sup>62</sup> 2021 Transcript bundle, page 525, line 12.

<sup>63</sup> 2021 Transcript bundle, page 546, line 2.

<sup>64</sup> Record: Volume G11, page 1451, para 11.

<sup>65</sup> 2021 Transcript bundle, page 547, line 19.

<sup>66</sup> 2021 Transcript bundle, page 546, line 10.

<sup>67</sup> 2021 Transcript bundle, page 546, line 24.

hurtful.<sup>68</sup> She became upset that Haffejee was not responsive to her as she would have liked him to be.<sup>69</sup>

55. Ms Benjamin stated that Haffejee's intention was to have a cell or group where he could influence and promote his beliefs.<sup>70</sup> Haffejee would have meetings with young students at his flat for the purpose recruiting them and teaching them how to be an activist.<sup>71</sup>

56. Ms Benjamin testified that she did not support Haffejee's recruitment of people to fight against apartheid. She claimed that Haffejee thought he was better than everyone else.<sup>72</sup> Under cross-examination, however, Benjamin conceded that she wanted Dr Haffejee to suffer a little<sup>73</sup> because of his interest in another woman. Benjamin conceded that her working with the Security Branch was to make him suffer for what he did to her, not for any public good.<sup>74</sup>

57. In her statement, Ms Benjamin stated that while cleaning Haffejee's flat, she came across subversive literature on how to train communists. In oral evidence, she changed her testimony and conceded that she was not cleaning, but in fact snooping around to find potential material to implicate Haffejee with the Security Branch.<sup>75</sup>

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<sup>68</sup> 2021 Transcript bundle, page 546, line 13.

<sup>69</sup> 2021 Transcript bundle, page 548, line 6.

<sup>70</sup> Record: Volume G11, page 1451, para 13.

<sup>71</sup> [2021 Transcript](#) bundle, page 532, lines 14 – 23.

<sup>72</sup> 2021 Transcript bundle, page 545, line 5.

<sup>73</sup> 2021 Transcript bundle, page 552, line 20.

<sup>74</sup> 2021 Transcript bundle, page 552, line 21.

<sup>75</sup> 2021 Transcript bundle, page 548, lines 10 – 17.

58. According to former Security Branch officer, Mohun Deva Gopal (“Gopal”), Benjamin called the switchboard at Fischer Street and her call was transferred to Capt. Petrus Lodewikus du Toit (“Du Toit”).<sup>76</sup> She informed Du Toit about a doctor involved in manufacturing of chemical bombs.<sup>77</sup> She advised that she was fed-up with him because he was involved in a relationship with her and a Muslim woman. She was very bitter and wanted to get back at him.<sup>78</sup>

59. The SB officers met Ms Govender at Delhi restaurant,<sup>79</sup> under the command of Du Toit and instruction of Major Joseph Benjamin. Gopal was accompanied by Warrant Officer Veera Ragululu Naidoo (VR Naidoo), amongst others, who went to collect her.<sup>80</sup> VR Naidoo, Sgt Shunmugam “Schrewds” Govender and Gopal walked into the restaurant to meet her.<sup>81</sup>

60. They asked her to get into their vehicle and took her to Fischer Street.<sup>82</sup> She was taken to Du Toit’s offices and was questioned by himself and Maj. Benjamin.<sup>83</sup> Gopal was part of the meeting<sup>84</sup> and testified that the SB received extensive information about Dr Haffejee.<sup>85</sup>

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<sup>76</sup> Record : Volume G26, page 1740, para 40.

<sup>77</sup> 2021 Transcript bundle, page 727, line 25.

<sup>78</sup> Record : Volume G26, page 1741, para 44.

<sup>79</sup> [2021 Transcript](#) bundle, page 725, line 2.

<sup>80</sup> Record : Volume G26, page 1740, para 41.

<sup>81</sup> Record : Volume G26, page 1740, para 42.

<sup>82</sup> 2021 Transcript bundle, page 728, line 21.

<sup>83</sup> 2021 Transcript bundle, page 729, line 21.

<sup>84</sup> 2021 Transcript bundle, page 730, line 18.

<sup>85</sup> 2021 Transcript bundle, page 731, line 11.

### Surveillance of Dr Haffejee

61. Gopal testified that he and members of the Security Branch had never heard of Dr Haffejee prior to receiving information from Ms Benjamin.<sup>86</sup> After meeting with Ms Benjamin, approximately the next day or so,<sup>87</sup> Major Benjamin spoke to Capt. du Toit about hotwiring Dr Haffejee's flat.<sup>88</sup> A *tamatie* was placed in Haffejee's flat<sup>89</sup> by Lt. Vic MacPherson and "Shrewds" Govender.<sup>90</sup> A *tamatie* was how the SB referred to a concealed listening bug. The Security Branch had access to Haffejee's flat through the keys provided to them by Ms Benjamin.<sup>91</sup> The Security Branch made copies of the keys.<sup>92</sup> Haffejee's home<sup>93</sup> and place of employment were tapped.<sup>94</sup>

62. It was then decided to observe Haffejee for 24 hours round the clock. They had six teams. VR Naidoo was part of one team.<sup>95</sup>

63. Shrewds Govender and Major Benjamin gained access to Haffejee's flat with the keys provided to them by Ms Benjamin. They made a copy of the key, with Du Toit's approval.<sup>96</sup> Papers in the flat were photocopied and the originals returned.<sup>97</sup> Ms Benjamin remained in contact with the

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<sup>86</sup> Record : Volume G26, page 1742, para 46.

<sup>87</sup> 2021 Transcript bundle, page 732, line 25.

<sup>88</sup> [2021 Transcript](#) bundle, page 732, line 3.

<sup>89</sup> Record : Volume [G26](#), page 1742, para 47.

<sup>90</sup> 2021 Transcript bundle, page 732, line 15.

<sup>91</sup> 2021 Transcript bundle, page 732, line20.

<sup>92</sup> 2021 Transcript bundle, page 733, line 18.

<sup>93</sup> 2021 Transcript bundle, page 733, line 15.

<sup>94</sup> 2021 Transcript bundle, page 733, line 23.

<sup>95</sup> Record : Volume G26, page 1744, para 50.

<sup>96</sup> Record : Volume G26, page 1742, para 47.

<sup>97</sup> Volume G26, para 7, item 26, p 1768.

Security Branch and gave them feedback on what was happening every two to three days.<sup>98</sup>

64. Ms Benjamin advised Gopal and the Security Branch that Haffejee gave lectures to Muslim students every Thursday evening at his flat and taught them how to manufacture bombs.<sup>99</sup> Based on this, the Security Branch concluded that Dr Haffejee was lecturing on manufacturing explosives.<sup>100</sup>

65. Surveillance went on for approximately four months,<sup>101</sup> beginning April 1977.<sup>102</sup>

65.1. Gopal listened to the conversations that took place in the flat.<sup>103</sup> He had a special interest in Thursday nights because these were the days that Dr Haffejee held lectures for two Muslim men from Port Shepstone between 20h00 and 22h00.<sup>104</sup> He claimed he heard Dr Haffejee giving lectures on the manufacturing of chemical bombs.<sup>105</sup>

65.2. Gopal was also tasked with observing who was entering and exiting Dr Haffejee's home.<sup>106</sup>

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<sup>98</sup> Volume G26, para 9, item 26, p 1768.

<sup>99</sup> Record : Volume [G26](#), page 1742, para 45.

<sup>100</sup> Record : Volume G26, page 1743, para 49.

<sup>101</sup> [2021 Transcript](#) bundle, page 736, line 19.

<sup>102</sup> Record : Volume G26, page 1744, para 50.

<sup>103</sup> [2021 Transcript](#) bundle, page 735, line 1.

<sup>104</sup> [2021 Transcript](#) bundle, page 736, line 4.

<sup>105</sup> [2021 Transcript](#) bundle, page 736, lines 5 – 9.

<sup>106</sup> [2021 Transcript](#) bundle, page 737, line 24.

66. Dr Abdul Kader Akoo, a friend of Haffejee, remembers Haffejee telling him that he thought he was being followed<sup>107</sup> while driving around Durban town.<sup>108</sup> Akoo knew that Haffejee had two romantic partners. He recalled that both had keys to Haffejee's flat. Lt James Borough Taylor ("Taylor") testified at the first inquest that he and Du Toit saw the Haffejee drive past them in central Durban between 21 June and 5 July 1977.<sup>109</sup> This seems to confirm that Haffejee was being monitored by the SB.

67. Dr KV Moodley was at Haffejee's flat on 15 July 1977. Haffejee received a phone call where he was "argumentative, dismissive and most of the time, rude." After Dr Moodley enquired who the caller was, Haffejee said it was Ms Benjamin.

68. According to Moodley, Haffejee advised that Benjamin was upset since she found out that he was courting another woman, a Ms Shaida who was a "student at University of Durban Westville (UDW)".<sup>110</sup>

69. Dr Moodley expressed his concern at the state of Haffejee's relationship with Ms Benjamin, as this could impact on their political work. He said that "complications from a scorned ex-girlfriend were unnecessary". Haffejee agreed.<sup>111</sup>

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<sup>107</sup> Record: Volume [G12](#), page 1467, para 18.

<sup>108</sup> 2021 Transcript bundle, page 191, line 1.

<sup>109</sup> Record: Volume [A3](#), page 52, lines 4 -5.

<sup>110</sup> Record: Volume [G13](#), page 1473, paras 13.

<sup>111</sup> Record: Volume G13, page 1473, paras 13.

70. Benjamin said that she saw Haffejee last between 23 and 26 July 1977 before he died.<sup>112</sup>

Dr Haffejee's final visit in Pietermaritzburg

71. On his return from a trip to Mumbai, India, and on Sunday, 31 July 1977, Dr Moodley was visited by Haffejee at Moodley's parent's home in Pietermaritzburg at around 16h00.

72. Haffejee informed Moodley that a coloured nurse (who worked with Haffejee) informed him that she overheard Ms Benjamin reporting his political activities to the Security Branch. Haffejee said to Moodley that he was "not worried, nor was he scared and certainly not suicidal, but only looking for advice."<sup>113</sup>

73. After discussing the matter, the two agreed that Haffejee should leave the country. Haffejee said that he would inform Moodley once he was out the country. Between 1 and 2 August 1977, while Moodley was on emergency call at hospital, he called Haffejee "several times" but there was no answer. Moodley assumed, erroneously, that Haffejee had left the country.<sup>114</sup>

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<sup>112</sup> Record : Volume [G11](#), page 1454, para 20, line 2.

<sup>113</sup> Record: Volume [G13](#), page 1473, paras 14.

<sup>114</sup> Record: Volume G13, page 1474, paras 16.

74. After meeting Moodley, Haffejee went to his family home in Pietermaritzburg.<sup>115</sup> According to Haffejee's sister, Sarah Bibi Lall, he was "in good spirits" and was playing with his nieces and nephews.<sup>116</sup>

75. On that Sunday evening, 31 July 1977, Haffejee visited his brother, Ismail, at his home in Loop Street, Pietermaritzburg and played Scrabble with Ismail's son. Haffejee left around 22:00 to go back to his parents' house in Church Street, Pietermaritzburg.<sup>117</sup>

#### Haffejee's return to Durban

76. Haffejee left Pietermaritzburg for Durban at between 06:00 and 06:30 on the morning 1 August 2022.<sup>118</sup> That evening, Dr Akoo, Crumsun Nandkumar and Haffejee had dinner at Haffejee's flat. The three friends spent time "reminiscing of the past".<sup>119</sup>

#### ***Arrest of Haffejee***

77. The next morning on 2 August 1977 around 06:00<sup>120</sup> Du Toit called his unit members and explained that there was enough to conclude that they

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<sup>115</sup> Record: Volume [G3](#), page 1397, paras 18 and 19.

<sup>116</sup> Record: Volume G3, page 1397, para 19.

<sup>117</sup> Record: Volume [G2](#), page 1388, para 12.

<sup>118</sup> Record : Volume [G3](#), page 1396, para 15.

<sup>119</sup> [2021 Transcript](#), page 191, line 18 and page 196, line 9.

<sup>120</sup> 2021 Transcript bundle, page 907, line 13.

there was sufficient cause,<sup>121</sup> to arrest Haffejee<sup>122</sup> for the purpose of interrogation.<sup>123</sup>

78. In examination, Gopal conceded that he could not state whether there was enough evidence, at that stage, against Dr Haffejee, to secure a conviction.<sup>124</sup>
79. In cross-examination, Gopal also conceded that it was possible that the decision to arrest Haffejee was linked to the conversation he had in his flat on Sunday, 31 July 1977, about his possible departure from the country.<sup>125</sup>
80. Gopal testified that around 6:30 Du Toit commanded his unit to get all their cars lined up and as Haffejee left his flat, they were to follow his vehicle and come to a specific point where they felt it was safe to have him arrested.<sup>126</sup> Capt. Du Toit led the line of vehicles with Jimmy Taylor, then by Gopal and Schrewds Govender, and then VR Naidoo and Vic MacPherson and the end.<sup>127</sup>
81. Around 07:47 to 08:00, Haffejee was forced off the road and arrested by Du Toit, Taylor, McPherson, Govender, Benjamin and Gopal.<sup>128</sup>

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<sup>121</sup> Evidence of MG Gopal: 2021 Transcript bundle, page 743, line 5.

<sup>122</sup> 2021 Transcript bundle, page 743, line 4.

<sup>123</sup> 2021 Transcript bundle, page 743, line 9.

<sup>124</sup> [2021 Transcript](#) bundle, page 743, line 18.

<sup>125</sup> 2021 Transcript bundle, page 909, line 22.

<sup>126</sup> 2021 Transcript bundle, page 747, lines 18 – 22.

<sup>127</sup> 2021 Transcript bundle, page 748, lines 10 – 18.

<sup>128</sup> Record : Volume [G26](#), page 1745, para 52.

According to Gopal the apprehension of Haffejee amounted to a kidnapping.<sup>129</sup>

82. Dr Haffejee's vehicle was forced onto a grassy patch.<sup>130</sup> The unit members alighted from their vehicles. Taylor was the first to open Haffejee's door and pulled him out of the vehicle.<sup>131</sup>
83. Contrary to Du Toit's and Taylor's evidence in the first inquest,<sup>132</sup> Haffejee did not resist arrest<sup>133</sup> and was not injured in any way at that point.<sup>134</sup> Gopal stated that the evidence of Du Toit and Taylor at the first inquest that a scuffle took place was a lie.<sup>135</sup>
84. Haffejee was handcuffed and placed into Du Toit's vehicle.<sup>136</sup> Haffejee was not informed of any charges against him and was not given any procedural warnings.<sup>137</sup>
85. Haffejee was then taken to the Brighton Beach Police station.<sup>138</sup> In cross-examination, Gopal conceded that, upon reflection, Haffejee was taken to Brighton Beach police station, rather than the Fischer Street SB offices in downtown Durban, to make sure nobody would know that he was being

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<sup>129</sup> 2021 Transcript bundle, page 750, line 8.

<sup>130</sup> [2021 Transcript](#) bundle, page 749, line 3.

<sup>131</sup> 2021 Transcript bundle, page 749, line 8.

<sup>132</sup> Discussed fully below.

<sup>133</sup> Record : Volume [G26](#), page 1745, para 52.

<sup>134</sup> [2021 Transcript](#) bundle, page 751, line 18.

<sup>135</sup> 2021 Transcript bundle, page 751, line 15.

<sup>136</sup> 2021 Transcript bundle, page 750, line 5.

<sup>137</sup> 2021 Transcript bundle, page 750, line 10.

<sup>138</sup> 2021 Transcript bundle, page 751, line 23.

abducted.<sup>139</sup> Brighton Beach Police Station is located quite far from the city centre in the quite suburb of The Bluff.

86. They reached the station at approximately 09:00.<sup>140</sup> According to Gopal, it took approximately an hour to get from Overport to Brighton Beach because of the heavy traffic.<sup>141</sup> Dr Haffejee was not booked in at the charge office but taken to a basement used as an interrogation room.<sup>142</sup> Gopal noted in cross-examination that upon reflection, Dr Haffejee was taken to a basement so that the sound could get drowned out,<sup>143</sup> since things could get “a little messy”.<sup>144</sup>

87. In this regard, the Honourable Court is referred to pages 10 to 19 of the Inspection in Loco Report, which describes the basement and provides images taken at the inspection-in-loco.<sup>145</sup>

### ***Interrogation of Haffejee***

88. According to Gopal, the purpose of the interrogation was to firstly find out who the two Muslim men were that attended Dr Haffejee’s lectures, and the second was to find out more about his training he had received in India.<sup>146</sup> Gopal conceded that the first 24 hours of interrogation were the most important, and as a result, were the most intense. This was for

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<sup>139</sup> 2021 Transcript bundle, page 883, line 16.

<sup>140</sup> 2021 Transcript bundle, page 753, line 16.

<sup>141</sup> 2021 Transcript bundle, page 753, line 13.

<sup>142</sup> 2021 Transcript bundle, page 760, line 7.

<sup>143</sup> 2021 Transcript bundle, page 884, line 1.

<sup>144</sup> 2021 Transcript bundle, page 884, line 14.

<sup>145</sup> Report on Inspection in loco. Record: Volume [L3](#), page 2673.

<sup>146</sup> [2021 Transcript](#) bundle, page 744, lines 5 – 10.

purposes of extracting information that could lead to the capture of other suspects before they got wind of Haffejee's detention.<sup>147</sup>

### Assault and torture

89. Gopal's evidence was that he was instructed to give Haffejee food, escort him to the toilet, and make sure he does not escape.<sup>148</sup> Taylor and Schrewds Govender were the initial interrogators.<sup>149</sup> Capt. Du Toit was also in the room and Maj. Joseph Benjamin intermittently entered and exited the room.<sup>150</sup>

90. Dr Haffejee was first asked about his background and his training. He was also asked about the lectures he was giving every Thursday night.<sup>151</sup> Haffejee was asked to get out of his blue-grey safari suit<sup>152</sup> and was left with his white underpants.<sup>153</sup> Gopal conceded that the purpose of stripping a suspect was firstly, not to leave blood stains on the clothing and secondly, to humiliate him.<sup>154</sup>

91. Haffejee was questioned by all the members of the Security Branch.<sup>155</sup> The assaults began around 09:15 or 09:20.<sup>156</sup> Taylor initiated the assault

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<sup>147</sup> 2021 Transcript bundle, page 746, line 20.

<sup>148</sup> 2021 Transcript bundle, page 761, line 6.

<sup>149</sup> 2021 Transcript bundle, page 761, line 10.

<sup>150</sup> 2021 Transcript bundle, page 761, lines 14 – 23.

<sup>151</sup> [2021 Transcript](#) bundle, page 760, lines 10 - 18.

<sup>152</sup> 2021 Transcript bundle, page 763, line 8.

<sup>153</sup> Record : Volume [G26](#), page 1746, para 56.

<sup>154</sup> 2021 Transcript bundle, page 789, line 15.

<sup>155</sup> Record : Volume G26, page 1728, para 10

<sup>156</sup> 2021 Transcript bundle, page 764, lines 2 – 4.

by slapping and punching Dr Haffejee, with open palm slaps, kicks on his kidney, along his back and front, and on his legs and thighs.<sup>157</sup>

92. The punches became more violent through the day.<sup>158</sup> Du Toit also started assaulting Haffejee, hitting him on the legs, ankles, private parts, buttocks, back, face, neck, arms and armpits.<sup>159</sup>

93. The torture stopped temporarily around 14:00 as the Security Branch members “broke for lunch”. Colonel Ignatius Gerhard Coetzee, who was second in command of the Durban SB, arrived and asked Gopal to assist Haffejee to put his clothes back on. Haffejee could not bend because his entire body was sore.<sup>160</sup>

94. After lunch,<sup>161</sup> Taylor resumed the torture, but this time more intensively.<sup>162</sup> Haffejee was already very bruised all over his body but not bleeding. Gopal could see marks all over his body as Haffejee had quite fair skin.<sup>163</sup> Gopal said that Taylor dragged Haffejee by the back of the neck to the toilet and made him drink the toilet water.<sup>164</sup> Haffejee was struggling to breath and resisted by pushing himself up. As a result, he fell back and hit his head against the wall and fell on the ground.<sup>165</sup> Haffejee was then dragged back to the interrogation room.<sup>166</sup>

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<sup>157</sup> 2021 Transcript bundle, page 764, lines 6 – 9.

<sup>158</sup> Record : Volume G26, page 1728, para 11

<sup>159</sup> Record : Volume G26, page 1728, para 11

<sup>160</sup> Record : Volume G26, page 1728, para 11.

<sup>161</sup> [2021 Transcript](#) bundle, page 778, line 9.

<sup>162</sup> Record : Volume [G26](#), page 1728, para 12.

<sup>163</sup> Record : Volume G26, page 1728, para 12.

<sup>164</sup> Record : Volume G26, page 1729, para 13.

<sup>165</sup> Record : Volume G26, page 1729, para 13.

<sup>166</sup> 2021 Transcript bundle, page 779, line 7.

95. After this episode, the assaults continued. Dr Haffejee still did not disclose any information or anything that constituted intelligence.<sup>167</sup> At this point the Security Branch had no evidence that would secure a charge.<sup>168</sup> Gopal testified that the claim by Du Toit that Haffejee was taken to Durban Bay where a scuffle broke out, was a lie put forward at the first inquest to explain the injuries on Haffejee's body.<sup>169</sup>

96. Gopal denied being part of the interrogation but later conceded under cross examination that he was<sup>170</sup> and that he did ask Dr Haffejee one or two questions.<sup>171</sup>

97. Gopal left the police station at some point to go to the shops to get lunch.<sup>172</sup> When he returned, he observed Haffejee being assaulted again. Haffejee collapsed on the floor after his face hit a pillar as a result of Taylor kicking and pushing him.<sup>173</sup>

98. Haffejee was confronted with the documents retrieved from his flat. He was also confronted with the recordings obtained from the *tamatie*.<sup>174</sup> According to Gopal, and contrary to Taylor's evidence at the first

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<sup>167</sup> 2021 Transcript bundle, page 780, line 3.

<sup>168</sup> 2021 Transcript bundle, page 780, line 9.

<sup>169</sup> 2021 Transcript bundle, page 782, line 10.

<sup>170</sup> 2021 Transcript bundle, page 961, lines 15 – 21.

<sup>171</sup> 2021 Transcript bundle, page 786, line 11.

<sup>172</sup> Record : Volume [G26](#), page 1729, para 13.

<sup>173</sup> Record : Volume G26, page 1729, para 14.

<sup>174</sup> 2021 Transcript bundle, page 943, lines 25.

inquest,<sup>175</sup> he was confronted with these documents throughout the day and not only at 23:00.<sup>176</sup>

99. According to Gopal, the torture concluded around midnight,<sup>177</sup> because the interrogators were “tired”.<sup>178</sup> The SB officers put Dr Haffejee’s clothes back on and Taylor brushed his hair back.<sup>179</sup> Taylor took a towel and wiped blood off Dr Haffejee’s lip.<sup>180</sup>

### ***The Charge Office***

#### Gopal’s Account

100. According to Gopal, Dr Haffejee was then taken to the charge office<sup>181</sup> by Schrewds Govender, Taylor, Du Toit and Gopal.<sup>182</sup> According to Gopal, Haffejee walked very slowly<sup>183</sup> but walked upright for a short while before bending over again.<sup>184</sup> He claimed that Haffejee did not have to be carried to the charge office.<sup>185</sup>

101. Gopal denied Taylor’s and Du Toit’s version at the first inquest that he, Shrewds Govender and MacPherson were out doing further

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<sup>175</sup> Record: Volume [A3](#), page 130, line 27.

<sup>176</sup> [2021 Transcript](#) bundle, page 943, line 21.

<sup>177</sup> Record : Volume G26, page 1729, para 15.

<sup>178</sup> 2021 Transcript bundle, page 787, line 19.

<sup>179</sup> 2021 Transcript bundle, page 788, line 3.

<sup>180</sup> 2021 Transcript bundle, page 787, line 25.

<sup>181</sup> 2021 Transcript bundle, page 793, line 2.

<sup>182</sup> 2021 Transcript bundle, page 793, line 20.

<sup>183</sup> [2021 Transcript](#) bundle, page 912, line 22.

<sup>184</sup> 2021 Transcript bundle, page 913, line 18

<sup>185</sup> 2021 Transcript bundle, page 918, line 16.

investigations at the time,<sup>186</sup> and were then called back<sup>187</sup> via radio to Brighton Beach and only then escorted<sup>188</sup> Haffejee to the charge office.<sup>189</sup>

102. In cross-examination it was put to Gopal that the reason Taylor and Du Toit<sup>190</sup> presented such fabricated evidence, which removed them from the scene, was because Haffejee was either debilitated and could barely move or he was probably dead by that time. Gopal denied this.<sup>191</sup> He testified that Haffejee was most likely killed because dead men 'tell no tales'.<sup>192</sup> However, he denied that Haffejee died under interrogation. This contrasted with the expert evidence of pathologist Dr SR Naidoo, who concluded that Haffejee would in all probability have been dead by this time.<sup>193</sup>

103. According to Gopal, Haffejee was then booked in by the charge office sergeant.<sup>194</sup> It was not disclosed to the charge office staff that Haffejee had sustained injuries.<sup>195</sup> Gopal testified that Taylor told Haffejee that if he disclosed his injuries, he would be taken back in for more 'questioning'.<sup>196</sup> Haffejee was trembling at the time because of how weak he was.<sup>197</sup> Gopal disputed Dr Naidoo's evidence that if Haffejee was not

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<sup>186</sup> 2021 Transcript bundle, page 946, line 6.

<sup>187</sup> 2021 Transcript bundle, page 952, line 2.

<sup>188</sup> 2021 Transcript bundle, page 953, line 8.

<sup>189</sup> 2021 Transcript bundle, page 945, line 16.

<sup>190</sup> 2021 Transcript bundle, page 951, line 19.

<sup>191</sup> 2021 Transcript bundle, page 949, line 3.

<sup>192</sup> 2021 Transcript bundle, page 955, line 17.

<sup>193</sup> 2021 Transcript bundle, page 970, line 12.

<sup>194</sup> [2021 Transcript](#) bundle, page 793, line 13.

<sup>195</sup> 2021 Transcript bundle, page 794, line 5.

<sup>196</sup> 2021 Transcript bundle, page 795, line 5.

<sup>197</sup> 2021 Transcript bundle, page 803, line 21.

already dead, he would have been in a lowered state of consciousness.<sup>198</sup>

104. When cross-examined on the injuries to Haffejee's arms, Gopal stated that he did not notice any injuries on Haffejee's arms. This claim contrasts with the medical evidence, to be dealt with below, which confirms injuries on the arms. Gopal was of the view that further torture must have taken place in the cell, after he left.<sup>199</sup> According to Constables Johannes Nicolaas Meyer (Meyer) and Hugh Derek Naude (Naude), uniform branch members on duty that night at the charge office Brighton Beach Police Station, when Haffejee was booked in he was injury free and that no one entered the cells after he was locked up.<sup>200</sup>
105. Gopal testified that if there were injuries were on his arms at that time the charge office staff would have noticed and duly recorded this in the occurrence book.<sup>201</sup> Gopal felt that the evidence of Naude and Meyer ought not be accepted because they would have collaborated with whoever inflicted those injuries on Dr Haffejee in his cell.<sup>202</sup>

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<sup>198</sup> 2021 Transcript bundle, page 969, lines 2 – 5.

<sup>199</sup> 2021 Transcript bundle, page 918, line 12.

<sup>200</sup> 2021 Transcript bundle, page 920, line 15.

<sup>201</sup> 2021 Transcript bundle, page 920, line 12.

<sup>202</sup> [2021 Transcript](#) bundle, page 922, line 2.

### Meyer's Account

106. Meyer stated a different version. Meyer was a police officer for the uniform branch of the South African Police. At the time, he held the rank of Constable and was stationed at the charge office.<sup>203</sup>

107. On the night of 2 August 1977 Meyer was on duty at the Brighton Beach police station.<sup>204</sup> Haffejee was brought into the charge office before midnight. Meyer was on duty with two other uniform branch members.<sup>205</sup> One was Naude<sup>206</sup> and the other was Constable Shadrack Madlala (Madlala).<sup>207</sup> Meyer was on shift between 22:00 and 06:00.<sup>208</sup> According to Meyer, Haffejee was detained as a "political prisoner".<sup>209</sup>

108. Meyer testified that he was not aware that Haffejee had been in the building since early that morning.<sup>210</sup> He was not aware that any interrogations took place at the basement storeroom.<sup>211</sup> He conceded that it was irregular or even illegal for the Security Branch to bring a detainee to the basement storeroom for interrogation without doing any paperwork.<sup>212</sup>

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<sup>203</sup> 2021 Transcript bundle, page 632, line 1.

<sup>204</sup> 2021 Transcript bundle, page 635, line 15.

<sup>205</sup> 2021 Transcript bundle, page 635, line 18.

<sup>206</sup> 2021 Transcript bundle, page 636, line 5.

<sup>207</sup> 2021 Transcript bundle, page 636, line 17.

<sup>208</sup> 2021 Transcript bundle, page 636, line 20.

<sup>209</sup> Record: Volume [M4](#), page 3008.

<sup>210</sup> 2021 Transcript bundle, page 652, line 19.

<sup>211</sup> 2021 Transcript bundle, page 653, line 18.

<sup>212</sup> [2021 Transcript](#) bundle, page 655, line 16.

109. Haffejee was accompanied by two well-built white Security Branch members.<sup>213</sup> Meyer could not recall any Indian members accompanying Haffejee.<sup>214</sup> Haffejee was dressed in a short sleeve safari suite and shoes and walked in quite normally.<sup>215</sup> Mr Meyer described him as nervous and "shaking a bit".<sup>216</sup>

110. Meyer claimed not to see any injuries or signs of assault, or bruise marks, on him at that stage.<sup>217</sup> Meyer asked Haffejee if he had any injuries and Haffejee said no.<sup>218</sup> Meyer conceded that this was inconsistent with the evidence of Gopal that Haffejee was severely beaten.<sup>219</sup> He also conceded that his evidence was inconsistent with the evidence of Dr Steve Naidoo who asserted that Haffejee would have been in great discomfort.<sup>220</sup>

111. Haffejee removed his trouser belt, shoelaces and other items from his person and booked into the Prisoners Property Register.<sup>221</sup> Haffejee removed these items himself, in the presence of Meyer.<sup>222</sup>

112. When Meyer asked Haffejee to finish a cold drink he was drinking, the Security Branch members apparently countermanded him and said

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<sup>213</sup> 2021 Transcript bundle, page 642, lines 1 – 10.

<sup>214</sup> 2021 Transcript bundle, page 660, line 24.

<sup>215</sup> 2021 Transcript bundle, page 638, line 18.

<sup>216</sup> 2021 Transcript bundle, page 640, line 11.

<sup>217</sup> 2021 Transcript bundle, page 638, lines 19 – 20.

<sup>218</sup> 2021 Transcript bundle, page 641, line 20.

<sup>219</sup> 2021 Transcript bundle, page 658, line 22.

<sup>220</sup> 2021 Transcript bundle, page 672, line 5.

<sup>221</sup> Record: Volume [B10](#), page 838.

<sup>222</sup> 2021 Transcript bundle, page 655, line 18.

Haffejee could take it with him to the cell.<sup>223</sup> Haffejee was then physically searched and found to have no other property on his person.<sup>224</sup>

The Charge Office: Naude's Account

113. Dereck Hugh Naude was a 19-year-old constable with the SAP's Uniform Branch in 1977.<sup>225</sup> Naude was on duty on the night of 3 August 1977<sup>226</sup> from 21:00 to 07:00 the next morning.<sup>227</sup>

114. Naude's evidence unsurprisingly dovetails with that of Meyer's. According to his evidence, he was on night duty at the time of the incident.<sup>228</sup> He was, however, not aware of the fact that Haffejee was being interrogated at Brighton Police Station.<sup>229</sup> In fact, he claimed that it was the first time he ever heard about this fact.<sup>230</sup>

115. According to Naude, on 3 August 1977 at around midnight,<sup>231</sup> two white<sup>232</sup> plain clothed men arrived at Brighton Beach police station, identifying themselves as Security Branch members.<sup>233</sup> He was informed that Haffejee was a political prisoner and nobody allowed to communicate with him, apart from the SB.<sup>234</sup>

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<sup>223</sup> [2021 Transcript](#) bundle, page 639, line 12.

<sup>224</sup> Record: Volume [M4](#), page 3008.

<sup>225</sup> 2021 Transcript bundle, page 1080, line 22.

<sup>226</sup> 2021 Transcript bundle, page 1081, line 1.

<sup>227</sup> 2021 Transcript bundle, page 1081, line 4.

<sup>228</sup> Record: Volume [M5](#), page 3010.

<sup>229</sup> 2021 Transcript bundle, page 1095, lines 10 – 22.

<sup>230</sup> 2021 Transcript bundle, page 1097, line 5.

<sup>231</sup> 2021 Transcript bundle, page 1100, line 12.

<sup>232</sup> 2021 Transcript bundle, page 1081, line 13.

<sup>233</sup> Record: Volume M5, page 3010.

<sup>234</sup> Record: Volume [M5](#), page 3010.

