

## IN THE HIGH COURT OF SOUTH AFRICA

## GAUTENG LOCAL DIVISION

Case no: 2019/445

Original case no: 1982/139

In the matter of:

**THE REOPENED INQUEST INTO THE DEATH  
OF NEIL HUDSON AGGETT**

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**FINAL WRITTEN CLOSING ARGUMENTS  
ON BEHALF OF THE AGGETT FAMILY**

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## INTRODUCTION

- 1 Dr Neil Aggett's death was brought about by the direct acts and omissions of the Security Branch (SB) during his detention. A young promising life was cut down in the early hours of 5 February 1982. His short life was a selfless one. Notwithstanding his privileged upbringing, Neil Aggett ("Neil" or "Aggett") dedicated himself to working for the most vulnerable in society. His choices deeply offended those in authority. They viewed his choices as the ultimate betrayal, worthy of vindictiveness and unrelenting brutality. Their malice and cruelty led directly to his death.
- 2 It is our submission that this Honourable Court will have little difficulty in reversing the finding of Magistrate P.A.J. Kotze that Aggett's "*death was not brought about by any act or omission involving or amounting to an offence on the part of any person.*"
- 3 That decision was the product of a deeply flawed legal system. It was the product of a conspiracy by the police to subvert justice and deny the truth to the Aggett family and the nation. It was the product of intimidation. It was the product of a corrupt magistrate and prosecutor who were willing to avert their gaze from the facts. In short, it was the product of a brutal police state.
- 4 Neil's parents, Aubrey and Joy, and brother, Michael, went to their graves without closure. They had to live and die with a manifestly false official finding that

nobody was to blame for Neil's death. Neil's sister, Jill Burger, and nephew, Stephen Aggett, have followed every day of the proceedings of the reopened inquest. The Aggett family, Neil's partner, Liz Floyd, his friends, and comrades had to wait 38 years for the inquest to be reopened.

5 It must be asked why it has taken the state so long to act in this case, and indeed in virtually all the cases arising from the Apartheid-era. On 2 May 1996, Liz Floyd, who had been detained with Neil, and who was severely traumatised following Neil's death, testified before a hearing of the Truth and Reconciliation Commission (TRC) in Johannesburg.<sup>1</sup> She called on Aggett's interrogators to come forward and speak the truth. None did.

6 In its final report, the TRC found that:

*“.... the former state, the Minister of Police, the Commissioner of Police and the Head of the Security Branch responsible for the detention, torture and death of Dr Neil Aggett, constituting gross violations of human rights.”<sup>2</sup>*

7 The TRC noted that no prosecutions resulted from complaints of torture, even though the use of torture was highlighted in several inquests and political trials. The Commission referred to the cases of Ahmed Timol, Neil Aggett and Lindy

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<sup>1</sup> Transcript of the Hearing of the Human Rights Violation Committee of the TRC CASE: GO\ - Johannesburg, Day 3, 02.05.96: Elizabeth Floyd, available at: <https://www.justice.gov.za/Trc/hrvtrans/methodis/floyd.htm>

<sup>2</sup> *Truth and Reconciliation Commission of South Africa Report*, 1999, para 194, Vol 3, Ch 6, subsection 25, available at: <https://sabctrc.saha.org.za/reports/volume3/chapter6/subsection25.htm>

Mogale as examples.<sup>3</sup> Few expected the apartheid security bodies to investigate themselves. The Commission lamented the fact that magistrates and judges seldom protected detainees or ruled in their favour, even though patterns of abuse were repeatedly demonstrated.<sup>4</sup> Notwithstanding these findings, post-apartheid police and prosecutors were not moved to act.

- 8 The TRC referred hundreds of cases to the National Prosecuting Authority (NPA) in which amnesty was not applied for or denied, including the Aggett 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 light of day in courts of law. It has emerged in recent court proceedings<sup>5</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*

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<sup>3</sup> *Truth and Reconciliation Commission of South Africa Report*, 1999, para 38, p 620, Vol 6, Section 5 Ch 2, subsection 4, available at:

<https://sabctrca.saha.org.za/reportpage.php?id=12942&t=Aggett&tab=report>

<sup>4</sup> *Ibid* at para 39.

<sup>5</sup> *Thembi Nkadimeng v National Director of Public Prosecutions and Others* Case No. 3554/2015, Gauteng Division. Court papers available at: <https://www.ahmedtimol.co.za/wp-content/uploads/2020/03/6.-Notice-of-motion-and-founding-affidavit-and-annexures.pdf>:

*Rodrigues v The National Director of Public Prosecutions* [2019] 3 All SA 962 (GJ) at paras 21 – 23.

*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>6</sup>*

- 10 Most of these cases cannot be revived. Suspects, witnesses, and family members have died.<sup>7</sup> The harm visited upon these families and their communities is incalculable. They deserve nothing less than a full, open and public commission of inquiry as to how and why justice was denied to them.
- 11 In this matter, the Aggett family have been cruelly denied much accountability and truth. Former Lieutenant Stephen Whitehead, lead interrogator and tormentor of Neil Aggett, died on 22 April 2019, in the same week that the Minister of Justice announced the reopening of the Aggett inquest. He was only 62 years old.<sup>8</sup>
- 12 Whitehead and several others could have been held to account if the authorities had done their jobs under law and Constitution, and not succumbed to political pressure to abandon these cases. While the NPA and SAPS have appeared to turned over a new leaf on these cases with the welcome announcement of the

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<sup>6</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, available at: [https://www.ahmedtimol.co.za/wp-content/uploads/2019/08/2019-04-17-Representations-to-the-Commission\\_paginated-bundle.pdf](https://www.ahmedtimol.co.za/wp-content/uploads/2019/08/2019-04-17-Representations-to-the-Commission_paginated-bundle.pdf)

<sup>7</sup> Just in 4 months, between April and August 2019, four former suspects and witnesses in apartheid-era cases died before the trials or inquests commence, including accused former Sergeant Msebenzi ‘Vastrap’ Radebe in the Nokuthula Simelane murder case; former Lieutenant Stephen Whitehead, lead interrogator of Neil Aggett; witness Ernest Matthis who saw Timol fall and was expected to testify in the murder trial of Jao Rodrigues; and former Security Branch Colonel James Taylor, who was involved in the arrest and brutal interrogation of Dr Hoosen Haffejee. Recently another accused in the murder of Nokuthula Simelane died.

<sup>8</sup> Tymon Smith, *NPA to re-examine Neil Aggett’s death*, New Frame, 6 May 2019: <https://www.newframe.com/npa-re-examine-neil-aggetts-death/>; Ufrieda Ho, *Did details of Neil Aggett’s ‘suicide’ die with apartheid security policeman Steve Whitehead?* Daily Maverick, 16 May 2019: <https://www.dailymaverick.co.za/article/2019-05-16-did-details-of-neil-aggetts-suicide-die-with-apartheid-security-policeman-steve-whitehead/>

creation of a special unit, just this week, we must regrettably advise that they had to be forced to take action in this case. The Pro Bono Department of Webber Wentzel, the Aggett family attorneys, had to threaten the NPA with litigation to compel them to reopen the inquest through correspondence on 21 June 2016, 8 July 2016, 11 and August 2016. On 23 August 2016, the attorneys sent the NPA a letter of demand placing them on terms:

*"In the circumstances we hereby demand that the necessary recommendations to the Minister of Justice in terms of section 17A of the Inquest Act 58 of 1959 to reopen the aforesaid inquests be made by no later than 30 September 2016."<sup>9</sup>*

- 13 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 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. 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.
- 14 Perpetrators of apartheid era crimes have taken their lead from the State's inaction. They know they have nothing to fear. This explains why, with a few notable exceptions, former Security Branch (SB) witnesses have paraded before this Court and continued with their charade of innocence, just as they did before the first Inquest Court in 1982. It is as if nothing has changed. They do not have the slightest concern of having to face the music for their lies and deceit.<sup>10</sup> This

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<sup>9</sup> A copy of the letter this was attached to the Calata representations to the State Capture Commission marked "IC24", see footnote 6 above.

<sup>10</sup> The full 1982 record from the Wits archives can be accessed here: <http://www.historicalpapers.wits.ac.za/?inventory/U/collections&c=AK2216/R/>

is the price that we must pay for the readiness of our law enforcement authorities to trash the rule of law at the behest of powerful political forces.

- 15 We pay tribute to the Aggett legal team in 1982, George Bizos SC, Denis Kuny SC, William Lane, and David Dison. They fought a valiant fight against a rigged system. We stand on their shoulders. George Bizos devoted his entire working life to fighting for justice for victims of apartheid crimes. He died last year before he could see finality in this case.
- 16 We also pay tribute to the Aggett family members, his partner Liz Floyd, and his friends and comrades in the trade union movement who kept his memory alive and pushed for this inquest to be reopened. We recall Brian Sandberg, a friend and classmate of Neil at Kingswood College in Grahamstown, who founded the Neil Aggett Support Group. He died in 2014. Sandberg laid criminal charges against Whitehead at the Johannesburg Central Police Station (formerly John Vorster Square) in 2013.<sup>11</sup> If the authorities had acted then Whitehead could have been held to account.
- 17 Getting to the truth of what happened to Neil Aggett during his security detention, and the details of his death, has been a difficult exercise. According to the SB version he died alone so there are no witnesses to his last moments. The prevailing culture of the Security Branch saw a closing of the ranks and the concocting of fabricated versions before the 1982 Inquest to conceal the truth of

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<sup>11</sup> *Culpable homicide charge for Aggett's death over three decades later*, 28 November 2013, The Witness, available at: <https://www.news24.com/witness/archive/culpable-homicide-charge-for-aggetts-death-over-three-decades-later-20150430>

what happened. Some of these SB officers came before this reopened inquest and persisted with the same lies and half-truths. We will argue that they must face the consequences for their ongoing deception.

- 18 Notwithstanding these challenges, we are satisfied that sufficient fresh evidence has been placed before this Court to warrant an overturning of the first inquest court finding. It is abundantly clear that the conduct of the SB caused the death of Neil Aggett. The evidence points unequivocally to an unrelenting and irrational campaign of vindictiveness and physical brutality directed against Aggett.
  - 18.1 We will argue that in these circumstances, if his death was a suicide, it was an induced suicide for which the police are directly responsible. If suicide, we submit in these arguments, that it was the cruelty of the police that drove Aggett over the edge. In addition, we will argue that the SB, on their own versions, were aware, or should have been aware, that he was a suicide risk, but nonetheless took no reasonable steps to protect him.
  - 18.2 However, we will also point to cogent evidence that points at the real possibility of foul play on the part of the police. This has much to do with what transpired in the hours leading up to his death and what transpired shortly thereafter. It also has much to do with the clumsy efforts of the police in covering up their conduct. This evidence points to the possibility that Aggett may have been murdered.