116. Naude said that Haffejee wore a trouser and a shirt<sup>235</sup> He claimed that Haffejee was in "perfect health"<sup>236</sup> but appeared to be looking tense.<sup>237</sup> Naude conceded that if Dr Haffejee was wearing a short sleeve safari suit, and sustained such injuries on his arms, he would probably have seen such injuries.<sup>238</sup>

<sup>117.</sup> Haffejee was stripped of standard items as specified for cell detention at the time. These were logged in the cell register and occurrence book and he then taken to the cells by Naude and his colleague.<sup>239</sup>

<sup>118.</sup> In cross examination it was put to Naude that it was the evidence of forensic pathologists Dr Naidoo and Dr Holland that Haffejee's time of death would have been at least by midnight, Naude said that he did not see how that was possible because he saw Haffejee taken to the cells.<sup>240</sup> Naude agreed that it was not proper procedure to place Haffejee directly into interrogation without being booked in and filling out the proper paperwork.<sup>241</sup>

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<sup>235</sup> [2021 Transcript](#) bundle, page 1086, line 5.

<sup>236</sup> 2021 Transcript bundle, page 1087, line 4.

<sup>237</sup> 2021 Transcript bundle, page 1087, line 9.

<sup>238</sup> 2021 Transcript bundle, page 1103, line 8.

<sup>239</sup> Record: Volume M5, page 3010.

<sup>240</sup> 2021 Transcript bundle, page 1089, lines 14 – 22.

<sup>241</sup> 2021 Transcript bundle, page 1100, line 1.

***Taking Haffejee from charge office to cell***

**Gopal's account**

119. Gopal denied Taylor's evidence at the first inquest that he was not part of the group that escorted Haffejee to his cell.<sup>242</sup> He insisted that he accompanied Haffejee to his cell.<sup>243</sup>
120. According to Gopal, Haffejee's injuries were noticeable as he had visible bruises and lacerations. At this time, he says Haffejee was conscious and could talk very softly.<sup>244</sup>
121. While in the cell, Gopal claims he spoke to Haffejee. He told Haffejee that he was getting a two-hour break before the rest of the officers would be back.<sup>245</sup>
122. When it was put to Gopal that it was improbable that his evidence was correct because it was the expert opinion of forensic pathologist, Dr Steve Naidoo, that Haffejee would have either been in a state of absolute distress and pain, or unconscious, or even dead. Gopal denied this and insisted that Haffejee was alive at the time and was able to walk to the charge office and to his cell.<sup>246</sup>

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<sup>242</sup> [2021 Transcript](#) bundle, page 950, line 13.

<sup>243</sup> 2021 Transcript bundle, page 950, line 15.

<sup>244</sup> 2021 Transcript bundle, page 954, line 4.

<sup>245</sup> Record : Volume [G26](#), page 1729, para 16.

<sup>246</sup> 2021 Transcript bundle, page 971, lines 18 - 25.

123. When Gopal left the cell, Haffejee was still wearing the same safari suit he had worn since the morning.<sup>247</sup> In examination, Gopal said that the clothing Haffejee wore in the post-mortem images, a long sleeve shirt, were not the same clothing he saw him in during the day of his torture, a short sleeve safari suit.<sup>248</sup> Gopal claimed that the long sleeved shirt was probably placed on Haffejee to hide his injuries.<sup>249</sup> Gopal claimed that this shirt must have been on Haffejee after he left the cell.<sup>250</sup>

#### Meyer's account

124. Meyer claims that around 23:00 or 23:30,<sup>251</sup> Haffejee was escorted to a holding cell by himself and Naude, in the presence of Security Branch members.<sup>252</sup> He claims that Haffejee was able to walk freely, without assistance from anyone.<sup>253</sup> After Haffejee was placed in his cell the normal procedure of locking the doors was followed.<sup>254</sup>

125. According to Meyer, the Security Branch members then left the police station and the uniform members returned to the charge office.

#### Naude's account

126. Contrary to Gopal's evidence, Naude in the re-opened inquest said that he together with a colleague and the SB officers took Haffejee to his

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<sup>247</sup> [2021 Transcript](#) bundle, page 792, line 7.

<sup>248</sup> 2021 Transcript bundle, page 791, line 13.

<sup>249</sup> 2021 Transcript bundle, page 791, line 25.

<sup>250</sup> 2021 Transcript bundle, page 792, line 5.

<sup>251</sup> 2021 Transcript bundle, page 643, line 10.

<sup>252</sup> 2021 Transcript bundle, page 642, line 15.

<sup>253</sup> 2021 Transcript bundle, page 642, line 20.

<sup>254</sup> Record: Volume [M4](#), page 3008.

cell.<sup>255</sup> He could not recall any Indian members walking with him. He claimed that Haffejee had no issue walking to his cell.<sup>256</sup>

### ***Cell monitoring***

127. According to Meyer, the cells were inspected every hour in teams of two.<sup>257</sup> Meyer claimed that on the first hour he and a colleague visited the cells, which was most probably between 0:00 and 01:00.
128. According to Naude, after Haffejee had been placed in his cell, normal cell visits and procedures were adhered to for the remainder of his shift.<sup>258</sup> These procedures included checking the number of prisoners and that cell doors were correctly closed.<sup>259</sup> He would enter the cell to confirm this.<sup>260</sup> No communication was made with Dr Haffejee.<sup>261</sup> Cell visits occurred every hour until 04:00 when Dr Haffejee was discovered dead.<sup>262</sup>
129. Naude agreed that, since it was not practice to wake detainees during cell visits, there is a possibility that Haffejee could have already been dead during his prior visits.<sup>263</sup>

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<sup>255</sup> [2021 Transcript](#) bundle, page 1103, lines 13 – 16.

<sup>256</sup> [2021 Transcript](#) bundle, page 1105, line 10.

<sup>257</sup> [2021 Transcript](#) bundle, page 661, from line 5.

<sup>258</sup> Record: Volume [M5](#), page 3010.

<sup>259</sup> [2021 Transcript](#) bundle, page 1105, line 18.

<sup>260</sup> [2021 Transcript](#) bundle, page 1106, line 10.

<sup>261</sup> [2021 Transcript](#) bundle, page 1106, line 15.

<sup>262</sup> [2021 Transcript](#) bundle, page 1105, line 20.

<sup>263</sup> [2021 Transcript](#) bundle, page 1108, line 24.

130. According to Naude, the last cell visit was at 06h00 on the morning of 3 August 2021.<sup>264</sup> When it was put to him that he testified at the first inquest that he saw the dead body during his cell visit at 04h00, he said he was convinced it occurred just prior to handing over to the next shift at 07h00, but conceded that his memory might be shaky, given the lapse of so many years.<sup>265</sup>

### ***Death Scene***

#### **Meyer's account**

131. At just after 04:00,<sup>266</sup> upon opening the door, Meyer claimed he noticed that something was abnormal about the scene. According to him Haffejee was:

- 131.1. laying on the floor on his back,
- 131.2. his lower body was naked,<sup>267</sup>
- 131.3. with something attached to his neck and tied around the bars of the “safety gate”, on the inside of the cell,<sup>268</sup>
- 131.4. the knot was tied very tightly<sup>269</sup> in a koeksister formation.<sup>270</sup>

132. On entering the cell, Meyer says he saw Haffejee's trousers tied around the bars of the safety gate with the leg parts twisted around his neck.<sup>271</sup>

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<sup>264</sup> 2021 Transcript bundle, page 1083, line 24.

<sup>265</sup> 2021 Transcript bundle, page 1084, lines 14 – 19.

<sup>266</sup> [2021 Transcript](#) bundle, page 646, line 25.

<sup>267</sup> 2021 Transcript bundle, page 637, line 112.

<sup>268</sup> Record: Volume [M4](#), page 3009.

<sup>269</sup> 2021 Transcript bundle, page 646, line 12.

<sup>270</sup> 2021 Transcript bundle, page 637, line 17.

<sup>271</sup> Record: Volume [M4](#), page 3009.

133. According to Meyer, no person was allowed to visit the cells. The officers in the charge office held the keys. If any officer, including members of the Security Branch, issued a higher command to release the keys, Meyer insisted that he would not follow the command. Instead, he would have escorted the Security Branch member to the cell.<sup>272</sup>

134. While Meyer said he believed it was suicide, he conceded that he could not automatically assume that it was in fact suicide since there is evidence from other re-opened inquests that other political prisoners would not have caused their own deaths.<sup>273</sup>

#### Naude's account

135. On the last cell visit prior to handing over responsibilities to the morning shift, Naude said he found Haffejee lying on the floor of his cell with his head against the bars of the inner cell door. His trousers were threaded through the bars of the cell door and around his throat, twisted tightly and his knees were pulled up towards his stomach. <sup>274</sup>

#### ***Post death***

136. In the Reopened Inquest both Constables Naude and Meyer claimed they were the first (with Constable Madlala) to discover Haffejee dead in cell number 2 on their cell visit at 04h00 on the morning of 3 August 1977.<sup>275</sup>

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<sup>272</sup> [2021 Transcript](#) bundle, page 638, lines 13 – 25.

<sup>273</sup> 2021 Transcript bundle, page 666, lines 14 – 24.

<sup>274</sup> Record: Volume [M5](#), page 3010.

<sup>275</sup> 2021 Transcript bundle, page 1105, line 20. See exhibit [L3](#) from page 23 for photos and description of the cell.

In the first inquest, Naude testified that it was he who discovered Dr Haffejee's dead body.<sup>276</sup>

137. Naude contacted his immediate superiors<sup>277</sup> who took control of the situation, and they were instructed not to leave the premises until advised they could do so.<sup>278</sup> He recalled members of the Security Branch entering the scene of death.<sup>279</sup> His station commander, a lieutenant whose name he could not remember, gave him that instruction.<sup>280</sup>

138. According to Meyer, Security Branch members,<sup>281</sup> the station commander Captain Potgieter,<sup>282</sup> and standby Criminal Investigation Department (CID), Warrant Officer Bezuidenhout<sup>283</sup> were immediately telephoned. Other Security Branch members, such as Du Toit and Taylor, arrived on their own about 15 minutes later.<sup>284</sup>

139. According to Du Toit's testimony in the first inquest, Captain Schoerie took him to the cell. Then Colonel Stadler arrived and his former chief, Brigadier Steenkamp.<sup>285</sup> Prof Gordon was then telephoned.<sup>286</sup>

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<sup>276</sup> Record: Volume A3, page 347, line 9.

<sup>277</sup> Naude could not recall which superiors he contacted. See 2021 Transcript, page 1113, line 25.

<sup>278</sup> Record: Volume [M5](#), page 3010.

<sup>279</sup> [2021 Transcript bundle](#), page 1113, line 5

<sup>280</sup> 2021 Transcript bundle, page 1089, line 3.

<sup>281</sup> Record: Volume [M4](#), page 3009.

<sup>282</sup> 2021 Transcript bundle, page 667, line 2.

<sup>283</sup> 2021 Transcript bundle, page 667, line 9.

<sup>284</sup> 2021 Transcript bundle, page 667, lines 4 – 19.

<sup>285</sup> Record: Volume A3, page 180, lines 9 – 11.

<sup>286</sup> Record: Volume A3, page 181, line 4.

140. According to Meyer, the Security Branch instructed the uniform branch members to leave the scene.<sup>287</sup> The Security Branch thereafter did their own investigations.<sup>288</sup> It is not known what ‘investigations’ were carried out by the Security Branch, who carried out the investigations or what time they arrived, but we know that they entered the cell before the Forensics Unit carried out their duties.<sup>289</sup>

141. Du Toit, together with Taylor, was thereafter assigned to pick up Prof Gordon. He could not remember what time he picked up Gordon.<sup>290</sup> We do however know that the examination in the cell occurred at 07h00.<sup>291</sup>

142. The police investigation that followed can only be described as substandard. Indeed, we submit that the investigation was largely designed to prop up the cover story of the Security Branch. In this regard see below the section titled “Security Branch Cover-up”.

143. Sergeant Richard Phillip Law of the South African Medico-Legal Laboratories at 95 Gale Street, Durban removed Dr Haffejee’s body from Brighton Beach Police Station<sup>292</sup> and transported his body to the mortuary. We do not know what time Dr Haffejee’s body was transported to the mortuary from the police station, but it must have occurred after Prof Gordon conducted his inspection in the cell at 07:00.

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<sup>287</sup> Meyer did not say who gave this instruction.

<sup>288</sup> 2021 Transcript bundle, page 637, line 21.

<sup>289</sup> 2021 Transcript bundle, page 668, line 6.

<sup>290</sup> Record: Volume A3, page 181, lines 12 – 18.

<sup>291</sup> Record: Volume A3, page 31, line 29.

<sup>292</sup> Record: Volume B12, page 869.

144. According to an interview by Christian de Vos of the University of Durban Westville's "Voices of Resistance" Oral History Project with Dr Haffejee's late brother Yusuf on 25 May 2022, two white males approached him on the morning of 4 August 1977 and informed him that his brother had committed suicide. He was informed that a post-mortem was going to occur and that he should phone Prof Gordon if he wanted to know anything.<sup>293</sup>
145. Yusuf called Prof Gordon's office and was advised that Gordon was already at the police mortuary in Gale Street, and that if Yusuf wanted to have a doctor present he should hurry, because Gordon was going to start the post-mortem.<sup>294</sup>
146. Yusuf called his friend Dr Yusuf Chenia and asked him to be present at the post-mortem and to arrange for a pathologist. Dr Chenia could not arrange a pathologist to be present and attended the post-mortem alone.<sup>295</sup> The post-mortem began at approximately 10h20.<sup>296</sup> Dr Chenia did not give evidence at the first inquest nor was there any statement of his in the record or exhibit list.

### ***The Mortuary***

147. On 3 August 1977, Amena Motala, a friend of Haffejee and Haffejee's aunt, Rabia Bee Bee Rahim ("Rahim"), were dropped off by Amena's

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<sup>293</sup> Record: Volume E12, page 1135.

<sup>294</sup> Record: Volume E12, page 1136.

<sup>295</sup> Record: Volume E12, page 1136.

<sup>296</sup> Record: Volume A3, page 22-23, line 30.

husband at a museum. Ms Rahim was unable to give oral evidence, but her affidavit was placed on record.<sup>297</sup> Her evidence was that she was dropped off at the museum early in the morning, on her husband's way to work. Her husband returned to the museum approximately two hours later and said that they needed to urgently go to the government mortuary in central Durban.<sup>298</sup>

148. The Motalas and Rahim attended the mortuary where two white Security Branch officers were waiting for them. Ms Motala spoke to these two officers but could not remember their names. She informed them that she was present to identify the body of Dr Haffejee.<sup>299</sup>

149. Haffejee's body was released and uncovered. Rahim was emotionally struck by Haffejee's injuries and left the room.<sup>300</sup> Ms Motala observed the following injuries:

149.1. Burn marks underneath the soles of his feet which she believes could have been caused by an electrical instrument.

149.2. Many bruises on his body and head which she believed was caused by an assault.

149.3. His face was swollen.<sup>301</sup>

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<sup>297</sup> Record: Volume [G18](#), page 1505.

<sup>298</sup> Record: Volume [G15](#), page 1490, para 10.

<sup>299</sup> Record: Volume G15, page 1490, para 13.

<sup>300</sup> Record: Volume G15, page 1490, para 13.

<sup>301</sup> Record: Volume G15, page 1491, para 14.

150. Motala confronted the Security Branch officers and said that Dr Haffejee did not look like he killed himself. They did not respond but gave her a "bad look".<sup>302</sup> Later that day, Haffejee's brother, Yusuf, identified the body,<sup>303</sup> and carried out Haffejee's Islamic burial rights.<sup>304</sup>

***Bathing of the body***

151. Dr Haffejee's body was then transported back to Pietermaritzburg to be bathed according to the Muslim tradition. Dr Biggs was asked by the Haffejee family to examine the body at the family home in Church Street, Pietermaritzburg at approximately 17h40.<sup>305</sup> It is not clear whether this examination occurred before or after Dr Haffejee's ceremonial bath.

152. Doctor Chota Motala was also present. Dr Biggs directed a photographer who took photos of the body.<sup>306</sup>

153. When removing the white calico covering (or "kaffan"), Ismail Haffejee was shocked by the condition of his brother's body.<sup>307</sup> He recalled the following injuries on Dr Haffejee's body:<sup>308</sup>

153.1. Bruises, most notably on the back and sides.

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<sup>302</sup> Record: Volume [G15](#), page 1491, para 14.

<sup>303</sup> Record: Volume B12, page 868.

<sup>304</sup> Record: Volume G15, page 1491, para 15.

<sup>305</sup> Record: Volume B3, page 790.

<sup>306</sup> Record: Volume [G2](#), page 1389, para 20. These photographs can be seen in Vol B6 – B9 at pages 801 – 837.

<sup>307</sup> [2021 Transcript](#) Record, page 147, line 17.

<sup>308</sup> Record: Volume G2, page 1390, para 21.

- 153.2. Brown dots that looked like burns could be seen on his inner thighs and in and around the genital area.
- 153.3. Swelling on the face.
- 153.4. Depressions in and around the wrists, underarms and genital areas, and

154. All these injuries made Ismail Haffejee believe that his brother had been tortured, and he “could not reconcile hanging with these injuries”.<sup>309</sup>

155. Ms Hajera Beebee Subedar, Haffejee’s maternal aunt, stated that at the funeral, she saw Dr Haffejee’s face and described it as swollen.<sup>310</sup>

156. When Dr Moodley saw Dr Haffejee’s body he “noticed all the wounds (over 50) on his body, some looked like electrical burns and others where his skin appeared to have been removed by unknown instrument. His face and skull were also swollen and bruised”.<sup>311</sup>

#### ***Dr Haffejee’s physical and mental well-being***

157. According to Haffejee’s sister, Sarah Bibi Lall, Haffejee as a young man showed no signs of depression.<sup>312</sup> She saw Haffejee during the weeks before his death, including the weekend before, and he did not seem any different. He was not displaying any signs of anxiety or stress.<sup>313</sup>

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<sup>309</sup> Record: Volume [G2](#), page 1390, para 21.

<sup>310</sup> Record : Volume [G6](#), page 1426, paras 5 - 6.

<sup>311</sup> Record: Volume [G13](#), page 1474, paras 17.

<sup>312</sup> [2021 Transcript](#) Bundle, page 153, line 15.

<sup>313</sup> 2021 Transcript Record, page 158, lines 6 and 7.

158. Mrs Lall said that no one believed the police when they claimed that her brother had committed suicide.<sup>314</sup> To her, it “sounded bizarre”<sup>315</sup> because in the Islamic faith, suicide is not permissible. Haffejee knew about that principle. He knew that committing suicide was a sin and that if he did, he could not be buried in the Muslim section of the cemetery.<sup>316</sup> Haffejee was however buried in the designated Muslim area of the cemetery, because nobody in the community believed he had committed suicide.<sup>317</sup>

159. Ismail Haffejee (“Ismail”) insisted that his brother believed strongly in the Muslim doctrine that life is sacred, and it is only God that can take life away prematurely. It is well known to Muslims that if they take their own lives prematurely it is a grave and unforgiveable sin. Ismail cited the Islamic doctrine that life comes from God; life belongs to Him and it is He who takes away life.<sup>318</sup>

160. According to Ismail, Haffejee had no health conditions and was very healthy.<sup>319</sup> He said his brother “was jovial” before he left his house the Saturday evening before his death. He had “no injuries or complaints”.<sup>320</sup>

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<sup>314</sup> Record: Volume [G3](#), para 29, page 1393 and 2021 Transcript Bundle, page 170, line 21.

<sup>315</sup> Record: Volume G3, page 1399, para 29.

<sup>316</sup> [2021 Transcript](#) Bundle, page 170, line 15.

<sup>317</sup> Record: Volume [G3](#), page 1399, para 29.

<sup>318</sup> 2021 Transcript Bundle, page 148, lines 2 – 6.

<sup>319</sup> 2021 Transcript Bundle, page 143, lines 19 – 20.

<sup>320</sup> Record: Volume [G2](#), page 1388, para 13.

161. Dr Akoo last saw Dr Haffejee when they had dinner at his flat on the Sunday evening before his death. When he left Dr Haffejee's flat around 22h30,<sup>321</sup> he did not recall Haffejee being "unhappy".<sup>322</sup>

***Gopal instructed to cover up***

162. Gopal claims that he was informed of Haffejee's death by Lt James Taylor the morning after his death when he bumped into Taylor at the Fischer Street offices.<sup>323</sup> Gopal then met Maj Benjamin and asked him what had happened. Gopal says that Benjamin put his finger to his lips and told Gopal to keep quite.<sup>324</sup> Gopal claimed to have had a bad feeling that Benjamin knew what happened but did not want to tell him.<sup>325</sup>

163. According to Gopal, on that morning, Captain Lodewikus Du Toit called all the SB officers who were present during the interrogation and said that they might be called to give evidence at the first inquest and that they should "have (their) story prepared".<sup>326</sup>

164. The cover story was that Haffejee had confessed that there was a dead letter box at the Durban Bay and that they had taken him there to point out where he had hidden documents on the manufacture of explosives, chemical bombs and instructions on how to deal with interrogation.<sup>327</sup>

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<sup>321</sup> 2021 Transcript, page 191, line 19.

<sup>322</sup> Record: Volume [G12](#), page 1467, paras 22 – 23.

<sup>323</sup> Record : Volume [G26](#), page 1730, para 17 ; [2021 Transcript](#) bundle, page 804, line 25

<sup>324</sup> 2021 Transcript bundle, page 964, line 18.

<sup>325</sup> 2021 Transcript bundle, page 964, line 23.

<sup>326</sup> Record : Volume G26, page 1730, para 18.

<sup>327</sup> 2021 Transcript bundle, page 781, lines 4 – 8.

165. The interrogation team was told by Capt. Du Toit that he will be dictating to each member what they should say. Du Toit then called in each member one by one.<sup>328</sup> Gopal was told that he would have to say that Haffejee was not handcuffed and that he tried to escape. During this process, Haffejee got violent and had to be restrained, and in the process his body struck various parts of the car. Capt. Du Toit gave Gopal a four-track cassette on which to record his story.<sup>329</sup>

166. Capt. Du Toit instructed Gopal and MacPherson to go to Dr Haffejee's flat to remove the listening bug,<sup>330</sup> which was removed by MacPherson and Schrewds Govender.<sup>331</sup>

167. Gopal admitted that as a member of the interrogation team, he was willing to collude and lie, so the truth could be swept under the carpet.<sup>332</sup> Ultimate Magistrate Blunden accepted the SB's cover story and concluded nobody was to blame for Haffejee's death.

### ***Post-death intimidation by the Security Branch***

#### **Dr Sacoor and Dr AB Gangat**

168. On 4 August 1977, the day after Haffejee died, a doctor from the King Edward hospital called Dr Sacoor to ask where her husband, Dr Gangat

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<sup>328</sup> 2021 Transcript bundle, page 809, lines 22 – 25.

<sup>329</sup> [2021 Transcript](#) bundle, page 809, line 21.

<sup>330</sup> 2021 Transcript bundle, page 808, line 11.

<sup>331</sup> 2021 Transcript bundle, page 809, line 11.

<sup>332</sup> 2021 Transcript bundle, page 810, line 6.

was. He had disappeared, which was unusual,<sup>333</sup> as his car was still parked at the hospital.<sup>334</sup>

169. Later that day, Sacoor received information from her brother that a Mr. Farouk Moolla found her husband wandering around on Stamford Hill Road, Durban between 12:45 and 13:00.<sup>335</sup> Moolla took Gangat to Sacoor's brother's shop on Victoria Street.<sup>336</sup> After taking Gangat home, Dr Sacoor learned that he had been tortured by the Security Branch.

170. Gangat died in 2017, so the account below is Sacoor's recollection of what he told her. Gangat told Sacoor that two men from the Security Branch arrived at his hospital and asked him if he knew Dr Haffejee. He answered in the affirmative and he was instructed to follow them to a car.<sup>337</sup> Gangat scribbled a note to one of the nurses at the hospital to say that he had been taken by the Security Branch.<sup>338</sup>

171. According to Sacoor, Gangat was blindfolded in the car.<sup>339</sup> While in the car, Gangat was asked about what him and Dr Haffejee had been discussing over the phone the day before Haffejee was arrested.<sup>340</sup> Gangat replied that they talked about the day's work schedule, but the Security Branch officers did not believe him.<sup>341</sup>

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<sup>333</sup> Record: Volume [G20](#), page 1519, para 9.

<sup>334</sup> Record: Volume G20, page 1519, para 9.

<sup>335</sup> Record: Volume G20, page 1519, para 10.

<sup>336</sup> Record: Volume G20, page 1520, para 14.

<sup>337</sup> Record: Volume [G20](#), page 1520, para 12.

<sup>338</sup> This note was not found.

<sup>339</sup> Record: Volume G20, page 1520, para 13.

<sup>340</sup> Record: Volume G20, page 1520, para 13.

<sup>341</sup> [2021 Transcript](#) bundle, page 412, line 15.

172. When they reached an unknown place, the Security Branch took him to an unknown room. In this room, the Security Branch asked Dr Gangat if he was a communist and whether they were planning unrest in the country and if Haffejee was trained to make bombs.<sup>342</sup> Gangat said that they were not communists but dentists, and that he and Haffejee never talked about bombs or communism.<sup>343</sup>

173. This upset the Security Branch members. Gangat was then taken to another room and then subjected to the following forms of torture which lasted for more than an hour:<sup>344</sup>

173.1. He was stripped naked.

173.2. They pushed his head repeatedly into a container of water.

173.3. They shocked him with electrodes on his head.

173.4. They tied his hands and feet behind him and then hung him upside down by his feet.

173.5. In this position, he was beaten and forced to tell them what he knew about Haffejee and their plans.

174. Dr Sacoor testified that the Security Branch followed her husband everywhere following Haffejee's death.<sup>345</sup> Sacoor and Gangat realised that Gangat's phone at the hospital must have been bugged, and that is

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<sup>342</sup> Record: Volume G20, page 1520, para 13.

<sup>343</sup> 2021 Transcript bundle, page 413, line 17.

<sup>344</sup> Record: Volume G20, page 1520, para 13.

<sup>345</sup> Record: Volume [G20](#), page 1522, para 17.

how the Security Branch knew that Gangat and Haffejee had been in contact.

175. Their domestic workers were interrogated and threatened. The couple were followed to and from work and Dr Gangat's practice was repeatedly raided, which had an adverse effect on patients.
176. They discovered that Gangat's hospital phone had been bugged by Johnny Swanepoel, a police reservist, who had been planted at King Edward Hospital by the Security Branch.<sup>346</sup>

Sarah Bibi Lall

177. Haffejee's sister, Lall, testified that her elder brother, Yusuf was hanging up photographs of Security Branch Police officials Taylor and Du Toit outside their family shop window with the caption which read "Who killed Hoosen?".<sup>347</sup> Police officers came to the shop to instruct him to remove the photographs, but he refused.
178. She also recalled police who came to their home around midnight to search the house. She could not recall the date. They searched her mother's and Haffejee's rooms. They also tried to search Yusuf's room, but he refused to let them in.<sup>348</sup>

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<sup>346</sup> Record: Volume [G20](#), page 1522, para 17.

<sup>347</sup> Record: Volume [G3](#), page 1400, para 30.

<sup>348</sup> Record: Volume G3, page 1400, para 31.

Ismail Haffejee

179. After the death of Haffejee, Ismail Haffejee said that the SB started following the Haffejee family. In one instance, he recalled Security Branch vehicles parked opposite the family shop and they watched who came and who left.<sup>349</sup>

**FIRST INQUEST**

***Submissions of the Haffejee family***

180. At the first inquest, the Haffejee family was represented by Dr W Cooper SC, Adv ASK Pitman and Mr I Mahomed.<sup>350</sup>

181. The family's case was that Du Toit and Taylor used third degree methods and deliberately inflicted injuries on Dr Haffejee while in interrogation.<sup>351</sup> Since the Security Branch believed that Haffejee had been trained in urban terrorism and belonged to a subversive movement, the SB had a powerful motive to apply excessive and extreme interrogation methods.<sup>352</sup> Accordingly, the core focus of the family's representatives was on the injuries sustained by Haffejee.<sup>353</sup>

182. Counsel for the family challenged the versions of Du Toit and Taylor that Haffejee sustained his horrific injuries by resisting arrest. This was

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<sup>349</sup> Record: Volume [G2](#), page 1390, para 23.

<sup>350</sup> Record: Volume [A2](#), page 3.

<sup>351</sup> Record: Volume A2, page 13, lines 2 – 5.

<sup>352</sup> Record: Volume A2, page 16, line 10.

<sup>353</sup> Record: Volume A2, page 12, line 24.

because Du Toit and Taylor were unable to explain, with reference to specific incidents, how each injury was sustained. Dr Lorentz, a surgeon, asserted that the nature, extent and distribution of the injuries indicated that they could not have been sustained in the manner described by the Security Branch.<sup>354</sup>

183. Lastly, the family argued that it was these deliberate assaults that ultimately led to the death of Haffejee.<sup>355</sup> However, Cooper SC, quite inexplicably, agreed with the Magistrate that he could not ask for a finding that the death of Dr Haffejee was brought about by any act or omission as contemplated in the Inquest Act.<sup>356</sup> In our respectful view there was no factual or legal basis for Cooper SC to have made such a concession.

184. Cooper SC urged the court not to make a finding of suicide because the Inquest Act did not require a court to go that far in making a finding.<sup>357</sup> Astonishingly, Magistrate Blunden agreed, which resulted in a non-finding that nobody was responsible for Haffejee's death, even though he had died in unnatural circumstances, and Blunden had already concluded that Haffejee had committed suicide.<sup>358</sup>

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<sup>354</sup> Record: Volume A2, page 16, lines 19 – 27.

<sup>355</sup> Record: Volume [A2](#), page 16, lines 9 – 12.

<sup>356</sup> Record: Volume A2, page 17, line 21.

<sup>357</sup> Record: Volume A2, page 17, line 29.

<sup>358</sup> Record: Volume A2, page 10, line 20.

***The first inquest court judgment***

185. Magistrate Blunden found that the evidence of Du Toit and Taylor coincided in all material respects.<sup>359</sup> This is hardly surprising given that the two had colluded in the cover up. Their evidence will be considered together, for the purposes of the first inquest.

**Du Toit and Taylor**

186. Magistrate Blunden accepted the following evidence of Du Toit and Taylor, without question:

186.1. The Security Branch had been interested in the activities of Dr Haffejee since about April 1977.<sup>360</sup>

186.2. During this time, entry was gained into Haffejee's flat, and documents removed, photocopied and replaced. These documents were highly incriminating in that they showed Dr Haffejee engaging in subversive activities.<sup>361</sup>

186.3. It was decided that Dr Haffejee be arrested to question him and perhaps charge him.<sup>362</sup> According to Taylor, at around 06:30 on Tuesday, 2 August 2022, Lieutenant Taylor, Captain du Toit, Lt

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<sup>359</sup> Record: Volume A2, page 4, line 29.

<sup>360</sup> Record: Volume A2, page 5, line 2.

<sup>361</sup> Record: Volume A2, page 5, line 5.

<sup>362</sup> Record: Volume A2, page 5, line 9.

MacPherson, Lt Moonsamy, Adjunct Officer Naidoo, and Const.

Gopal arrived in the vicinity of Dr Haffejee's flat.<sup>363</sup>

186.4. On driving away from his flat Haffejee was pursued by Taylor.

Taylor signalled Dr Haffejee to pull over. Haffejee failed to comply, which resulted in Taylor forcing off the road by cutting in front of him. Since Haffejee was believed to be a trained saboteur, and it was thought that he might be dangerous, it was prearranged between Du Toit and Taylor that Haffejee's car would be immediately searched for weapons.<sup>364</sup>

186.5. However, Haffejee resisted arrest. Du Toit then came to Taylor's

assistance and gripped Dr Haffejee from behind, bumped Haffejee up against his car and held him in that position until Taylor established that he was unarmed. Haffejee refused to accompany them to the police station. Du Toit and Taylor placed Haffejee into his car by force, but he put up a "spirited" resistance.<sup>365</sup>

186.6. Du Toit claimed that he did not want to use excessive force

because he did not want to injure Dr Haffejee unnecessarily. As a result, he struggled to get Haffejee into his own vehicle.<sup>366</sup>

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<sup>363</sup> Record: Volume [A3](#), page 52 lines 23 - 24 and page 196, lines 21 -25.

<sup>364</sup> Record: Volume [A2](#), page 5, lines 8 – 18.

<sup>365</sup> Record: Volume A2, page 5, lines 18 – 28.

<sup>366</sup> Record: Volume A2, page 6, lines 1 – 23.

Eventually, Taylor pinned Haffejee down on the seat while Du Toit pulled him into the car.<sup>367</sup>

186.7. Haffejee was then taken to Brighton Beach police station where he was interrogated for various periods during the day, until 20:00 when Dr Haffejee was taken to the North Pier<sup>368</sup>:

186.7.1. According to Taylor, Haffejee was first questioned from 09:20 to 11:00.<sup>369</sup>

186.7.2. According to both Taylor and Du Toit, from 11:00 to 13:00 Dr Haffejee was then taken to various unidentified locations in the greater Durban area by Taylor, Du Toit, Lt McPherson and Lt Moonsamy.<sup>370</sup>

186.7.3. According to Taylor, between 13:30 and 14:15 a lunch break was taken. Haffejee was in a room with Taylor, Du Toit, McPherson and Moonsamy.<sup>371</sup>

186.7.4. Taylor states that Haffejee was interrogated between 14:15 and 16:15. Haffejee then had a break between 16:15 and 16:30 before interrogation

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<sup>367</sup> Record: Volume A2, page 6, lines 23 – 27.

<sup>368</sup> Record: Volume A2, page 7, line 2.

<sup>369</sup> Record: Volume [A3](#), page 96, lines 4 – 7.

<sup>370</sup> Record: Volume [A3](#), page 43, lines 25- 30 and page 96, lines 9 – 10.