19 In order to assist this Honourable Court to navigate a total record consisting of 8,957 pages, 447 exhibits<sup>12</sup> and the evidence of some 90 witnesses over three different hearings, we have attached to our heads the following documents:

- 19.1 Annex A: Detailed Chronology,
- 19.2 Annex B: Outline of the Evidence in the Reopened Inquest,
- 19.3 Annex C1: Table of Abuse and Torture,
- 19.4 Annex C2: Allegations of Torture by JVS Detainees,
- 19.5 Annex C3: SB Officers – Denials and Admissions,
- 19.6 Annex D: Aggett Interrogation Summary,
- 19.7 Annex E: List of Witnesses in the Reopened Inquest,
- 19.8 Annex F: List of Exhibits in the Reopened Inquest,
- 19.9 Annex G: Index to Transcripts in the Reopened Inquest,
- 19.10 Annex H: Index to the 1982 Aggett Inquest.

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<sup>12</sup> In the 1982 Inquest there were 251 exhibits. In the Reopened Inquest there were 92 exhibits put up the family, 90 by the investigating officer, 6 by the NPA, 6 from former SB officers and 2 from the Commissioner SAPS.

## EVIDENTIAL CONSIDERATIONS

### ***The incomplete record from the 1982 inquest proceedings***

- 20 The original record from the original inquest is incomplete. The state of the record of the original inquest needs to be considered and properly considered by this Court.
- 21 The 1982 inquest record was downloaded from the University of Witwatersrand's Historical Papers Research Archive Website (Wits Archives).<sup>13</sup> The 1982 record is broken up into 5 parts:
  - 21.1 part A is the transcript (divided into 8 volumes, A1 to A8); Judgment and summary of evidence,
  - 21.2 part B is exhibits that were handed up (divided into 8 volumes, B1 to B8),
  - 21.3 part C is Heads of Argument, affidavits, and statements,
  - 21.4 part D is attorneys' correspondence; and
  - 21.5 part E is additions.
- 22 The index to the 1982 inquest record indicates that the transcripts of the court proceedings should run until page 3518. However, the transcript that is currently before the court (as recovered from the Wits Archives) is missing certain pages, as follows:

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<sup>13</sup> The full 1982 record from the Wits archives can be accessed here:  
<http://www.historicalpapers.wits.ac.za/?inventory/U/collections&c=AK2216/R/>

- 22.1 the transcript ends at page 3165, at the testimony of Professor Jan Adriaan Plomp. This means that pages 3166 to 3518 (from docket volume A8) are missing, which amounts to 353 pages. At the end of page 3165 the court adjourns for lunch. It thus appears that at least part of the missing pages relates to Professor Plomp's testimony. We are unable to confirm if there was another witness that came after Professor Plomp but note that no such witness is mentioned in the index; and
- 22.2 page 212 of the transcript is also missing, (part of A1.1.7) which is the expert report by Professor J D Laubscher. The missing page appears to deal with a possible cause of death other than by hanging.
- 23 After the transcript, the judgment runs from pages 3519 to 3707 (which is complete) and a 271-page summary appears thereafter (which is complete).
- 24 There are various exhibits missing from part B of the 1982 record, which are as follows:
- 24.1 photographs relating to the crime scene when Aggett was found hanging and photographs of the post-mortem. These are listed in the 1982 index at B1.15, B1.19 and B1.33. They are listed as pages 27 to 29; 34; 72 to 76 of Part B.
- 24.2 B1.43, which is the statement of Sergeant J Agenbag, is missing page 92.
- 24.3 in folder B3.1 (new affidavits by detainees) annexure C is missing which is an affidavit by Barbara Hogan.

- 24.4 B3.5.19 is missing which is another statement by Barbara Hogan.
- 24.5 B4.1.3 is missing which is Auret Van Heerden's statement on his assaults.
- 24.6 B6.1 is missing which is an affidavit by Chari Vorster.
- 24.7 B7.5 is missing which is an article by L J West on the Psychosis of sleep deprivation. Folder B7 deals with psychological material.
- 25 The whole of B2 was indicated as missing in the Wits Archives index of the 1982 record. During the 2020 inquest proceedings the attorneys for the Aggett family reached out to Beverley Naidoo (author of the book "Death of an Idealist") as she had provided various inquest documents to the Sussex University archives. Naidoo arrange with Sussex University for the return of the B2 folder, which was handed up to the court during the 2020 inquest proceedings.
- The missing photographs***
- 26 The most significant portions of the record that are missing are the photos of the crime scene, including Aggett's hanging body and the cell, as well as photos of the body at the post-mortem. It is most likely that these photographs were intentionally removed from the 1982 Inquest record and destroyed. It cannot be deemed a coincidence that all photographs of Aggett's body are missing from the 1982 inquest record.
- 27 The investigating officer for the reopened inquest, Frank Kgamanyane ("Kgamanyane"), confirmed that the 1982 inquest record was missing all photographs of Aggett's body from the 1982 inquest in his testimony at the

reopened inquest in 2020. Kgamanyane was initially informed by Ms Gabriel Mohale of the Wits Archives that there were photographs of Aggett. He went to the Wits Archives but could not find any photographs.<sup>14</sup>

- 28 The only photographs of Aggett's body in the reopened inquest were obtained from a SABC documentary and sourced by Webber Wentzel, the attorneys for the Aggett family and handed over to Kgamanyane.<sup>15</sup> These are attached to his evidence and handed up to the court as exhibit FGK7(1) to (4). These are poor quality photos as they appear to be copies of copies. A photograph of the kikoi from which Aggett was found hanging was obtained from former SB officer, Paul Erasmus,<sup>16</sup> and given to Kgamanyane, which was handed up as exhibit FGK15.<sup>17</sup>
- 29 Charl Wynand Lambrechts was the police officer responsible for taking photographs at the crime scene in 1982. He testified at the 2020 (and 1982) inquest that he only took 4 photographs at the crime scene:
- 29.1 the door to the cell with the deceased hanging from the grille,
- 29.2 the front of the deceased hanging on the bars,
- 29.3 a close-up of the deceased's face with the knot in the kikoi, and
- 29.4 the concrete bed in the cell.<sup>18</sup>

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<sup>14</sup> Oral testimony of Frank Kgamanyane on 20 January 2020, page 39, line 12; 2020 consolidated transcript bundle, page 40.

<sup>15</sup> *Ibid*, page 39, line 22; 2020 consolidated transcript bundle, page 40.

<sup>16</sup> Paul Erasmus died on 14 July 2021.

<sup>17</sup> *Ibid*, page 52, line 13; 2020 consolidated transcript bundle, page 53.

<sup>18</sup> Oral testimony of Charl Lambrechts on 20 February 2020, page 65, line 17; 2020 consolidated transcript bundle page 2841; exhibit B1.32.

- 30 It appears that the first two photos taken by Lambrechts are the photos handed up as FGK7(1) and (2). The photograph of a close-up of Aggett's face and the concrete bed in the cell have not been recovered. Lambrechts testified that he did not take any photographs of Aggett's body once it had been cut down and was placed on the floor.<sup>19</sup> Lambrechts did not indicate in his 1982 or 2020 testimony that he took any photos of Aggett's body at the morgue. His testimony in 1982 confirms that he only took four photographs of the deceased and then focused on fingerprinting.
- 31 Dr Steve Naidoo, forensic pathologist for the family, testified that the medical evidence revealed that there was no record of photographs taken during the autopsy under the guidance of a pathologist.<sup>20</sup> In the 1982 inquest Warrant Officer Mostert was the official photographer and he stated in his 1982 affidavit that Aggett's body was photographed by him on 5 February 1982. His affidavit refers to accompanying photos marked 270/82 but no photographs are attached.<sup>21</sup> There is no record of the Mostert photographs in the inquest record.
- 32 Dr Botha, who was the pathologist for the family in 1982, was asked by Advocate Haasbroek (for the police) if he would like to look at a photograph of the body and he declined saying that he looked at them the day before.<sup>22</sup> No reference is made to an exhibit number and so we are unable to tell what photograph was being referred to and whether or not it was handed up as an exhibit at the inquest.

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<sup>19</sup> Oral testimony of Charl Lambrechts on 20 February 2020, page 74, line 14; 2020 consolidated transcript bundle page 2850

<sup>20</sup> Oral testimony of Dr Steve Naidoo on 6 February 2020, page 91, line 1; 2020 consolidated transcript bundle page 1489.

<sup>21</sup> Exhibit B1.12, para (b) (repeated at exhibit B8.5 page 17)

<sup>22</sup> Page 176 of the 1982 consolidated transcript.

- 33 We regard the disappearance of the photos of the death scene and post-mortem as nothing less than deeply suspicious. The possibility that these photos were deliberately removed to hamper a future inquiry, such as this reopened inquest, cannot be ruled out.

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

- 34 Section 17A(2) of the Inquests Act, 48 of 1959 (the Act) requires for 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.
- 35 The record in these proceedings, to the extent that it can be supplied, is already before this Court. In addition, the 1982 record has been supplemented by considerable new evidence, which we submit, has been of assistance to this Court. 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>23</sup> the SCA 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 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*

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<sup>23</sup> *S v Chabedi* 2005 (1) SACR 415 (SCA).

*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."*

- 36 In addition, it is trite that a party to any legal 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>24</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>25</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>26</sup>
- 37 None of the parties have raised a dispute regarding the existence of the documents. The concern is that the available documents from the original inquest are incomplete.
- 38 The principle set out in *Chabedi* applies in respect of criminal appeals. An inquest is not a criminal trial and a reopened inquest is not a criminal appeal. However, 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

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<sup>24</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>25</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>26</sup> *Ibid.*

presented in this inquest is more than sufficient to enable this Court to properly consider the facts and issues and reach a finding.

- 39 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**

- 40 In this section we set out an overview of the Aggett story, including his early years, political activity, arrest, interrogation, torture, death and the aftermath.
- 41 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. 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***

- 42 Neil Aggett was born on 5 February 1953 in Kenya. His family left Kenya soon after independence in 1960 and settled in Somerset West near Cape Town. Neil

and his siblings went to boarding school at Kingswood College in Grahamstown, one of the oldest Methodist educational institutions in South Africa.<sup>27</sup>

- 43 Neil matriculated at Kingswood College with a first-class pass in 1970.<sup>28</sup> He then studied a for medical degree at the University of Cape Town (UCT) which he completed in 1976. He met Liz Floyd in his fourth year while she was in her third year and they became romantically involved.<sup>29</sup>
- 44 Neil was interested in philosophy, particularly German and French philosophers including Camus and Fanon.<sup>30</sup> He was concerned about politics in South Africa but at the time was not involved in any organisations. He planned to leave the country after graduation to avoid military conscription because he was opposed to the National Party led apartheid government and refused to fight against his fellow South Africans.<sup>31</sup>
- 45 In January 1977, Neil worked as an intern at Umtata Hospital where he became friends with politically aware African doctors. He returned to Cape Town in July of that year but could not find another internship locally. He found an internship at Tembisa Hospital in the then Transvaal.<sup>32</sup>
- 46 Neil decided to stay in the country. He and Liz decided to live together in Fox Street, Jeppestown in Johannesburg. Neil's had become a "draft dodger" and he

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<sup>27</sup> G4 p 2 para 6

<sup>28</sup> B8.73 para 1

<sup>29</sup> G4 p 2 para 9

<sup>30</sup> G4 p 2 para 9

<sup>31</sup> G4 p 2 para 10

<sup>32</sup> G4 p 4 para 11

was evading the military police. He could not take a full-time job as a doctor because the military police would be able to trace him.

47 Neil therefore employed his skills as a trained medical doctor working part-time sessions at the Baragwanath Hospital in the casualty after hours section.<sup>33</sup> The casualty department of Baragwanath treated very serious injuries. Neil took a liking to the work and was interested in studying further in the field of emergency surgery. He worked two evenings a week at the casualty section.<sup>34</sup>

### ***Political activity***

48 When Oscar Mpetha came to Johannesburg to open a branch of the Food and Canning Workers Union (“**FCWU**”), he stayed with Neil in Johannesburg who also provided him with transport. Oscar began to mentor Neil and recruited him to the union. Neil attended meetings, ran the office, and sought mentorship from Emma Mashinini at the Congregated and Allied Workers Union of South Africa (“**CAWUSA**”) and Thozamile Gweta and Sisa Njikelana from the South African Allied Workers Union (“**SAAWU**”). The SAAWU leaders from East London who were opening a branch in the Transvaal and stayed with Neil and Liz when they visited Johannesburg. Neil began to work full-time in the emerging labour movement and served as an organiser of the Transvaal branch of the FCWU. This role was unpaid.<sup>35</sup>

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<sup>33</sup> G4 p 4 para 12

<sup>34</sup> G4 p 4 para 13

<sup>35</sup> G4 pp 4-5 paras 14-15

- 49 Neil sympathised with the ANC but was not a member.<sup>36</sup> He and Liz chose to work in public organizations and not to work underground for the ANC. He and Liz believed that this was more effective. They did not take instructions from the ANC nor did they report to the ANC structures. Neil felt that to take orders from an outside organisation would undermine the shop floor process and would be undemocratic.<sup>37</sup>
- 50 Neil felt that he could make a bigger difference through the trade union movement and did not want to be targeted by the State because of any association with a banned organisation.<sup>38</sup>

### ***Arrest and Detention***

- 51 Neil's union activities started gaining the attention of the Security Branch ("SB") of the then South African Police ("SAP"). In 1981, SB members often followed Neil with several cars when he left his house and parked outside the house on many nights. The SB tampered with union vehicles by overinflating tyres and deflating others with the aim of causing accidents. They also raided union offices and tampered with equipment. The SB detained Sisa Njikelana from Liz and Neil's house on 19 May 1981.<sup>39</sup> Liz and Neil felt that the SB was increasing the pressure on them, but they were unable to predict their next steps.<sup>40</sup>

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<sup>36</sup> G4 p 5 para 16, Hogan testimony second inquest record p 620

<sup>37</sup> G4 p 5 para 16

<sup>38</sup> Dison testimony second inquest record pp 181-182, Hogan testimony second inquest record p 602, G34 p 12 para 32

<sup>39</sup> G4 p 5 para 17 and G20 p2 para 8

<sup>40</sup> G4 p 5 para 18

- 52 Matters came to a head when Barbara Hogan, an underground member of the ANC, was tricked by a SB undercover agent into preparing a list of her close comrades.<sup>41</sup> Once this list was in the hands of the SB it was only a matter of time before action was taken against those on the list.
- 53 Major Arthur Cronwright (Cronwright), then head of the SB at John Vorster Square (JVS), believed that he had cracked the ANC political underground and that he would bring activists in truckloads to court like the Rivonia trial in the next big treason trial.<sup>42</sup> He was desperate to use the Close Comrades list to prove a wider conspiracy beyond Barbara Hogan and her mission on behalf of the Botswana arm of the ANC. The SB had hoped that the Close Comrades list would prove this grand conspiracy.<sup>43</sup>
- 54 Neil's name featured on the Close Comrades list prepared by Ms Hogan.<sup>44</sup> She identified herself as 'under discipline', meaning that she had submitted herself to the discipline of the ANC.<sup>45</sup> Dr Aggett was identified as one of the people that Ms Hogan would consult with as part of her reference group. This category was described as "*Advisory/ reference group/ people, (only above-ground work)*".<sup>46</sup> Ms Hogan also stated that this group was only available for above ground legal work and she never engaged with any of them about ANC work nor attempted to recruit them into an ANC network.<sup>47</sup>

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<sup>41</sup> B3.5.21

<sup>42</sup> Hogan testimony second inquest record p 628, G13 p 11 para 32, G17 p 3 para 7, G29 p 11 para 40,

<sup>43</sup> G3 p 7 para 23

<sup>44</sup> Exhibit B3.5.21

<sup>45</sup> Hogan testimony second inquest record p 596

<sup>46</sup> Hogan testimony second inquest record p 618, G13 p 9 para 27.4

<sup>47</sup> Hogan testimony second inquest record p 619

- 55 On 26 November 1981, Neil was arrested and detained under section 6 of the Terrorism Act, 83 of 1967 ("Terrorism Act") due to his name being listed on the Close Comrades document.<sup>48</sup> This was notwithstanding that his name was in a group that was only involved in legal above ground work. He was taken to JVS. The next day he phoned his sister, Jill Burger, saying that she need not worry as he had done nothing wrong and the SB had nothing to pin on him.<sup>49</sup>
- 56 During Neil's detention from 27 November 1981 till his death in the early hours of 5 February 1982, he only received one visit from his family and was kept in solitary confinement for the duration of his detention. On 31 December 1981 he was visited at JVS by his mother and sister in the presence of an SB member who controlled their conversations.<sup>50</sup> During his detention, he was not permitted to consult with a legal representative.<sup>51</sup>

### ***Interrogation and Torture***

- 57 Neil's first phase of interrogation took place from 15 December 1981 to 23 December 1981 under the control of Captain Martin Naude (Naude).<sup>52</sup> He had no complaints about his treatment during this period other than the injustice of his detention without trial.<sup>53</sup>
- 58 A new period of interrogation under the control of Lt Stephen Whitehead (Whitehead) took place from 4 January 1982.<sup>54</sup> This commenced a cruel period

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<sup>48</sup> G4 p 6 para 21

<sup>49</sup> Burger testimony second inquest record pp 109-110, G2 p 2 para 5

<sup>50</sup> G2 paras 6-9

<sup>51</sup> Second inquest record 2020 pp 160-161

<sup>52</sup> Second inquest record 2021 p 144

<sup>53</sup> B1.2, Second inquest record 2021 pp 41-42

<sup>54</sup> B8.47 p 3

of interrogation and torture in which Neil's physical and mental health deteriorated considerably, culminating in his death either late night on 4 February or early in the morning of 5 February 1982.<sup>55</sup>

- 59 On the first day of Whitehead taking control of the interrogation the torture and assaults on Neil commenced. He was assaulted and electrocuted by Detective Sergeant James Andrew Van Schalkwyk, a railway police officer, who we believe had been brought to JVS, together with other railway policemen to soften up detainees. The assault took place in the presence of Constable Magezi Eddie Chauke and Whitehead. Neil requested to see a doctor, but his request was ignored.<sup>56</sup>
- 60 On 4 January 1982, Inspector of Detainees, Abraham Johannes Mouton, was denied access to Neil, the very day he was assaulted.<sup>57</sup> On 6 January 1982, Magistrate AGJ Wessels was also denied access to him.<sup>58</sup>
- 61 On 18 January 1982, Neil was permitted to see Magistrate Wessels and recorded his complaint of assault he sustained on 4 January 1982. He had an injury on his forearm that corroborated this allegation, which was identified during the post-mortem examination.<sup>59</sup>
- 62 On 25 January 1982 Maurice Smithers, a detainee, and Constable Mohanoe Gerden Makhetha observed Neil being struck with a rolled-up newspaper or

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<sup>55</sup> G17 para 59, G27 paras 57-58, B4.1.1 para 19, G14 para 33, G7, para 42, G23 para 21

<sup>56</sup> B8.55

<sup>57</sup> B8.63

<sup>58</sup> B8.64

<sup>59</sup> B8.67

magazine and being forced to do exercises for an extended period, semi-naked on the 10<sup>th</sup> floor of JVS.<sup>60</sup>

- 63 Between Thursday 28 January to Sunday 31 January 1982, Neil was subjected to prolonged interrogation, referred to as the 'long weekend'. During this time Neil was kept under continuous interrogation on the 10<sup>th</sup> floor by different teams working on a roster basis. During this period, he was not returned to his cell and deprived of sleep. He was tortured and electrocuted by Whitehead on the night of Friday, 29 January 1982.<sup>61</sup>
- 64 On 1 February 1982, a visiting magistrate was prevented from seeing him.<sup>62</sup>
- 65 On 4 February 1982 Neil made a complaint in an affidavit to Sgt Blom in which he described the assaults and treatment on 4 February 1982 and the 'long weekend'.<sup>63</sup> Some 15 hours later he was dead.

### ***Death***

- 66 The SB allege that Neil hung himself in his cell from the grille using a kikoi on in the early hours of the morning of 5 February 1982. He was found at approximately 01h30am by Sergeant James Agenbag and Constable Maseou Paul Sehloho.<sup>64</sup>

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<sup>60</sup> G6 paras 33-45, G8 paras 41-44, G9 paras 17-33

<sup>61</sup> B8.55

<sup>62</sup> First inquest record p 1049

<sup>63</sup> Exhibit B8.55

<sup>64</sup> Exhibit B1.40 and Exhibit B1.43

67 In the late hours of the night of 4 February 1982 and the early hours of the evening on 5 February 1982 at least three detainees heard a commotion and observed unusual activity in the corridors of the second floor:

67.1 Sisa Njikelana heard the main gate being opened and several low voices.

According to Njikelana, upon hearing this he stood on top of his toilet bowl and looked out the window into the passage and saw approximately six persons carrying Neil in the direction of the second set of stairs away from the lifts. They were carrying Neil the way Muslims carry their dead at funerals, and they were moving quickly.<sup>65</sup>

67.2 Keith Coleman saw 4 figures hurrying past, but they were not warders. All the cell windows were banged closed one by one and the main gate to the cell block was slammed and locked.<sup>66</sup>

67.3 Jabu Ngwenya testified that police officers went down the corridor and stood in front of each cell door, obscuring the peephole into the corridor.<sup>67</sup>

### ***Investigation and “Walking Suicide” Mission***

68 Contrary to crime scene protocol numerous persons were in the cell for some 2.5 hours before a forensic investigation commenced. At least five SB officers were in the cell, including Whitehead.<sup>68</sup>

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<sup>65</sup> Exhibit G20 Para 40 to 43 and annexure SN1; 2021 transcripts pages 1192 - 1195

<sup>66</sup> Exhibit G27 Para 60-62

<sup>67</sup> Exhibit G23 para 23

<sup>68</sup> Exhibit B8.37, B1.42, B1.36, B1.39, B8.30, B1.23, B1.40, B8.4, B1.34, B8.29, B1.23, B1.34