<sup>371</sup> Record: Volume A3, page 96, lines 25 – 30.

continued.<sup>372</sup> Between 16:30 and 18:20 Haffejee was interrogated about his reading habits.<sup>373</sup>

186.7.5. Du Toit's version was that the interrogation continued from 14:15 for four hours, until 18:00.<sup>374</sup>

186.7.6. According to Taylor, Haffejee took a break between 18:20 to 18:40 when he had a sandwich and a cooldrink.<sup>375</sup> The interrogation resumed on the question of certain literature. At around 20:00 Haffejee eventually told them that the literature was dumped in the sea.<sup>376</sup>

186.8. At the North Pier, Haffejee was instructed to point out where the supposed subversive literature was. He did the pointing, but nothing was found. Haffejee was thereafter ordered to get back into the vehicle but refused. For the second time that day, force had to be used. Another physical struggle ensued, and he was forcefully taken back to Brighton Beach Police Station at around 21:20<sup>377</sup> where the interrogation continued.<sup>378</sup>

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<sup>372</sup> Record: Volume A3, page 104, lines 5 – 6.

<sup>373</sup> Record: Volume A3, page 106, line 12.

<sup>374</sup> Record: Volume A3, page 223, lines 30 – 31.

<sup>375</sup> Record: Volume A3, page 106, line 12 – 15.

<sup>376</sup> Record: Volume A3, page 106, line 22 – 30.

<sup>377</sup> Record: Volume A3, page 102, line 27 - 28.

<sup>378</sup> Record: Volume A2, page 7, lines 5 – 11.

186.9. Du Toit and Taylor were adamant that Haffejee's injuries were sustained during the periods in which he resisted arrest.<sup>379</sup>

186.10. At around 23:00, photocopies of the documents seized from Haffejee's flat were shown to him. Up to that point, and according to Taylor, Haffejee was unaware that the Security Branch had these documents. This caused Haffejee to become visibly shaken.<sup>380</sup>

186.11. The documents were photocopies of the originals and included a handwritten document, which the Magistrate accepted the evidence of handwriting expert, Warrant Officer Pretorius, to be the writing of Haffejee. Allegedly, the documents proposed a general insurrection and detailed instructions of how death and destruction may be used to achieve such an insurrection.<sup>381</sup> The handwritten document, contained details of how to make a wide variety of explosives and incendiary devices, the ingredients required, and diagrams for their manufacturing.<sup>382</sup>

186.12. This caused Haffejee to become extremely uncooperative. Shortly after midnight, when it became apparent that no

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<sup>379</sup> Record: Volume A2, page 13, line 9.

<sup>380</sup> Record: Volume A2, page 7, lines 11 – 16.

<sup>381</sup> The alleged documents were submitted as exhibits R, S and T in the first inquest. Cooper SC for the family objected to their admission, but Magistrate Blunden ruled that they were admissible. See Record pages 231 – 234. The documents have since disappeared.

<sup>382</sup> Record: Volume A2, pages 7 – 8.

progress was being made, the interrogation was suspended until the next morning.<sup>383</sup>

186.13. At the charge office, Haffejee was handed over to the uniform members on duty where the formalities were completed. He was then taken to cell number two<sup>384</sup> where he was locked up for the night.<sup>385</sup>

186.14. Du Toit and Taylor were wholly unaware of any injuries sustained by Haffejee. He showed no signs of having been injured and made no complaints to the SB or the uniform members at the charge office. They could not connect any injury to either of the two struggles. Both noticed that, at various points in time, Dr Haffejee's body encountered various parts of the cars in question. According to both, Haffejee could have easily bumped his head on the radio console protruding between the two front seats, while resisting arrest.<sup>386</sup>

186.15. In cross-examination, it was put to Du Toit and Taylor that they were bigger, heavier and stronger men than Haffejee. Both explained that subduing Haffejee would not have been an issue due to their superior physical advantages. Haffejee could have easily been subdued and placed in the car. However, they

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<sup>383</sup> Record: Volume A2, page 8, lines 16 – 19.

<sup>384</sup> For images, see the Report on Inspection in loco. Record: Volume [L3](#), page 2673.

<sup>385</sup> Record: Volume A2, page 8, lines 20 – 22.

<sup>386</sup> Record: Volume [A2](#), page 13, lines 1 – 30.

claimed their objective was to use as little force as possible to avoid causing unnecessary injury.<sup>387</sup>

186.16. Du Toit claimed that it was extraordinarily difficult to thrust even a small man into a vehicle if such person was declining to cooperate.<sup>388</sup>

Constable DH Naude

187. Constable Derek Hugh Naude was a 19-year-old uniform branch constable at the charge office in Brighton Beach Police Station. According to the evidence of Const. Naude:<sup>389</sup>

187.1. No one had access to Haffejee from the time he was locked in cell 2, except Constable Meyer, himself, and Sergeant Madlala.

187.2. He had sole custody of the cell keys.

187.3. Every hour on the hour, he and Madlala carried out a cell inspection.

187.4. At 03:00, Dr Haffejee did not exhibit any signs of injury and made no complaints while lying on the cell mat.

187.5. Haffejee was awake but did not sleep that evening.

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<sup>387</sup> Record: Volume A2, page 14, lines 2 – 10.

<sup>388</sup> Record: Volume A2, page 14, line 14.

<sup>389</sup> Record: Volume A2, page 8, lines 22 – 30.

187.6. At around 04:00, Naude found Dr Haffejee dead, suspended by his trousers.<sup>390</sup>

187.7. Senior officers, including Du Toit, were called in and at 07:00 Prof Isidor Gordon, the Chief Government Pathologist ("Prof Gordon" or "Gordon"), arrived at the police station.<sup>391</sup>

188. It should be noted that the other 2 charge office policeman present on the night of 2 August 1977, Sergeant Madlala and Constable Meyer, were not called to testify in the first hearing. They provided statements, which were labelled exhibits X and Z, but these part of the missing exhibits from the first inquest.

#### Professor Isidore Gordon

189. According to Prof Gordon:

189.1. The probable time of death was between 03:00 and 04:00.<sup>392</sup>

189.2. Prof Gordon was of the view that Haffejee's injuries were sustained within a period of four to 12 hours before his death.<sup>393</sup>

190. Drs Gluckman and Lorentz, the experts for the family, differed with Gordon and concluded that the lesions from the back and the right iliac crest were probably inflicted between 8 and 24 hours before death and

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<sup>390</sup> Record: Volume [A2](#), page 9, line 3.

<sup>391</sup> Record: Volume A2, page 9, lines 1 – 5.

<sup>392</sup> Record: Volume A2, page 9, line 19.

<sup>393</sup> Record: Volume [A3](#), page 32, line 7.

at least one other injury would have occurred between 4 and 6 hours of before death.<sup>394</sup>

191. In addition to the superficial injuries, a dissection made by Gordon revealed:

191.1. Varying zones of engorgement in the intestines and an area of extravasation of blood in the substance of the mesentery.

191.2. Extensive extravasation of blood in the subcutaneous tissue and muscles of the scalp.

191.3. There was no fracture to the skull and his thick mop of hair may have cushioned any blow to the head.<sup>395</sup>

192. In examining the ligature mark, Gordon excluded the possibility of post-mortem hanging.<sup>396</sup> This conclusion was disputed by forensic pathologist, Dr Steve Naidoo, to be discussed below.

193. The knots in the trousers were examined by Brigadier Lothar Neethling (“Neethling”).<sup>397</sup> The consensus between Neethling and Gordon was that there was nothing out of the ordinary about the knots and they were the kind of knots a layperson might have tied.<sup>398</sup> Neethling performed a simulation which was recorded on video and shown to the court, which

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<sup>394</sup> Record: Volume [A2](#), page 10, lines 14 – 21.

<sup>395</sup> Record: Volume A2, pages 10 – 11.

<sup>396</sup> Record: Volume A2, page 11, lines 5 – 9. See Gordon’s explanation at Vol A3, from paginated page 261.

<sup>397</sup> For background on Leethling’s dubious policing career, see Vol [L14](#), page 2924.

<sup>398</sup> Record: Volume [A2](#), page 11, line 20.

persuaded the Magistrate that the deceased would have been capable of committing suicide in the way postulated by Neethling.<sup>399</sup> The video has since disappeared. The conclusions of Neethling and Gordon are disputed by an expert witness and mechanical engineer, Thivash Moodley, to be discussed below.

194. Gordon concluded that Haffejee's death was consistent with hanging and that the injuries, other than those attributable to the ligature in no way contributed to Dr Haffejee's death. Gordon suggested that the injuries were minor except the injury to the scalp and mesentery. He said the bruises to the sternum, ribs and loins could be described as "significant".<sup>400</sup>

195. Oddly, Gordon refused to comment on the probabilities of the injuries of Dr Haffejee being sustained as illustrated by Taylor and Du Toit.

195.1. Bizarrely, Gordon was not prepared to comment on the mechanism that caused the injuries, nor was he prepared to make a scientific assessment of the degree of force required to cause them.

195.2. Defying logic, he claimed that since a layperson was in as good a position as a medically trained person to make assessments of this kind, he would decline to give a view.<sup>401</sup>

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<sup>399</sup> Record: Volume A2, page 11, lines 20 – 25.

<sup>400</sup> Record: Volume A2, page 11, lines 10 – 15.

<sup>401</sup> Record: Volume A2, page 14, lines 20 – 25.

195.3. He was however prepared to concede that blunt force could take the form of a blow with fists or a kick but was not prepared to concede that the police version was far-fetched.<sup>402</sup>

195.4. Gordon ruled out that the possibility that the injuries could have been self-inflicted in the cell, during the process of hanging.<sup>403</sup>

Dr Theo Lorentz

196. Dr Theo Lorentz, the expert surgeon for the family, provided the following evidence<sup>404</sup>:

196.1. The extravasation of blood into the subcutaneous tissues of the scalp required a direct blow of some significance.

196.2. Such a blow could not have gone unnoticed, and one might reasonably have expected Haffejee to have been dazed or concussed.

196.3. Though speculative, he commented that the mechanics of injury to the scalp would have been due to a direct blow to the head of Haffejee.

196.4. The same applied to the injury to the mesentery. This sort of injury would have caused a person to be winded and if so, it would have been noticeable.

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<sup>402</sup> Record: Volume [A2](#), page 14, lines 25 – 30.

<sup>403</sup> Record: Volume A2, page 12, line 28.

<sup>404</sup> Record: Volume A2, page 15.

196.5. He agreed that the abraded bruises were not in themselves serious. However, what was significant was that there was many of them, and their distribution was striking.

196.6. Lorentz was of the view that it was unlikely that Haffejee could have sustained that many injuries during two scuffles.

#### Findings of Magistrate Blunden

197. In his finding dated 15 March 1978, Regional Magistrate Trevor L Blunden<sup>405</sup> found that:<sup>406</sup>

197.1. The evidence of Taylor and Du Toit was found to be reasonably true.<sup>407</sup>

197.2. There was no dispute about the events that followed the handing over of Haffejee by the SB to the uniform branch in the charge office.

197.3. There was no suggestion by anyone that the death of Haffejee can in any way be attributed to a homicidal act on the part of any person or persons.

197.4. No one seemed to have had a motive to kill Haffejee.

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<sup>405</sup> Blunden died on 23 April 2013 at the age of 85. He was the former President of the Regional Court of Natal and a Grand Knight of the Catholic Order of the Knights of da Gama.

<sup>406</sup> Record: Volume A2, page 12, lines 1 – 25.

<sup>407</sup> Record: Volume A2, page 17, line 11.

197.5. Haffejee would have been worth more alive than dead to the Security Branch.

197.6. Haffejee, on the other hand, “*undoubtedly had a strong motive to do away with himself, no conclusion is reasonably possible other than that he did just that; that is, he committed suicide by hanging himself.*”<sup>408</sup>

198. According to Blunden, the mechanics of hanging did not explain the injuries, however, the consensus of all the medical experts were that the injuries occurred before Haffejee was handed over to the charge office staff.<sup>409</sup>

199. At least some of the injuries were in all probability sustained while in the custody of the Security Branch. However, the Magistrate rejected the view that the injuries were deliberate and considered such an assertion as mere speculation.<sup>410</sup>

200. Breathtakingly, the magistrate held that even if there were eyewitnesses to a deliberate infliction of injuries, such evidence would be entirely irrelevant as such injuries were not related to the death of Dr Haffejee.<sup>411</sup>

201. Accordingly, Magistrate Blunden found that Haffejee died by hanging and his death was not brought about by any act or omission involving any

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<sup>408</sup> Record: Volume [A2](#), page 10, line 20.

<sup>409</sup> Record: Volume A2, page 12, line 30.

<sup>410</sup> Record: Volume A2, page 16, lines 10 and 30.

<sup>411</sup> Record: Volume A2, page 12, lines 1 – 25.

person. In a final act of absurdity, he concluded that the Inquest Act does not require a formal finding of suicide and made no such finding.<sup>412</sup>

### ***Bias of Magistrate Blunden***

#### Approach of Apartheid-era magistrates

202. The Apartheid system introduced a structural bias in the criminal justice system, particularly in the magistrate's courts, in favour of the Apartheid agenda.<sup>413</sup> Magistrates were appointed predominantly from the public service rather than the legal fraternity. They were appointed by the Minister of Justice in terms of Section 9 of the Magistrates' Courts Act No. 32 of 1944. The majority were former prosecutors who often interacted with Security Branch members.<sup>414</sup>

203. Magistrates and district surgeons were tasked with ensuring the well-being of detainees. This placed magistrates at the "coal face" of the Apartheid's government's engagement with political prisoners.<sup>415</sup>

204. The TRC had the following to say about the magistracy as a whole:

*"The Commission deplores and regrets the almost complete failure of the magistracy to respond to the Commission's invitation, the more so considering the previous lack of formal independence of magistrates and their dismal record as servants of the Apartheid state in the past."*<sup>416</sup>

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<sup>412</sup> Record: Volume [A2](#), page 15, line 30.

<sup>413</sup> Paul Gready and Lazarus Kgalema, "Magistrates under Apartheid: A case study of professional ethics and the politicisation of justice", [South African Journal on Human Rights](#), Vol 19, 2003

<sup>414</sup> *Ibid*

<sup>415</sup> *Ibid*

<sup>416</sup> TRC Final Report, 1998, Vol 4, Ch 4, [p108](#)

205. The TRC also concluded that collusion had taken place between police and prosecutors, who collaborated with police to undermine the cases of victims and/or their families.<sup>417</sup>

206. In an affidavit provided to the Re-Opened Inquest into the Death of Neil Hudson Aggett, the late Advocate George Bizos SC (Bizos) referred to the state of the magistracy in South Africa under Apartheid.<sup>418</sup>

207. Bizos pointed out that most apartheid-era magistrates had no real desire to reach the truth.<sup>419</sup> It appeared that some of these magistrates saw it as their duty to protect organs of the state, such as the police. Magistrates tended not to interrogate police versions that vigorously. By way of example, magistrates invariably never asked police the most obvious question: why should a detainee commit suicide when he had the option of remaining silent under interrogation?

208. Bizos noted that apartheid-era inquest courts tended to minimize evidence of the ill-treatment of detainees.<sup>420</sup> Official police versions were often contradicted by forensic pathologists who examined the bodies of detainees. Magistrates typically ignored such expert evidence and uncritically accepted the versions of police witnesses.

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<sup>417</sup> Vol 5, Ch. 6, Findings and Conclusions, [p 253](#), para 158, sub-para b.

<sup>418</sup> His affidavit can be accessed on this [link](#).

<sup>419</sup> Aggett Reopened Inquest Exhibit [G1](#) p 4 para 15

<sup>420</sup> Aggett Reopened Inquest Exhibit G1 p 5 para 18

209. Improbable testimony of police witnesses was invariably rubber-stamped by inquest magistrates.<sup>421</sup> Police versions that deceased detainees were treated with care and consideration were readily accepted by the courts notwithstanding evidence of pre-death injuries.<sup>422</sup>

210. Mothle J, in the *Re-opened inquest into the Death of Ahmed Timol*, held that:

*"It will be remiss of this Court not to address an issue on which Bizos' evidence put a spotlight. This is the impropriety role played by some in the magistracy, prosecuting authorities and medical experts in the past inquest proceedings. Bizos's evidence reveals the role of some of these public officials in being complicit in exonerating members of the Security Branch from the crimes they committed. The 1972 inquest into the death of Timol is one such example. From the outset, it had to take a Court order to allow Timol's family and their lawyers access to case documents before the inquest commenced. The evidence of the 1972 inquest furthers demonstrate how the prosecution made no effort to obtain evidence other than that of the police and the magistrate attempting to explain away the ante mortem injuries, without any shred of evidence supporting his statement about a brawl."*<sup>423</sup>

#### The Role of Magistrate TL Blunden

211. The first inquest finding of Magistrate Trevor Blunden ("Blunden" or "the Magistrate") makes for pitiful reading. He accepted the police version without question. He did not even raise the slightest concern or apprehension about its improbabilities.

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<sup>421</sup> Aggett Reopened Inquest Exhibit [G1](#) p 5 para 19

<sup>422</sup> See the findings of bias made against Magistrate Kotze in *Re-opened Inquest into the Death of Dr Neil Hudson Aggett* (445/2019; 139/1985) [2022] ZAGPJHC 110 (4 March 2022) at paras 265, 270 and 283.

<sup>423</sup> *The re-opened inquest into the death of Ahmed Essop Timol* [2017] ZAGPPHC 652 para 341

212. Examples of Blunden's disinterest in the truth was his acceptance of the claims by Taylor and Captain Du Toit that Haffejee was violent in nature in that he strenuously resisted arrest and had to be forced into the vehicle on the morning of 2 August 1977; and that he again resisted being placed back into the vehicle following the so-called pointing out at North Pier on the beach at 20:00.<sup>424</sup>

213. The evidence of Taylor and Du Toit is not believable. Haffejee had an unusually small physique for a 26-year-old, weighing only 49 kg (with a height of 1.75m).<sup>425</sup> He had a body mass index (BMI)<sup>426</sup> of only 16, when it should have been between 18.5 and 24.9.<sup>427</sup> According to the evidence of Dr SR Naidoo, the average weight of a 14-year-old boy would have been 49 kilograms, rendering Dr Haffejee remarkably underweight.<sup>428</sup>

214. In contrast Du Toit and Taylor would not have been out of place in the front or second row of a rugby scrum.<sup>429</sup> Du Toit weighed 109 kg<sup>430</sup> and his height was 1.98m<sup>431</sup>, giving him a BMI of approximately 27.8. Taylor weighed in at 82 kg<sup>432</sup> with a height of over 1.75m<sup>433</sup> giving him a BMI of

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<sup>424</sup> Record: Volume [A3](#), page 45, lines 10 – 12.

<sup>425</sup> Post-Mortem Report at Volume [B1](#), page 754.

<sup>426</sup> See [BMI calculator](#)

<sup>427</sup> Medico Legal Report of Dr SR Naidoo: Volume [L4](#), page 2712, para 29.

<sup>428</sup> [2021 Transcript](#), page 294, lines 4 – 10.

<sup>429</sup> Newspaper photos of Du Toit and Taylor can be viewed at Vol [H1](#), page 1828.

<sup>430</sup> Volume A3, p186 (finding p165), line 1. The evidence states "240 pounds" being 109kgs.

<sup>431</sup> Volume A3 p 186, (finding p165) lines 4-5. The evidence was "ses voet ses" being 6'5" – which was then converted to centimetres.

<sup>432</sup> Volume A3, p 40, line 27.

<sup>433</sup> Taylor, in cross-examination stated that he was "perhaps a bit taller than what [Haffejee] would be". Vol A3, p41, line 17.

26.8. Indeed, Du Toit admitted he had been a rugby player<sup>434</sup> and Taylor conceded he “played rugby at the time”.<sup>435</sup>

215. There were at least six police officers present at the arrest<sup>436</sup> and at least four were supposedly present at the alleged pointing out at North Pier.<sup>437</sup> The claim that Haffejee, a tiny person, would have taken on multiple police officers, especially those the size of Du Toit and Taylor on two occasions stretches belief to breaking point.

216. Indeed, the evidence of former Warrant Officer Mohun Deva Gopal is that the so-called pointing out at North Pier in the harbour never took place.<sup>438</sup> It was a story invented to try and explain away the injuries all over Haffejee’s body. In fact, the fabrication went to the length of producing images of the sites where these alleged scuffles took place and was produced as evidence in the first inquest.<sup>439</sup>

217. The fabrication however is easily understood. The Security Branch had to come up with an explanation for the nearly 50 injuries inflicted on Haffejee. Gopal’s evidence was that Du Toit and Taylor concocted their stories<sup>440</sup> and they instructed him to make sure his story aligned with

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<sup>434</sup> Record: Volume [A3](#), page 594, line 20

<sup>435</sup> Taylor at TRC Section 29 Hearing, [Vol E10](#), paginated page 1054 (p 47).

<sup>436</sup> Record: Volume [G26](#), page 1745. These were Du Toit, Taylor, Govender, VR Naidoo, Gopal and McPherson.

<sup>437</sup> Record: Volume A3, page 106 – 107, lines 30 – 32. These were Du Toit, Taylor, McPherson and Moonsamy (later known as Benjamin).

<sup>438</sup> Record: Volume [G26](#), page 1771, para 18; see also Record: Volume G26, page 1751, para 65 and page 1752, para 67.

<sup>439</sup> See Record: Volume [L12](#), page 2915. Exhibits K6 and K7 produced at the first inquest were photos of the pier referenced in Taylor’s and Du Toit’s evidence. See Du Toit’s evidence at Volume [A2](#), page 229, line 12. The photos have disappeared.

<sup>440</sup> Record : Volume G26, page 1730, para 18.

theirs. Gopal was told that if he were to testify, he would have to say whatever he was told to say.<sup>441</sup> In so doing the SB were accommodated by a pliant magistrate who was willing to avert his gaze from logic and the facts.

218. Blunden accepted the versions of Taylor, Du Toit, Naude and Madlala that Haffejee was injury free and made no complaint to them,<sup>442</sup> when in fact the injuries reflected in the post-mortem report would have seriously incapacitated him and caused him much pain, which would have been evident to all, as per the evidence of Dr Lorentz.<sup>443</sup> Even Prof Gordon's evidence, which Blunden accepted, conceded that the blunt force injury to Haffejee's scalp and mesentery and the bruises to his sternum, ribs and loins were "significant".<sup>444</sup>

219. Blunden, in his rush to exonerate the police saw no contradiction in accepting these mutually destructive versions. If Blunden had been engaged in a serious search for the truth, he would have found the evidence of Du Toit, Taylor, Naude and Madlala to be highly improbable, raising serious questions as to what they were hiding.

220. Magistrate Blunden casually found that nobody had a motive to kill Dr Haffejee,<sup>445</sup> completely ignoring the impact of the 50 odd injuries on him, and the serious implications for the police in trying to explain how these

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<sup>441</sup> [2021 Transcript](#) bundle, page 975, line 22.

<sup>442</sup> Record: Volume [A4](#), page 376, lines 6 – 15.

<sup>443</sup> Record: Volume [A2](#), page 15.

<sup>444</sup> Record: Volume A2, page 11, lines 10 – 15 and page 14, lines 25 – 30.

<sup>445</sup> Record: Volume A4, page 375, line 7.

occurred, particularly since it is likely that by the end of Dr Haffejee's ordeal, he was most likely incapacitated, unconscious or dead. Blunden studiously avoided exploring the possibility that Haffejee succumbed under torture.

221. Given the medical evidence Blunden was forced to accept that there “*seems little doubt that at least some of the injuries found on the body ...were in all probability sustained by him whilst he was in the custody of the Security Police concerned, that is Captain du Toit and Lieutenant Taylor...*”<sup>446</sup> However, notwithstanding this concession, Blunden concludes that any suggestion that Du Toit and Taylor were responsible for such injuries “*is completely unsupported by any evidence and is in fact mere speculation*”<sup>447</sup>

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222. This jaw dropping conclusion was reached based on their denials “*under oath*”, that they corroborated each other, that any such injuries occurred in the two subduing incidents; and that the two were “*unshaken by cross-examination which was long and searching*.”<sup>448</sup>

223. Denials by Security Branch officers under oath were good enough for Blunden. It is quite apparent that Taylor and Du Toit were unshaken in cross-examination because they always knew they had nothing to fear from the inquest proceedings. As stated above, apartheid-era inquests

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<sup>446</sup> Record: Volume [A4](#), page 379, line 5.

<sup>447</sup> Record: Volume A4, page 397, line 30.

<sup>448</sup> Record: Volume A4, page 398, line 7.

involving the Security Branch were charades designed for the purpose of covering up the truth.

224. Blunden went so far as to claim that even if there was “*direct eye-witness evidence of a deliberate infliction of injuries*” by the police this would be “*entirely irrelevant to this inquest*” since these acts are “*collateral or completely unconnected with the main issue*”, namely the death.<sup>449</sup>
225. Blunden offered no explanation for this crass conclusion. He suggests that the very context in which the death occurred is irrelevant to an investigation into how the death occurred. This is particularly startling given how important context is to cases of alleged suicide in police custody. Blunden’s wilful avoidance of the search for truth is abundantly evident from his clumsy attempt to compartmentalise the story and prevent the making of obvious connections between the chain of events.
226. There was not the slightest attempt to explore the impact of the injuries on the physical and mental wellbeing of the deceased, and if it was a suicide, whether it was an induced suicide -- given the brutality visited upon Haffejee. Not a single question was raised about what Security Branch officers were willing to do to protect themselves from the inevitable scrutiny that would follow.
227. Blunden concludes his woeful finding by claiming that after “*careful consideration*” the Inquest Act does not require him to make a finding of

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<sup>449</sup> Record: Volume [A4](#), page 398, line 12.

suicide, even if the death was a suicide.<sup>450</sup> In his final cop-out, he finds that Dr Haffejee “died by hanging” which “was not brought about by any act or omission amounting to an offence on the part of any person.”

228. Aside from the obvious misreading of the Inquest Act, the mind boggles as to why Blunden could not bring himself to put up a reason behind the hanging when he has already concluded that the hanging was self-inflicted.

229. This is especially so when Blunden suggests earlier in his judgment that Haffejee “a strong motive to do away with himself”.<sup>451</sup> This apparent motive is because Haffejee was supposedly exposed after the documents found in his flat were presented to him during interrogation. These documents, which have since disappeared, allegedly included various unidentified handwritten documents, pamphlets and documents on explosives.

### ***Conclusion on bias***

230. Impartiality and bias are defined in *Le Grange*<sup>452</sup> as follows:

*“Impartiality can be described – perhaps somewhat inexactly – as a state of mind in which the adjudicator is disinterested in the outcome and is open to persuasion by the evidence and submissions. In contrast, bias denotes a state of mind that is in some way predisposed to a particular result, or that is closed with regard to particular issues. Bias in the sense of judicial bias has been said to mean ‘a departure from the standard of even-handed*

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<sup>450</sup> Record: Volume A4, page 398, line 29.

<sup>451</sup> Record: Volume A2, page 12, line 17.

<sup>452</sup> *Le Grange v The State* [2008] ZASCA 102

*justice which the law requires from those who occupy judicial office'.*<sup>453</sup>

231. In *S v Dube*<sup>454</sup> the SCA held that:

*"What the law requires is not only that a judicial officer must conduct the trial open-mindedly, impartially and fairly but that such conduct must be manifest to all those who are concerned in the trial and its outcome, especially the accused."*<sup>455</sup>

232. It is submitted that the first inquest into Dr Haffejee's death was riddled with examples of bias on the part of the presiding magistrate.

233. Blunden misdirected himself in:

233.1. Accepting, without question, the say so of the police.

233.2. Paid no heed to the cause, nature and extent of the injuries of Dr Haffejee.

233.3. Refused to apply his mind to the evidence of Dr Lorentz.

233.4. Finding that the injuries, even though they occurred while in custody, were irrelevant and not connected to Dr Haffejee's death.

234. We submit that Magistrate Blunden conducted himself in manner that was predisposed to a particular result, namely the exoneration of the police from all wrongdoing. He refused to apply his mind and went out of his

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<sup>453</sup> Ibid para 21

<sup>454</sup> *S v Dube* 2009 (2) SACR 99 (SCA)

<sup>455</sup> Ibid paras 7-8

way to give the police version a veneer of respectability. It was manifest to any casual observer of the first inquest that the magistrate paid little or no regard to the standard of even-handed justice. His manifest bias was plain to see.

235. In the *re-opened inquest into the death of Ahmed Essop Timol* the court found that an inquest is an inquisitorial process:

*"... the inquest must be so thorough that the public and interested parties are satisfied that there has been a full and fair investigation into the circumstances of death."*<sup>456</sup>

236. The first inquest into the death of Haffejee did not come remotely close to resembling a full and fair investigation. In our respectful view Magistrate Blunden conducted a substandard inquiry aimed at rubberstamping the police version. He conducted himself disgracefully. We also saw no evidence of the prosecutor pursuing anything resembling a thorough investigation.

237. It is hardly surprising that the Haffejee family and the wider community regarded the first inquest as little more than an extension of the police cover-up dressed up with judicial gloss.

238. We accordingly submit that on this ground alone the finding of the first inquest warrants overturning.

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<sup>456</sup> [The re-opened inquest into the death of Ahmed Essop Timol](#) [2017] ZAGPPHC 652 at paras 13 and 14.

## **EVIDENCE OF ABUSE AND TORTURE BY THE SECURITY BRANCH**

239. In this section we outline the history and evidence of abuse and torture meted out by the Security Branch to detainees.

240. The evidence reflects that the conduct of Haffejee's detention bears absolutely no resemblance to the version placed by the SB before the first inquest court.

241. In his affidavit before the Reopened Aggett Inquest, George Bizos described how apartheid-era detainees routinely complained of torture and the police were often sued in the civil courts for torture and damages were awarded against them. These include the widow of Imam Abdullah Haroon who sued the state for R22 000 in respect of her husband's death and received an *ex-gratia* payment of R5 000. The mother and sons of Steve Biko similarly sued the State and were paid an amount of R65 000.<sup>457</sup>

### ***Security Branch History of Abuse***

#### Perception of the Security Branch

242. According to Gopal, Security Branch officers were considered the "bosses above bosses". They were not constrained by the ordinary 48-hour periods of detention and relied on the draconian powers of sections

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<sup>457</sup> Aggett Reopened Inquest Exhibit [G1](#) pp 5-6 paras 20-21.

6 and 10 of the Terrorism Act. They could use all the time they needed to extract information from anti-apartheid activists.<sup>458</sup>

243. There was a certain culture within the Security Branch that was oppressive and instilled fear into the hearts of its members, particularly members of colour.<sup>459</sup>

243.1. There was a general culture of white superiority.<sup>460</sup>

243.2. If a police officer of colour did not toe the line, which included covering up, the SB would fabricate stories against them.<sup>461</sup>

243.3. Commanding officers had full knowledge of the use of the "third degree" [use of excessive force] and approved of it.<sup>462</sup>

243.4. If junior members of the uniform branch were told by the SB to do anything, they would simply do it. For example, if they were told not to do any paperwork, they would not do it.<sup>463</sup>

244. Former Constable Meyer conceded that the Security Branch enjoyed a superior status within the police.<sup>464</sup> The SB was able to order the uniform branch to do tasks and the uniform branch was in a subservient position. Meyer believed that the Security Branch were a law unto themselves.<sup>465</sup>

*"The Security Branch enjoyed amnesty to do anything. You never heard*

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<sup>458</sup> [2021 Transcript](#) bundle, pages 744 - 745, lines 17 - 3.

<sup>459</sup> 2021 Transcript bundle, page 825, line 19.

<sup>460</sup> 2021 Transcript bundle, page 827, line 4.

<sup>461</sup> 2021 Transcript bundle, page 828, line 24.

<sup>462</sup> 2021 Transcript bundle, page 848, line 6.

<sup>463</sup> 2021 Transcript bundle, page 924, line 10.

<sup>464</sup> 2021 Transcript bundle, page 649, line 10.

<sup>465</sup> [2021 Transcript](#) bundle, page 649, line 18.

*of the Security Branch getting into trouble. They assaulted, detained and kidnapped people as they wanted".<sup>466</sup>*

245. Meyer also conceded under cross examination that Uniform Branch members were afraid of the SB because they were so powerful and had their ways of keeping everyone in line. Squealing on the Security Branch meant serious repercussions such as demotion and even physical harm.<sup>467</sup>

246. Naude described the Security Branch as "*this secret guardian division of the force, supposedly looking after [the people of South Africa's] best interests*".<sup>468</sup> He claimed not to have knowledge of what the SB was doing during Apartheid<sup>469</sup> but was aware that they detained people regarded as a threat to national security.<sup>470</sup> He heard rumours that detainees were assaulted and tortured but claimed, not convincingly in our view, that he did not know this for sure.<sup>471</sup>

#### Re-Opened Timol Inquest

247. The *Re-Opened Timol Inquest* confirmed the practice that torture would be deliberately inflicted in such a manner that its effects would leave little or no evidence:

*"The ill-treatment of detainees is often visualised or expressed in the form of physical assault, i.e. beatings of detainees. It is indeed*

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<sup>466</sup> 2021 Transcript bundle, page 649, lines 19 – 25.

<sup>467</sup> 2021 Transcript bundle, page 650, lines 11 – 19.

<sup>468</sup> 2021 Transcript bundle, page 1090, lines 5 – 7.

<sup>469</sup> 2021 Transcript bundle, page 1092, line 5.

<sup>470</sup> 2021 Transcript bundle, page 1092, line 25.

<sup>471</sup> 2021 Transcript bundle, page 1093, lines 20 – 25.