- 69 The investigation at the crime scene was sub-standard, which prevented a thorough, or even a basic investigation from taking place. Only one solitary fingerprint was lifted from the entire grille, which was allegedly above the kikoi knot at the top of the grille.<sup>69</sup> Aggett's body was lifted and cut down by members of the SB and not by the investigators.<sup>70</sup> The various shortcomings are dealt with later in these heads.
- 70 Following Neil's death, the SB sent Whitehead and Sgt Paul Erasmus (Pretorius) on a secret mission to find support for the notion that Neil "was a *walking suicide*". They posed as journalists and visited his old High School and gained illegal entry into the Aggett family home in Somerset West. Pretorius was charged with this crime, after he was caught by a neighbour. The mission was a dismal failure as no evidence of suicidal tendencies were discovered.<sup>71</sup>
- 71 According to Erasmus, the family's legal team telephones were bugged, and rehearsals were held at JVS to prepare Whitehead for the inquest.<sup>72</sup>
- 72 The SB spared no effort to ensure they would be absolved of wrongdoing. SB members packed the court room to intimidate various witnesses.<sup>73</sup> Magistrate Kotze found that Neil had committed suicide, following his alleged betrayal of his comrades, and nobody was to blame for his death.<sup>74</sup>

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<sup>69</sup> Exhibit B1.34 and Exhibit B8.29

<sup>70</sup> Exhibit B1.34 and B 8.29

<sup>71</sup> Exhibit G29 para 42 onwards

<sup>72</sup> Exhibit G29 para 72

<sup>73</sup> Exhibit G29 para 74

<sup>74</sup> 1982 consolidated transcript page 3706

## FIRST INQUEST

### ***Submissions of Aggett family***

- 73 The Aggett family's legal representatives led by Adv Bizos SC presented extensive and detailed heads of argument spanning 196 pages before the first inquest court.<sup>75</sup>
- 74 The Aggett family legal team focused on Dr Aggett's condition resulting from his detention. They argued that over Dr Aggett's 70-day detention he was extensively and brutally interrogated by the SB. This interrogation intensified in January 1982 when interrogations took place daily. This culminated with Dr Aggett being subjected to 62 hours of continuous interrogation over the 'long weekend' that preceded his death.<sup>76</sup>
- 75 The Aggett family lawyers argued that extensive evidence was presented to the first inquest court which provided a contrasting picture of Dr Aggett in the earlier stages of his interrogation compared to his physical, mental and emotional state after 25 January 1982.<sup>77</sup> The team argued that Aggett was not the type of person who was likely to contemplate taking his own life.<sup>78</sup>
- 76 This picture contrasted with the evidence of the SB officers in the first inquest whose version was that Dr Aggett was well cared for, was mentally and emotionally stable and healthy, calm, agreeable and co-operative.<sup>79</sup> The SB

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<sup>75</sup> Exhibit C2

<sup>76</sup> Exhibit C2 pp 5-6 paras 3.1-3.2, Exhibit C3.6 is a chart displaying Dr Aggett's interrogation.

<sup>77</sup> Exhibit C2 pp 7-8 paras 4.1-4.2, p 41 para 15 *et seq*

<sup>78</sup> Exhibit C2 p 10 para 5.2

<sup>79</sup> Exhibit C2 pp 8-9 paras 4.3-4.4

claimed that Dr Aggett's sudden death on 5 February 1982 came as a complete shock and surprise given his sound state of physical, mental and emotional health.<sup>80</sup>

- 77 The family legal team pointed to Dr Aggett's affidavit of 4 February 1982, which provided a first-hand account of his abuse and torture, as refuting the SB version.<sup>81</sup> They argued that the marks on Aggett's body observed at the post-mortem were consistent with injuries inflicted upon by him by SB members during his detention.<sup>82</sup> Evidence of the abuse of Aggett was also provided by the observations of other detainees.<sup>83</sup>
- 78 The legal team argued that the SB were obliged to protect Dr Aggett and keep him in good health and ensure that he was released at the end of his detention with his physical and mental health unimpaired.<sup>84</sup> The SB were not entitled to subject him to assault or third-degree methods of interrogation.<sup>85</sup>
- 79 If SB members instigated, assisted or placed Dr Aggett in a position to commit suicide, they would be committing an offence depending on the facts of a particular case, despite the final act of suicide being a voluntary, non-criminal act of the deceased.<sup>86</sup>

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<sup>80</sup> Exhibit C2 p 9 para 4.4

<sup>81</sup> Exhibit C2 p 11 para 6.2

<sup>82</sup> Exhibit C2 pp 4-5 para 2.3

<sup>83</sup> Exhibit C2 p 12 para 6.3 in respect of the testimony of Smithers, van Heerden, Ngwenya and Njikelana

<sup>84</sup> *Rossouw v Sachs* 1964 (2) SA 551 (AD) 561D-F, 564H

<sup>85</sup> Exhibit C2 p 15 para 10.1

<sup>86</sup> Exhibit C2 p 15 para 10.3

- 80 The Aggett family lawyers submitted that Aggett's ill treatment at the hands of SB officers, particularly during the week prior to his death drove or induced him to take his own life.<sup>87</sup> The relevant SB officers were accordingly criminally responsible, on a balance of probabilities, for Dr Aggett's death by reason of their acts and omissions.<sup>88</sup> The responsible officers were primarily Major Cronwright and Lt Whitehead.<sup>89</sup> They were responsible for the crime of culpable homicide because of their acts and omissions.<sup>90</sup>
- 81 The claims of Cronwright and Whitehead that Aggett was well-treated were belied by the facts.<sup>91</sup> Dr Aggett complained to a magistrate on 18 January 1982 that he had been assaulted on 4 January 1982. He was prevented from complaining to the inspector of detainees, the magistrate, and the district surgeon. This complaint was not investigated nor was a statement taken from Aggett until 4 February 1982, only hours before he died. In his statement, he complained about further assaults that had taken place during the "long weekend". The nature of these assaults was more severe than the earlier assaults. Despite this serious complaint, no attempt was made to have Aggett examined by a doctor or to suspend his interrogation. His interrogation continued that day. The legal team submitted that had such steps been taken his life may very well have been saved.

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<sup>87</sup> Exhibit C2 p 19 para 11.2

<sup>88</sup> Exhibit C2 p 20 paras 11.2-11.3

<sup>89</sup> Exhibit C2 p 21 paras 11.4.1, p 21 para 11.4.2

<sup>90</sup> Exhibit C2 p 31 paras 12.11

<sup>91</sup> Exhibit C2 p 33 para 13.11, p 43 para 16 *et seq*

- 82 The Aggett family legal team painstakingly analysed evidence of Dr Aggett's state before and during his detention.<sup>92</sup> These submissions demonstrated that the SB version that he was well treated was incredulous, improbable and one which the first inquest court should have rejected.
- 83 The legal team took issue with the SB's claim that Dr Aggett's suicide was motivated by his betrayal of his comrades by making certain disclosures recorded on four pages of notes furnished to WO Deetlefs.<sup>93</sup> The claim was totally improbable. The alleged four pages of notes or the telex (which transmitted the pages) were never produced before the first inquest court and no follow up action was taken by the police despite its apparently damning contents.<sup>94</sup>
- 84 They accordingly submitted that the only reasonable conclusion to draw in the circumstances was that the unlawful actions of Cronwright and Whitehead drove Aggett to suicide and that they knew that suicide was a likely result of their unlawful conduct.<sup>95</sup> They asked the first inquest court to find that Cronwright and Whitehead were responsible for Dr Aggett's death in terms of section 16(2)(d) of the Inquests Act.<sup>96</sup>

***The first inquest court judgment***

- 85 The first inquest court rejected the submissions advanced by the Aggett family's legal representatives. Magistrate Kotze concluded that Dr Aggett had committed

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<sup>92</sup> Exhibit C2 p 41 para 15 et seq

<sup>93</sup> Exhibit C2 p 82 para 23

<sup>94</sup> Exhibit C2 pp 83-84 para 23.2 et seq

<sup>95</sup> Exhibit C2 p 168 para 58

<sup>96</sup> Exhibit C2 p 171 para 61

suicide and he found that his death was not brought about by any act or omission involving or amounting to an offence on the part of any person.

- 86 Magistrate Kotze found that Dr Aggett had been visited regularly by officers, magistrates and the district surgeon, none of whom had observed any injuries or to whom Dr Aggett had made any complaints.<sup>97</sup> He concluded that, Dr Aggett received better treatment than the other detainees since his cell was filled with a lot of personal items, including clean clothes; parcels of sweets, biscuits and other foodstuffs; cigarettes and twenty books.<sup>98</sup>
- 87 Magistrate Kotze rejected the evidence that Dr Aggett was ill-treated and subjected to physical abuse. He found that the injury sustained by Dr Aggett on his arm was a superficial injury and not of the kind that one would go to a doctor for treatment.<sup>99</sup> He also rejected that Aggett's continuous interrogation led to his decision to commit suicide stating that the mere fact that a man finds himself in an interrogation room for a certain period need not necessarily be more conducive to depression than spending a similar period of time in the cell.<sup>100</sup>
- 88 The magistrate dismissed the evidence of Keith Coleman, Parmanathan Naidoo, Ismael Momoniat, Shirish Nanabhai, Sisa Njikelana, Jabu Ngwenya, Auret van Heerden that they had been tortured.<sup>101</sup>

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<sup>97</sup> First Inquest Record pp 3522-3, 3527, 3529, 3535

<sup>98</sup> First Inquest Record p 3529.

<sup>99</sup> First Inquest Record pp 3524-5.

<sup>100</sup> First Inquest Record p 3535.

<sup>101</sup> First Inquest Record pp 3553-3565, 3568-3581, 3586-7.

- 89 Magistrate Kotze also explained away the fact that Dr Aggett was not visited by doctors or magistrates. As far as he was concerned the unavailability of Dr Aggett on two different occasions because “*he was out*” with SB officers was a perfectly legitimate reason.<sup>102</sup> Kotze noted that when Aggett was interviewed by a magistrate, even though Aggett alleged assault, he did not show any marks.<sup>103</sup> Another magistrate also attempted to visit Dr Aggett on a separate occasion but was told “*Dr Aggett was not available.*”<sup>104</sup> Magistrate Kotze accepted without question that the SB would have taken Aggett to a doctor if he was not feeling well, and that he would always get “*sufficient food, be treated properly and not be ill-treated*”.<sup>105</sup>
- 90 Kotze found that the suggestion that “*detainees did not receive the necessary medical attention*” was “*not supported by the facts before the Court.*”<sup>106</sup> He rejected the assertion that Dr Aggett was kept away from the inspector of detainees and the magistrate because “*such a conspiracy is denied by witnesses whose evidence I cannot reject*”.<sup>107</sup>
- 91 As for Aggett’s condition, Magistrate Kotze found that Aggett did well in detention and did not need a doctor, the food was good and he had no complaints about his treatment.<sup>108</sup> Likewise, Aggett’s interrogation was normal, friendly and conversational and there were no marks on him.<sup>109</sup>

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<sup>102</sup> First Inquest Record p 3581.

<sup>103</sup> First Inquest Record p 3581.

<sup>104</sup> First Inquest Record p 3582.

<sup>105</sup> First Inquest Record p 3585.

<sup>106</sup> First Inquest Record pp 3689-90.

<sup>107</sup> First Inquest Record p 3691.

<sup>108</sup> First Inquest Record p 3585.

<sup>109</sup> First Inquest Record p 3587.

- 92 Kotze found that Security Branch officers had a good relationship with Dr Aggett. They did not know and could not tell if Aggett had been assaulted, and he did not complain.<sup>110</sup> Whitehead had a “good” relationship with Aggett and “*in the circumstances a friendly one. He [Whitehead] never assaulted or ill-treated Dr Aggett*” and he was not sleep deprived.<sup>111</sup>
- 93 Magistrate Kotze found SB interrogation methods were above board. The SB officers did not assault Aggett or any other detainee and placed them under observation when they presented a risk of suicide.<sup>112</sup> Detainees would be provided with camp beds on the tenth floor so that they could sleep when extended interrogations took place.<sup>113</sup>
- 94 Magistrate Kotze accepted that the SB version that political motives played into Dr Aggett’s decision to commit suicide. “*If Dr Aggett involved others during interrogation it could have given him a guilty conscience, if he betrayed the others it could have caused a conscience crisis, in principle suicide could follow.*”<sup>114</sup> Kotze concluded that the opinion of Professor Jan Adriaan Plomp that Dr Aggett was pre-disposed to suicide was reliable.<sup>115</sup>
- 95 Kotze found that the notion that the Security Branch strangled Dr Aggett and hung him in an unconscious state to simulate a suicidal hanging were “*absolutely without any factual basis*” and “*devoid of any truth or substance*”.<sup>116</sup> He

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<sup>110</sup> First Inquest Record pp 3605-3615, 3631-2, 3638-9.

<sup>111</sup> First Inquest Record pp 3615-20.

<sup>112</sup> First Inquest Record pp 3622-3627.

<sup>113</sup> First Inquest Record p 3638.

<sup>114</sup> First Inquest Record p 3645.

<sup>115</sup> First Inquest Record pp 3647-3659.

<sup>116</sup> First Inquest Record p 3689.

concluded that the failure to patrol Dr Aggett's cell on the night of his death was irrelevant as regular inspections of Dr Aggett's cell would not have prevented the hanging.<sup>117</sup>

- 96 Kotze held that Lt Whitehead was not responsible for Dr Aggett's death as "*there is no direct evidence of any assault against Dr Aggett*".<sup>118</sup> The long interrogation was explained away by his acceptance that Aggett consented to it, finding that "*On the evidence before us I cannot find without any without any reasonable doubt or on the preponderance of probabilities that this was not done with his consent and collaborations*".<sup>119</sup>
- 97 On the evidence of the police officials, Dr Aggett's demeanour had not changed during the time of his detention and he may have manipulated his demeanour, thereby preventing the police from detecting a change in his condition or discerning that he was a suicide risk.<sup>120</sup>
- 98 In the final analysis, Magistrate Kotze found that Dr Aggett voluntarily decided to take his own life, and he accepted the evidence of Prof Plomp that Aggett had a suicidal frame of mind at that time.<sup>121</sup> Kotze found:

*I have come to the conclusion that the following factors played an important role in the decision by Dr Aggett to take his own life:*

*(a) He was a man who was devoted to a cause who worked with a number of close associates to achieve his goals.*

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<sup>117</sup> First Inquest Record p 3690.

<sup>118</sup> First Inquest Record p 3693.

<sup>119</sup> First Inquest Record p 3701.

<sup>120</sup> First Inquest Record pp 3701-2.

<sup>121</sup> First Inquest Record pp 3703-6.

*(b) During the period of detention, he had to disclose particulars of his activities and more important the names of his associates.*

*(c) These disclosures must have brought about a feeling of uncertainty about his future and the realisation that steps could be taken against his associates. The possibility of a sense of guilt towards his associates, a sense of betrayal of his friends and associates is large*

*(d) He had to face some of his associates and to admit the disclosures, an anticipation or' feeling of rejection by them cannot be excluded. Unfortunately, it was during this crucial period that he had to be informed *inter alia* that a friend could not afford to provide him with a portable radio in the cell.<sup>122</sup>*

99 In short, Magistrate Kotze bought the SB fabricated version lock, stock and barrel. He made the following finding in terms of section 16(2) of the Inquest Act:

- "(a) The identity of the deceased period, Neil Hudson Aggett.*
- (b) Cause of death: Suicidal hanging.*
- (c) Date of death: 5th February 1982.*
- (d) The death was not brought about by any act or omission involving or amounting to an offence on the part of any person."<sup>123</sup>*

### ***Bias of magistrate***

#### The approach of apartheid-era magistrates

100 The Apartheid system introduced a deep structural bias in the criminal justice system, particularly within the magistrate's courts, in favour of the Apartheid agenda.<sup>124</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 and they had often interacted with SB members.<sup>125</sup>

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<sup>122</sup> First Inquest Record pp 3705-6.

<sup>123</sup> First Inquest Record p 3706.

<sup>124</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, volume 19, 2003

<sup>125</sup> *Ibid*

101 Piet Kotze, the magistrate assigned to the Aggett inquest fitted this bill. He was an enthusiastic prosecutor in the Eastern Cape in the 1960s. During this time hundreds were imprisoned for supporting the banned ANC.<sup>126</sup> Kotze presided over many political cases in the Regional Court. Regional magistrates who conducted political trials were carefully selected. Typically, the SB arranged with the control prosecutor to set a matter down in a court, which was presided over by a magistrate they trusted.<sup>127</sup>

102 Kotzé, was the prosecutor in the inquest that exonerated the police from wrongdoing in the death of the Ahmed Timol, some ten years earlier. In that inquest Kotze failed to conduct himself as an independent officer of the court but blindly aligned himself with the case of the SB. He finalised his investigations into Timol's death without even bothering to interview the detainee arrested with Timol, who was equally brutalised, and other detainees held on the 10th floor at the same time. Their evidence would have completely discredited the police version that security detainees were not tortured. He conducted no background checks into the police witnesses. If he had he would have discovered a veritable history of brutality, including allegations and convictions of assault against the leading interrogators. He also did not bother to seek out witnesses to Timol's fall from the building.<sup>128</sup> It is perhaps little coincidence that Pieter Kotze was selected to provide over the Aggett Inquest.

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<sup>126</sup> G1 p 24 para 105

<sup>127</sup> *Ibid.*

<sup>128</sup> Para 52.7, 73 and 119 of Main Heads of Argument of the Timol Family in Reopened Inquest Late Ahmed Timol, Case No. I01/2017

103 The TRC documented the extensive and systemic use of torture by the SB.

Magistrates and district surgeons were tasked with ensuring the well-being of detainees placing magistrates at the “coal face” of the Apartheid’s government’s engagement with political prisoners.<sup>129</sup>

104 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>130</sup>

105 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>131</sup>

106 Bizo SC points out that the majority of apartheid-era magistrates had no real desire to reach the truth.<sup>132</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?

107 Bizo SC also points out that apartheid-era inquest courts tended to minimize evidence of the ill-treatment of detainees.<sup>133</sup> Official police versions were often

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<sup>129</sup> *Ibid*

<sup>130</sup> TRC, 1998 Volume 4, p 108

<sup>131</sup> Vol 5, Ch. 6, Findings and Conclusions, p 253, para 158 sub-para b.

<sup>132</sup> Exhibit G1 p 4 para 15

<sup>133</sup> G1 p 5 para 18

contradicted by forensic pathologists who examined the bodies of detainees. Magistrates typically ignored such expert evidence and uncritically accepted the versions of police witnesses.

- 108 Improbable testimony of police witnesses was invariably rubber-stamped by inquest magistrates.<sup>134</sup> Police versions that deceased detainees were treated with care and consideration were readily accepted by the courts notwithstanding evidence of pre-death injuries.
- 109 Bizos SC expressed similar sentiments in an affidavit filed in the reopened Timol Inquest. Mothle J accepted Bizos evidence in his judgment and 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>135</sup>

#### The role of Magistrate Kotze

- 110 Magistrate Kotze's brazen bias is demonstrated in his dismissal of the evidence of the family witnesses on the flimsiest of grounds. Some examples include:

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<sup>134</sup> G1 p 5 para 19

<sup>135</sup> *The re-opened inquest into the death of Ahmed Essop Timol* [2017] ZAGPPHC 652 para 341

110.1 Parmanathan Naidoo's evidence was rejected as he was incarcerated at the time and therefore biased.<sup>136</sup>

110.2 Shirash Nanabhai's evidence was rejected as he failed to complain about his ill-treatment, he "made a few mistakes" in his testimony, was unable to identify certain security branch officers, and, like Mr. Naidoo, was incarcerated at the time.<sup>137</sup>

110.3 Sisa Njikelana's evidence was rejected in part as he was hesitant in his replies.<sup>138</sup>

110.4 Jabu Ngwenya's evidence was rejected in part because he answered questions "with a degree of arrogance".<sup>139</sup>

110.5 Maurice Smithers' evidence was rejected in part because he was not prepared to take a sworn oath but had rather testified under affirmation. The court also found fault with his inability to say definitively what instrument had been used in the assault of Aggett he observed through the ribbed glass partition, when it was clear that the ribbed glass partially obscured his view; and that he re-wrote his note relating to Dr Aggett's treatment.<sup>140</sup>

111 The magistrate's bias is particularly apparent in the case of Mr Smithers. Kotze took Smithers to task for a minor inconsistency between his initial smuggled note, his affidavit and his testimony. In his note, he had stated that he had seen Dr

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<sup>136</sup> First Inquest Record p 3665-7

<sup>137</sup> First Inquest Record p 3667-8

<sup>138</sup> First Inquest Record pp 3669-70

<sup>139</sup> First Inquest Record p 3670

<sup>140</sup> First Inquest Record pp 3671-6, 3689.

Aggett hit with a newspaper, but in evidence he said that it appeared to be a newspaper but that he was not sure. The Magistrate would not make allowance for the necessity for brevity in a note, hurriedly written on a scrap of paper and smuggled out of a high security cell.

112 Magistrate Kotze, however, found that the evidence provided by Security Branch and police officials as unblemished. He trumpeted the fact that evidence supplied by the police relating to the night of the death of Dr Aggett stood uncontradicted,<sup>141</sup> which is hardly surprising since only SB and police were present. While he found the evidence of the detainees to be incredulous, the evidence of the police witnesses was without fault.<sup>142</sup>

113 According to Kotze, Lt Whitehead “*was able to give reasonable explanations for his actions with the reservation I expressed of the visit to the [Aggett’s] house*”<sup>143</sup> and Professor Jan Plomp was “*an unbiased and honest witness*”.<sup>144</sup> In fact Plomp, who had never met Aggett, was there simply prop up the SB case of suicide on the basis of conjecture and speculation. He disgraced himself.