*so the physical assault, apart from being a common method to hurt and bring fear into a detainee, it is also easier to prove by reference to scars from injuries or evidence of medical treatment. However, there are other less mentioned forms of torture which leave no evidence and are difficult to prove, such as sleep deprivation, long hours of standing and interrogation as well as electrocution.*<sup>472</sup>

248. In the case of Haffejee, the interrogation team observed no such niceties.

Leaving some 50 visible marks on Haffejee's body. This forced them to fabricate a crude cover-up story, involving the two scuffles.

249. The *Re-Opened Timol Inquest* Court found that torture extended beyond physical violence to include a broader "rubric of torture" that encompassed "all forms of abuse visited on detainees".

*"This Court is of the view that on the basis of the evidence received it would be misleading to refer only to physical assaults as the ill treatment of detainees. Detainees were subjected to beatings at various level of brutality, with the least being only slapped once across the face. It nevertheless remains an assault, but not comparable to those who were hit with solid objects, punched and kicked. ... It will be more accurate to deal with the subject of ill treatment or abuse of detainees under the rubric of torture, as it includes all forms of abuse visited on the detainees."*<sup>473</sup>

250. Mothle J found in *Re-Opened Timol Inquest*. that detention under of the Terrorism Act was, at times, an effective death sentence:

*"[T]he evidence in these and other inquests demonstrate, this drastic legislation became a tool in the hands of some members of the Security Branch, not only to torture but also to kill detainees with impunity."<sup>474</sup>*

<sup>472</sup> [The re-opened inquest into the death of Ahmed Essop Timol](#) [2017] ZAGPPHC 652 para 252.

<sup>473</sup> [Re-Opened Inquest into the Death of Ahmed Essop Timol](#) [2017] ZAGPPHC 652 para 253.

<sup>474</sup> *Ibid* at para 43.

251. The Court's finding in *Timol* was epitomised by its rejection of the evidence of SB officers in the following terms:

*"The evidence of assault and other forms of torture of detainees presented in the 2017 re-opened inquest is so overwhelming, that the denial and lack of knowledge thereof by the three former Security Branch police officers who testified is disingenuous. Further, the fact that each one of them testified during the 2017 re-opened inquest that they knew nothing about assault apart from what they read in the media, is a demonstration that they were regurgitating a standard response, seemingly prescribed to all members of the Security Branch. Else, Sons and Rodrigues's conduct calls for censure. Their conduct must be investigated further with a view to raise appropriate charges."*<sup>475</sup>

252. These findings are consistent with the conclusions of the TRC Report which found that torture and the killing of detainees by the SB was a "strong possibility".

*"The Commission has taken into consideration the evidence of victims of torture which could well have led to death, especially those cases in which similar forms of torture did lead to death. A number of cases were recorded of detainees having their heads bashed against the wall and of detainees who were suspended by their feet outside windows of buildings of several storeys, raising the strong possibility that at least some of those detainees who allegedly committed suicide by jumping out of the window were either accidentally dropped or thrown."*<sup>476</sup>

### ***Apartheid State sanctioned torture and killings***

253. Apartheid State sanctioned extra judicial killings and rampant criminality by state security organs were the order of the day during the 1970s and 1980s. At the TRC, a former Commander of the SB, Johannes Velde van der Merwe confirmed this:

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<sup>475</sup> *Ibid* at para 261. To date this recommendation has not been pursued by the NPA.

<sup>476</sup> TRC Report Vol 2, Ch 3, p206, [para 169](#).

*"All the powers were to avoid the ANC/SACP achieve their revolutionary aims and often with the approval of the previous government we had to move outside the boundaries of our law. That inevitably led to the fact that the capabilities of the SAP, especially the security forces, included illegal acts. People were involved in a life and death struggle in an attempt to counter this onslaught by the SACP/ANC and they consequently had a virtually impossible task to judge between legal and illegal actions."*<sup>477</sup>

254. The TRC found that during this period the state committed a host of gross violations of human rights in South Africa. These included, amongst other violations, extra judicial killings and torture.<sup>478</sup>
255. The Police Act 7 of 1958 mandated the South African Police with *inter alia* the preservation of internal safety. The Security Branch was charged with spearheading this function. The SB was the effective intelligence wing of the former SAP, falling directly under the Commissioner of Police. It operated in a separate and parallel structure to the Uniform and Detective branches.
256. The SB targeted any person or organisation which opposed the government. Its activities included the close monitoring of the affairs and movements of such persons, the detention of thousands and the torture of many.

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<sup>477</sup> TRC Report, Vol 5 Ch. 6, Findings and Conclusions, [para 77](#).

<sup>478</sup> TRC Report, Vol 5 Ch. 6, Findings and Conclusions, [para 101](#).

### ***History of cover-ups***

#### **Evidence of Brig. Clifford Marion**

257. Christopher Reginald Clifford Marion ("Marion") is a private investigator who investigated the Haffejee case. He is a retired SAPS Brigadier and a former Provincial Head of Detective Services in KwaZulu Natal, with 40 years policing experience. He is employed by the Foundation for Human Rights (FHR) to investigate serious apartheid era crimes as part of its Unfinished Business of the Truth and Reconciliation Commission project.<sup>479</sup>

258. Brig. Marion was of the view that the probabilities pointed to the possibility that Haffejee died under interrogation. Alternatively, Haffejee was in such a debilitated state that he was murdered to protect the Security Branch from scrutiny.<sup>480</sup> Marion is of the opinion that the cover-up and staging of suicide was done to either conceal the abuse and brutal torture of Haffejee, or to mask the fact that Haffejee died during interrogation.<sup>481</sup> The police version before the first inquest was accordingly concocted to deflect attention from what actually took place in Brighton Police Station between 2 and 3 August 1977.<sup>482</sup>

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<sup>479</sup> See Unfinished Business of the TRC [website](#).

<sup>480</sup> Record: Volume [L21](#), page 2999, para 81.

<sup>481</sup> Record: Volume L21, page 2999, sub-paras 81.1 – 81.2.

<sup>482</sup> Record: Volume L21, page 3000, para 85.

259. The Court in the Re-Opened Timol Inquest found that the SB routinely invented cover-up stories “*to shield police from blame*” and “cover up crimes committed by members of the Security Branch:<sup>483</sup>

*“In order to implement this cover-up strategy, the assistance of some selected members of the prosecuting authority, medical profession and magistracy were roped in to be part of the sham. Officials from these professions were carefully selected to support a cover-up version in the case of any judicial proceedings.”<sup>484</sup>*

260. The first Haffejee inquest was no exception. The evidence before this Court clearly demonstrates that the Apartheid State concocted an elaborate scheme to cover-up the circumstances surrounding Dr Haffejee’s death, which will be dealt with in detail below.

261. Gopal testified that he was asked to cover-up and stick to a specific story.<sup>485</sup> It was also his evidence that Du Toit and Taylor lied under oath and that Haffejee did not get injured while being placed into various vehicles.<sup>486</sup>

### ***Torture of other detainees***

262. In the Reopened Inquest, substantial evidence of torture at Fischer Street and other venues in Durban was presented by several former detainees who were interrogated and tortured in during the 1970s and 1980s.

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<sup>483</sup> [Re-Opened Inquest into the Death of Ahmed Essop Timol](#) [2017] ZAGPPHC 652 para 313.

<sup>484</sup> *Ibid* para 314.

<sup>485</sup> 2021 Transcript bundle, page 809, line 23.

<sup>486</sup> 2021 Transcript bundle, page 751, line 15.

263. We summarise the similar fact evidence as follows.

Kambadasen Subramony “Coastal” Govender

264. Mr Govender was a member of the Natal Indian Congress<sup>487</sup> and a former police officer with the rank of Major in Crime Intelligence.<sup>488</sup> He was arrested in the second week<sup>489</sup> of September 1977 under section 6 of the Terrorism Act.<sup>490</sup> Govender was taken to the SB headquarters in Fischer Street for interrogation.<sup>491</sup>

265. According to Govender, the officers present included Taylor, Gopal, VR Naidoo and Maj Benjamin. Govender says he was hit a few times;<sup>492</sup> ordered to take his clothes off;<sup>493</sup> kicked by four or five people at a time;<sup>494</sup> fell on the floor several times;<sup>495</sup> ballpens were put between his fingers and squeezed his fingers on both hands;<sup>496</sup> he was made to sit with hands outstretched on an imaginary chair;<sup>497</sup> and he was kicked under his arms.<sup>498</sup>

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487 [2021 Transcript bundle](#), page 211, line 1.

488 2021 Transcript bundle, page 679, line 12.

489 2021 Transcript bundle, page 211, line 10.

490 Record: Volume [M3](#), page 3005, para 7.

491 Record: Volume M3, page 3005, para 7.

492 [2021 Transcript bundle](#), page 216, line 19.

493 2021 Transcript bundle, page 217, line 1.

494 2021 Transcript bundle, page 217, line 4.

495 2021 Transcript bundle, page 217, line 5.

496 2021 Transcript bundle, page 217, line 18.

497 2021 Transcript bundle, page 217, line 22.

498 2021 Transcript bundle, page 218, line 3.

266. If he fell, he would be kicked until he got back on his feet.<sup>499</sup> He also recalled having his private parts squeezed.<sup>500</sup> Govender recalled one evening having some form of electrical device applied to his genitals and being shocked.<sup>501</sup> He said he was held by his hair and his head pushed into a toilet, at least twice, by Taylor.<sup>502</sup> According to Gopal, Taylor meted out the same treatment to Haffejee.<sup>503</sup>

267. While he was assaulted, one of the Indian officers in the interrogation said to Govender that the white officers will kill him like they killed Haffejee.<sup>504</sup> Govender could not recall whether this was Gopal, VR Naidoo or Benjamin. Govender testified that the Indian officers did assault him, but their assaults were milder than the white officers.<sup>505</sup>

268. During the evening of the first day, Mr Govender was again stripped naked<sup>506</sup> and further assaulted. The assaults ended sometime after 21h00.<sup>507</sup> Govender was then taken to Mayville Police Station for detention.<sup>508</sup> He testified that he could not walk and had to be carried out of the car.<sup>509</sup>

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<sup>499</sup> 2021 Transcript bundle, page 218, line 13.

<sup>500</sup> 2021 Transcript bundle, page 218, lines 19 – 21.

<sup>501</sup> 2021 Transcript bundle, page 219, lines 3 – 4.

<sup>502</sup> 2021 Transcript bundle, page 227, line 10.

<sup>503</sup> Record : Volume G26, page 1729, para 13.

<sup>504</sup> 2021 Transcript bundle, page 221, line 21.

<sup>505</sup> 2021 Transcript bundle, page 226, line 15.

<sup>506</sup> Record: Volume M3, page 3006, para 10.

<sup>507</sup> 2021 Transcript bundle, page 222, line 20.

<sup>508</sup> Record: Volume M3, page 3005, para 8.

<sup>509</sup> 2021 Transcript bundle, page 223, line 10.

269. The next morning,<sup>510</sup> he was taken back to Fischer Street where he was stripped again and heavily assaulted.<sup>511</sup> His abuse included forced squats. The same Security Branch officers were present.<sup>512</sup> He said the officers used slaps on his face, as opposed to punches, to avoid visible injuries.<sup>513</sup> His torture stopped at around 15h00 when a senior officer, Coetzee, walked in.<sup>514</sup>

### Mohammed Timol

270. Mr Mohammad Timol (Timol) is a former ANC struggle activist and brother of the late Ahmed Timol who was murdered by the SB while in detention at John Vorster Square in 1971.<sup>515</sup> He was a former South African diplomat in London and Brussels.<sup>516</sup> Timol was arrested in Durban by six members of the Security Branch on 25 October 1971<sup>517</sup> and taken to Fischer Street SB offices.

271. He was interrogated at Fischer Street from 11:00 to about 23:00.<sup>518</sup> He was never left alone.<sup>519</sup> The officers made him stand on a brick in the office and he was made to hold up two telephone directories for hours.<sup>520</sup> He was repeatedly beaten up whenever he became unsteady or lowered

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510 2021 Transcript bundle, page 226, line 2.

511 Record: Volume M3, page 3005, para 8.

512 2021 Transcript bundle, page 227, line 4.

513 2021 Transcript bundle, page 237, line 22.

514 2021 Transcript bundle, page 228, lines 11 – 18.

515 [Re-Opened Inquest into the Death of Ahmed Essop Timol](#) [2017] ZAGPPHC 652.

516 [2021 Transcript bundle](#), page 392, line 14.

517 Record: Volume [L10](#), page 2788, para 14.

518 2021 Transcript bundle, page 400, line 3.

519 Record: Volume L10, page 2789, para 21.

520 Record: Volume L10, page 2789, para 20.

the directories. He received blows to his stomach, legs<sup>521</sup> and body.<sup>522</sup>

Thereafter, he was taken to Berea Police Station where he was held in a lockup cell.<sup>523</sup>

272. Timol was taken back to Fisher Street the next morning for more interrogation,<sup>524</sup> and was assaulted further. He was made to sit on an imaginary chair, which the police called the “golden chair”. He was beaten up whenever he relaxed. He was then asked to do the golden chair<sup>525</sup> until he gave in and told the SB about his political activities in the United Kingdom and his contact with Dr Yusuf Dadoo.<sup>526</sup>

273. They continued to interrogate and torture him<sup>527</sup> until 23h00 that evening.<sup>528</sup> The interrogation continued from the Monday, 25 October, to Wednesday evening, 27 October, till about 18:00 each evening.<sup>529</sup>

274. Timol was not punched or kicked in the face. He said this was because the SB were trying to avoid any visible injuries.<sup>530</sup>

#### Raymond Sorrel Suttner

275. Professor Raymond Sorrel Suttner (Suttner) is an emeritus professor at the University of South Africa. He was involved in the liberation struggle

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<sup>521</sup> 2021 Transcript bundle, page 399, line 22.

<sup>522</sup> Record: Volume L10, page 2789, para 22.

<sup>523</sup> Record: Volume L10, page 2789, para 23.

<sup>524</sup> Record: Volume L10, page 2789, para 24.

<sup>525</sup> 2021 Transcript bundle, page 400, line 9.

<sup>526</sup> Record: Volume L10, page 2789, para 24.

<sup>527</sup> Record: Volume [L10](#), page 2790, para 26.

<sup>528</sup> [2021 Transcript bundle](#), page 400, line 17.

<sup>529</sup> 2021 Transcript bundle, page 400, line 24.

<sup>530</sup> 2021 Transcript bundle, page 404, line 11.

in the 1970s and was a lecturer at the University of Natal, Durban.<sup>531</sup> In June 1975 he was detained and tortured by the Security Branch.<sup>532</sup>

276. Prof Suttner was arrested on 17 June 1975 after spending hours distributing illegal pamphlets in Durban and Pietermaritzburg. He was taken to Fischer Street.<sup>533</sup> He experienced two events of interrogation and torture by the SB.

277. The first interrogation happened with police officers questioning him in teams, two or three at a time. The assaults started after Suttner said that he would not answer further questions.<sup>534</sup> Colonel S.C. Steenkamp, the head of the Security Branch in Durban, came in the interrogation room and shouted, "*this is serious, man*", and he twisted Suttner's nose and then left.<sup>535</sup> Suttner believes that the twisting of his nose was the signal to "*change approach*".

278. Shortly after Col. Steenkamp left, Col. Andy Taylor<sup>536</sup> entered the room. Prof Suttner described Andy Taylor as a very tall man who was wearing a white butcher's apron and carrying handcuffs. Andy Taylor took off Suttner's glasses and put on the handcuffs and said that "*this was serious*".<sup>537</sup> (Andy Taylor is not to be confused with Jimmy Taylor who brutalised Haffejee).

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<sup>531</sup> Record: Volume [L9](#), page 2761, para 4

<sup>532</sup> Record: Volume L9, page 2761, para 4

<sup>533</sup> Record: Volume L9, page 2763, para 15.

<sup>534</sup> Record : Volume L9, page 2765, para 25.

<sup>535</sup> Record: Volume [L9](#), page 2766, para 28.

<sup>536</sup> Record: Volume L9, page 2766, para 29.

<sup>537</sup> [2021 Transcript bundle](#), page 375, line 15.

279. Suttner was ordered to strip off all his clothes and instructed to lie down.<sup>538</sup> They held him at various points on his body, by the legs and shoulders.<sup>539</sup> A cloth was put around his mouth.<sup>540</sup> Electric wires were attached to his penis.<sup>541</sup> Captain Dreyer pulled out some of Prof Suttner's pubic hairs, and hair from his head, beard and legs.<sup>542</sup>

280. SB officers began administering electric shocks.<sup>543</sup> They blocked his shouting with a gag and made obscene remarks such as "*I want to see him come now*".<sup>544</sup> According to Suttner, the officers were aware of the danger of electric shocks, because he heard them say "*this is bad for your heart, you know*".<sup>545</sup> He was also subjected to antisemitic slurs.<sup>546</sup>

281. The torture continued until 07:00 or 08:00 the next morning.<sup>547</sup> At around 20h00 Suttner was taken to Durban North police station.<sup>548</sup> On his return to Fischer Street the next morning he was taken to a room on the 4<sup>th</sup> floor with two large floodlights on a table and handcuffs on the floor.<sup>549</sup> He was asked questions and made to face the lights while sitting against the wall. He was forced to sit on the invisible chair. His arms were stretched out and he had to balance what they called "his bibles" (books on Marx

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538 Record: Volume L9, page 2766, para 30.

539 Record: Volume L9, page 2766, para 30.

540 Record: Volume L9, page 2766, para 30.

541 Record: Volume L9, page 2767, para 31.

542 Record: Volume L9, page 2767, para 32.

543 Record: Volume L9, page 2767, para 32.

544 Record: Volume L9, page 2767, para 32.

545 Record: Volume L9, page 2767, para 33.

546 Record: Volume L9, various paras between 42 – 83.

547 Record: Volume L9, page 2768, para 36.

548 Record: Volume L9, page 2769, para 45.

549 Record: Volume L9, page 2769, para 48.

and Lenin) on each arm. Drawing pins were placed on the floor to prevent him from falling. When he dropped the books or fell on the floor, the books would be picked up and additional volumes were forced on him.<sup>550</sup>

282. Suttner experienced further modes of torture, which included stamping on his toes; kicking his shins,<sup>551</sup> threats that he would be “fucked up” properly, that they would put the “kaffirs” onto him,<sup>552</sup> that he was a “fucking Jew”<sup>553</sup> and a threat to place a rat under a pot on his stomach,<sup>554</sup> and other degrading treatment.<sup>555</sup>

#### Yunis Shaik

283. Mr Yunis Shaik (Shaik) is a non-practicing attorney and an executive director of Hoskin Consolidated Investments Ltd. Between the late 1970s and early 1990s Shaik was active in the ANC underground and held leadership positions in the trade union movement. He was detained by the SB for various periods during 1980 and between 1985 and 1986.<sup>556</sup>

284. In his evidence, Shaik distinguished between two forms of detention: interrogatory and preventative.<sup>557</sup> Interrogatory detention was used primarily to extract information from a detainee, while preventative detention was to stop an activist from mobilising people and engaging in

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<sup>550</sup> Record: Volume L9, page 2770, para 48.

<sup>551</sup> Record: Volume L9, page 2772, para 56.

<sup>552</sup> Record: Volume L9, page 2771, para 50.

<sup>553</sup> Record: Volume L9, page 2771, para 51.

<sup>554</sup> [2021 Transcript bundle](#), page 381, line 14.

<sup>555</sup> Record: Volume L9, page 2772, para 53.

<sup>556</sup> Record: Volume [L11](#), page 2796, paras 1 - 7.

<sup>557</sup> Record: Volume L11, page 2798, para 10.

activities detrimental to the apartheid state.<sup>558</sup> It was aimed at extricating an activist from society.<sup>559</sup>

285. While Shaik experienced both forms of detention, his evidence focused on interrogatory detention. Shaik highlighted the following significant features of security detention:<sup>560</sup>

285.1. Security detention allowed for a detainee to be held in solitary confinement without any access to an attorney, family, friends, or anyone else – other than state officials such as police officers, a magistrate, or the district surgeon.<sup>561</sup>

285.2. The period of the detention was unlimited, and release was at the discretion of the investigating officer. The jurisdiction of the courts was excluded.

285.3. A detainee was generally treated as an enemy of the state and suffered intense animosity and antipathy by the police, as well as from Magistrates and District Surgeons. If you were a member of the ANC or SACP, you subjected to intense hatred and vilification.<sup>562</sup>

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<sup>558</sup> Record: Volume L11, page 2799, para 10.

<sup>559</sup> [2021 Transcript bundle](#), page 479, line 7.

<sup>560</sup> Record: Volume L11, pages 2799 - 2800, para 12.

<sup>561</sup> [2021 Transcript bundle](#), page 474, line 3.

<sup>562</sup> 2021 Transcript bundle, page 479, line 21.

285.4. Information was often extracted from a detainee by means of torture and wanton acts of cruelty that resulted in a detainee suffering trauma, severe physical injuries, and sometimes death.

285.5. Typically, the SB claimed the cause of the trauma, physical injuries or death were self-inflicted. This necessitated collusion between members of the SB and at times, other members of the erstwhile SAP.

286. Shaik was detained at Brighton Police Station for 14 days in 1980 and interrogated at Fischer Street, before being held for 6 months preventative detention at Modderfontein Prison. He was not seriously mistreated during these periods in detention. He recalled the hourly inspections at the police cells at Brighton Police Station.<sup>563</sup>

287. Shaik was detained at CR Swart Square on two separate occasions, under section 29 of the Internal Security Act. The first was from 3 to 19 July 1985 ("the first period") and the second was from 3 August 1985 to the following year ("the second period").<sup>564</sup>

288. Shaik was ordered to strip naked. A wet hessian hood was placed over his head and the interrogation began.<sup>565</sup> He was ordered to strip naked in order to prevent any evidence of blood or other fluids staining his clothing. A hood was placed over his head.<sup>566</sup>

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<sup>563</sup> Record: Volume [L11](#), paras 14 – 19.

<sup>564</sup> Record: Volume L11, page 2802, para 20.

<sup>565</sup> Record: Volume L11, page 2803, para 25.

<sup>566</sup> [2021 Transcript bundle](#), page 492, line 22.

289. The assault began with punches, knees and elbows<sup>567</sup> to various parts of his body, his head, back, gut and solar plex. Shaik could not see who was assaulting him because he was hooded.<sup>568</sup> Sgt Visagie pinned Shaik down to the table and gripped his head and hands.<sup>569</sup> Shaik's hands were bound by a rope and a bicycle tube like substance.<sup>570</sup>

290. After a while and after no information was given, there was a dramatic change in the method of torture. Shaik had to get dressed and was led to another room where he again had to strip naked. He was hauled onto a table and forced to kneel, with his head and hands held against a tabletop.<sup>571</sup> His hands were bound by rubber tubing and his head was still covered by a damp hessian hood. The soles of his feet and back were repeatedly struck with fists and what felt like a wooden club. While all this was happening, he was still being questioned.<sup>572</sup>

291. While in this position, an instrument was inserted into his anus and pushed into its far recesses whilst at the same time, Shaik was struck on his lower back. These brutal assaults caused him to suffer excruciating pain.<sup>573</sup> The more he was assaulted, the more he struggled to pull free from having his hands and head pressed against the table. The more he tried to pull free, the harder Sgt Visagie tightened his grasp on Shaik.<sup>574</sup>

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<sup>567</sup> 2021 Transcript bundle, page 494, line 19.

<sup>568</sup> Record: Volume L11, page 2803, para 28.

<sup>569</sup> Record: Volume L11, page 2804, para 29.

<sup>570</sup> 2021 Transcript bundle, page 493, line 3.

<sup>571</sup> Record: Volume L11, page 2804, para 30.

<sup>572</sup> Record: Volume L11, page 2804, para 31.

<sup>573</sup> Record: Volume L11, page 2804, para 32.

<sup>574</sup> Record: Volume L11, page 2804, para 33.

292. The wet hessian bag held tightly on his head and face was causing Shaik to suffocate.<sup>575</sup> He testified that if that torture had gone on for a while longer, he believed he would have died by asphyxiation.<sup>576</sup> Shaik described the experience of being hooded as a “dice with death” because of the inability to breath while being hooded and tortured.<sup>577</sup>

293. After a while, the assaults became random.<sup>578</sup> During the torture, Shaik lost consciousness several times and was revived. At times, he was dragged to the toilet and had water thrown on him. As he had soiled himself due to the ferocity of the torture, he was required to clean up.<sup>579</sup> Shaik suffered internal bleeding, bleeding through his rectum and lost hearing in one of his ears.<sup>580</sup>

294. Shaik made the following observations from his experiences in detention:

294.1. Typically, the station commander or duty officer would conduct inspections of the cells every hour. A police officer would be stationed in the courtyard of the cell block and detainees would be under regular and frequent surveillance.<sup>581</sup>

294.2. Notice would be taken if a detainee was in obvious distress. It was the responsibility of the station commander to attend to the

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<sup>575</sup> Record: Volume L11, page 2804, para 33.

<sup>576</sup> Record: Volume L11, page 2805, para 38.

<sup>577</sup> [2021 Transcript bundle](#), page 498, line 12.

<sup>578</sup> Record: Volume L11, page 2805, para 34.

<sup>579</sup> Record: Volume [L11](#), page 2805, para 35.

<sup>580</sup> [2021 Transcript bundle](#), page 499, line 19.

<sup>581</sup> Record: Volume L11, page 2800, para 16.

needs of a detainee when held in his station. An appropriate entry was required to be made in the occurrence book. At the very least, a detainee would be observed at mealtimes, changing of shifts and scheduled cell inspections and patrols.<sup>582</sup>

294.3. A death in detention would result in the SB orchestrating a cover-up of what happened. Police officers would typically deny that detainees were assaulted or badly treated and claim that injuries were self-inflicted. A culture of brotherhood existed amongst the Security Branch which involved total secrecy and never implicating each other.<sup>583</sup>

294.4. District surgeons and magistrates would pay little attention to you and would ask you questions as formalities. There was no point in letting them know that you were assaulted, because the reports of the magistrate and surgeon went straight to the officers abusing you. The reports would not go to an independent party.<sup>584</sup>

294.5. Security Branch officers acted with total impunity. Since detainees were held *incommunicado*, with no access to lawyers or doctors, they had licence to act as they wished with no fear of being held accountable.<sup>585</sup>

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<sup>582</sup> Record: Volume L11, page 2801, para 17.

<sup>583</sup> Record: Volume [L11](#)page 2807, para 44.

<sup>584</sup> [2021 Transcript bundle](#), page 503, lines 1 – 10.

<sup>585</sup> Record: Volume L11, page 2808, para 46.

294.6. The uniform branch was subservient to the SB. The SB effectively controlled police stations where they operated and had total control over detainees held in police stations. If a SB officer asked uniform branch members to do anything, they would do so without question.<sup>586</sup>

294.7. Among those in the underground, it was not expected of a detainee to resist answering questions or to hold out indefinitely. Shaik noted that one should hold out for about three days.<sup>587</sup> The option of suicide or self-harm was never demanded or encouraged.<sup>588</sup>

Dr A B Gangat

295. The evidence in relation to the abduction and torture of Dr Gangat has been summarized above. Dr Gangat died in 2017. We relied on the evidence adduced by his wife, Dr Sacoor. This hearsay evidence was not challenged in terms of section 3(1)(a) of the Law of Evidence Amendment Act 45 of 1988 and accordingly may be admitted in terms of section 3(1)(c) of that Act.

***Direct evidence of abuse of Haffejee***

296. The only direct evidence of Haffejee's abuse before this re-opened inquest comes from former Security Branch Warrant Officer Mohan Deva

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<sup>586</sup> 2021 Transcript bundle, page 506, line 2.

<sup>587</sup> [2021 Transcript bundle](#), page 513, line 1.

<sup>588</sup> Record: Volume [L11](#), page 2808, para 47.

Gopal. He disclosed that the Security Branch conducted interrogations at Fischer Street, but also at private buildings around Durban that they used as safe houses.<sup>589</sup> This was particularly so when they needed to extract information quickly.

297. According to Gopal the typical forms of assault and torture used by the SB included:<sup>590</sup>

297.1. Psychological abuse.

297.2. Sleep deprivation.

297.3. Continuous interrogation over several days.

297.4. Physical assault, involving:

297.4.1. Minor assault by slapping,

297.4.2. Major assault such as “panel beating” and kicking.

297.5. The helicopter method: the victim of torture is made to stand with his arms out, balance on his toes, with a ruler on his head and crouched down.<sup>591</sup> If the ruler falls, the detainee would be brutally kicked.<sup>592</sup>

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<sup>589</sup> 2021 Transcript bundle, page 701, line 8.

<sup>590</sup> Record : Volume [G26](#), page 1766

<sup>591</sup> [2021 Transcript bundle](#), page 713, line 9.

<sup>592</sup> 2021 Transcript bundle, page 714, line 16.

297.6. Electrocution: wires were connected to a dynamo.<sup>593</sup> The wires would be clamped to the victim's body part<sup>594</sup> such as the nipple, genital, anus, kidney area, ear or nostril.<sup>595</sup>

297.7. Wooden rulers were used to assault victims on their testicles.<sup>596</sup>

298. Gopal witnessed the following methods of torture being applied against Haffejee:

298.1. Stripped naked and left in his underpants, but later instructed to remove his underpants. The purpose of stripping was to not leave behind any stains on clothing and to humiliate.<sup>597</sup>

298.2. Slapped on the face with open palm slaps.<sup>598</sup>

298.3. Kicked on the kidneys, along his back and front, thighs and legs.<sup>599</sup>

298.4. Hit and punched on the legs, ankles, private parts, buttocks, back of body, neck, arms and armpits.<sup>600</sup>

298.5. Dragged by the back of the neck to the toilet, with head pressed into the toilet bowel and made to drink toilet water.<sup>601</sup>

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<sup>593</sup> A dynamo is a machine or electrical generator that converts mechanical energy to electricity as a direct current for transmission via cables, wires or power lines.

<sup>594</sup> 2021 Transcript bundle, page 714, line 11.

<sup>595</sup> 2021 Transcript bundle, page 714, line 16.

<sup>596</sup> 2021 Transcript bundle, page 721, line 10.

<sup>597</sup> [2021 Transcript bundle](#), page 763, lines 1 – 3, page 789, line 15.

<sup>598</sup> 2021 Transcript bundle, page 764, lines 6 – 9.

<sup>599</sup> *Ibid*

<sup>600</sup> Record : Volume [G26](#), page 17278, para 11

<sup>601</sup> Record : Volume G26, page 1729, para 13.

298.6. Head smacked into a pillar (by Taylor).<sup>602</sup>

299. Gopal described the torture of Haffejee as “*a grotesque feature of a horrible nightmare that just unfolded before my very eyes*”.<sup>603</sup> In his evidence, he recalled that:

299.1. Dr Haffejee could not bend because his entire body was sore. Gopal had to help Dr Haffejee put his underpants on<sup>604</sup>

299.2. Dr Haffejee was very bruised all over the body but not bleeding. Gopal could see marks all over his body as Dr Haffejee was quite a fair person.<sup>605</sup>

300. Gopal’s description of the torture is largely consistent with the findings of the expert medical witnesses.

## **MEDICAL EVIDENCE OF ABUSE**

### ***Professor Gordon***

301. Professor Isidor Gordon was the Chief Government Pathologist for Durban (Gordon). He attended the scene of death on the morning of 3 August 1977 and declared Haffejee dead at 06h59. He compiled the

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<sup>602</sup> Record : Volume G26, page 1729, para 14.

<sup>603</sup> 2021 Transcript bundle, page 717, line 12.

<sup>604</sup> Record : Volume G26, page 1728, para 11.

<sup>605</sup> Record : Volume [G26](#), page 1728, para 12.

post-mortem report, which commenced at 10.20 am at the SAP Medico Legal Laboratories, Gale Street, Durban.<sup>606</sup>

302. According to Prof Gordon, a dissection of various parts of Haffejee's body revealed:

302.1. Varying zones of engorgement in the intestines and an area of extravasation of blood in the substance of the mesentery.

302.2. "Extensive" extravasation of blood in the subcutaneous tissue and muscles of the scalp.<sup>607</sup>

302.3. No fracture to the skull of Dr Haffejee and his thick mop of hair could have cushioned any blow to the head.<sup>608</sup>

303. According to Gordon most of Haffejee's injuries were minor except the injury to the scalp and mesentery and the bruises to the sternum, ribs and loins. These he described as "significant".<sup>609</sup>

304. Gordon ruled out that the possibility that the injuries could have been self-inflicted in the cell, during the process of hanging.<sup>610</sup>

305. Curiously, Gordon was not prepared to comment on the possible mechanism that caused the injuries nor was he willing give his assessment of the degree of force required to cause them. He claimed

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<sup>606</sup> Record: Volume [B1](#)

<sup>607</sup> Record: Volume [A3](#); page 336 (352 paginated) at line 15.

<sup>608</sup> Record: Volume [A2](#), pages 10 – 11.

<sup>609</sup> Record: Volume A2, page 11, lines 10 – 15.

<sup>610</sup> Record: Volume A2, page 12, line 28.

that a layperson was in as good a position as a medically trained person to make assessments of this kind.<sup>611</sup>

306. In our view these refusals reflect very poorly on Gordon. His claim that a layperson was as qualified as an experienced and senior forensic pathologist to consider cause of injury and assess the degree of force employed is obviously wrong. Not only did Gordon abdicate his responsibility as chief state pathologist, but he left the distinct impression that he did not wish to be seen giving potentially negative evidence about the Security Branch.