114 Even Dr Aggett’s own evidence, in the form of his complaint of assault to Sgt Blom on 4 February 1982 was rejected. Magistrate Kotze found that “[t]here are allegations of assaults and extreme ill-treatment with the inevitable consequences on Dr Aggett and opposite to that there is evidence to the contrary”.<sup>145</sup> Ultimately, Magistrate Kotze held that—

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<sup>141</sup> First Inquest Record p 3661.

<sup>142</sup> First Inquest Record pp 3677-9.

<sup>143</sup> First Inquest Record p 3678.

<sup>144</sup> First Inquest Record p 3681.

<sup>145</sup> First Inquest Record pp 3662-3.

*“the reports by Dr Aggett on alleged assaults as information which has evidential weight, they are so contradictory in detail, so contradicted by reliable evidence, so unsupported by reliable facts, that it cannot be accepted as the truth on the balance of probabilities.”<sup>146</sup>*

115 The evidence of fellow detainees of Dr Aggett that the SB engaged in “assaults, ill-treatment, sleep deprivation etc.” was rejected on the basis that—

*“the evidence on assaults and ill-treatment, after being properly tested and carefully considered and contradicted by impressive witnesses, is so unreliable that no *prima facie* proof of a *modus operandi* of assaults and ill-treatment on the detainees is established.”<sup>147</sup>*

116 Kotze dismissed out of hand the evidence supplied by almost every family witness. He single-mindedly discredited all these witnesses on the grounds of minor inconsistencies in testimony, shiftiness on the stand, failure to complain to the inspector and claimed bias against the SB.

117 When it came to the police witnesses, Magistrate Kotze asserted that he was impressed by the degree of corroboration which their evidence offered one another, as if this was something not to be expected, and was routine practice in apartheid-era courts. Whatever discrepancies existed were wiped away by the corroboration of each other.

118 Although Magistrate Kotze planned to treat the evidence of Maj Cronwright and Lt Whitehead *“with caution”*, he felt they had fared well under a “thorough and merciless” cross-examination by Adv Bizos SC and was particularly impressed by Lt Whitehead and the corroboration offered by other police witnesses.

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<sup>146</sup> First Inquest Record p 3686.

<sup>147</sup> First Inquest Record pp 3687-8.

### Blocking of evidence and curtailing of cross-examination

119 Magistrate Kotze curtailed the cross-examination of the Aggett family's legal counsel on several relevant issues.<sup>148</sup>

120 Kotze refused to allow the family legal team to introduce into evidence affidavits by other detainees on their treatment by Major Cronwright's investigation team at JVS. The fact that these detainees underwent similar interrogation procedures and suffered similar injuries to Aggett corroborated the Aggett family's case that Dr Aggett was ill-treated and abused at the hands of the SB.<sup>149</sup>

121 Kotze disallowed the statements of Thozamile Gqwela,<sup>150</sup> Ahila Mpetha,<sup>151</sup> Montgomery Narsoo<sup>152</sup> and Samson Ndou.<sup>153</sup> Bizo SC found it difficult to accept the reasons given by Magistrate Kotze for disallowing further evidence of torture and believed that evidence of graphic accounts of torture were excluded to save the apartheid regime from embarrassment.<sup>154</sup>

### Conclusion on bias

122 Impartiality and bias are defined in *Le Grange*<sup>155</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*

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<sup>148</sup> See, for example, First Inquest Record pp 484-485, 698-699, 1107, 1122, 1130, 1132, 1907.

<sup>149</sup> G1 p 18 para 78

<sup>150</sup> First Inquest Record p 724

<sup>151</sup> First Inquest Record p 725

<sup>152</sup> First Inquest Record p 725

<sup>153</sup> First Inquest Record p 725

<sup>154</sup> G1 p 19 para 83

<sup>155</sup> *Le Grange v The State* [2008] ZASCA 102

*of judicial bias has been said to mean 'a departure from the standard of even-handed justice which the law requires from those who occupy judicial office'.*<sup>156</sup>

123 In *S v Dube*<sup>157</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>158</sup>

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

125 Kotze misdirected himself in:

125.1 curtailing cross-examination by counsel for the family,

125.2 disallowing detainees' statements that disclosed torture.

125.3 knit-picking the smallest inconsistencies in detainees' testimony.

125.4 disregarding detainees' testimony because they were incarcerated for political crimes, and,

125.5 accepting, largely without question, evidence of the police.

126 Kotze gave no latitude for the disorienting effect that prolonged solitary confinement has on detainees. Almost all political detainees at John Vorster Square were held in solitary confinement to facilitate their interrogation. It is little wonder that after months in solitary confinement some detainees fumbled in

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<sup>156</sup> *Ibid* para 21

<sup>157</sup> 2009 (2) SACR 99 (SCA)

<sup>158</sup> *Ibid* paras 7-8

respect of minor details, which Magistrate Kotze seized upon to undermine their credibility.

127 We submit that Magistrate Kotze conducted himself in manner that was predisposed to a particular result, namely the exoneration of the police from all wrongdoing. 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. We submit that on this ground alone the finding of Magistrate Kotze warrants overturning.

## **EVIDENCE OF ABUSE AND TORTURE AT JVS**

128 In this section we outline the history and evidence of abuse and torture meted out by the Security Branch to detainees.

### ***Security Branch History of Abuse***

129 The evidence reflects that the conditions of Dr Aggett's detention bore no resemblance to the version that the SB placed before the original inquest court.

130 Bizos SC describes 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.<sup>159</sup> These include the widow of Imam Abdullah Haroon who sued the state for R22 000 in respect of her husband's death and received

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<sup>159</sup> G1 pp 5-6 paras 20-21

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.

### Re-Opened Timol Inquest

131 The *Re-Opened Timol Inquest* confirmed the practice that torture would be deliberately inflicted in such a manner that its effects would leave 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 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>160</sup>*

132 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 needs to be stated that there are instances of detainees that were not subjected to beatings, such as Monica Dube and Gadija Chothia. 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>161</sup>*

133 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*

<sup>160</sup> *Re-Opened Inquest into the Death of Ahmed Essop Timol* [2017] ZAGPPHC 652 para 252.

<sup>161</sup> *Re-Opened Inquest into the Death of Ahmed Essop Timol* [2017] ZAGPPHC 652 para 253.

*Security Branch, not only to torture but also to kill detainees with impunity.*<sup>162</sup>

134 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>163</sup>

135 The findings of this Court also accord the TRC Report which identified 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>164</sup>

#### Evidence of Frank Dutton

136 Mr Frank Dutton, the family's investigator, testified that an important function of the SB was to obtain, frequently by illegal means, operational information from arrested or detained activists. The *modus operandi* employed by the SB involved

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<sup>162</sup> *Re-Opened Inquest into the Death of Ahmed Essop Timol* [2017] ZAGPPHC 652 para 43.

<sup>163</sup> *Re-Opened Inquest into the Death of Ahmed Essop Timol* [2017] ZAGPPHC 652 para 261.

<sup>164</sup> TRC Report Vol 2 p 206 para 169.

extreme interrogation methods which routinely included assault, torture and cover-ups.<sup>165</sup>

137 The Apartheid State sanctioned extra judicial killings and rampant criminality by state security organs was the order of the day.<sup>166</sup> At the TRC, the Commander of the SB, Johannes Velde van der Merwe conceded that state criminality was embarked upon:

*"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."*

138 Van der Merwe also testified that:

*"It was expected of members of the South African Police and the South African Defence Force to stop the violent onslaught at any price even if they had to act outside the law as in a war situation."*<sup>167</sup>

139 The TRC found that during this period the state committed a host of gross violations of human rights in South Africa.<sup>168</sup> These included, amongst other violations, extra judicial killings, and torture.

140 The Police Act 7 of 1958 mandated the SAP with *inter alia* the preservation of internal safety. The SB was charged with spearheading this function. The SB was the effective intelligence wing of the former SAP, falling directly under the

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<sup>165</sup> G75 p 5 para 9

<sup>166</sup> G75 p 5 para 11

<sup>167</sup> G75 p 10 para 24

<sup>168</sup> TRC Report, Vol 5 Ch. 6, Findings and Conclusions, p 222

Commissioner of the SAP. It operated in a separate and parallel structure to the Uniform and Detective branches of the SAP.<sup>169</sup>

- 141 The SB also served as the effective 'political wing' of the SAP. Its target was any person or organisation which opposed the government. The SB's activities included the close monitoring of the affairs and movements of individuals, the detention of tens of thousands of citizens and the torture of many, as well as trials and imprisonment of suspects.
- 142 Numerous reports have concluded that the SB resorted to cruel, inhumane and illegal practices to advance its ends, including the TRC Report, the report of the Goldstone Commission entitled "*Report to the International Investigation Team*" as well as its "*Third Force Report*".<sup>170</sup>
- 143 Mr Dutton gives a specific example of the SB enacting an elaborate cover-up of their crimes. He refers to the SB's murder of Maisha Johannes "Stanza" Bopape, which the SB attempted to cover-up staging a "*mock escape*". The TRC found that the officers that had applied for amnesty for this crime "*at all relevant times... acted in the course and scope of their duties as members of the Security Branch*".<sup>171</sup>
- 144 Brigadier Hennie Muller who served as the Divisional Commander of the SB in Johannesburg, at the time of Dr Aggett's death, was no stranger to unlawful actions, including abductions, torture, and murder. Dutton lists various crimes in

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<sup>169</sup> G75 p 7 para 16

<sup>170</sup> G75 pp 7-8 paras 17-19

<sup>171</sup> G75 p 10 para 23

which he was implicated in by the TRC.<sup>172</sup> Major Cronwright, Lieutenant Whitehead, and, indeed, all other members of the SB employed at JVS ultimately reported to him. Muller personally sanctioned the ill-fated mission to the Cape, in which Sgt Erasmus and Lt Whitehead were instructed to find evidence of Aggett's possible "*suicidal tendencies*".

145 Mr Dutton further testified that the Apartheid government enacted repressive laws and detained persons in solitary confinement for extended periods without charge or trial, legal assistance, or visitation rights. Deaths of detainees were generally regarded with extreme suspicion and caused intensified opposition to apartheid locally and abroad.<sup>173</sup>

#### Evidence of other witnesses

146 The SB *modus operandi* is also corroborated by the evidence of several other witnesses:

146.1 Adv Bizos SC noted the consistent trend of detainees dying while in SB custody with at least 73 detainees known to have died in detention between 1963 and 1990.<sup>174</sup> The true circumstances of these deaths were unknown either being attributed to 'natural causes' or their true circumstances were concealed.<sup>175</sup>

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<sup>172</sup> G75 p 11 paras 25.1-25.3

<sup>173</sup> G75 p 12 para 28

<sup>174</sup> G1 p 3 para 11, the full list is contained at G64

<sup>175</sup> G1 p 3 paras 12-13

- 146.2 Rev Chikane's testimony of the SB having resorting to extrajudicial killings by attempting to murder him by poisoning;<sup>176</sup>
- 146.3 Mr Erasmus testified that no rules applied to SB operations who would engage in "*incredibly brutal methods*" including torture by way of electric shocks;<sup>177</sup>
- 146.4 Mr Erasmus testified that the SB employed mass surveillance by interception, tapping and bugging in every town and city across South Africa;<sup>178</sup>
- 146.5 Mr Erasmus testified that the SB engaged in, and rewarded, unlawful behaviour such as house-breaking, damage to property, general harassment, desecration, arson, and any crime necessary to make the life of anti-apartheid activists "a living hell";<sup>179</sup> and
- 146.6 Mr Erasmus testified that the SB established soft Stratcom and hard Stratcom to formally bring these activities under the control of a national security project. Soft Stratcom specialised in misinformation and propaganda whereas hard Stratcom focused on murder, bombings, sabotage, and violent intimidation.<sup>180</sup>

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<sup>176</sup> Chikane testimony second inquest record pp 734-736, 742

<sup>177</sup> G29 p 6 para 18

<sup>178</sup> G29 p 6 paras 19-20

<sup>179</sup> G29 pp 7ff paras 24ff

<sup>180</sup> G29 p 9 para 30

### History of cover-ups

147 The Re-Opened Timol Inquest concluded that the SB routinely concocted cover-up stories “to shield police from blame” and “cover up activities of members of the Security Branch who had contravened the law”.<sup>181</sup> And, that:

*“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>182</sup>*

148 The first Aggett 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 Aggett’s death, which will be dealt with in some detail below.

149 Indeed, two former SB officers, Roelf Venter and William Smit gave testimony at the TRC that conflicted with their testimony before the first inquest court. At the original inquest they had both denied assaults and mistreatment of detainees during the SB’s *“Barbara Hogan”* investigation. Before the TRC they admitted that they had indeed assaulted and mistreated these detainees.<sup>183</sup>

### ***Torture of detainees at JVS***

150 The Aggett family presented substantial evidence of torture at JVS from several former detainees who were held at JVS around the same time as Dr Aggett. The evidence of the former detainees has been summarised in Annex B, “Outline of

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<sup>181</sup> *Re-Opened Inquest into the Death of Ahmed Essop Timol* [2017] ZAGPPHC 652 para 313.

<sup>182</sup> *Re-Opened Inquest into the Death of Ahmed Essop Timol* [2017] ZAGPPHC 652 para 314.

<sup>183</sup> See above under the outline of the evidence Roelf Venter.

the Evidence," under the subheading "Former Detainees", and will not be repeated in detail in this section. We also refer to this Court to Annexes C1 and C2 attached to these heads, which provide a 'Table of Abuse and Torture' and a document detailing the main allegations of torture made by each detainee.

151 Mr Dutton consulted with twelve detainees during his investigations into the deaths of Ahmed Timol and Neil Aggett and concluded that torture was a routine method of extracting information from detainees by the SB from at least as early as 1963.<sup>184</sup> The methods of torture he recorded from these interviews included:

151.1 physical assault,

151.2 forced long periods of standing on one spot,

151.3 suffocation by placing a bag over the head,

151.4 strangulation,

151.5 holding heavy objects above the head or with arms outstretched,

151.6 forced exercises such as push-ups and frog-jumps,

151.7 sleep deprivation,

151.8 electrical shocks,

151.9 assuming difficult body positions (the imaginary chair),

151.10 suspending victims in painful positions (the aeroplane),

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<sup>184</sup> G75 p 13 para 30

151.11 solitary confinement, and

151.12 derogatory and degrading treatment.

152 The detainee witness evidence is corroborated by that of officials formerly in the employ of the police at John Vorster Square. This includes the evidence of Joe Mavi Nyampule, Mohane Gerden Makheta and Paul Erasmus.<sup>185</sup>

153 Mr Nyampule, for example, describes how a particular detainee, Mr Paul Langa, was tortured by being forced to stand for prolonged periods<sup>186</sup> noting that “*Paul’s feet were swollen, like an elephant’s feet because of the standing*”.<sup>187</sup> Nyampule also observed how other detainees also had swollen feet, as well as bruises from their handcuffs and leg irons.<sup>188</sup>

154 Mr Nyampule also testified that he would take down detainee’s complaints which he would provide to Sgt Macpherson who, in turn, would bring the complaint to the attention of Major Cronwright.<sup>189</sup> He testified that detainees returning from interrogation would often complain of being assaulted, electrocuted, forced to stand for prolonged periods, and forced to perform strenuous exercises and adopt difficult body postures.<sup>190</sup> He also observed visible injuries on detainees like injuries from leg irons and handcuffs, cigarette burns.<sup>191</sup>

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<sup>185</sup> See the summaries of their evidence in Annex B.

<sup>186</sup> Nyampule testimony second inquest record p 437

<sup>187</sup> G5 p 15 paras 58-59

<sup>188</sup> G5 p 16 para 62

<sup>189</sup> Nyampule testimony second inquest pp 410-411

<sup>190</sup> Nyampule testimony second inquest p 412

<sup>191</sup> Nyampule testimony second inquest pp 443-444

155 According to Mr Nyampule, when he worked on the tenth floor as a tea server, he would observe detainees being tortured, including being forced to perform exercises and being slapped with an open hand.<sup>192</sup>

156 Mr Erasmus confirmed that detainees were routinely tortured. Mr Erasmus points out that the SB were trained to use specific torture methods to avoid detection, and which would not be seen by doctors. These included making the detainee stand for extended periods, sleep deprivation and suffocation by strangulation and the wet bag torture.<sup>193</sup>

157 Mr Erasmus testified that he was lectured on interrogation methods to break a suspect, including by attacking a person's identity or ethnicity, inducing feelings of guilt, and imposing total terror.<sup>194</sup>

158 Mr Erasmus also testified that detainees would be strangled with a wet bag over their heads until they were on the edge and believed they were at the brink of death.<sup>195</sup>

159 We submit that the evidence set out above amounts to similar fact evidence that unequivocally demonstrates that torture and ill-treatment at the hands of SB at JVS at that time was routine and commonplace. This torture ranged from abusive treatment such as sleep deprivation, humiliation and forced exercise to physical assault and electric shock treatment.

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<sup>192</sup> Nyampule testimony second inquest record pp 464-465

<sup>193</sup> G29 p 5 para 15

<sup>194</sup> G29 p 4 para 14, p 10 para 35

<sup>195</sup> G29 p 10 para 36

160 We contend that the evidence of abuse and torture at JVS at the time Aggett's detention is so overwhelming that this Court will have little difficulty in concluding that the abuse and torture of political detainees was routine practice by the SB; and that the treatment of Aggett was no exception. We contend that the Court will also have no difficulty in dismissing out of hand the multiple shrill denials of the SB witnesses<sup>196</sup> and their transparent efforts to dilute or sanitise their own roles.

### ***Torture and abuse of Aggett***

161 In addition to this similar fact evidence, multiple witnesses testified to Dr Aggett's condition which paint a picture of unrelenting brutality and neglect at the hands of the SB.

#### Deteriorating condition

162 Rev Frank Chikane testified that he observed Dr Aggett on 1 February 1982 through the peephole in his cell on the 2<sup>nd</sup> floor. He stated that:

*"He was walking towards the direction of the cells so I could tell he was coming back from interrogation. He was not in a good state. He was walking slower than usual and bending forward, clearly struggling to walk. I had seen Neil on the second floor before, I do not recall how many times, and I had not seen him struggle to walk like that. I suspect he was in pain and he looked very weak. The image is etched in my mind because that was the last time I saw him."*<sup>197</sup>

163 Mr Ismail Momoniat spoke with Aggett before 24 January 1982 at which stage Aggett indicated that he did not think he would be charged but believed the State

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<sup>196</sup> See the summaries of the evidence of the SB officers in Annex B.

<sup>197</sup> G14 p 10 para 34

would use him as a witness in its case against Ms Hogan and others.<sup>198</sup> Momoniat then saw him again on two or three occasions between 25 and 29 January 1982, as well as again between 1 to 4 February 1982.<sup>199</sup> Mr Momoniat notes the change in his demeanour: initially, he “*did not look unduly stressed*” and was “*relaxed*”<sup>200</sup> but, later, he looked like he was “*going through a very rough time*”, he stopped taking meals and exercising.<sup>201</sup> Mr Momoniat also testified that on 3 or 4 February 1982 he saw Dr Aggett “*in a daze*” and “*in a terrible state*”.<sup>202</sup> Mr Momoniat also observed a large mark on Dr Aggett’s forehead about three quarters of an inch in diameter that was darkish in colour, which in his view indicated that Dr Aggett had been beaten up.<sup>203</sup>

164 Momoniat also states that Samuel Lerumo, a fellow detainee, told him that Aggett said to him a few days before his death that “*Eric, I have told them everything but that they are still fucking me up. I don't know what they want from me.*”<sup>204</sup> And, that Chauke said in Aggett’s presence “*Look at how he is walking/limping. We hit him on his balls*”.<sup>205</sup>

165 Mr Sisa Njikelana testified that Dr Aggett pointed to a triangular mark on his right forearm which he understood Aggett to be communicating that “*I am being tortured*” albeit non-verbally.<sup>206</sup> When Njikelana saw him again in late January

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<sup>198</sup> G17 p 20 para 59

<sup>199</sup> G17 p 21 para 61

<sup>200</sup> G17 p 21 para 62

<sup>201</sup> G17 p 22 paras 63-64

<sup>202</sup> G17 pp 23-24 paras 67, 69

<sup>203</sup> G17 p 24 para 70

<sup>204</sup> G17 p 26 para 75

<sup>205</sup> G17 p 26 para 76

<sup>206</sup> G20 p 9 para 36

1982, Aggett's condition had deteriorated, and he looked "depressed and morose".<sup>207</sup>

166 Mr Jabu Ngwenya testified that he was taken to the 10<sup>th</sup> floor on 25 January 1982, the same day Smithers observed Aggett being tortured. While he was being interrogated three policemen, including W/O Carr, stormed into the office and stated "*Waar is hy? Waar is hy?*" only to leave when they realised Ngwenya was in the office. Ngwenya then saw them enter the office that Aggett was in where he observed the police officers beating him in that office.<sup>208</sup>

167 Ngwenya also saw Aggett on 3 February 1982 and noted he was not walking normally. He was walking wide legged as if something was wrong with his private parts.<sup>209</sup> Aggett told him that he had been assaulted and electrocuted and lifted the sleeves of his jersey to show him his arms.<sup>210</sup>

168 Mr Keith Coleman testified that Aggett told him the SB were assaulting him and that the SB had torn his shirt which he was keeping as evidence to prove the assault.<sup>211</sup> Coleman testifies to seeing Aggett on a further two occasions before his death where his condition had deteriorated further.<sup>212</sup>

169 Annex D, which sets out a table of Aggett's interrogations, shows that following his 'long weekend' ordeal, he had to endure another 40 hours of interrogation

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<sup>207</sup> G20 p 10 para 38

<sup>208</sup> G22 p 5 para 19

<sup>209</sup> G22 p 6 para 21

<sup>210</sup> G22 p 6 para 22

<sup>211</sup> G27 p 17 para 54

<sup>212</sup> G27 p 17 paras 57-58

between Monday 1 February and Thursday, 4 February 1982 at the hands of Whitehead and Warrant Officer De Bruin.<sup>213</sup>

170 Mr Paul Erasmus, former SB officer, testified that during the course of the ill-fated Somerset West mission Whitehead confessed to him that he had kept Dr Aggett awake for over 60 hours and that by the end “*Aggett was confused and broken*” as well as admitting that “*he may have pushed Aggett too far*”.<sup>214</sup> According to Erasmus, Captain Struwig later told him that Whitehead had “*gone too far with Aggett*” in trying to prove he was a successful and skilful interrogator.<sup>215</sup>

#### Direct evidence of abuse

171 Perhaps the most direct evidence of Dr Aggett being tortured is that of former detainee, Mr Maurice Smithers. Smithers provided a first-hand account of how Dr Aggett was tortured by the SB on the tenth floor of John Vorster Square. On 25 January 1982, Mr Smithers was taken to the tenth floor.<sup>216</sup> While he waited, he was able to observe Aggett in the office next door through ribbed glass partitioning. He knew Dr Aggett and identified him based on his very distinct beard and haircut.<sup>217</sup>

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<sup>213</sup> SB Officer Karel Johan De Bruin of the SB Ladybrand, who was seconded to JVS in December 1981. He interrogated Aggett on multiple occasions between 25 January and 4 February 1982. See B8.42.