307. Gordon did however concede that the injuries could have been caused either by the application of blunt force to the body or by bringing the body into contact with a blunt object. He also conceded that that blunt force could take the form of blows with fists or a kick. But he was not prepared to concede that the police version was far-fetched.<sup>612</sup>

***Dr Theo Lorentz***

308. Dr Theo Lorentz, a specialist physician and surgeon, appeared for the family (Lorentz). His report, which was co-authored by Professors Laubscher, Shapiro and Simson, and Dr Gluckman, which was submitted before the first inquest as exhibit HH has not been located. He did however testify.<sup>613</sup> His evidence included that:

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<sup>611</sup> Record: Volume A2, page 14, lines 20 – 25.

<sup>612</sup> Record: Volume [A2](#), page 14, lines 25 – 30.

<sup>613</sup> Record: Volume [A3](#): p 335 (paginated page 351) – p 348 (paginated page 364).

308.1. The extravasation<sup>614</sup> of blood into the subcutaneous tissues of the scalp required a direct blow of some significance.<sup>615</sup>

308.2. Such a blow could not have gone unnoticed, and one might reasonably have expected Haffejee to have been dazed or concussed.<sup>616</sup>

308.3. The mechanics of injury would most likely have been due to a direct blow to the head of Haffejee.

308.4. No satisfactory account has been given to explain the head injury of this extent occurring in the two scuffles alleged by Taylor and Du Toit.<sup>617</sup> Lorentz found it difficult to accept the accounts of the police. He concluded that the number of superficial lesions and the severity and extent of the deep bruising did not align with claims of Du Toit and Taylor.<sup>618</sup>

309. In relation to the deep bruises over the sternum, breastbone, left hand lower ribs and flanks and mesentery extravasation,<sup>619</sup> Lorentz testified that these were caused by "*direct blows to the body*"<sup>620</sup> which could have

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<sup>614</sup> Extravasation is the leakage of blood, lymph, or other fluid from a blood vessel into the tissue around it.

<sup>615</sup> Record: Volume A3, page 352, line 23.

<sup>616</sup> Record: Volume A3, page 352, line 29. In this regard Lorentz noted that no evidence need be found of cerebral injury in cases of concussion.

<sup>617</sup> Record: Volume [A3](#), page 353, line 20.

<sup>618</sup> Record: Volume A3, page 355, lines 10 – 15.

<sup>619</sup> The mesentery is a continuous folded band of membranous tissue that attaches intestines to the wall of the abdomen, keeping them in place and preventing them from collapsing into the pelvic area.

<sup>620</sup> Record: Volume A3, page 354, line 15.

been inflicted with fists.<sup>621</sup> He viewed the mesenteric injury as at least a potentially serious injury.<sup>622</sup>

310. Lorentz testified that the alleged scuffles put up by the Security Branch could not explain these injuries.<sup>623</sup> The abrasion on the knees of Dr Haffejee did not look like the type of abrasions that had been grazed by gravel.<sup>624</sup>

311. This sort of injury would have caused a person to be winded and, if Dr Haffejee was indeed winded at any stage, it would have been noticeable.<sup>625</sup>

312. Lorentz noted that while the abraded bruises were not in themselves serious, they are significant in that there was a large number of them, and their distribution was striking.<sup>626</sup>

***Amnesty International Danish Medical Team***

313. On 14 October 1977 a confidential request was made by Mr Malcolm Smart of the International Secretariat of Amnesty International's Africa Department to Professor Albrechtsen and members of the Amnesty International Danish medical team<sup>627</sup> ("the Danish medical team") to

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<sup>621</sup> Record: Volume A3, page 354, line 23.

<sup>622</sup> Record: Volume A3, page 354, line 28.

<sup>623</sup> Record: Volume [A3](#): page 338-9.

<sup>624</sup> Record: Volume A3, page 357, lines 8 – 25.

<sup>625</sup> Record: Volume [A3](#), page 378, lines 12 – 16.

<sup>626</sup> Record: Volume A3, page 355, line 4.

<sup>627</sup> Record: Volume [C1](#), page 871.

assess the images and report of Dr Biggs and provide an expert opinion on the nature and causes of the marks on Dr Haffejee's body.

314. On 19 October 1977, the Danish medical team replied with the following findings:<sup>628</sup>

314.1. Scattered on the trunk and the extremities are sequelae of blunt injuries of varying degrees.

314.2. Scattered on the back are well-defined irregular dark-coloured marks which may be due to blows or prolonged pressure.

314.3. Similar skin injuries are located around the knees and elbows and in less degree around the ankle joints. They are due to some form of blunt violence.

314.4. Their nature and location might suggest that the victim had been restrained for some time.

315. On 24 February 1978, the Danish medical team released a further report after assessing the report of Prof Gordon and the supplementary report by Dr Biggs.<sup>629</sup>

316. In this report, the team found that the bleedings in the scalp and the lesions on the body and the extremities were caused by heavy blunt violence while Haffejee was alive. The bleeding around the mesenteries mentioned in the autopsy indicated blunt violence directed towards the lower abdomen.

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<sup>628</sup> Record: Volume [C2](#), pages 872 – 873.

<sup>629</sup> Record: Volume [C4](#), page 877 – 878.

317. On 16 March 1978, following the judgment of Magistrate Blunden, Amnesty Internationally released a press statement critical of the judgment. The press statement challenged the finding that there was insufficient evidence to attribute Haffejee's death to any individual since the injuries were sustained in the 4 – 12 hours before death, while in the custody of the police.<sup>630</sup>

***Dr D H Biggs***

318. Dr David Hobson Biggs was an orthopaedic surgeon based in Pietermaritzburg. He testified on behalf of the Haffejee family at the first inquest. At the request of the Haffejee family, he assessed Haffejee's body before he was buried.

319. Dr Biggs was examined on certain aspects of his report<sup>631</sup> and how the report found its way to the press.<sup>632</sup> The salient points of his report, in relation to evidence of abuse includes:

319.1. There were notable lesions circular in shape and some 6 mm in diameter on both sides of the ankles and on the right knee.

319.2. The floor of the lesion was depressed below the level of the skin.

319.3. On the left posterior aspect of the chest there was a hand sized discolouration, which may have indicated bruising.

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<sup>630</sup> Record: Volume [C5](#), pages 881 – 882.

<sup>631</sup> Record: Volume B3, page 790.

<sup>632</sup> Record: Volume [A3](#), page 240.

319.4. The face and neck were noted to be darker in colour than the rest of the body and there were subconjunctival haemorrhages in both eyes.

320. Dr Biggs produced a further report to explain the unusual and similar marks observed on the body.<sup>633</sup> Dr Biggs took photos of the body.<sup>634</sup> He had not “seen such marks produced in any way”.<sup>635</sup> He noted that, as an orthopaedic surgeon, he has never seen such marks on a person injured in a collision.<sup>636</sup>

321. Dr Biggs evidence was not considered by Magistrate Blunden since the counsel for the family stated that they would not be relying on the evidence of Dr Biggs.<sup>637</sup>

***Dr S R Naidoo***

322. Dr Steve Naidoo is an independent specialist forensic pathologist (Naidoo). He was instructed by the National Prosecution Authority to study the medical evidence of the first inquest and provide an independent forensic medical opinion on the manner, circumstances and cause of Haffejee’s death. He compiled a report dated 23 February 2021<sup>638</sup> and testified at the reopened inquest.

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<sup>633</sup> Record: Volume [B3](#), page 794 - 5.

<sup>634</sup> Record: Volume A3, page 240, line 30. The photos can be seen in Vol B6 – B9 at pages 801 – 837.

<sup>635</sup> Record: Volume A3, page 241, lines 5 – 6.

<sup>636</sup> Record: Volume A3, page 241, lines 14 – 16.

<sup>637</sup> Record: Volume A3, page 242, lines 3 – 6.

<sup>638</sup> Record: Volume [L4](#), page 2703, para 1. Note that this is an updated version of Dr Naidoo’s first report dated 28 June 2018 at Vol [G24](#).

323. According to Dr Naidoo, the injuries inflicted on Haffejee's scalp, chest and mesentery were caused by significant forces. These injuries would have been physically incapacitating, causing Haffejee to be in noticeable pain and in marked distress until his demise.<sup>639</sup> If these injuries were inflicted in stages, then Haffejee's condition would have progressively worsened.<sup>640</sup> Naidoo's description of the most serious injuries are set out below.

### Head

324. The extravasation of blood (or bleeding from ruptured blood vessels)<sup>641</sup> on the scalp can be described as deep scalp bruising.<sup>642</sup> Such extensive bruising points to several physical impacts that rendered the bruising as a confluent<sup>643</sup> (i.e., merged, or blended into one) set of haemorrhages. This meant multiple blows were inflicted on Haffejee's head.<sup>644</sup> Dr Naidoo could not exclude brain damage from the state of concussion.

325. Such injuries would have induced unconsciousness, or a lowered state of consciousness, or drowsiness as seen with a concussion.<sup>645</sup> This would have disabled Haffejee, rendering him unable to walk or talk.<sup>646</sup>

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<sup>639</sup> Record: Volume L4, page 2716, para 37.

<sup>640</sup> Record: Volume L4, page 2716, para 37.

<sup>641</sup> [2021 Transcript bundle](#), page 288, line 21.

<sup>642</sup> Record: Volume L4, page 2717, para 37b.

<sup>643</sup> [2021 Transcript bundle](#), page 288, line 6.

<sup>644</sup> [2021 Transcript bundle](#), page 288, line 17.

<sup>645</sup> [2021 Transcript bundle](#), page 326, line 4.

<sup>646</sup> [2021 Transcript bundle](#), page 328, lines 17 – 19.

Such injuries would not have been caused by the alleged scuffles, (which we now know were fabrications designed to mask the torture).

### Chest

326. The thoracic contusion, or bruising, is indicative of a heavy blow to the left lower front of the chest and would have been intensely painful.<sup>647</sup> These blows would have resulted in cardiac concussion.<sup>648</sup>

327. Such blows would have left Dr Haffejee winded, breathless and doubled-up in pain, if not in a state of sudden cardiac death from a cardiac concussion.<sup>649</sup>

328. Such cardiac impact has been reported to be able to cause sudden death by the trigger of a sudden abnormal cardiac rhythm where an actual bruise to the heart itself may not be visible to the naked eye.<sup>650</sup>

### Abdomen

329. According to Dr Naidoo, the mesenteric extravasation of blood in abdominal area indicates a bleeding or bruising which can only occur with a massive blow, possibly by fist or kick.<sup>651</sup>

330. Dr Naidoo believed such a blow would have seriously incapacitated Dr Haffejee where he would have been “doubled-up” in pain, not just

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<sup>647</sup> Record: Volume [L4](#), page 2717, para 37c.

<sup>648</sup> [2021 Transcript bundle](#), page 331, line 15.

<sup>649</sup> Record: Volume [L4](#), page 21, para 43.

<sup>650</sup> Record: Volume L4, page 2717, para 37c.

<sup>651</sup> Record: Volume [L4](#), page 2718, para 37d.

“winded”. He would have been unable to sit or stand up or walk upright. It might have had restricted abdominal movements and respiration due to mesenteric irritation.

331. Dr Naidoo further noted that if there was no observable bleeding, death may have supervened very shortly after the abdominal impact, and it cannot be excluded that the death may have been caused by the abdominal impact themselves.<sup>652</sup>

General impact of the injuries

332. According to Dr Naidoo, in the light of Haffejee’s injuries, it was not possible that the deceased was awake and normal when he was last visited in his cell at 03:00, as claimed in the first inquest. An objective observer would have found a seriously injured person in noteworthy pain and distress if he was alive, if he was not unconscious or dead.<sup>653</sup>

333. Since these injuries were likely sustained under interrogation, Haffejee would not have been able to retain an upright or even a seated position. Since the injuries were between 4 and 12 hours old, the police officers at the charge office ought to have been able to discern that Haffejee was in considerable pain and distress, even if his injuries were not immediately visible.<sup>654</sup>

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<sup>652</sup> [2021 Transcript bundle](#), page 334, line 22.

<sup>653</sup> Record: Volume [L4](#), page 2718, para 37e.

<sup>654</sup> *Ibid*

### Visibility of the injuries

334. Dr Naidoo believed the bodily injuries would have been clearly noticeable when they were exposed to view.<sup>655</sup>

335. Although the visible injuries do not necessarily indicate the full extent of physical harm perpetrated on Haffejee.<sup>656</sup>

335.1. Dr Naidoo counted between 60 to 75 individual discrete lesions, or body wounds.<sup>657</sup>

335.2. There could have been about 120 strikes, although 60 of them fell below the wounding threshold.<sup>658</sup>

335.3. Many of these are in clusters and groups which may have occurred in single impacts, or with repeated impacts to the same body part.<sup>659</sup>

335.4. Strikes, such as open-handed slaps to the face, would not pass the wounding threshold and would not produce a visible injury.<sup>660</sup>

336. According to Dr Naidoo, the injuries around the elbows and knees appear to suggest a distinct “pattern or set of patterns” that are difficult to reconcile with usual causes of injury. They indicate a specific directed

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<sup>655</sup> Record: Volume [L4](#), page 2720, para 40.

<sup>656</sup> Record: Volume L4, page 2722, para 42.

<sup>657</sup> Dr Naidoo used the markings on the diagrams (in his report at L4) on pages 2706 and 2707 of the record to count the injuries. He mentioned in his report that the wounds were in clusters and could reflect repeated blows (page 2723 of the record).

<sup>658</sup> [2021 Transcript bundle](#), page 352, line 10.

<sup>659</sup> Record: Volume [L4](#), page 2723, para 42b.

<sup>660</sup> [2021 Transcript bundle](#), page 353, line 3.

application of force, strongly suggesting restraint or constraint by an object or surface with a patterned configuration.<sup>661</sup>

337. Dr Naidoo stated that the possible use of electrodes cannot be excluded or easily dismissed.<sup>662</sup> The injuries of the lower back do not reconcile with incidental injuries of falls, sliding on the ground or being forced into a vehicle.<sup>663</sup> The linear marks at the back of Dr Haffejee's knees indicate the possibility of Dr Haffejee having been suspended from a piece of wood under his knees.<sup>664</sup>

338. Dr Naidoo was of the view that the general wound age was at its widest range between 6 and 24 hours, but that there was concurrence of a period of between 8 and 12 hours<sup>665</sup> - which was the most likely period.<sup>666</sup> This placed the age of the injuries squarely within the period Dr Haffejee was being interrogated.<sup>667</sup>

339. Dr Naidoo was critical of Dr Gordon's view on the injuries. Prof Gordon viewed the injuries as superficial<sup>668</sup> and refused to comment on how the injuries were caused and the type of force used. Dr Naidoo felt that such an approach was unhelpful to the court and unbecoming of senior state pathologist.<sup>669</sup>

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<sup>661</sup> Record: Volume L4, page 2721, para 41a.

<sup>662</sup> Record: Volume L4, page 2722, para 41c.

<sup>663</sup> Record: Volume L4, page 2722, para 41e.

<sup>664</sup> Record: Volume L4, page 2722, para 41f.

<sup>665</sup> Record: Volume L4, page 2716, para 36.

<sup>666</sup> 2021 Transcript bundle, page 320, line 3.

<sup>667</sup> 2021 Transcript bundle, page 319, line 1.

<sup>668</sup> 2021 Transcript bundle, page 320, line 24.

<sup>669</sup> 2021 Transcript bundle, page 322 - 323, line 8 – 7.

340. Following the provision by Gopal of his affidavit, Dr Naidoo was asked by Adv Shubnum Singh of the NPA to prepare a supplementary report, that considered Gopal's version of the abuse of Haffejee. That report is dated 24 February 2021 and was entered as exhibit L5. Naidoo made the following remarks:

340.1. The nature of the assaults as described by Gopal are very much aligned with the injuries noted at the post-mortem examination;<sup>670</sup>

340.2. The nature of the assaults is also in keeping with his observations of multiple impacts in multiple positions and in keeping with the estimated age of the injuries of between eight and 12 hours before death;<sup>671</sup>

340.3. The deep scalp bruising could have occurred with any type of blows, including striking his head against the wall when Haffejee was plunged into the toilet;<sup>672</sup>

340.4. The number of injuries in clusters around the elbows and knee suggest the possibility of shackling, as mentioned by Gopal in his affidavit when describing the practices of the Security Branch;<sup>673</sup>

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<sup>670</sup> Record: Volume L5, page 2732, para 8a.

<sup>671</sup> Record: Volume L5, page 2732, para 8b.

<sup>672</sup> Record: Volume L5, page 2732, para 8d.

<sup>673</sup> Record: Volume L5, page 2732, para 8e.

340.5. The injuries behind Dr Haffejee knees raises the possibility that Dr Haffejee was subject to the helicopter method, while Gopal was not in the room;<sup>674</sup>

340.6. There were no genital injuries observed by Prof Gordon in his post-mortem report, but unless one specifically dissects and looks for bruises, they may easily be missed;<sup>675</sup>

340.7. The abdominal blunt blow, as well as the chest bruising, could be in keeping with the possibility that a mule-kick was administered to Haffejee;<sup>676</sup>

340.8. Gopal's description of Haffejee being in pain, exhausted and unable to stand and speak properly is in keeping with Dr Naidoo's assessment of what Haffejee's state would have been.<sup>677</sup>

### ***Dr S Holland***

341. Dr Shakeera Holland is the Principal Specialist in Forensic Pathology at the Diepkloof Medico-legal Laboratory.<sup>678</sup> She prepared a specialist report on Dr Haffejee dated 27 February 2020, which is exhibit G28.

342. According to Dr Holland, the injuries on Haffejee's body were not related to the cause of his death.<sup>679</sup> Dr Holland noticed a large scalp haematoma

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<sup>674</sup> Record: Volume L5, page 2733, para 8f.

<sup>675</sup> Record: Volume [L5](#),page 2733, para 8g.

<sup>676</sup> Record: Volume L5, page 2733, para 8h.

<sup>677</sup> Record: Volume L5, page 2733, para 8i.

<sup>678</sup> Record: Volume [G28](#), page 1788.

<sup>679</sup> Record: Volume G28, page 1800

over the top of Dr Haffejee's scalp. She believed that it was caused by a blunt force impact to the head that may have occurred just prior to death.<sup>680</sup>

- 343. Victims of homicidal hanging may be incapacitated by the superior force of alleged assailants.<sup>681</sup> Dr Haffejee weighed 49 kg (as stated in the PM report) and the South African Police personnel involved in the deceased's interrogation had much heavier body weights than the deceased with their being up to five Security Branch officers involved in guarding the Dr Haffejee.
- 344. Hence, the possibility that Dr Haffejee was incapacitated prior to death must be taken into consideration in determining the circumstances of the death in this case.
- 345. Dr Holland questioned the explanations given by the various police members in their testimonies at first inquest, citing "scuffles" as the reason for Dr Haffejee's injuries. Dr Holland stated that such injuries were inconsistent with the findings of Magistrate Blunden. Instead, she stated that the unexplained injuries of the limbs should raise the suspicion of a homicidal death<sup>682</sup>
- 346. Prof Holland agreed with Dr Naidoo that it was a possibility, based on the post-mortem report, that the deceased suffered thoracic contusion

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<sup>680</sup> [2021 Transcript, page](#), page 433, line 7

<sup>681</sup> Exhibit [G28](#), 27 February 2020, Entire record p1801

<sup>682</sup> Record: Volume G28, page 1801

following a heavy blow to the left lower chest which could lead to cardiac concussion.<sup>683</sup>

347. She also agreed with Dr Naidoo that it is a blunt force injury that caused the injuries on the intestines.<sup>684</sup>

348. Dr Holland however did not see evidence of electrocution, nor evidence of hypoxia in the report.<sup>685</sup> She did concede that it was a possibility but could only rely on the post-mortem report.

349. It is on this basis that we submit that a finding be made that Dr Haffejee was indeed tortured during his period of detention. In the next section, we lay out the case for why we submit that, unlike the findings of Magistrate Blunden, this torture is most certainly relevant and directly connected to the death of Dr Haffejee.

## MECHANICS AND INSTRUMENT OF DEATH

350. Dr Haffejee was found “hanging” in his cell with a trouser around his neck. The trouser was tied to the lowest rung of the cell grille. The crotch of the trouser was around Dr Haffejee’s neck and the trouser was twisted to create the compressive force.<sup>686</sup> The ankles were tied around the grille in a knot. A handkerchief was then tied over the knot.<sup>687</sup>

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<sup>683</sup> [2021 Transcript bundle](#), page 451, line 12.

<sup>684</sup> [2021 Transcript bundle](#), page 452, line 18.

<sup>685</sup> 2021 Transcript bundle, page 456, line 5.

<sup>686</sup> See photos at Vol [B2](#), page 783.

<sup>687</sup> See photos at Vol B2, page 787.

### ***Evidence of Thivash Moodley***

351. Mr Thivash Moodley is a mechanical and aeronautical engineer with the firm TMI Dynamatics (Moodley). In 2018, he was requested by Adv Shubnum Singh of the NPA to conduct simulations<sup>688</sup> and report on the death of Dr Haffejee. His first report dated 6 April 2018 is before this Court as exhibit G25.<sup>689</sup> The photographs taken during the simulation are contained in G25.1,<sup>690</sup> while his final report dated 6 August 2019 is exhibit G25.2<sup>691</sup> and the video of his simulation is G25.3. The final report includes the report of the simulation conducted in relation to death by suffocation. Moodley concluded that it was possible but unlikely that Haffejee died from self-strangulation.<sup>692</sup>

352. Moodley first considered the Magistrate's finding that Haffejee "died by hanging". He observed from the photos that Haffejee's legs, pelvis and abdomen were on the floor. The noose was fixed around the lower section of the neck.<sup>693</sup> The height of the knot on the first horizontal bar of the jail door was 493 mm above the ground.<sup>694</sup> Only the head, thorax, neck, and upper arms were suspended off the ground.<sup>695</sup>

353. He noted documented findings that a person would need approximately 15 kilograms of compression of force around the neck to block their

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<sup>688</sup> [2021 Transcript bundle](#), page 106, lines 5 – 25.

<sup>689</sup> Record: Volume G25, page 1630.

<sup>690</sup> Record: Volume G25.1, page 1657.

<sup>691</sup> Record: Volume [G25.2](#), page 1701

<sup>692</sup> 2021 Transcript bundle, page 108 – 109. See entire discussion.

<sup>693</sup> Record: Volume G25, page 1636.

<sup>694</sup> Record: Volume G25, page 1638.

<sup>695</sup> Record: Volume G25, page 1633.

arteries and cause death.<sup>696</sup> Haffejee had a tall frame at 1.75 metres but weighed only 49 kg. Moodley concluded that the tensile force in the trouser is equivalent to a suspension mass of 11.72 kg which is approximately 24% of the late Dr HM Haffejee's total weight. He was of the opinion, that the suspended mass was too low for Haffejee to have died from hanging or sudden arterial occlusion.<sup>697</sup>

354. Moodley and his team conducted simulations dealing with 4 scenarios. He concluded that two of the scenarios were within the realm of possibility.<sup>698</sup>

355. In scenario one:

355.1. Haffejee tied the ends of the trousers to the lower vertical bar of the jail door and then tied the handkerchief around the trousers and placed the crotch of the trousers around his neck

355.2. He then twisted himself until the pants twisted so tight around his neck that he suffocated and died. A fourth or fifth turn would have likely resulted in suffocation.<sup>699</sup>

355.3. The re-enactment demonstrated that it would have been considerably easier for Haffejee to twist the trousers around his neck by rotating his head whilst kneeling in front of the jail door.

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<sup>696</sup> 2021 Transcript bundle, page 111, lines 1 – 5.

<sup>697</sup> [2021 Transcript bundle](#), page 111, lines 1 – 20. Exhibit [G25.2](#). page 10 of report.

<sup>698</sup> Record: Volume [G25.2](#), pages 1713 – 1720.

<sup>699</sup> Record: Volume [G25.2](#), page 1713.

355.4. However, it is likely he would have then suffocated and died in a kneeling position. To have been found in a lying possession he would have to stretch out and lie down while in the process of suffocation.<sup>700</sup>

356. In the second scenario, which was scenario 4 in the simulation:

356.1. Third parties placed the crotch of the trousers around the neck of a live or an already deceased Haffejee.

356.2. Then twisted the trousers,

356.3. Then pulled Haffejee to the door and tied the trousers to the lowest horizontal bar of the jail door.

356.4. Tied the handkerchief to the knot of the trousers to ensure the trousers cannot be untwisted,

356.5. Then closed the door and exited.<sup>701</sup>

357. Moodley noted that it was the first time he had seen a handkerchief being used to secure a knot.<sup>702</sup> He stated that the handkerchief was used to make sure that the knot of the pants would not slip open. It was also to maintain the compression force when the pants twisted. If the knot of the pants loosened compressive force in the pants would have been lost.<sup>703</sup>

358. Regarding the staged suicide scenario, Moodley said that third parties could have tightened the ligature without necessarily having to roll the

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<sup>700</sup> Record: Volume [G25.2](#), page 1720 - 21.

<sup>701</sup> Record: Volume [G25.2](#), page 1720 - 21.

<sup>702</sup> [2021 Transcript bundle](#), page 139, line 12.

<sup>703</sup> 2021 Transcript bundle, page 129, lines 1 – 5.

body over because they would twist it in their hands while the body was in a completely stationary position.<sup>704</sup>

359. Moodley was of the view that it was likely a third person was involved because “it could be very easy to use the lowest bar, strangulate the person, tie them to the lowest bar and then close the door behind them”.<sup>705</sup>

360. Moodley noted that the position in which Haffejee’s body was found would have made suffocation difficult to achieve, so it suggested third parties may have been involved in his death.<sup>706</sup> If there was no involvement of a third party, it would have involved great effort to have to have suffocated himself in that position, and he would have chosen the most difficult position to suffocate himself.<sup>707</sup>

361. If suffocation as opposed to hanging was the preferred option of suicide, Moodley maintained it would have immeasurably easier to kneel or stand up since “*you would require a lot less rotation of the body on the ground, like twisting on the floor and you could literally stand up straight and just turn around in a direction to keep twisting that knot.*”<sup>708</sup>

362. In his report, during the inspection-in-loco as well as his testimony, Moodley said the entire situation intrigued him, since the cell door was

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<sup>704</sup> [2021 Transcript bundle](#), page 123, lines 15 – 20.

<sup>705</sup> [2021 Transcript bundle](#), page 109-110, lines 20 – 25.

<sup>706</sup> Record: Volume [B2](#), page 787.

<sup>707</sup> 2021 Transcript bundle, page 115, lines 1 – 10.

<sup>708</sup> 2021 Transcript bundle, page 126, lines 10 – 16.

approximately 2m high, it would have been immeasurably easier to commit suicide by simply hanging oneself from the highest bar. This would have allowed his entire body to be suspended.<sup>709</sup> This is especially in light of the version advanced by all the police officers, that Haffejee was able to walk with ease from the charge office to the cell.

363. According to Moodley, even hanging himself from the second or third horizontal bar of the grille gate would have been an easier method of suicide because more body weight would have been suspended than just his head and shoulders.<sup>710</sup>

364. Aside from higher vantage points on the gate grille, Moodley noted that he had the option of attaching the ligature to the higher parts of the cell door or on either of two windows that were available. In this regard, see photos numbered 22, 23, 27 and 28 of the Inspection-in-loco Report.<sup>711</sup> Moodley found it “weird” that a person would choose the convoluted manoeuvre involved in strangling oneself from the lowest bar of the door.<sup>712</sup>

365. Moodley agreed that if the death was the result of homicidal strangulation, then rigging the deceased to the lowest rung off the ground was the “*simplest and easiest*” method. Since if higher rungs were used the deceased would have to be lifted, requiring 2 or more persons to hold

<sup>709</sup> Record: Volume [G25.2](#), page 1721.

<sup>710</sup> [2021 Transcript bundle](#), page 127, lines 10 – 20.

<sup>711</sup> Record: Volume [L3](#), page 2673, pages 23 – 28 of the Report.

<sup>712</sup> 2021 Transcript bundle, page 109, line 19.

him and another to tie the knot. Also, it would have been simple enough for the perpetrators to step out of the cell and then just pull the door behind them.<sup>713</sup>

366. SB officer Mohan Gopal conceded in cross-examination that Haffejee was too weak<sup>714</sup> to have crouched or rolled around to strangle himself.<sup>715</sup> He added that if Haffejee was able to stand and walk and if he intended to commit suicide, he would most likely have done so from the highest rung of the cell bar, or from the grill on one of the cell windows. If the suicide was staged, Gopal agreed that it would have been easiest to attach Haffejee to the lowest rung on the cell door, because it meant not lifting and holding him while carrying out the manoeuvre.<sup>716</sup>

***Medical evidence supporting staged suicide version***

367. Supporting Moodley's view that third parties were most likely involved in causing death through a staged suicide are the expert opinions of the two forensic pathologists who testified in the Reopened Inquest. They raised the distinct possibility that Haffejee was incapacitated prior to death. Dr Holland made the following observation in her report:

- "The deceased had a number of injuries on his body that were not related to the cause of death.
- These injuries included a large scalp haematoma at the top of the scalp (a bruise of the soft tissues of the scalp).
  - The way in which this wound was afflicted has not been adequately explained.

<sup>713</sup> [2021 Transcript bundle](#), page 134 line 1 to page 135 line 5.

<sup>714</sup> 2021 Transcript bundle, page 955, line 23.

<sup>715</sup> 2021 Transcript bundle, page 956, line 5.

<sup>716</sup> [2021 Transcript bundle](#), pages 957 - 959, lines 12 – 1.

- This wound was caused by a blunt force impact to the head.
- It is possible that the blunt force impact which resulted in the scalp haematoma could have been inflicted just prior to death and **rendered the deceased incapacitated**.  
Thus, the possibility of this scenario would raise questions about the manner of death because **evidence of incapacitation should raise the suspicion of a homicide**.<sup>717</sup> (Bold added).

368. Dr Naidoo also raised the possibility of Haffejee's antemortem head injuries rendering him unconscious. Referring to the "extensive" deep scalp bruising from front to rear at the top and sides, Naidoo raised the possibility that:

"....several physical impacts as a confluent (merged or blended into one) set of haemorrhages, the effects of such injury would have included **either unconsciousness or a lowered state of consciousness or a drowsiness as seen with concussion**."<sup>718</sup> (Bold added)

369. Dealing with injuries to Haffejee's chest, Dr Naidoo notes that thoracic contusion:

"....is indicative of a heavy blow to the left lower front of the chest and would have been intensely painful. Such blows would also cause the person to be winded and breathless and in pain. **Such a blow could also cause cardiac concussion**." (Bold added)<sup>719</sup>

370. In respect of Haffejee's abdominal injuries arising from the mesenteric extravasation of blood, sustained by a "massive abdominal blow" would, in Dr Naidoo's view, have seriously incapacitated the deceased, who would thereafter have been doubled up in pain and not just winded but unable to sit or stand up or walk upright. Dr Naidoo believed that such an

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<sup>717</sup> Record: Volume [G28](#), page 12 of the report

<sup>718</sup> Record: Volume [L4](#), page 15 of report, para 37b.

<sup>719</sup> Record: Volume [L4](#), pages 15 – 16 of report, para 37c.

injury would have been potentially life threatening if the spleen or liver had been damaged, and death may have supervened shortly thereafter.<sup>720</sup>

371. Dealing with the general effects of the injuries, Naidoo observed:

"With regard to the injuries individually and together, the deceased could not reasonably have been found to be simply awake and normal and if the cell was last visited for inspection at 03:00 for at that stage, he must have sustained all the observed injuries, such visit being undertaken by an objective inspector of his condition, **he would have found an injured person in noteworthy pain and distress if he was still alive after these injuries, if not in a state of unconsciousness from the head injury or already deceased.**" (Bold added)<sup>721</sup>

372. The medical evidence suggests that Haffejee was most likely incapacitated prior to death and would have been in no position to carry out the strenuous exercise of strangling himself as alleged by the police.

373. In respect of the instrument and mechanism of death, Dr Naidoo questioned the need for an additional knot with a handkerchief over the trouser, which he viewed as somewhat redundant and superfluous, especially since the legs of the trousers were of "*ample length*" to tie a knot.<sup>722</sup> He commented that the knot appeared to have been extremely tight, as observed by Prof Gordon who was at the death scene.<sup>723</sup> In this regard he referred to the report by Robert Chisnall MEd titled "*Distinguishing between homicide and suicide knots and ligatures: A*

<sup>720</sup> Record: Volume [L4](#), page 16 of report, para 37d.

<sup>721</sup> Record: Volume [L4](#), page 16 of report, para 37e.

<sup>722</sup> Record: Volume [L7](#), page 2756, para 4.

<sup>723</sup> 2021 Transcript bundle, page 358, line 17.

*comparative analysis of case and survey data.*<sup>724</sup> Naidoo considered the findings of Chisnall in a short commentary that was provided to the Court and parties.<sup>725</sup>

374. While noting that he was not a knot expert, Naidoo drew attention to the finding that strangulation was “*more likely*” in external tying cases and “*not likely*” in self-tying.<sup>726</sup> He noted that the Chisnall article did not consider ligature twists and number of twists, but did investigate ligature tension and found that:

“In all homicides involving strangulation with knotted ligatures, the neck ligatures were tight or extremely tight – smaller than the relaxed circumference of the neck ...”

“Suicides were more frequently characterised by loose neck ligatures and the presence of an inverted ‘V’ mark in the soft neck tissue ...’

‘The incidence of tight, self-tied neck ligatures was lower than loose ligatures’.<sup>727</sup>

375. Naidoo noted that there was no presence of an inverted V-mark which is the typical hallmark of a suicide.<sup>728</sup>

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<sup>724</sup> Chisnall, Robert. (2020). *Distinguishing between homicide and suicide knots and ligatures: A comparative analysis of case and survey data*. Journal of Forensic Sciences. 66. 10.1111/1556-4029.14567. Exhibit [L6](#) at page 2735 of the record.

Record: Volume [L7](#), page 2755.

<sup>726</sup> L7, para 2.I referring to table 11 page 224 of the Chisnall article (L6).

<sup>727</sup> L7, para 2.II referring to page 214 of the Chisnall article (L6).

<sup>728</sup> [2021 Transcript bundle](#), page 358, line 22.

## FORENSIC CAUSE OF DEATH

### ***Dr I Gordon***

376. According to the post-mortem report of Dr Gordon, the official cause of death was “consistent with hanging”.<sup>729</sup>

### ***Dr DH Biggs***

377. According to Dr Biggs’ report, it seemed likely that Dr Haffejee’s death was caused by a tight constriction of the neck. It further appeared to be death by suffocation rather than by sudden arterial occlusion.<sup>730</sup> He explained this was because the knot was so tight that it had to be cut open.<sup>731</sup>

### ***Dr S R Naidoo***

378. Dr Naidoo concluded that cause of death may have been the consequence of pressure upon the neck,<sup>732</sup> arising from the consequence of neck constriction by ligature or ligature strangulation.<sup>733</sup> He excluded actual hanging by suspension.<sup>734</sup>

379. Naidoo found that the possibility of “terminal reflex neurogenic cardiac arrest” cannot be excluded”.<sup>735</sup> He noted that it was also a possibility that

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<sup>729</sup> Record: Volume [B1](#), page 754.

<sup>730</sup> Record: Volume [B3](#), page 793.

<sup>731</sup> Record: Volume B3, page 793.

<sup>732</sup> Record: Volume [L4](#), page 2713, para 32.

<sup>733</sup> Record: Volume L4, page 2714, para 32; [2021 Transcript bundle](#), page 308, line 16.

<sup>734</sup> 2021 Transcript bundle, page 306, line 4; Record: Volume [L4](#), page 2713, para 32.

<sup>735</sup> Record: Volume [L4](#), page 2714, para 32 (page 12 of report).

such cardiac arrest could have occurred under torture.<sup>736</sup> According to Naidoo, if Haffejee had died following cardiac arrest, this would not have been picked up at the post-mortem as there would be no signs that this was the mechanism.<sup>737</sup>

380. While Naidoo accepted that neck constriction could have been self-applied, he found it odd that the deceased attached himself to the lowest rung and not one of the upper rungs of the cell door grille, which would have made self-constriction easier.<sup>738</sup> He testified that he had seen several examples of suicide by self-constriction from a standing position and that this case was the first time he had seen an alleged suicide employing this method so close to the floor. Naidoo found the ligature contraption on Dr Haffejee to be extremely unusual.<sup>739</sup>

381. He could not determine whether this was a self-inflicted neck constriction or whether it was caused by another party. The available objective evidence does not exclude other persons applying the constriction.<sup>740</sup> For instance, the physical setting allowed for the possibility that the deceased could have been strangulated by another person or persons from the outside of the cell using the grille bars as leverage.<sup>741</sup> Dr Naidoo

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<sup>736</sup> 2021 Transcript bundle, page 311, line 4.

<sup>737</sup> 2021 Transcript bundle, page 311, line 20.

<sup>738</sup> [2021 Transcript bundle](#), page 306, line 25.

<sup>739</sup> 2021 Transcript bundle, page 307, line 3.

<sup>740</sup> Record: Volume L4, page 2714, para 33.

<sup>741</sup> Record: Volume [L4](#), page 2714, para 33.

however excluded throttling, which he defined as the manual strangulation by hands or fingers, as opposed to the use of a ligature.<sup>742</sup>

382. In relation to the short linear abrasions on Haffejee's neck, Dr Naidoo questioned the repeated claims by Prof Gordon that such injuries are usually due to the deceased's own fingers and fingernails attempting to adjust the ligature in suicide.<sup>743</sup> Aside from the fact that a person intent on committing suicide would have little reason to adjust the ligature in the process of suicide:

"...it's also seen or in fact, more often seen in cases where the deceased himself or herself is trying to loosen the ligature that's constricting him or her in strangulation, homicidal strangulation."<sup>744</sup>

383. Dr Naidoo concluded that it "*cannot be resolutely determined that the ligature constriction of the neck was caused either before or after death or before or after a state of unconsciousness has occurred.*" Naidoo disputed Prof Gordon's assertion that the possibility of post-mortem hanging (or more accurately constriction) is "*completely excluded*".<sup>745</sup> Naidoo noted that except for two areas of bruising in the neck (at the inner aspect of the right side of the mandible<sup>746</sup> and the anterior edge of the sternomastoid muscle<sup>747</sup>), no other deep vital reaction was observed.

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<sup>742</sup> Record: Volume [L4](#), page 2714, para 34.

<sup>743</sup> 2021 Transcript bundle, page 312, line 15.

<sup>744</sup> *Ibid.*

<sup>745</sup> 2021 Transcript bundle, page 309, lines 16 – 25.

<sup>746</sup> The lower part of the jaw.

<sup>747</sup> Large neck muscles used to rotate head.

Accordingly, both these haemorrhages could have been post-mortem, as much as they could have been perimortem<sup>748</sup> or antemortem.<sup>749</sup>

384. Naidoo testified that that there was no way a pathologist could say "*that the ligature was not placed after death or constricted, or if the person died before or whether he was still alive, and the ligature was placed, or he placed it himself.*" The two bruises, referred to above, "are more likely related to the ligature itself, they're superficial" and such bruising "can be seen in some cases where a person is strung up very shortly after death."<sup>750</sup>

***Dr S Holland***

385. Dr Shakeera Holland concluded that cause of death, based on the findings documented in the post-mortem report ought to have been "*consistent with pressure to the neck*".<sup>751</sup>

386. Dr Holland highlighted that the post-mortem report indicated that examination of the internal neck structures showed "bruising of the subcutaneous tissues below the inner aspect of the right side of the mandible".<sup>752</sup> She stated that an assessment of the presence and shape of the ligature mark is the most crucial factor in determining a case of "hanging" versus a case of "strangulation".<sup>753</sup>

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<sup>748</sup> At the time or near the time of death.

<sup>749</sup> Record: Volume [L4](#), page 2714, para 35, pages 13 – 14 of the report.

<sup>750</sup> [2021 Transcript bundle](#), pages 314 line 14 to page 315, line 5.

<sup>751</sup> 2021 Transcript bundle, page 430, line 21.

<sup>752</sup> 2021 Transcript bundle, page 432, line 9.

<sup>753</sup> Record: Volume G28, page 1792.

387. Dr Holland concluded that:

387.1. The presence of marks in the internal neck structures of Haffejee were not consistent with hanging.<sup>754</sup>

387.2. Since a pair of trousers were allegedly used as a ligature, such material is a "soft broad type of ligature", which would not be expected to cause injuries to the neck.<sup>755</sup>

387.3. The presence of a submandibular (which is the side of the jaw, under the ear) "bruise" is not consistent with hanging, but usually indicates blunt force applied directly to that area and is more consistent with the manual application of pressure to the neck, i.e., manual strangulation.<sup>756</sup>

388. In Dr Shakeera Holland's report she provided detailed context to the manner of Haffejee's death.<sup>757</sup> Firstly, Dr Holland noted that the deceased had several injuries on his body that were not related to the cause of death, including a large scalp haematoma over the top of the scalp ("a bruise of the soft tissues of the scalp"). She commented that:

388.1. The way in which this wound was inflicted has not been adequately explained.

388.2. This wound was caused by a blunt force impact to the head.

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<sup>754</sup> Record: Volume [G28](#), pages 1799-1800.

<sup>755</sup> 2021 Transcript bundle, page 432, line 13.

<sup>756</sup> Record: Volume [G28](#), page 1800.

<sup>757</sup> Record: Volume [G28](#), page 1800

388.3. It is possible that the blunt force impact which resulted in the scalp haematoma could have been inflicted just prior to death and rendered the deceased incapacitated, which should raise the suspicion of a homicide.<sup>758</sup>

389. Dr Holland noted that the PM report described at least 46 "abraded bruises" on the back, the groin, both arms and both legs. Histological analysis on some of these wounds was done (from the back, right groin, right knee and base of the neck), which suggested that the wounds were between 4 and 12 hours old. She stressed that these wounds displayed a "vital reaction", confirming that they were sustained during life.<sup>759</sup>

390. Dr Holland disputed the Magistrate's finding that since the injuries were not related to cause of death, they did not need to be explained. In her view explaining these injuries was "*crucial in excluding or confirming a homicidal manner of death.*" Since the scuffle explanations of the police are not consistent with the nature of the injuries, a suspicion of homicidal death must be raised.<sup>760</sup>

391. Dr Holland noted that since Haffejee only weighed 49 kg it would have not taken much for multiple SB officers to subdue him. She noted further that entangling of hair in the knot of the ligature, as was the case here, is generally associated with homicidal hanging.<sup>761</sup>

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<sup>758</sup> Record: Volume [G28](#), page 1800, page 12 of the report.

<sup>759</sup> *Ibid.*

<sup>760</sup> Record: Volume [G28](#), page 1801, page 13 of the report.

<sup>761</sup> *Ibid.*

## TIME OF DEATH

### **Prof Gordon**

392. According to Prof Gordon, the probable time of death was between 03:00 and 04:00.<sup>762</sup> Prof Gordon examined Dr Haffejee's body at 06:59 and recorded Dr Haffejee's temperature at 35.3 degrees centigrade.<sup>763</sup>

393. While Gordon used a method which calculated the time of death by using a decrease in temperature,<sup>764</sup> he claimed that his estimation of the time of death was based on "*the collation of the temperature and rigor mortis, and the lividity and so on. It hasn't got absolute accuracy; it can't possibly have. But it is an estimate.*"<sup>765</sup>

### **Dr S R Naidoo**

394. Dr Naidoo disputed the finding of Prof Gordon.<sup>766</sup> He was of the view that death occurred several hours earlier, possibly around midnight or earlier. Due to the technical nature of the calculations, Dr Naidoo attached annex A (titled '*Notes on the Estimation of Time Interval Since Death*') to his report to explain his conclusions.<sup>767</sup>

395. Naidoo doubted the reliability of core body temperature as an accurate measure of time of death. The reading of 35.3c at 06h59 at the death scene

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<sup>762</sup> Record: Volume A2, page 9, line 19.

<sup>763</sup> Record: Volume [A3](#), page 27, line 1 and Record: Volume A3, page 28, line 8.

<sup>764</sup> Record: Volume [B1](#), page 763.

<sup>765</sup> Record: Volume A3, page 28, line 20.

<sup>766</sup> Record: Volume [L4](#), page 2712, para 31a.

<sup>767</sup> Record: Volume [L4](#), page 2725, page 23 of report.

was approximately 1,7 degrees lower than the assumed normal rectal temperature of 36,9c.<sup>768</sup>

396. Naidoo noted that in theory, it is assumed that the normal core temperature is 37c and there is a post-death temperature plateau of between 1 and 2 hours, and thereafter there is a steady post-mortem temperature drop of approximately 1c per hour. Using the first temperature reading of 35,30c, this is a 1,7c drop from normal core temperature. This must be added to the plateau which extrapolates to between 2,7 to 3,7 hours since death, which is close enough to Gordon's estimate. However, this method takes no environmental and other conditions<sup>769</sup> into consideration and is a very rough rule-of-thumb process.<sup>770</sup>

397. If the formula is applied to the temperature reading of 27c, which was recorded at 10h23 at the beginning of the autopsy, the rough calculation would be an interval of some 11 to 12 hours since death.<sup>771</sup> This would bring the time of death to between 10h23 and 11h23 the night before.<sup>772</sup>

398. Dr Naidoo applied the more stringent "Henssge's nomogram method"<sup>773</sup> to Prof Gordon's first and second temperature measurements, employing an

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<sup>768</sup> Record: Volume [L4](#), page 2725, page 23 of report.

<sup>769</sup> Such as Haffejee's small physique, surrounding temperature, conditions on the cement floor in the cell.

<sup>770</sup> *Ibid*

<sup>771</sup> 2021 Transcript bundle, page 299, line 14.

<sup>772</sup> Record: Volume [L4](#), page 2726, page 24 of report.

<sup>773</sup> Henssge C, et al. [\*The Estimation of the Time Since Death in the Early Postmortem Period\*](#) (1995): Edward Arnold.

average environmental temperature of 18,5c and arrived at the result of a time lapse of 7 and 11 hours respectively since death.<sup>774</sup>

399. Dr Naidoo viewed the state of full development of rigor mortis as a more reliable measurement of the time of death.<sup>775</sup> Prof Gordon's finding in annex D of the PM Report was that rigor mortis" *had developed completely*" and "*fully developed*" in all the joints he described. Naidoo concluded that complete rigidity happens between 6 to 10 hours after death – with a mean at 8 hours, relying on the well-researched text of Henssge (1995).<sup>776</sup> This would translate to death at between 9pm and 1am that night.<sup>777</sup>

400. In his testimony Naidoo narrowed his estimates to time of death to be between 22h00 and 00h00 with a possible mean of 22:50.<sup>778</sup> He concluded that the evidence given in the first inquest by Constables Naude and Madlala, who claim to have saw Haffejee alive at 3 am and only dead at 4 am, must be "*seriously doubted*" and must be challenged.<sup>779</sup>

### ***Dr Shakeera Holland***

401. In her report, Dr Holland noted that in the PM Report, the Port-Mortem Interval (PMI)<sup>780</sup> was stated as "3 to 4 hours". However, she noted that Prof Gordon only considered the changes in the body temperature to assess the PMI.<sup>781</sup>

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<sup>774</sup> *Ibid*

<sup>775</sup> [2021 Transcript bundle](#), page 299, line 7.

<sup>776</sup> Henssge C, et al. [The Estimation of the Time Since Death in the Early Postmortem Period](#) (1995): Edward Arnold. Table 5.3 and text on page 152.

<sup>777</sup> Record: Volume [L4](#), page 2726, page 24 of report.

<sup>778</sup> 2021 Transcript bundle, page 300, line 2.

<sup>779</sup> Record: Volume [L4](#), page 11 of report.

<sup>780</sup> The period between time of death and the discovery of the corpse.

<sup>781</sup> Record: Volume [G28](#), page 1801, page 13 of the report.

402. This contrasted with Gordon's scene report which described that the upper limbs, and the lower limbs were in full rigor mortis. Relying on the research of Shkrum & Ramsay (2007)<sup>782</sup>, she noted that rigor is established in all joints varies from 2 to 20 hours with a mean of  $8 \pm 1$  hour.<sup>783</sup>

403. Referring to Saukko & Knight (2004)<sup>784</sup> she noted that rigor mortis in 'average' conditions might be expected to reach a maximum within 6-12 hours.<sup>785</sup> The finding of full rigor mortis in the large muscles like the upper and lower limbs would significantly increase the PMI.<sup>786</sup>

404. Dr Holland concluded that the longer PMI was not consistent with the explanation of the circumstances of death as given by the police witnesses in the first inquest.<sup>787</sup>

405. If the evidence of the two forensic pathologists is accepted, as we submit it must be, then Haffejee died while in the hands of the Security Branch.

## CONTRASTING THE EXPERT EVIDENCE WITH THE POLICE EVIDENCE

406. All the police officers who testified in the first and reopened inquests insisted that Haffejee died in cell 2 at Brighton Police Station sometime after he was locked up around midnight. The charge office constables claim that Haffejee

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<sup>782</sup> Shkrum, Michael & Ramsay, David. (2007). *Forensic Pathology of Trauma: Common Problems for the Pathologist*. 10.1007/978-1-59745-138-3.

<sup>783</sup> Record: Volume [G28](#), page 1802, page 14 of the report.

<sup>784</sup> Saukko, P. and Knight, B. (2004) *Knight's Forensic Pathology*. 3rd Edition, Oxford University Press Inc., London, 39-40, 421.

<sup>785</sup> [2021 Transcript bundle](#): Page 435, line 21 and exhibit [G28](#), p 1802, p 14 of the report.

<sup>786</sup> 2021 Transcript Record: Page 435, line 23.

<sup>787</sup> 2021 Transcript Record: Page 435, line 25.

died between 3 and 4 am, since he was alive at the 3 am inspection and was found dead at 4 am. Their evidence is in direct conflict with the expert evidence of Doctors Naidoo and Holland who assert that Haffejee must have died several hours earlier.

407. Former SB officer Mohan Gopal insists in his evidence that Haffejee was alive when taken to his cell at midnight and that he was likely murdered in his cell sometime thereafter.<sup>788</sup> Gopal asserted that the evidence of Naude and Meyer ought not be accepted because they would have collaborated with whoever inflicted the injuries on Haffejee in his cell.<sup>789</sup>

408. Gopal appeared to be adamant that Haffejee did not commit suicide but was murdered.<sup>790</sup> This was because:

408.1. Haffejee was strong psychologically<sup>791</sup> and he did not break down in interrogation.<sup>792</sup>

408.2. Haffejee was very thin and after being beaten he was weak.<sup>793</sup>

408.3. It was suspicious that Maj. Benjamin shushed him when he enquired about how Haffejee died.<sup>794</sup> The SB would not go to such lengths if it was actually suicide.<sup>795</sup>

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<sup>788</sup> [2021 Transcript bundle](#), page 955, line 17; page 970, line 12; page 971, lines 18 – 25.

<sup>789</sup> 2021 Transcript bundle, page 922, line 2.

<sup>790</sup> 2021 Transcript bundle, page 955, line 23.

<sup>791</sup> Record : Volume [G26](#), page 1730, para 19.

<sup>792</sup> 2021 Transcript bundle, page 956, line 13.

<sup>793</sup> 2021 Transcript bundle, page 956, line 7.

<sup>794</sup> 2021 Transcript bundle, page 964, line 18.

<sup>795</sup> 2021 Transcript bundle, page 965, lines 1 – 12.

409. It appears then that Gopal accepts that Haffejee was murdered and did not commit suicide. However, he insists that this did not take place in his presence.

410. Notwithstanding the conflict between Gopal's version and the views of the aforesaid pathologists, Gopal and his lawyer did not seek to rebut such evidence with their own expert report, nor was any application brought to re-examine Drs Naidoo and Holland.

411. The legal team for the family carried out an exercise to align the age of Haffejee's injuries with the possible times of death. In this regard Drs Holland and Naidoo did not challenge the age of the injuries in the histology report attached to the PM report.<sup>796</sup> The histopathological investigation estimated that the ages of the injuries were between 4 and 12 hours before death. This analysis was put to Gopal to solicit his response.<sup>797</sup>

412. Professor Gordon claimed that Haffejee died between 3 and 4 am in the morning. If we do the subtraction of 12 hours. The outer limit, or the earliest time that the injuries could have taken place on Gordon's estimation of death at 4 am would have been 4 pm in the afternoon. If death occurred early, say 3.30 am then the earliest injuries could only have taken place at 15.30 in the afternoon. The latest time of injuries (subtracting 4 hours) would have been 3 am in the morning. It was put to Gopal that we had to dismiss the opinion of Prof Gordon because on Gopal's version there were very serious assaults

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<sup>796</sup> Annex E to the PM Report ([B1](#)) at page 764 of the Record.

<sup>797</sup> [2021 Transcript bundle](#), pages 1021 - 1037.

that had taken in the morning, which intensified through morning and after lunch. At that time, according to Gopal, Haffejee was in such pain that he was doubled over and couldn't even put his own pants on. Gopal accepted that very serious assaults had taken place in the morning, long before mid or late afternoon.<sup>798</sup>

413. Then the expert opinions of Drs Holland and Naidoo were put to Gopal. They both concurred that based on the assessment of fully developed rigor mortis, that death had occurred between 6 and 12 hours prior to the declaration of death by Prof Gordon at 06:59 in the morning. The mean time would have been approximately 8 hours, working back from that time. Gopal was reminded that the 2 pathologists prepared their reports independently of each other and not confer with each other. On their estimations the latest time of death would have been at 01:00 in the morning and the earliest time of death would have been at 19:00 the night before. The mean time of death would have been at 23:00 the night before.<sup>799</sup>

414. Applying the ages of the injuries (4 to 12 hours before death), if death occurred at 19:00 and we subtract 12 hours, that takes us to 07:00. in the morning and we must dismiss that possibility because on Gopal's evidence, there were no assaults taking place at that time, as the arrest was only made at approximately between 07:47 and 08:00 and Haffejee offered no resistance to his arrest.

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<sup>798</sup> [2021 Transcript bundle](#), pages 1021 line 10 – 1022 line 11.

<sup>799</sup> [2021 Transcript bundle](#), pages 1022 line 17 – 1023 line 15.

415. If we take the mean time of death as being 11 pm and we subtract 12 hours, then the earliest injuries would have taken place at 11 am in the morning. If we subtract 4 hours from 23:00, then the latest time injuries were sustained was at 19:00. So, on the mean time of death, we have injuries being inflicted between 11 am and 7 pm. It was put to Gopal that this appeared to be an acceptable range because it was consistent with his evidence in his statement and his testimony.<sup>800</sup> We accordingly submit that the most serious injuries occurred in this time range.

416. If we take the latest time of death, 01:00 in the morning and we subtract 12 hours, that takes us to 1 p.m. in the afternoon. It was put to Gopal that we must dismiss this time of death because on his version, Haffejee received serious assaults at least from mid-morning. On Gopal's version at midday, when Colonel Coetze came, and instructed Haffejee to get dressed, he was already doubled over in pain. So, the infliction of those injuries took place well before 13:00 which means he could not have died at 01:00.<sup>801</sup>

417. If we take Dr Naidoo's report where he considers the time of death based on core body temperature measurements, his calculation is that the time of death was between 10:23 p.m. and 11:23 p.m. at night. If we subtract 12 hours from 10.23 pm, that gives us 10:23 am in the morning. If we subtract the four hours, that give us 6.23 p.m. in the evening. It was put to Gopal that this range fitted "nicely" with his evidence. Applying the formula to time of death at 11:23 p.m.

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<sup>800</sup> [2021 Transcript bundle](#), page 1023.

<sup>801</sup> [2021 Transcript bundle](#), page 1024.

then we get to the earliest infliction of injuries at 11:23 a.m. and the latest at 7:23 p.m.<sup>802</sup>

418. It was put to Gopal that we would submit to this Court that the most likely time of death, was during the late night of 2 August 1977, given that when one compares the age of the injuries, the most likely time of infliction, which is also consistent with his evidence, was from mid-morning to early or mid-evening. It was put to him that, on the objective evidence, this time range “*makes eminent sense.*”<sup>803</sup> Gopal disputed this evidence, claiming that “*I saw what I saw*”.<sup>804</sup>

419. The expert evidence on the question of time of death also materially contradicts the evidence of the charge office personnel, Constables Meyer, Naude and Madlala. They claimed that at midnight when Haffejee was booked in he was alive and in good health with no complaints. They also claimed that he was alive during their hourly cell visits at between 01:00 and 03:00 and was only found dead at 04:00.

420. We submit that this Honourable Court must accept the evidence of the two forensic pathologists. Their evidence has not been rebutted. As we will set out below there are cogent reasons for Gopal and the other surviving police officers to be untruthful on the question of time of death.

421. It is apparent that Professor Isidore Gordon made fundamental errors in his post-mortem report, most notably in relation to time of death. It must be asked

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<sup>802</sup> *Ibid.*

<sup>803</sup> [2021 Transcript bundle](#), page 1025 lines 1 – 8.

<sup>804</sup> [2021 Transcript bundle](#), page 1025 line 15 to page 1026 line 2.

whether Gordon was simply incompetent, or whether he, like Magistrate Blunden, was politely averting his gaze.

## **SECURITY BRANCH COVER UP**

422. According to the evidence of Brigadier Clifford Marion (Ret.) ("Marion") the investigation of the death of Haffejee amounted to little more than a cover-up.
423. Marion is employed by the Foundation for Human Rights to investigate apartheid-era crimes. In this capacity he was the family's private investigator into Haffejee's death.
424. Marion has more than 40 years policing experience. He was the Regional Head of Investigations for the Directorate of Special Operation (Scorpions) in KwaZulu Natal. Between 2011 and 2017 he was the Provincial Head of Detective Services for Kwa Zulu Natal.<sup>805</sup>
425. In his affidavit and his testimony, Marion provided the context in which Haffejee died in detention, including an overview of applicable security laws, deaths in SB detention, the role of inquest courts, the modus operandi of the SB and their routine covering up of their crimes.<sup>806</sup>

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<sup>805</sup> Record: Volume [L21](#), paras 6 – 9.7.

<sup>806</sup> Record: Volume [L21](#), paras 10 - 45.

***Assessment of the investigation***

426. In Marion's view the SAP investigation was not only substandard but aimed at concealing what really happened between 2 and 3 August 1977.<sup>807</sup> He noted that:

426.1. Affidavits were only recorded from Petrus Du Toit and James Taylor of the Security Branch.

426.2. There were other SB officers who were involved in one or more of the following: intelligence gathering, surveillance, investigation, the abduction, interrogation, torture and subsequent death. These included:

- 426.2.1. Lieutenant Vic McPherson,
- 426.2.2. Brigadier Steenkamp, Commander SB, Durban,
- 426.2.3. Colonel Ignatius Gerhard Coetzee, 2IC SB Durban,
- 426.2.4. Major Joseph Benjamin (formerly Moonsamy),
- 426.2.5. W/O Shunmugam (Schrewds) Govender,
- 426.2.6. Sergeant V R Naidoo; and
- 426.2.7. Constable Mohan Deva Gopal.

426.3. Had statements been taken from them if they had been subject to the scrutiny of cross examination and a fuller picture could have emerged.

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<sup>807</sup> Record: Volume L21, page 2992, para 49.

426.4. Similar fact evidence was not led at the first inquest, even though other detainees had been brutally assaulted by the SB during the 1970s. Had similar fact evidence been explored in the first inquest it would have demonstrated a pattern of routine assault, torture and ill treatment of detainees by the SB.<sup>808</sup>

427. Marion set out the minimum standards that the investigation should have adhered to.<sup>809</sup>

427.1. There must be a thorough crime scene and incident investigation.

427.2. All available evidence must be collected and presented to the inquest court.

427.3. All potential witnesses must be interviewed, their affidavits recorded, and they must be made available in court.

427.4. All material evidence must be properly marked and preserved so that the subsequent chain of evidence can be demonstrated.<sup>810</sup>

428. According to Marion not one of these minimum standards were complied with. At the time the investigation commenced it was clear that the investigators simply wished to demonstrate that Haffejee committed suicide. This fell short of the required level of impartiality which requires an open mind to the cause of death. The selected investigator Major Schutte was based at the Criminal

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<sup>808</sup> Record: Volume L21, pages 2992 – 2993, sub-paras 49.1. – 49.5.

<sup>809</sup> Record: Volume [L21](#), paras 50 – 52.5.

<sup>810</sup> Record: Volume [L21](#), pages 2993 – 2994, sub-paras 52.1. – 52.5.

Investigation Division at Durban District headquarters and was probably well known to the SB members involved.<sup>811</sup>

429. In Marion's view Schutte's investigation was not independent as he investigated the matter with a view to ensuring a 'finding' of suicide'. Du Toit in his testimony admitted that Security Branch's Divisional Head Colonel Herman Stadler recorded his statement and later returned and signed a typed statement.<sup>812</sup>

430. Marion called into question the role of Security Branch's Divisional Head, Col. Stadler. Where a SB member is a potential suspect in a crime his statement should have been taken by a member of the detective branch. Du Toit testified that Col. Stadler first recorded his statement and only later returned to sign a typed version of it.<sup>813</sup> TRC records show that Col. Stadler was considered to be the Security Branch's "*chief theoretician, almost intellectual*".<sup>814</sup>

### ***Crime scene investigation***

431. Brig. Marion, in his evidence issued a scathing review of the crime scene investigation.

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<sup>811</sup> Record: Volume [L21](#), page 2994, para 53.

<sup>812</sup> Record: Volume [A3](#), original p27, paginated page 427.

<sup>813</sup> Record: Volume [L21](#), page 2994, para 54.

<sup>814</sup> Record: Volume L21, page 2994, para 57.

Presence of non-investigators at the scene

432. According to the testimony of Constable Meyer, Du Toit and Taylor, who played central roles in the interrogation, were present in the cell, prior to the forensic investigation proceeding.<sup>815</sup>

433. The scene was not cordoned off resulting in no-one being allowed on the scene.<sup>816</sup>

434. Const. Meyer testified that the investigator attended the scene together with the Station Commander.<sup>817</sup> Marion described the presence on the scene of multiple officers, including the SB interrogators, as "highly improper".<sup>818</sup>

435. According to Marion, the duty of the first commissioned duty officer at the scene is to cordon off and secure the scene for forensic investigation. There was no evidence that this was done.<sup>819</sup> Meyer testified that the forensic expert photographer attended the scene after Du Toit had been on the scene.<sup>820</sup>

436. Constable Naude, one of the charge office policemen on duty at the time, conceded that no person should have entered the cell until the forensic investigation was complete.<sup>821</sup> He conceded that it was a possibility that the Security Branch could, as a result, contaminate and disturb the evidence. He was surprised to hear that no fingerprinting was done.<sup>822</sup>

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<sup>815</sup> Record: Volume L21, page 2996, para 64; 2021 Transcript, page 667, lines 11 – 19

<sup>816</sup> 2021 Transcript Bundle, page 1071, line 7.

<sup>817</sup> 2021 Transcript Bundle, page 667, lines 1 – 10.

<sup>818</sup> Record: Volume [L21](#), page 2996, para 65.

<sup>819</sup> Record: Volume L21, page 2996, para 66.

<sup>820</sup> 2021 Transcript bundle, page 668, lines 4 – 6.

<sup>821</sup> [2021 Transcript bundle](#), page 1113, line 14.

<sup>822</sup> 2021 Transcript bundle, page 1113, lines 15 – 20.

437. Meyer also conceded that it was only after the Security Branch did their own investigations in the cell did the photographer, fingerprint experts<sup>823</sup> and other forensic personnel entered the cell.<sup>824</sup> He further conceded that it would have been improper because the scene could have been disturbed before forensics could have done their examination.<sup>825</sup>

### Fingerprints

438. Marion observed that there was no evidence that the grille had been dusted for fingerprints to determine whether Dr Haffejee had in fact touched and handled the bars to attach himself to the grille as alleged by the police. The lifting of prints could have pointed to who might have been present in the cell.<sup>826</sup>

439. This was especially important to do prior to anyone entering the cell.<sup>827</sup> For example it would have been crucial to determine whether any other prints were present on the lower grille, such as those of the SB officers. In Marion's view the failure to do fingerprinting was a deliberate attempt not to expose the persons who had touched the grille.<sup>828</sup>

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<sup>823</sup> There is no evidence of fingerprints being taken.

<sup>824</sup> 2021 Transcript bundle, page 668, line 5.

<sup>825</sup> 2021 Transcript bundle, page 668, line 11.

<sup>826</sup> Record: Volume [L21](#), page 2996, para 67.

<sup>827</sup> [2021 Transcript bundle](#), page 1073, line 22.

<sup>828</sup> 2021 Transcript Bundle, page 1072, line 13.

440. It would also have been important to dust the grille for marks, such as smudged and wipe marks, which may have pointed to an attempt to remove fingerprints.<sup>829</sup>

441. We submit that the failure to fingerprint the death scene is one of the clearest indicators of the police cover up.

### Crime scene photographs

442. Marion stated that the purpose of photographs was to record the scene as it was found.<sup>830</sup> The photos taken did not come close to achieving this basic objective. Marion noted that:

442.1. Photos were only taken of the immediate vicinity of the grille door and the rung from which Dr Haffejee was found attached by his trousers.<sup>831</sup>

442.2. Photographs were not taken of the whole cell, in particular the highest grille bar of the cell door, the grille window above the toilet and other grille window.<sup>832</sup> These photographs would have prompted further questions before the first inquest.<sup>833</sup>

442.3. No photographs were taken of the interrogation room.<sup>834</sup>

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<sup>829</sup> 2021 Transcript Bundle, page 1074, line 21.

<sup>830</sup> Record: Volume L21, page 2995, para 59.

<sup>831</sup> Record: Volume [B2](#), pages 783 – 789; Exhibit [L21](#), page 2996, para 59.

<sup>832</sup> Compare with Inspection in loco Report at Vol [L3](#), p 2673. See photos 22, 23 and 27.

<sup>833</sup> Record: Volume L21, page 2996, para 60.

<sup>834</sup> Record: Volume L21, page 2996, para 61.

443. In contrast with the paucity of the death scene photos, the police took several photos of the area of arrest and the parking lot at the North Pier.<sup>835</sup> We submit this was done to bolster the Security Branch's fabrication that Haffejee sustained injuries in scuffles at these scenes. These photographs were produced at the first inquest but are now missing and do not form part of the current record.

Traces of blood and other bodily fluid

444. Marion noted that the cell, interrogation room and SB vehicles ought to have been examined for traces of blood and fluid, since the reports of Drs Gordon and Biggs pointed to extensive injuries. In his view this was deliberately not done to help with the cover-up and protect the SB members involved.<sup>836</sup>

Evidence ought to have been collected and logged

445. There is evidence on record at the first inquest that 'exhibits' were found at the scene. These are the Shirt ('hemp') (exhibit G2), a Jacket ('baadjie') (G3), Underpants (exhibit 2), Trouser (exhibit 3), Vest (exhibit 4), Handkerchief (exhibit 5), Powder Blue Safari Suit (exhibit 6), pair of shoes (exhibit 7) and a pair of socks (exhibit 8). These exhibits were apparently handed to Lothar Paul Neethling, and he personally transported them to the Forensic Laboratory in Pretoria for analysis.

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<sup>835</sup> These photographs were produced at the first inquest and are listed under item number "Exhibit K 1 – 7" in Record: Volume L12, page 2915.

<sup>836</sup> Record: Volume L21, page 2996, para 69.

446. The question remains unresolved as to why Haffejee supposedly had an extra set of clothing. Not only did he have a safari suit (which comprises a top and bottom) and jacket but he also had separate shirt and trousers. The evidence suggests he was arrested in a short-sleeved safari suit but died in long sleeved patterned shirt. It is not known whether the trousers used as a ligature was the safari suit bottom or the separate pair of trousers (exhibit 3).

447. We note that pieces from the long sleeve shirt were cut and tested for blood, but not the safari suit, which was most likely stained with blood. In order not to interrupt the flow of these arguments we attach a detailed analysis of this question annexed to these heads as annex "A". In short, we submit, that on the probabilities, the Indian members that were sent out for "investigation" on the night of 2 August 1977, were in fact sent to Haffejee's flat to collect fresh clothing.

448. According to Taylor, the Indian members returned just after midnight.<sup>837</sup> If death had occurred between 10.23 and 11pm, this timing would fit the unfolding story. Alternatively, if earlier in the evening Haffejee had become comatose or unresponsive, the plot could have been hatched at that time, and the Indian members despatched somewhat earlier to retrieve fresh clothes from the flat.

449. When the suicide was staged, the safari suit was removed and Haffejee was placed into the fresh clothing. In this way testing for blood from the new shirt

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<sup>837</sup> Vol A3, page 135, lines 19 – 26.

would not reveal any blood traces. We submit that it was no coincidence that Neethling tested the long sleeve for traces of blood but not the safari suit.

450. There is evidence on record at the first inquest that these exhibits such as the shirt, jacket and vest were handed to Lothar Paul Neethling. Neethling personally transported them to the Forensic Laboratory in Pretoria for analysis.<sup>838</sup>

451. In Neethling's evidence at the first inquest, he could not remember who handed the box of evidence to him.<sup>839</sup> According to Marion, there was no evidence of who recovered the exhibits at the scene, nor were there any statements proving the chain of evidence and the integrity of the exhibits.<sup>840</sup>

452. Neethling said that he cut pieces of cloth from the clothing handed to him and he examined these pieces of clothing for blood.<sup>841</sup> No evidence was led as to how Neethling came into possession of the exhibits. No evidence was led as to who visited and investigated the scene. There is no indication as to who retrieved the exhibits from the scene and from where they came from.

453. Major Schutte's affidavit (exhibit "CC") was handed in by consent at the first Inquest. This affidavit is one of the many documents that has gone missing. While the chain of custody may have been reflected in his affidavit, no evidence was led as to whether the exhibits were properly collated, marked and logged.

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<sup>838</sup> Record: Volume A3, page 60, lines 19 – 20.

<sup>839</sup> Record: Volume A3, page 60, lines 29 – 31.

<sup>840</sup> Record: Volume L21, page 2996, para 71.

<sup>841</sup> Record: Volume A3, page 63, lines 8 – 9.

454. Accordingly, the integrity of the exhibits is open to serious question. It cannot be conclusively stated that the items examined by Neethling were in fact recovered from the incident scene at cell number 2.<sup>842</sup>

#### Transporting Prof Gordon to the Police Station

455. Prof. Isidor Gordon was asked by Brig. Steenkamp to attend at the scene.<sup>843</sup> Taylor and another Security Branch member picked up Gordon, supposedly an independent witness,<sup>844</sup> from his home and transported him to the Brighton Beach cells. According to Marion, this was improper, and Gordon should have come to the scene on his own, not accompanied by Security Branch members, especially not those who were persons of interest.<sup>845</sup>

456. Its highly likely that the incident was discussed with Gordon.<sup>846</sup> In addition, during that ride, an amicable or friendly association could have developed. The car ride to the police station could have helped shaped Prof. Gordon's view of the scene.<sup>847</sup>

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<sup>842</sup> Record: Volume L21, page 2998, para 72.

<sup>843</sup> Record: Volume A3, page 186.

<sup>844</sup> 2021 Transcript Bundle, page 1070, line 8.

<sup>845</sup> Record: Volume [L21](#), page 2996, para 63.

<sup>846</sup> 2021 Transcript Bundle, page 1070, line 14.

<sup>847</sup> 2021 Transcript Bundle, page 1070, line 22.

### Description of the scene

457. Remarkably, Major Schutte, the investigating officer, did not provide a description of the incident scene at the first inquest. Only the key persons of interest, Du Toit and Taylor, gave evidence describing the scenes.<sup>848</sup>

### Interview of other detainees

458. No interviews of fellow detainees or prisoners were recorded on that morning in question. Marion established that one Billy Dorasamy was detained in a cell close to Haffejee, but he was not interviewed. Attempts to trace Dorasamy for the reopened inquest were fruitless. Had this statement and that of other detainees been recorded at the time, it could have shed light on the happenings and movements in the cell block.<sup>849</sup>

### Criminal or disciplinary enquiries

459. Aside from a criminal investigation, Marion asserted that there should have been an internal or disciplinary inquiry to determine whether any police member contravened any standing orders or police regulations in relation to the apprehension, interrogation, and death of Haffejee. For example, the holding of Haffejee in a basement for some 16 hours, without completing any official paperwork of his arrest and detention was illegal. No such inquiry was held, and no questions were raised.<sup>850</sup>

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<sup>848</sup> Record: Volume L21, page 2996, para 62. Naude was only asked questions in relation to his discovery of the body in the cell.

<sup>849</sup> Record: Volume [L21](#), page 2996, para 68.

<sup>850</sup> Record: Volume L21, page 2998, para 75.

### ***Collusion and fabrication of evidence***

460. There is direct evidence of the police cover-up. As discussed above, Gopal testified in the reopened inquest that on the morning of 3 August 1977, Captain Du Toit told all those present in the interrogation they may have to testify at the inquest everyone should have their stories prepared.<sup>851</sup>

461. The cover story included the pointing out<sup>852</sup> where there was another scuffle took place. Du Toit told the team he will be advising what each team member to say and called them in one by one.<sup>853</sup> Gopal was instructed to say that Haffejee was not handcuffed and tried to escape, got violent and had to be restrained and forced into the vehicle, striking his body against parts of the car. Gopal had to record this story on a four-track cassette.<sup>854</sup>

462. Ultimately only Du Toit and Taylor were called to give evidence at the first inquest. Gopal and other officers of colour who were present in the interrogation were not permitted to give evidence. Magistrate Blunden found no fault in the evidence provided by Taylor and Du Toit because their versions corroborated each other.<sup>855</sup>

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<sup>851</sup> Record : Volume G26, page 1730, para 18.

<sup>852</sup> 2021 Transcript bundle, page 781, lines 4 – 8.

<sup>853</sup> 2021 Transcript bundle, page 809, lines 22 – 25.

<sup>854</sup> [2021 Transcript](#) bundle, page 809, line 21.

<sup>855</sup> Record: Volume A2, page 4, lines 24 – 30.

## THE CASE FOR FOUL PLAY

463. We submit that the case for foul play is overwhelming.

### ***The forensic case***

464. Once this Court accepts the expert evidence of Drs Naidoo and Holland that the time of death was not between 3 and 4 am but several hours earlier (because of the fully developed rigor mortis) then the police version must be dismissed in its entirety.

465. Relying on the estimates of time of death by Drs Naidoo and Holland and matching these estimates with the ages of the injuries (determined through histological analysis) we can get to a reasonably accurate picture of what transpired.

466. What is not in dispute are the approximate times of arrest, arrival at Brighton Police Station and the commencement of the interrogation. According to Gopal they arrived at Brighton Police Station at around 9.00 am,<sup>856</sup> while Du Toit and Taylor said in their evidence that the interrogation began at approximately 9.20 am.<sup>857</sup>

467. Gopal testified that the assaults on Haffejee began about 15 minutes into the interrogation, around 9.35 pm and got progressively worse. These included open palm slaps, punches and kicks.<sup>858</sup> It can be safely assumed on the basis

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<sup>856</sup> 2021 Transcript bundle, page 753, line 16.

<sup>857</sup> Volume A3, page 96, lines 4 – 7.

<sup>858</sup> 2021 Transcript bundle, page 764, line 4

of Gopal's evidence that the most serious assaults had commenced between 10 and 11 am and continued into the evening.

468. Since the uncontested histological evidence placed the ages of the injuries at 4 to 12 hours before death, we can work out the most likely time of death. Prof Gordon's estimate of time of death must be dismissed because on his estimate, the earliest injuries would only have taken place between 3 and 4pm in the afternoon. According to Gopal serious torture had commenced by mid-morning.

469. Although we have misgivings about aspects of Gopal's evidence, which we will deal with below, we believe the Court can accept much of what he says in relation to the torture of Haffejee. His account of the torture of Haffajee is consistent with the medical evidence. In this regard the Court's attention is drawn to the Supplementary Report of Dr Naidoo dated 24 February 2021.<sup>859</sup> In this report Dr Naidoo was asked to give his views on the abuse of Haffejee as related by Gopal in his affidavit. Dr Naidoo concluded that "*Gopal's descriptions of the assaults on the deceased are fully in keeping with my independent observations of the nature of the injuries, with no areas of discordance.*"<sup>860</sup>

470. The estimated mean time of death of 11pm by Dr Naidoo, which puts the earliest injuries occurring at 11am in the morning, aligns with Gopal's evidence of the terrible abuse inflicted at this time. The estimate by Dr Naidoo

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<sup>859</sup> Record: Vol [L5](#), page 2730

<sup>860</sup> Record: Vol [L5](#), page 2732, para 9 of the report.

(based on temperature reading)<sup>861</sup> of death at 10.23pm, which brings the earliest injuries to 10.23am is even closer to Gopal's account of when the serious assaults began.

471. We accordingly submit that the most probable time of death was between 10.23pm and 11pm on the night of 2 August 1977. We urge this Honourable Court to make such a finding. Should this Court do so, it must dismiss the claims of the police of what transpired thereafter in the charge office and cell number 2. It must also make a finding that Haffejee died while in the hands of the Security Branch.

***Family version consistent with forensic evidence***

472. The forensic evidence is entirely consistent with the family version of what happened to Haffejee following his arrest on the morning of 2 August 1977.

473. It is now abundantly clear that the Security Branch sought to bludgeon Haffejee into submission as quickly as possible to extract information on others.

474. To keep Haffejee's apprehension under wraps the SB did not take him to SB HQ in Fisher Street, downtown Durban. They took him rather to a police station off the beaten track, Brighton Beach Police Station on the Bluff. He was not booked in. The SB wanted to make sure that nobody knew he had been apprehended.<sup>862</sup> They did not take him to an office or interrogation room.

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<sup>861</sup> Using the Henssge Nomogram calculation. See annex A of Dr Naidoo's report at Vol [L4](#), page 2703.

<sup>862</sup> 2021 Transcript bundle, page 883, line 15.

The SB had other plans for him. They needed a place with total privacy where things could get messy. This is why they took him to an underground basement.<sup>863</sup>

475. Not long after the interrogation started in the basement storeroom the SB unleashed a barrage of unrelenting brutality against Haffejee. Like many other underground activists linked to the ANC and SACP who had received training on how to handle detentions, Haffejee was expected to hold out for at least 24 hours.<sup>864</sup> By all accounts he did not break. This enraged his interrogators who visited even more barbarity on him.

476. The medical evidence demonstrates that by the end of his interrogation he had been so battered he was likely concussed, or in a state of unconsciousness,<sup>865</sup> induced by head trauma from blunt force impact,<sup>866</sup> and we submit probably not responding to attempts to revive him.<sup>867</sup>

477. Given his chest and abdominal trauma he would have been doubled up in pain and breathing with great difficulty.<sup>868</sup> He was probably close to death at that point and may have already died from cardiac concussion.<sup>869</sup>

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<sup>863</sup> 2021 Transcript bundle, page 884, lines 1 - 14.

<sup>864</sup> Affidavit of Mohamed Bhamjee, Vol G5, p 1423, para 30; 2021 Transcript bundle, page 746, line 20.

<sup>865</sup> Record: Volume L4, page 2718, para e.

<sup>866</sup> 2021 Transcript bundle, page 453, lines 13 – 20.

<sup>867</sup> 2021 Transcript bundle, page 259, line 2 – 7.

<sup>868</sup> 2021 Transcript bundle, page 449, lines 1 – 16.

<sup>869</sup> 2021 Transcript bundle, page 332, line 1 – 5.

478. The medical evidence demonstrates that he did not die from hanging but from cardiac arrest possibly arising from neck constriction,<sup>870</sup> which was a common form of police torture.

479. Since time of death has been reliably placed as between 10.23 and 11.00 pm, or thereabouts, this places Haffejee squarely in the hands of Security Branch. The probabilities are then overwhelming that Haffejee either:

- 479.1. died under torture as result of a cardiac incident, or
- 479.2. fell into unconsciousness or a coma due to head trauma and could not be revived.

480. In respect of the former, the suicide would then have been staged to mask the death under torture. In respect of the latter, in order to mask the brutal torture, the police would have carried the comatose or unresponsive Haffejee to cell no.2, attached him to the lower grille bar in the cell and murdered him through ligature constriction.

481. In relation to the second possibility, we note that Dr Naidoo observed that:

- 481.1. Concussion could render a victim unconscious from a few minutes to several hours.<sup>871</sup>

- 481.2. Brain injury could not be ruled out, and if it did happen, it would not have been visible or detectable at the post-mortem.<sup>872</sup>

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<sup>870</sup> 2021 Transcript bundle, page 311, line 1 – 2.

<sup>871</sup> 2021 Transcript bundle, page 326, lines 10 – 23

<sup>872</sup> 2021 Transcript bundle, page 326, line 24 – page 327, line 14

481.3. If brain injury had occurred, even if Haffejee emerged from an unconscious state, he may have remained unresponsive, and may not have been able to talk or walk.<sup>873</sup>

482. It is likely that the Security Branch used the time between time of death late night of 2 August through till the early hours of the morning of 3 August, to manufacture their cover story and execute their plans. This would have included concocting the tall tales of scuffles at the time of arrest and the fabricated North Pier excursion to explain the multiple injuries visible on Haffejee. They would have had some 5 to 6 hours, or more, before the detective branch and Prof Gordon were summoned.

483. The evidence on the alleged mechanism of death provided by the mechanical engineer, Thivash Moodley, indicated that ligature constriction from the lowest rung of the grille gate was the most difficult and least likely method of suicide, given the opportunities of attaching the ligature to higher rungs or from one of the window grilles. It would however have made sense if third parties were involved since Haffejee would not have to be lifted and held.

484. Since the Security Branch were the feared elites of the police, they would have encountered no resistance from the uniform branch members who would have done what they were told to do. In this regard, we have searched high and low in the record and come across no exhibit containing an Occurrence

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<sup>873</sup> 2021 Transcript bundle, page 327, lines 15 – 19

Book (OB) entry booking in Haffejee at midnight, or indeed at all. Any such OB entry would have been fraudulent.

485. No evidence was led at the first inquest suggesting that Haffejee was suicidal. He did not break or confess. He betrayed nobody. There is no evidence that the SB arrested or acted against anyone based on information extracted Haffejee.

486. Family members and friends testified that it would have been totally uncharacteristic for Dr Haffejee to have taken his own life. Sarah Lall<sup>874</sup> and Ismail Haffejee<sup>875</sup> and friends such as Dr Akoo<sup>876</sup> are adamant that he would not have taken his own life. In their view he did not fit the profile of someone who would commit suicide.

487. Eyewitnesses, such as Sarah Lall,<sup>877</sup> Ismail Haffejee,<sup>878</sup> and Dr Akoo,<sup>879</sup> testified to his well state of being, and physical and mental health prior to his detention. This was in stark contrast to their observations of his body at the mortuary<sup>880</sup> and the washing of the body.<sup>881</sup>

488. As demonstrated by Brig Marion, the investigation that followed was not just substandard in nature, it was specifically aimed at suppressing the truth.

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<sup>874</sup> [2021 Transcript](#) Bundle, p 153, line 15; p 158, lines 6 and 7; Exhibit G3, p 1399, para 29.  
<sup>875</sup> 2021 Transcript Bundle, page 143, lines 19 – 20; Volume [G2](#), page 1388, para 13.

<sup>876</sup> Record: Volume [G12](#), page 1467, paras 22 – 23.

<sup>877</sup> [2021 Transcript](#) Bundle, page 153, line 15; p 158, lines 6 and 7; Vol G3, p 1399, para 29.  
<sup>878</sup> 2021 Transcript Bundle, page 143, lines 19 – 20; Volume [G2](#), page 1388, para 13.

<sup>879</sup> Record: Volume [G12](#), page 1467, paras 22 – 23.

<sup>880</sup> Record: Volume G15, page 1492, para 14.

<sup>881</sup> Record: Volume G2, page 1390, para 21.

Gopal admits that the SB launched a cover-up post the death, with Du Toit constructing the script for each member to follow.

- 489. Under apartheid, cover-ups of Security Branch crimes were the order of the day. The cover up in the Haffejee case would have been consistent with this practice.
- 490. No cover-up would have been required if Haffejee had not been tortured and if he had died through a genuine suicide. It is our submission that the case for foul play has been made.

### **POSSIBILITY OF INDUCED SUICIDE**

- 491. There is no specific evidence supporting a finding of voluntary suicide. The ambiguous finding of Magistrate Blunden amounted to nothing more clutching at straws. He concluded without any reasoning that nobody had a motive to kill Haffejee. He accepted without question the patent fabrication that Haffejee was more valuable alive than dead to the SB. He concludes that the deceased “*undoubtedly had a motive to do away with himself*”, without the slightest attempt to substantiate this though factual analysis or application of basic logic.<sup>882</sup> Blunden notes the claim by the SB that Haffejee was “visibly shaken” when confronted with the seized documents but makes no attempt to connect this observation with the alleged suicide.<sup>883</sup>

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<sup>882</sup> First Inquest Finding, A2 at page 12, lines 5 to 20.

<sup>883</sup> First Inquest Finding, A2 at page 7, line 10.

492. At best it might be argued that after being in the custody of the SB thugs for some 15 hours, of which Haffejee was subjected to brutal torture for around 9 hours he could take more and ended his life to spare himself from further abuse. The medical evidence casts serious doubt whether he would have been in a physical position to have tightly secured the ligature and engaged in the twisting on the floor.<sup>884</sup> Even if this took place this would not have been a voluntary act but rather one of induced suicide, which we submit amounts to an act of murder on the part those involved in the interrogation.

### ***Criminal Law Liability for Induced Suicide***

493. It is established in our law that a person who instigates, assists, or puts another person in a position to commit suicide, commits an offence depending on the facts of the case. The mere fact that the last act of a person committing suicide is that person's own, voluntary, non-criminal act, does not necessarily mean that the other person cannot be guilty of an offence.

494. This position was established by the Appellate Division 50 years ago in *Grotjohn*.<sup>885</sup> *Grotjohn* was recently applied by the SCA in *Stransham-Ford*<sup>886</sup> where Wallis JA, confirmed the principles in *Grotjohn* as follows:

*"This court was extremely careful in Grotjohn to say no more than that it was not an automatic conclusion from the fact that the final act in the chain of events was that of the suicide, that a person who encouraged, provided the means or assisted the suicide in that act, would commit no crime. It recognised the possibility that they might be guilty of murder if their actions were performed with criminal intent and there was no break in the chain of causation between their actions and the ultimate death of the suicide, or culpable homicide if their actions*

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<sup>884</sup> Dr SR Naidoo's findings, Record: Volume L4, page 2724, para 45 b.

<sup>885</sup> *Ex Parte Minister of Justice in re S v Grotjohn* 1970 (2) SA 355 (AD) 365G-H.

<sup>886</sup> *Minister of Justice v Estate Stransham-Ford* 2017 (3) SA 152 (SCA)

were merely negligent. Every case was to be decided in accordance with basic principles and on its own peculiar facts. That much is apparent from the final answers given to the questions posed to this court, which were:

*'As will appear from the aforesaid the answers to the questions posed is to be found in the applicable principles of our criminal law. The first question cannot be answered with a simple yes or no. Whether a person who encourages, assists or enables another to commit suicide commits an offence will depend on the facts of the particular case. With an eye on the cases that gave rise to these questions it is necessary to place in the foreground that the mere fact that the final act was the suicide's own, independent, non-criminal act, will not without more result in that person not being guilty of a crime. The answer to the second question depends entirely on the factual circumstances. After consideration thereof the crime may be murder, attempted murder or culpable homicide.'*<sup>887</sup> (Underline added)

495. If the Court concludes that Haffejee did commit suicide in cell number 2, this is the test that must be applied in assessing whether any Security Branch member is criminally responsible for the death of Dr Haffejee. The questions to be asked are:

495.1. whether the Security Branch member or members in question performed their actions with criminal intent; and

495.2. whether there was no break in the chain of causation between their actions and the ultimate death of Dr Haffejee.

496. Under law, the SB was obliged to maintain Haffejee in good health, both in body and in mind, and to ensure that at the end of his detention he would be released with his physical and mental health unimpaired.

497. The SB was not entitled to subject him to any form of assault or torture in interrogating or attempting to obtain a statement from him.<sup>888</sup> The SB thus

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<sup>887</sup> *Minister of Justice v Estate Stransham-Ford* 2017 (3) SA 152 (SCA) para 53  
<sup>888</sup> *Rossouw v Sachs* 1942(2) SA 551 (AD) 561D-F, 564H

owed Dr Haffejee, as a detainee in their custody, a legal duty of care and protection.<sup>889</sup>

498. In *Minister of Safety and Security and Others v Craig and Others NNO* it was held that:<sup>890</sup>

*In Mtati v Minister of Justice 1958 (1) SA 221 (A), this court (at 224) emphasised the duty of officials who have prisoners in their charge should see to their well-being, and courts should be vigilant to ensure that officials, who have in their charge those whose freedom of movement have been restricted, comply with the obligation to ensure their well-being.*

...

*In Minister of Police v Skosana 1977 (1) SA 31 (A), ... Police standing orders place an obligation on members of the police, to whom it appears that detainees are in distress and are therefore injured or ill, to obtain the necessary medical assistance for them.*<sup>891</sup>

499. On the established evidence, Haffejee's interrogators, comprising Du Toit, Taylor and the others, acted in breach of this legal duty by brutally assaulting him while he was in their custody. They ramped up this treatment over the course of the day.

500. The SB engaged in this course of conduct knowing the conditions of Haffejee's detention were such that he could not as a matter of law access friends, family, a lawyer, or a medical practitioner.

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<sup>889</sup> *Minister of Police v Skosana 1977 (1) SA 31 (A) 40A-B.* See also *Minister of Safety and Security v Craig NNO 2011 (1) SACR 469 (SCA)* paras 60-61: Officials who have prisoners in their charge should see to their well-being, and courts should be vigilant to ensure that officials, who have in their charge those whose freedom of movement have been restricted, comply with the obligation to ensure their well-being. Police standing orders place an obligation on members of the police, to whom it appears that detainees are in distress and are therefore injured or ill, to obtain the necessary medical assistance for them. See also *Minister Van Veiligheid en Sekuriteit v Geldenhuys 2004 (1) SA 515 (SCA)*.

<sup>890</sup> 2011 (1) SACR 469 (SCA).

<sup>891</sup> Paras 60 – 61.

501. If Haffejee did commit suicide, his interrogators must have foreseen, and by implication did foresee, that there was a reasonable possibility that there was a real risk that, given the conditions of his treatment, he might take his own life given the means and opportunity to do so.

502. There was accordingly a legal duty on them to protect Haffejee by not abusing him; ensuring that he received medical attention; and taking steps to prevent him from harming himself. They did none of the above.

503. In acting as they did, they subjectively reconciled themselves with the foreseen consequences by persisting with Haffejee's ill treatment without taking positive steps to ensure that he did not pose a risk to himself. In the circumstances, Haffejee's interrogators had the requisite intent in the form of *dolus eventualis* to kill Dr Haffejee.<sup>892</sup> If induced suicide took place, Du Toit, Taylor and all in the interrogation team, including Gopal and VR Naidoo are responsible for Haffejee's murder.

504. If Gopal's version that he was present in cell number 2 is accepted, it could be argued that he played a specific role by threatening Haffejee that if he did not speak, he could expect more abuse in a few hours.<sup>893</sup>

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<sup>892</sup> In *S v Sigwahlra* 1967 (4) SA 566 (A) the following was stated at 570B-E:  
*"The expression 'intention to kill' does not, in law, necessarily require that the accused should have applied his will to compassing the death of the deceased. It is sufficient if the accused subjectively foresaw the possibility of his act causing death and was reckless of such result. This form of intention is known as dolus eventualis, as distinct from dolus directus. .... Subjective foresight, like any other factual issue, may be proved by inference. To constitute proof beyond reasonable doubt the inference must be the only one which can reasonably be drawn...."*

<sup>893</sup> Record: Volume G26, page 1749, para 63.

505. In addition, in the case of induced suicide, the interrogation team would have conspired or made common purpose to conceal the true facts and circumstances behind Haffejee's induced suicide, in order to mask the torture. In so doing they committed one or more of the following crimes: (i) perjury; (ii) accessory after the fact to murder and/ or culpable homicide; and/ or (iii) defeating or obstructing the course of justice.<sup>894</sup>

## THE PROBABILITIES

506. We submit that the probabilities overwhelmingly point to foul play.

507. If this Court accepts the expert evidence of the two forensic pathologists called in the reopened inquest that Haffejee may have been incapacitated under torture, and that death occurred late in the evening of 2 August 1977, then the version of all the police witnesses of what transpired in the charge office and cell number 2 becomes untenable.

508. The police version is compounded by:

508.1. The overwhelming evidence of unrelenting torture.

508.2. The alleged method of suicide, which aside from being unusual, was probably the most difficult option, given the more seamless options available in cell number 2. However, if it was a staged suicide, at a mechanical level, it was the easiest option available.

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<sup>894</sup> In relation to what transpired in 1977, these crimes have prescribed in terms of s 18 of the Criminal Procedure Act.

508.3. The confirmed cover-up by the Security Branch.

509. In the circumstances we submit that the probabilities point to Haffejee either dying under interrogation or becoming unresponsive or unconscious, and failing to be revived. In the former instance the suicide was then staged to mask the death under interrogation, while in the latter instance Haffejee was murdered in the staged suicide to mask the torture that rendered him unrevivable.

510. The probabilities point to the Security Branch, given their elite and feared status, having full access to the cells. It is not known to what extent the charge office staff would have cooperated. At its most basic level this would have been:

- 510.1. handing over the cell keys to the SB,
- 510.2. staying out of their way,
- 510.3. agreeing to 'discover' Haffejee dead in his cell at 4 am,
- 510.4. keeping quiet and providing testimony consistent with the SB version.

511. We note that torture, extra-judicial killings, and cover-ups were the order of the day for the SB during the apartheid era. The disposing of Haffejee through a staged hanging would not have been inconsistent with the modus operandi of the force at that time.

512. We submit that the inferences drawn above are consistent with the proven facts,<sup>895</sup> namely the time ranges of infliction of injuries, time range of death and the cover-up. We submit further that when all the facts are considered together,<sup>896</sup> through a detailed and critical examination, only one sensible story emerges – namely that of foul play, as described above.

***Improbabilities in the evidence of Gopal***

513. The role played by Gopal in the death of Haffejee needs to be unpacked further. On the one hand Gopal did supply the Reopened Inquest with useful evidence that provided an important window into the actions of the Security Branch. However, we are of the firm view that he stopped short of short disclosing the full truth of what happened to Haffejee.

514. We suspect that the reason for this was to sanitise himself from the worst excesses of his colleagues in the SB. Moreover, he must have realised that placing himself on the scene when Haffejee died could expose himself to a charge of murder, which as was put to him in cross examination, never prescribes.<sup>897</sup>

515. It appears that Gopal took the view that if he discloses some of the truth, most significantly the vicious torture of Haffejee, that the improbabilities in his evidence would be overlooked or excused. We submit that, if this

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<sup>895</sup> *R v Blom* 1939 AD 188.

<sup>896</sup> *R v De Villiers* 1944 AD 493 at 508; *S v Cwele* 2013 (1) SACR 478 (SCA) at para 19.

<sup>897</sup> 2021 Transcript bundle, page 1019, lines 1 – 20.

was his strategy, he miscalculated. He likely did not expect the level of scrutiny and examination that this reopened inquest brought to bear on this tragic incident.

516. We submit this Court can largely accept Gopal's account of:

516.1. The modus operandi and culture of the SB in Durban in the late 1970s.<sup>898</sup>

516.2. The types of torture and assault applied by the SB.<sup>899</sup>

516.3. The monitoring and surveillance of Haffejee.<sup>900</sup>

516.4. The arrest of Haffejee.<sup>901</sup>

517. Much of his account of the ordeal of Haffejee under interrogation can be accepted. However, we are of the view that he withheld some details of the torture that Haffejee was subjected to. We also believe that he has not been totally frank with this Court about his own role in that interrogation.

518. We believe he has been truthful on some key details such as confirming the fabrication of the so-called scuffles at the time of arrest and the pointing's out at North Pier. While he was truthful to a degree on the SB

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<sup>898</sup> Record : Volume G36, pages 1730 – 1735 ; See generally 2021 Transcript bundle, pages 702 – 711, 744 – 745, and 824 – 848.

<sup>899</sup> Volume G36, page 1766 ; 2021 Transcript bundle, pages 701, 713, 714 and 721.

<sup>900</sup> Record: Volume G26, page 1743, para 47 – 1744, para 50; See generally 2021 Transcript bundle, pages 731 – 742, 873 – 874, 879 – 880.

<sup>901</sup> Record: Volume G26, page 1744, para 51 – 1746, para 54. See generally 2021 Transcript bundle, pages 742 – 745, 880 – 885.

cover-up, he stopped well short of describing the full extent of conduct which was being covered up.

519. Most strikingly, we are of the view that Gopal was present, or was aware, that Haffejee had succumbed (either through death or incapacitation) while in the hands of the Security Branch. Gopal played his role in covering this up. On this central aspect, we submit, he provided false evidence.

520. Aside from these aspects there are multiple points where we submit Gopal gave improbable evidence. All these improbabilities were put to Gopal under cross examination.<sup>902</sup> These include:

520.1. He never assaulted any detainee or suspect during his entire career with the Security Branch.<sup>903</sup>

520.2. He applied for amnesty from the TRC for witnessing assaults of Haffejee but did not engage in any assaults or abuse himself.<sup>904</sup>

520.2.1. In this regard we note that former TRC Legal Officer, Adv Saatchi Govender, disputed Gopal's claim that he advised Gopal that there was no need to apply for amnesty, but he should apply as a formality and it would be turned down, and he has nothing to worry about.<sup>905</sup>

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<sup>902</sup> 2021 Transcript bundle, pages 1017 – 1032.

<sup>903</sup> 2021 Transcript bundle, page 846, line 22; page 1026, lines 21 – 25.

<sup>904</sup> 2021 Transcript bundle, page 1027, lines 5 – 8.

<sup>905</sup> 2021 Transcript bundle, page 1013 line 20 to 1017 line 10. See also exhibit [L19](#) at p2971.

520.3. That no instruments or electric shock treatment were used on Haffejee during his torture.<sup>906</sup> On this score we note that:

520.3.1. The evidence of Drs Biggs and Naidoo suggested Haffejee may have been subject to electric shock treatment.<sup>907</sup> According to Dr Naidoo, the “demarcated impressions” observed on Haffejee’s skin may have been the result of electrical injuries.<sup>908</sup>

520.3.2. Ms Amina Motala,<sup>909</sup> Dr KV Moodley<sup>910</sup> and Ismail Haffejee,<sup>911</sup> observed marks on Haffejee’s skin at the bathing of the body which to them looked like electrical burn marks.

520.4. That he was not involved in the interrogation of Joseph Mdluli,<sup>912</sup> but he just peeped into the interrogation room and stood there watching for 3 minutes.<sup>913</sup>

520.5. That he was not involved in the interrogation and abuse of K S Govender and just peeped into see what was happening.<sup>914</sup>

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<sup>906</sup> 2021 Transcript bundle, page 1027, linea12 – 19.

<sup>907</sup> For Biggs’ supplementary report on “unusual marks”, see Record: Volume B4, page 795.

For Dr Naidoo’s report see Record: Volume L4, page 2721, para 14 c.

<sup>908</sup> 2021 Transcript bundle, page 269, lines 1 - 25. See also pages 348 – 349.

<sup>909</sup> Record: Volume G15, page 1491, para 14.

<sup>910</sup> Record: Volume [G13](#), page 1474, paras 17.

<sup>911</sup> Record: Volume G2, page 1390, para 21.

<sup>912</sup> 2021 Transcript bundle, page 847, line 2.

<sup>913</sup> 2021 Transcript bundle, page 1027, lines 20 – 23.

<sup>914</sup> 2021 Transcript bundle, page 1028, lines 1 – 4.

520.6. That apart from one question over lunch while the others were out, he did not take part in the interrogation.<sup>915</sup>

520.7. That Haffejee walked upright and unaided from the interrogation room to the charge office and cell.<sup>916</sup>

520.8. That he did not ask Yusuf Haffejee for payment or compensation.<sup>917</sup>

521. In short, Gopal has not been entirely frank with the Court, and as to be recommended below, he should face the consequences.

## **FINDINGS AND RECOMMENDATIONS**

522. The main purpose of reopened inquest proceedings established under s 17A of the Inquests Act 58 of 1959 is to ascertain if the evidence that has been presented at the proceedings is enough to persuade the presiding officer to set aside the original finding. In doing so, the ultimate aim is to uncover the truth and make a finding that is in the interests of justice.

523. This court is required to determine whether *prima facie* there is evidence before it upon which a reasonable person might convict a person of an offence arising from the death of the Haffejee.<sup>918</sup> The ultimate decision, whether to prosecute or not, will rest with the Director of Public

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<sup>915</sup> 2021 Transcript bundle, page 1029, lines 18 – 23.

<sup>916</sup> 2021 Transcript bundle, page 1030, lines 2 – 9.

<sup>917</sup> 2021 Transcript bundle, page 1030, lines 19 – 21.

<sup>918</sup> Section 16(1)(d) of the Inquests Act

Prosecutions after the record of proceedings is referred to her in terms of section 17(1)(a) and (b) of the Inquests Act.

524. In **FUL v NDPP**,<sup>919</sup> Murphy J held as follows regarding the purpose of an inquest and what should ideally follow a finding in an inquest has been made:

*“[72]. An inquest is an investigatory process held in terms of the Inquests Act which is directed primarily at establishing a cause of death where the person is suspected to have died of other than natural causes. Section 16(2) of the Inquests Act requires a magistrate conducting an inquest to investigate and record his findings as to the identity of the deceased person, the date and cause (or likely cause) of his death and whether the death was brought about by any act or omission that prima facie amounts to an offence on the part of any person. The presiding officer is not called on to make any determinative finding as to culpability.”*

*[77] ...The only question for the magistrate, in terms of section 16(2) of the Inquest Act, was whether the death was brought about by conduct prima facie amounting to an offence on the part of any person. A prima facie case will exist if the allegations, as supported by statements and real documentary evidence available, are of such a nature that if proved in a court of law by the prosecution on the basis of admissible evidence, the court should convict. ...”*

525. In **Goniwe and Others**,<sup>920</sup> the court held that the standard of proof required to make a finding in an inquest is not that as applied in a criminal trial. The test is less stringent in inquests. The court explained this rationale as follows:

*“Bearing in mind the object of an inquest it is my opinion that the test to be applied is not the ‘beyond reasonable doubt’ test but something less stringent. In my opinion the test envisaged by the Inquest Act is whether the judicial officer holding the inquest is of the opinion that there is evidence available which may at a subsequent criminal trial be held to be credible and acceptable and which, if accepted, could prove that the death*

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<sup>919</sup> *Freedom Under Law v National Director of Public Prosecutions and Others* 2014 (1) SA 254 (GNP).

<sup>920</sup> *In Re Goniwe and Others* (2) 1994 (2) SACR 425 (SE)

*of the deceased was brought about by an act or omission which involves or amounts to the commission of a criminal offence on the part of some person or persons.*<sup>921</sup>

526. Similarly, in **Padi v Botha**<sup>922</sup> it was held that –

*“...section 16(2)(d) of the Act did not require proof beyond a reasonable doubt: a judicial officer was not required to make his finding with reference to the credibility and acceptability of the evidence before him as in a criminal trial.”*

### ***Proposed findings***

527. In the circumstances we submit that a cogent case has been made out to set aside the original inquest finding of Magistrate Blunden and replace it with a finding that:

527.1. The finding and judgment of Magistrate TL Blunden dated 15 March 1978 in Inquest. No. 951/77 is set aside.

527.2. Cause of death of Dr Haffejee is attributable to two possibilities:

527.2.1. Haffejee died following a cardiac incident while under torture; alternatively,

527.2.2. While under torture Haffejee fell into unconsciousness, or a debilitated or unresponsive state from which he could not be revived, and thereafter died from a cardiac incident caused by ligature constriction through a staged suicide.

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<sup>921</sup> *Ibid* at 428D – E.

<sup>922</sup> *Padi en 'n Ander v Botha* No en Andere 1995 (2) SACR 663 (W) at 665G.

527.3. In respect of the former scenario, the Security Branch staged the suicide to mask Haffejee's death under torture. In respect of the latter, the SB murdered Haffejee to mask the torture that rendered him unresponsive.

527.4. Time of death was not in the early morning but late on the night of 2 August 1977, the most likely range being between 22h23 and 23h00.

527.5. The Security Branch are held responsible for the acts and omissions leading to the death of Dr Haffejee. The officers primarily responsible for torturing and murdering Haffejee are Captain Petrus Lodewikus du Toit and Lieutenant James Borough Taylor.

527.6. While Du Toit and Taylor played the leading roles in causing the death of Haffejee, those who played various roles in the interrogation, torture and cover-up must also be held responsible for acts connected to Haffejee's murder. They associated themselves with what happened to Haffejee and did not raise the alarm. These persons are:

- 527.6.1. Brigadier Steenkamp, Commander SB, Durban,
- 527.6.2. Colonel Ignatius Gerhard Coetzee, 2IC SB Durban,
- 527.6.3. Major Joseph Benjamin (formerly Moonsamy),
- 527.6.4. Lieutenant Vic McPherson,
- 527.6.5. W/O Shunmugam (Schrewds) Govender,

- 527.6.6. Sergeant V R Naidoo,
- 527.6.7. Constable Mohan Deva Gopal.

527.7. Those former SAP uniform branch members stationed at Brighton Police Station, who turned a blind eye and helped facilitate the SB cover up, defeated the ends of justice and are accessories after the fact to murder. They include former Constables Johannes Nicolaas Meyer, Derek Hugh Naude and Shadrack Madlala.

528. Du Toit died on 15 April 2008, while Taylor died on 19 August 2019, within days of the Minister of Justice announcing the reopening of the inquest. Vic Macpherson died on 20 April 2017 and Joseph Benjamin died on 16 December 2010. Except for VR Naidoo and Gopal all the other SB members have either died or could not be traced, while of the charge office Uniform Branch members, Madlala has passed on.

#### ***Proposed recommendations***

- 529. We accordingly make the following recommendations against the surviving persons mentioned above. We submit that this Court ought to recommend to the NPA that criminal investigations be instituted against the individuals listed below, with a view to possible prosecution for the suggested crimes.
- 530. Considering the above, it is submitted that this Court ought to recommend that certain charges be considered by the National Prosecuting Authority (NPA) against the following persons:

530.1. Surviving members of the security Branch:

530.1.1. Mohun Deva Gopal.

530.1.2. Veeragululu Naidoo.

530.2. Surviving members of the Uniform Branch:

530.2.1. Derek Hugh Naude.

530.2.2. Johannes Nicolaas Meyer.

530.3. Other persons:

530.3.1. Matheevathinee Benjamin.

***Mohun Deva Gopal***

**Murder by common purpose<sup>923</sup>**

531. If this Court accepts the objective evidence of the forensic experts that Haffejee died before midnight, it means that he died while in the custody of the Security Branch, of which Gopal was a team member.

532. Gopal admitted to:

532.1. Being part of the team.

532.2. Interrogating Dr Haffejee<sup>924</sup> and asking Haffejee questions.<sup>925</sup>

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<sup>923</sup> The elements of murder are: (a) causing the death (b) of another person (c) unlawfully and (d) intentionally. See Snyman *Criminal Law* 4<sup>th</sup> Edition (Juta, Cape Town, 2002) 421.

<sup>924</sup> 2021 Transcript bundle, page 961, lines 15 – 21.

<sup>925</sup> 2021 Transcript bundle, page 786, line 11.

532.3. Being responsible for guarding Dr Haffejee and preventing him from escaping.<sup>926</sup>

532.4. Ensuring he was stripped and dressed as required.<sup>927</sup>

532.5. Always being present during the interrogation of Haffejee, except for one short period when he went out for food.

533. The essential basis of common purposes liability is that where several persons have a common purpose to commit a crime and they assist one another in the commission of that crime, all are guilty of murder if someone is killed in the process, and if all had intent, usually in the form of *dolus eventualis*,<sup>928</sup> regarding the victim's death. Whether the conduct of each is causally connected with the victim's death is not relevant.<sup>929</sup>

534. In this case the interrogation team had a common purpose to commit assault with grievous bodily harm (assault GGH) against Haffejee to extract information from him. Haffejee was killed in the process. All, including Gopal, had the necessary intent, based on the knowledge that such serious violence perpetrated against Haffejee may result in his death.

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<sup>926</sup> 2021 Transcript bundle, page 761, line 6.

<sup>927</sup> Record : Volume G26, page 1728, para 11.

<sup>928</sup> The test for *dolus eventualis* in respect of liability for murder based on common purpose, is whether the accused foresaw the possibility that the act committed would have fatal consequences and was reckless whether death resulted or not, as per *S v Malinga* 1963 1 SA 692 (A) 694 at 694G-H. Foresight may be proved by inference as per *Malinga* at 694H In determining whether *dolus*, generally in the form of *dolus eventualis*, was present, the court is usually dependent upon circumstantial evidence.

<sup>929</sup> Criminal Law Vol II 3<sup>rd</sup> Edition, para 127

535. In *S v Mgedezi and Others* 1989 (1) SA 687 (A) it was held that where no prior agreement has been proved, an accused regarding whom no causal link to the death has been proved, can be held liable for that death if five pre-conditions are present:

535.1. He was present at the scene of the violence,

535.2. He had knowledge of the assault on the victim,

535.3. He had intent to make common cause with those who committed the assault,

535.4. He had manifest participation in the common purpose with the perpetrators of the crime by some or other act of association with the conduct of the others,

535.5. He had the necessary *mens rea* regarding the killing, in the form of *dolus directus* or *dolus eventualis*.

536. Gopal clearly satisfied the first 3 pre-conditions on his own version. In relation to the 4<sup>th</sup> pre-condition, on his own version, Gopal associated himself with the conduct of the others through ensuring that Haffejee could not escape, participating in the interrogation through asking questions and providing general support to the rest of the team.

537. Gopal possessed the necessary *mens rea* in the form of *dolus eventualis* since he was aware that such ongoing brutality would likely result in Haffejee dying. On his own version he witnessed the most brutal assault on a person he had ever experienced. In his statement he provided a graphic account of what Haffejee went through and concluded by saying:

"I was fairly new at that stage as a junior constable and had seen interrogations including those of Joseph Mdluli, **but in comparison the assault on Haffajee was the worst I had ever seen. It was the most severe.**"<sup>930</sup> (Bold added)

538. Indeed, under cross-examination he admitted to this intention in the form of *dolus eventualis*:

"...Yes, but **what now I am saying is that when you are assaulting someone so seriously and if the person did not die then that person, then there is an attempt made to murder that person because that type of assault is not one or two slaps, it is not one or two touch taps, this is brutal assault, very brutal, and that can be construed as you are trying to kill that person.** That is attempted murder. Look, I am not a lawyer, I am not an advocate, but it is like my common understanding of what I am saying."<sup>931</sup> (Bold added)

539. Gopal accordingly satisfies all 5 pre-conditions laid down by the Appellate Division in *Mgedezi*.

540. Gopal has attempted to downplay his role in the interrogation. However, even as an accomplice as opposed to being a perpetrator, he is still liable on the basis of common purpose. This is because of the support he provided for the advancement commission of offence. Aside from the support he gave the primary offenders, Du Toit and Taylor, he intentionally failed to intervene even though, as a police officer, he was under a legal duty to thwart the commission of the offence.<sup>932</sup>

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<sup>930</sup> Vol G26, page 1747, para 58; 2021 Transcript bundle, page 866, line 14 – 21.

<sup>931</sup> 2021 Transcript bundle, page 855, line 1 – 10.

<sup>932</sup> *R v Pendek* 1967 (3) SA 200 (RA). Also see Hiemstra Commentary at 155.

Perjury (in 2021 Inquest)

541. Gopal ought to be charged with perjury for making false claims under oath before this Court, knowing them to be false:<sup>933</sup>

542. Gopal made the following statements under oath which we submit he knew were false:

542.1. He never assaulted or abused any detainee or suspect during his entire career with the Security Branch.<sup>934</sup>

542.2. That no instruments or electric shock treatment were used on Haffejee during his torture.<sup>935</sup>

542.3. That he did not administer any assaults on Dr Haffejee.<sup>936</sup>

542.4. That he was not involved in the interrogation of Joseph Mdluli,<sup>937</sup> but just peeped into the interrogation room and stood there watching for a few minutes.<sup>938</sup>

542.5. That he was not involved in the interrogation and abuse of K S Govender and just peeped into see what was happening.<sup>939</sup>

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<sup>933</sup> The elements of perjury are: (a) the making of a declaration; (b) which is false; (c) under oath or in a form equivalent to an oath; (d) during judicial proceedings; (e) unlawfully; and (f) intentionally. See Snyman *Criminal Law* 4<sup>th</sup> Edition (Juta, Cape Town, 2002) 341.

<sup>934</sup> 2021 Transcript bundle, p 846, line 22; p 1026, lines 21 – 25; p 1027, lines 5 – 8.

<sup>935</sup> 2021 Transcript bundle, page 1027, linea12 – 19.

<sup>936</sup> 2021 Transcript bundle, page 1027, line 11.

<sup>937</sup> 2021 Transcript bundle, page 847, line 2.

<sup>938</sup> 2021 Transcript bundle, page 1027, lines 20 – 23.

<sup>939</sup> 2021 Transcript bundle, page 1028, lines 1 – 4.

542.6. That apart from one question over lunch while the others were out, he did not take part in the interrogation.<sup>940</sup>

542.7. That Haffejee walked upright and unaided from the interrogation room to the charge office and cell.<sup>941</sup>

542.8. That he did not ask Yusuf Haffejee for payment or compensation.<sup>942</sup>

### ***Vee Ragululu Naidoo***

543. It is unclear whether former SB officer, Vee Ragululu Naidoo (VR Naidoo) was part of the interrogation or not. It is apparent that he was part of the arresting party.

544. Du Toit, he instructed Taylor, MacPherson, Naidoo, Benjamin and Gopal to effect the arrest on Haffejee.<sup>943</sup> Gopal states in his affidavit that VR Naidoo drove with MacPherson when they were approaching Dr Haffejee.<sup>944</sup> Gopal confirmed this in oral testimony.<sup>945</sup>

545. VR Naidoo, in his statement, claimed to have no direct involvement in the investigation of Dr Haffejee but was merely an escort on the day in

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<sup>940</sup> 2021 Transcript bundle, page 1029, lines 18 – 23.

<sup>941</sup> 2021 Transcript bundle, page 1030, lines 2 – 9.

<sup>942</sup> 2021 Transcript bundle, page 1030, lines 19 – 21.

<sup>943</sup> Record: Volume A3, page 196, line 24.

<sup>944</sup> Record: Volume G26, page 1745, para 52.

<sup>945</sup> 2021 Transcript bundle, page 748, line 16.

question.<sup>946</sup> In examination in chief, he could not recall being present at the arrest of Haffejee<sup>947</sup> and maintained this in cross-examination.<sup>948</sup>

546. Naidoo did however concede that he may have been present at Haffejee's interrogation "for a short time" and would have possibly been sent by superior officers to do some tasks.<sup>949</sup> However, Gopal could not recall whether VR Naidoo was present in the interrogation room<sup>950</sup> and later stated that he was not present.<sup>951</sup>

547. Since Gopal does not place him in the interrogation room or as being part of the interrogation team, we do not recommend any charges against him at this stage. Further investigation would be required to establish his whereabouts during the periods of Haffejee's interrogation and death.

***Former SAP members: Derek Hugh Naude and Johannes Meyer***

548. If this Court accepts the objective medical evidence that Haffejee died during the late night of 2 August 1977, the inescapable conclusion is that both Naude and Meyer were accessories to murder in that they:

548.1. Falsified evidence that Haffejee was booked into the charge room,

548.2. Fictitiously entered information into the property sheet,

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<sup>946</sup> Record: Volume G29, page 1807

<sup>947</sup> 2021 Transcript bundle, page 601, line 15

<sup>948</sup> 2021 Transcript bundle, page 619, line 10; page 620, line 5.

<sup>949</sup> 2021 Transcript bundle, page 622, lines 17 - 25.

<sup>950</sup> 2021 Transcript bundle, page 761, line 25

<sup>951</sup> 2021 Transcript bundle, page 762, line 6

- 548.3. Provided false testimony before the first inquest court, and
- 548.4. Colluded with the Security Branch's fabricated version.
549. Such conduct would make the accessories after the fact to murder. However, this crime has prescribed in terms of s 18 of the Criminal Procedure Act (CPA).
550. They would also have been responsible for the obstruction of justice by providing false and misleading statements to the first inquest, including that:
  - 550.1. Haffejee was alive and well,
  - 550.2. Haffejee said he was not injured,
  - 550.3. He was escorted to his cell,
  - 550.4. He was alive during their first 3 hourly visits,
  - 550.5. They did not hand the keys to anyone.
551. The crime of obstruction or defeating the ends of justice has also prescribed in terms of s 18 of the CPA.

Perjury (in 2021 Inquest)

552. We submit that this Court should recommend that Meyer and Naude be criminally investigated with a view to prosecution for making multiple false statements under oath before this Court, knowing them to be false.
553. We contend that the following statements of Meyer constitute lies under oath:

553.1. That Haffejee walked in quite normally.<sup>952</sup> Meyer described him as normal but nervous and “shaking a bit”.<sup>953</sup>

553.2. At that stage he did not pick up any injuries or signs of assault, or bruise marks.<sup>954</sup>

553.3. Meyer asked Haffejee if he had any injuries and Dr Haffejee said no.<sup>955</sup>

553.4. Haffejee removed the requested items himself.<sup>956</sup>

553.5. If any officer, including members of the Security Branch, ordered him to hand over the keys, he would have refused. Instead, he would have escorted the Security Branch member to the cell.<sup>957</sup>

553.6. At around 23h00 or 23h30,<sup>958</sup> Haffejee was escorted to the holding cells by Meyer and Naude, in the presence of Security Branch members.<sup>959</sup> Haffejee was able to walk freely, without assistance from anyone.<sup>960</sup>

553.7. The hourly inspections at cell number 2.

554. The following statements of Naude must constitute lies under oath:

554.1. Haffejee was in “perfect health”<sup>961</sup> but appeared to be looking tense.<sup>962</sup>

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952 2021 Transcript bundle, page 638, line 18.

953 2021 Transcript bundle, page 640, line 11.

954 2021 Transcript bundle, page 638, lines 19 – 20.

955 2021 Transcript bundle, page 641, line 20.

956 2021 Transcript bundle, page 655, line 18.

957 2021 Transcript bundle, page 638, lines 13 – 25.

958 2021 Transcript bundle, page 643, line 10.

959 2021 Transcript bundle, page 642, line 15.

960 2021 Transcript bundle, page 642, line 20.

961 2021 Transcript bundle, page 1087, line 4.

962 2021 Transcript bundle, page 1087, line 9.

554.2. He saw Haffejee being escorted to the cells.<sup>963</sup>

554.3. Haffejee had no issue walking to his cell.<sup>964</sup>

554.4. The hourly inspections at cell number 2.

***Matheevathinee Benjamin***

**Perjury (in 2021 Inquest)**

555. We submit that the following aspects of Ms Benjamin's testimony constituted lies under oath:

555.1. While cleaning Haffejee's flat, she found bits of metals and nails that looked like shrapnel for bombs.<sup>965</sup>

555.2. She claimed to have never given any members of the Security Branch a key to Dr Haffejee's flat.<sup>966</sup>

555.3. Ms Benjamin denied meeting Gopal and other members of the Security Branch at the Delhi Restaurant.<sup>967</sup>

555.4. She claims that she at no stage was entertained with booze and cash by Security Branch members in exchange for information.<sup>968</sup>

555.5. After Dr Haffejee's death, Ms Benjamin claimed in her statement that the Haffejee family threatened her.<sup>969</sup>

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<sup>963</sup> 2021 Transcript bundle, page 1089, lines 14 – 22.

<sup>964</sup> 2021 Transcript bundle, page 1105, line 10.

<sup>965</sup> Record: Volume G11, page 1453, para 19.

<sup>966</sup> Record: Volume G11, page 1456, para 25.

<sup>967</sup> Record: Volume G11, page 1456, para 25.

<sup>968</sup> Record: Volume G11, page 1455, para 22.

<sup>969</sup> Record: Volume G11, pages 1455 - 1458, paras 25 – 27.

556. Mathee Benjamin should hang her head in shame. As a jilted lover she sought to extract vengeance against Haffejee and betrayed him. This resulted in his torture and death. She came to court entirely unrepentant.

## CONCLUSION

557. The finding of Magistrate Blunden that nobody was to blame for Haffejee's death in detention cannot stand.

558. We have submitted that this Honourable Court must overturning the fraudulent finding of the first inquest court.

559. As we conclude we wish to pay tribute to other activists who died in Security Branch detention in KZN in the 1970s and 80s and who also deserve to have their inquests to be reopened to get to the truth of their deaths.

560. Their names are in enshrined in the table below.

<b>Names of Deceased</b>	<b>Police Station detained</b>	<b>Place of Death</b>	<b>Date of Death</b>	<b>Cause of Death</b>	<b>Reference</b>
Joseph Masobila Mdluli	Durban C R Swarts Square	Durban Security Branch – Fisher Street Offices	19 <sup>t</sup> March 1976	Claimed scuffle with SB and “fell” against a chair hitting his head and chest on a door.	<a href="https://sahistory.org.za/article/joseph-masobila-mdluli">Joseph Masobila Mdluli   South African History Online (sahistory.org.za)</a>
Samuel Malinga	PMB Prison	PMB Prison	22 Feb 1977	“Natural causes”	<a href="https://sabctr.sahistory.org.za/reportpage.php?id=12733&amp;t=H0osen+Haffejee&amp;tab=report">https://sabctr.sahistory.org.za/reportpage.php?id=12733&amp;t=H0osen+Haffejee&amp;tab=report</a>

Aaron Khoza	PM Burg Prison	PMB Prison	26 <sup>th</sup> March 1977	Alleged suicide by hanging	<a href="https://sahistory.org.za/people/aaron-khoza">https://sahistory.org.za/people/aaron-khoza</a>
<b>Bayempini Mzizi</b>	<b>Brighton Beach SAPS</b>	<b>Brighton Beach Cells</b>	<b>10<sup>t</sup> August 1977</b>	<b>Alleged suicide by hanging</b>	<b>Durban Inquest 1001/77</b>
Ephraim Mthethwa	Durban Central Prison	Durban Central Prison	25 August 1985	Alleged suicide by hanging	<a href="https://sabctrca.sah.org.za/reportpage.php?id=12733&amp;t=Hoosen+Haffejee&amp;tab=report">https://sabctrca.sah.org.za/reportpage.php?id=12733&amp;t=Hoosen+Haffejee&amp;tab=report</a>

561. We remind the Honourable Court of the death in detention of Bayempini Mzizi who died in very similar circumstances to Haffejee only 7 days later in a cell at Brighton Beach Police Station. On behalf of the Mzizi family we had sought to reopen that inquest and consolidate it with this inquest. Sadly, that has not happened, and there is still no decision in that case.

562. On behalf of the legal team and family, we wish to thank all those who made this reopened inquest possible, including –

562.1. This provincial division for making scarce judicial resources available,

562.2. Private investigator Clifford Marion for his meticulous investigations,

562.3. The Foundation for Human Rights for sponsoring his investigations and supporting this case,

562.4. Adv Denardo Macdonald and the DPCI investigators for their dedication to this case,

562.5. Adv Shubnum Singh of the NPA (now the coordinator of the TRC Component) who originally laid the foundation for this case. Her work opened the door to this case.

563. Finally, we pay tribute to Dr Hoosen Haffejee himself. He laid down his life for our freedom and democracy. He endured his final journey to save his comrades, not himself.

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H Varney

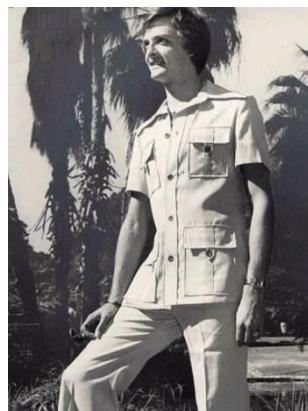
MZF Suleman

Counsel for the Family  
Chambers, Sandton and Umhlanga

18 October 2022

## ANNEX A: THE SAFARI SUIT QUESTION

1. The first inquest 'exhibits' include, amongst other items, a Shirt ('hemp') (exhibit G2), Trouser (exhibit 3) and a Powder Blue Safari Suit (exhibit 6).
2. A safari suit includes both a top (shirt) and bottom (trousers). A typical 1970s style safari suit is depicted below.



3. Questions arise, such as, if Dr Haffejee was wearing a safari suit, why the need for separate shirt and trousers? Conversely if he had shirt and trousers, why the need to also have a safari suit.
4. The evidence appears to disclose that when arrested and under interrogation Haffejee was wearing a short-sleeved safari suit, but the photos of Haffejee's body in the cell depict him in a long sleeve patterned shirt, with his body attached to the grille with a pair of trousers. It is not clear if the trousers are the safari suit bottom or a separate pair of trousers.

***Evidence of the safari suit***

5. Set out below is an overview of the evidence of the witnesses dealing with what Dr Haffejee was wearing.
6. According to Gopal,
  - 6.1. In his statement, Haffejee was wearing a blue or white safari suit when told to strip in the interrogation room.<sup>970</sup>
  - 6.2. In his evidence in chief:
    - 6.2.1. he stated that Dr Haffejee was wearing a powder blue safari suit on the day of his arrest. It comprised a short sleeve jacket and long pants.<sup>971</sup> However the images of Haffejee suspended body,<sup>972</sup> showed him to be wearing a checked long sleeve shirt.<sup>973</sup>
    - 6.2.2. Gopal could not explain the difference in Haffejee's clothing between arrest and interrogation on the one hand and the death scene on the other.<sup>974</sup>

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<sup>970</sup> Record: Volume G26, page 1746, para 56.

<sup>971</sup> 2021 Transcript bundle, page 789, lines 20 – 25.

<sup>972</sup> Record: Volume B2, page 787.

<sup>973</sup> 2021 Transcript bundle, page 790, lines 14 – 20.

<sup>974</sup> 2021 Transcript bundle, page 791, lines 4 – 12.

6.2.3. Gopal claimed that when Haffejee was placed in his cell he was wearing the blue safari suit.<sup>975</sup> The long sleeve shirt must have been placed on Haffejee after he left the cell.<sup>976</sup>

6.3. Under cross-examination,

6.3.1. Gopal confirmed that Haffejee was wearing a short sleeve safari suit on 2 August 1977 and that he was not wearing the long-sleeved shirt underneath the safari suit.<sup>977</sup> This Court commented at that point that it would be unlikely that a long-sleeved shirt would have been worn under a short sleeve safari suit.<sup>978</sup>

6.3.2. Gopal confirmed Dr Haffejee was in his safari suit when he was being groomed to look presentable for the charge office.<sup>979</sup>

6.4. Gopal was questioned as to how the long sleeve shirt got onto Haffejee's body.<sup>980</sup> According to Gopal:

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<sup>975</sup> 2021 Transcript bundle, page 792, lines 6 – 7.

<sup>976</sup> 2021 Transcript bundle, page 792, line 5.

<sup>977</sup> 2021 Transcript bundle, page 884, line 17 – 21.

<sup>978</sup> 2021 Transcript bundle, page 885, line 19.

<sup>979</sup> 2021 Transcript bundle, page 913, line 2.

<sup>980</sup> 2021 Transcript bundle, page 921, line 10.

6.4.1. Something must have taken place, and someone must have put on the long sleeve shirt onto Dr Haffejee while he was in the cell.<sup>981</sup>

6.4.2. Constables Meyer and Naude must have collaborated with whoever did this.<sup>982</sup>

6.4.3. The claim by Meyer and Naude that they did routine inspections and only discovered the body at 04:00 must be a fabrication.<sup>983</sup>

6.4.4. He suspected that those responsible for changing the clothing and stringing up Haffejee would have been Jimmy Taylor, Andy Taylor, Du Toit and Bobby Welman.<sup>984</sup> They would have instructed Meyer and Naude to give them the keys to the cell who would have complied.<sup>985</sup>

7. According to Meyer,

7.1. In his statement, he recalled that Haffejee was dressed in a safari suit and shoes. He could not recall Dr Haffejee having any other property on him.<sup>986</sup>

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<sup>981</sup> 2021 Transcript bundle, page 921, line 10.

<sup>982</sup> 2021 Transcript bundle, page 922, line 3.

<sup>983</sup> 2021 Transcript bundle, page 922, line 6; page 925, line 10.

<sup>984</sup> 2021 Transcript bundle, page 925, lines 17 – 20.

<sup>985</sup> 2021 Transcript bundle, page 926, line 6.

<sup>986</sup> Record: Volume M4, page 3008.

7.2. In his evidence in chief, Meyer stated that he stated that Haffejee was wearing a light safari suit.<sup>987</sup> It was a short sleeve top with long trousers.<sup>988</sup>

8. According to Naude,

8.1. In evidence in chief, he said that Dr Haffejee wore a trouser and a shirt. The shirt colour was “beigy”.<sup>989</sup> He could not recall whether the shirt was a long or short sleeved shirt, but he was sure Dr Haffejee was wearing long trousers.<sup>990</sup>

8.2. In cross-examination, he recalled Haffejee wearing a pants and a shirt, but could not recall whether it was a powder blue, short sleeve safari suit.<sup>991</sup>

### ***Conclusion on the safari suit***

9. There was some discussion around whether Haffejee was switched into the long sleeve shirt to conceal the injuries on his arms from the charge office staff. However, Meyer’s evidence was that Haffejee was in a short-sleeved safari suit when he was booked in. Naude could not recall whether he was wearing a safari suit or not. If Haffejee was already dead it would not have mattered, since the police officers would have been aware that the body would be stripped for the post-mortem examination.

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<sup>987</sup> 2021 Transcript bundle, page 640, line 4.

<sup>988</sup> 2021 Transcript bundle, page 640, lines 9 – 10.

<sup>989</sup> 2021 Transcript bundle, page 1086, lines 5 – 10.

<sup>990</sup> 2021 Transcript bundle, page 1086, lines 25 – page 1087, line 1.

<sup>991</sup> 2021 Transcript bundle, page 1100, lines 17 – 23.

10. During the inspection in loco, Dr S R Naidoo, remarked that given the torture sustained by Haffejee one would have expected to have seen the clothing on his body "heavily blood stained".<sup>992</sup> This observation may hold the key to unlocking this mystery.
11. If the body had been discovered with blood-stained clothing it may have pointed to torture under interrogation.
12. In this regard we note that Brigadier L P Neethling in his evidence in the first inquest was given a box of exhibits which contained a shirt, a jacket and a undershirt (from a source Neethling could not remember<sup>993</sup>) for testing for traces of blood.<sup>994</sup> The tests for blood came back negative.<sup>995</sup> What is remarkable however is that Neethling cut out samples from the long sleeve shirt for testing but not the safari suit Haffejee was wearing when arrested. It was probably no coincidence that Neethling opted not to test the safari suit for traces of blood.
13. It is not known whether Haffejee might have had the spare clothing in his car which could then have been retrieved by the Security Branch. A more likely possibility is that since the SB had easy access to Haffejee's flat,<sup>996</sup> when they realised that the blood-stained safari suit may give them away, they sent officers to collect another set of clothes from his flat.

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<sup>992</sup> 2021 Transcript bundle, page 339, lines 16 – 22.

<sup>993</sup> Record: Volume A3, page 60, lines 29 – 31.

<sup>994</sup> Record: Volume A3, page 63, lines 8 – 9.

<sup>995</sup> Record: Volume A3, page 64, line 3.

<sup>996</sup> 2021 Transcript bundle, page 733, lines 9 – 16. Gopal testified that "Schrewds" Govender, Benjamin, McPherson, Taylor and Du Toit all had access to Dr Haffejee's flat.

14. In this regard we note that at approximately 20h00, Taylor claims that he, Du Toit, MacPherson and Benjamin took Haffejee to the North Pier, where a scuffle took place<sup>997</sup> and they returned at 21h20.<sup>998</sup> Gopal testified that this never happened, and this story was manufactured to explain the injuries on Haffejee.
15. According to the police version of Taylor and Du Toit, during the evening, the Indian members were sent out on investigation, however no time was given as to when they left the station. According to Taylor, the Indian members returned just after midnight as they were escorting Haffejee to the charge office.<sup>999</sup> Du Toit testified that MacPherson, Benjamin and Gopal,<sup>1000</sup> returned to Brighton Beach Police Station around midnight after carrying out investigations relating to Haffejee.<sup>1001</sup>
16. Gopal denied that between 21h20 (the alleged time of return from North Pier) and midnight he and his colleagues were sent on investigation.<sup>1002</sup>
17. If death had occurred between 10.23 and 11pm, the despatching of Gopal and his colleagues to find fresh clothing with them returning after midnight tends to fit the unfolding story. Alternatively, if earlier in the evening Haffejee had become comatose or unresponsive, the plot could

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<sup>997</sup> Volume A3, page 107, lines 1 - 2.

<sup>998</sup> Volume A3, page 123, lines 27 – 28.

<sup>999</sup> Vol A3, page 135, lines 19 – 26.

<sup>1000</sup> Volume A3, page 135, lines 19 – 26.

<sup>1001</sup> Volume A3, page 183, lines 5 – 10.

<sup>1002</sup> 2021 Transcript bundle, page 953, lines 1 – 9.

have been hatched at that time, and the Indian members despatched somewhat earlier to retrieve fresh clothes from the flat.