<sup>214</sup> G29 p 15 para 52

<sup>215</sup> G29 p 21 para 76

<sup>216</sup> G9 p 6 para 18

<sup>217</sup> G9 p 6 para 20, p 7 para 22

172 Smithers observed Aggett in a room with several security branch officers. The officers would repeatedly strike Aggett with a cylindrical object that could have been a rolled-up newspaper.<sup>218</sup>

173 Smithers had to leave for a nearby optometrist, but, upon returning 45 minutes later, observed that Aggett was still in the room, but now he appeared to be naked and was being made to do exercises past the point of exhaustion.<sup>219</sup> Twice during the time Aggett dropped to the ground and was struck with an object that caused a loud cracking sound, which could have been a belt.<sup>220</sup> Smithers states that this continued for approximately an hour when Dr Aggett was told to get dressed and proceeded to do so from a state of nakedness.<sup>221</sup>

174 Upon being returned to his cell at the Randburg police station, Smithers attempted to perform the exercises that the SB officers had required Aggett to perform.<sup>222</sup> Smithers performed these exercises for an hour each day for three days. By the end of the third day, he was suffering intense pain and found it very difficult to walk so he stopped.<sup>223</sup>

175 Former SB officer, Mr Makheta testified that Smithers recollection of events was correct.<sup>224</sup> Makheta repudiated his denial of these events before the first inquest court where he testified nothing was happening in room 1012<sup>225</sup> and stated that

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<sup>218</sup> G9 p 7 para 23

<sup>219</sup> G9 p 8 para 26, p 9 para 28

<sup>220</sup> G9 p 8 para 27, p 9 paras 29-30

<sup>221</sup> G9 p 10 para 32

<sup>222</sup> G9 p 11 para 34

<sup>223</sup> G9 p 11 para 35

<sup>224</sup> G6 pp 4-5 paras 33-40

<sup>225</sup> First inquest record p 592

he was instructed to lie under oath that neither he nor Mr Smithers witnessed Dr Aggett being beaten and forced to perform exercises. Mr Makheta stood to gain nothing from this act. It placed him in a position of immense risk and was done exclusively to protect his white colleagues on the instructions of a regime that viewed him as disposable.<sup>226</sup>

#### Predicament of black police officers

176 History has also shown that black officers were regarded by their white counterparts as second-class policemen. Mr Nyampule testified that “*black officers were like children: we had to do as we were told and had no sense of power or control*”. Black officers were forced to turn a blind eye to the inhumane conditions of detainees, lest they become the subject of their white ‘colleagues’ ire. The disrespect for black officers extended beyond the offices of John Vorster Square. It reached into court proceedings where black officers were required to testify to false versions and perjure themselves to protect their white colleagues.

177 Mr Makheta’s willingness to perjure himself must also be seen in the context of his position of vulnerability as a black SB officer to whom his white counterparts constituted a danger.<sup>227</sup> Makheta testified that he could be detained, prosecuted and even imprisoned on the slightest suspicion. Were this to occur, he knew he would have been at risk of being assaulted and could even possibly die or disappear. This danger could even extend to his family.<sup>228</sup>

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<sup>226</sup> G6 p 6 paras 45-46

<sup>227</sup> G6 p 3 para 21

<sup>228</sup> G6 p 3 para 22

178 Mr Makheta also testified that he was aware of torture and ill-treatment of detainees taking place on the 10<sup>th</sup> floor of JVS. He stated that:

*“Over the course of time while working on the 10<sup>th</sup> Floor I came to know that detainees were abused. I used to hear shouting and swearing emanating from offices where interrogations were occurring, I heard expressions of pain; sounds of blows and knew that detainees were forced to stand and perform exercises to punish detainees to force them to give information.”<sup>229</sup>*

### ***Medical evidence of abuse***

#### **Evidence of Dr Kemp**

179 Dr Vernon Dennis Kemp (“**Dr Kemp**”) was the District Surgeon for Johannesburg at the time of Aggett’s death.<sup>230</sup> Dr Kemp conducted a post-mortem of Aggett’s body on 5 February 1982 at 08h45; being 7 hours and 15 minutes after the recorded time of death of 01h30.<sup>231</sup>

180 Dr Kemp made the following observations on in his report:

180.1 there was a small healing abrasion on the inner aspect of the right ankle.

This was about 7 mm in diameter and showed a scab formation;<sup>232</sup> Dr Kemp identified the wound as being about a week old and that it could have been caused by any scratch or abrasion;<sup>233</sup>

180.2 over the upper right scapular region there was a 3 cm triangular area of superficial subcutaneous bruising of recent origin;<sup>234</sup> Dr Kemp opined

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<sup>229</sup> G6 p 7 para 52

<sup>230</sup> First Inquest Record Vol 1 p 22.

<sup>231</sup> First Inquest Record Vol 1 p 23, p 127.

<sup>232</sup> First Inquest Record Vol 1 p 24.

<sup>233</sup> First Inquest Record Vol 1 p 27.

<sup>234</sup> First Inquest Record Vol 1 p 24.

that the wound was “*very fresh*” and appeared to have been caused by something squeezing the skin together.<sup>235</sup> This was consistent with the skin having been pinched against an iron bar or something like that, or some limited struggle against a table or wall or picture rail or anything of the sort;<sup>236</sup>

- 180.3 over the back of the chest very high up there was a triangular area of bruising measuring 3 cm x 3 cm x 3 cm, which appeared to be very recent and was not a deep bruise;<sup>237</sup>
- 180.4 over both posterior chest, meaning the right and left side of the back of the chest, there were old healed scars each measuring approximately 9 mm;<sup>238</sup>
- 180.5 over the fourth lumbar vertebrae, that is low down over the back in the middle, there was a 1.5 cm area very superficial abrasion, meaning that the skin was just scraped.<sup>239</sup> The wound was fresh, but occurred before death, and was probably caused by something that crashed against the skin or scraped against the skin;<sup>240</sup>
- 180.6 there was a small superficial abrasion just to the left of the nose high up on the cheek and on the incision over the separation there was no underlying infiltration of blood, indicating that it was merely a little scratching of the skin and had nothing serious underlying it, like

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<sup>235</sup> First Inquest Record Vol 1 p 27.

<sup>236</sup> First Inquest Record Vol 1 p 135.

<sup>237</sup> First Inquest Record Vol 1 p 24.

<sup>238</sup> First Inquest Record Vol 1 p 24.

<sup>239</sup> First Inquest Record Vol 1 p 24.

<sup>240</sup> First Inquest Record Vol 1 p 27.

bruising.<sup>241</sup> The wound was fresh and could have been caused by a fingernail that scraped the skin – Dr Kemp regarded this wound to have been caused after death;<sup>242</sup>

180.7 on the back aspect of the right forearm 5 cm above the wrist, there was a faint 1.5 cm triangular irregular scar that still showed a slight pinkish tinge of the surface. This was a small scar (superficial area of scarring) that had recently healed.<sup>243</sup> This wound was anything from 3 weeks old to 3 months old, and could have been caused by a rough surface scraping the skin.<sup>244</sup> Dr Kemp stated that this wound was consistent with what Aggett described in his statement as happening to him as a result of Schalk assaulting him on 4 January 1982.<sup>245</sup> The wound would have been visible to anyone who had come in contact with Aggett.<sup>246</sup> And, despite resulting in “*fairly profuse bleeding*” was not given medical treatment;<sup>247</sup>

180.8 the scalp and skull were intact, the brain showed no abnormality, the oral, orbital, and nasal cavities were normal and there were no injuries to the looks all the teeth;<sup>248</sup>

180.9 a bloodless dissection of the tissues of the neck revealed a fall by 2 cm area of bruising of the upper third of the posterior medical border of the

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<sup>241</sup> First Inquest Record Vol 1 p 25.

<sup>242</sup> First Inquest Record Vol 1 p 28.

<sup>243</sup> First Inquest Record Vol 1 p 25.

<sup>244</sup> First Inquest Record Vol 1 p 28.

<sup>245</sup> First Inquest Record Vol 1 p 79.

<sup>246</sup> First Inquest Record Vol 1 pp 79-80.

<sup>247</sup> First Inquest Record Vol 1 pp 80-1.

<sup>248</sup> First Inquest Record Vol 1 p 25.

right carotid sheath. In the region of the sheath, fairly high up in the neck there was a 4 x 2 cm area of bruising;<sup>249</sup> and

180.10 on 10 February 1982, Dr Kemp performed a special dissection of the cervical spine at the neck and this revealed no evidence of injury, no fracture and no abnormality or dislocation.<sup>250</sup>

181 The contents of Dr Aggett's statement dated 4 February 1982 detailing various assaults on Dr Aggett were put to Dr Kemp.<sup>251</sup> Dr Aggett's statement records an injury to his back with a scab formation. Dr Kemp denied having seen any scab on Aggett's back. Dr Kemp also denied having observed what Aggett in his statement described as a scratch on his left pulse (radial nerve), or, later, described as a scar on his (Aggett's) pulse.<sup>252</sup> The post-mortem would not have picked up the assaults described by Aggett in his statement as these occurred a month prior to the post-mortem.<sup>253</sup> Nor, would being grabbed by the scrotum and having one's testicles squeezed,<sup>254</sup> the pain of which Dr Kemp stated would be severe.<sup>255</sup>

182 Dr Kemp stated that it would not necessarily be detectable in the post-mortem whether Aggett had been electrically shocked.<sup>256</sup> If high currents were used this would almost certainly produce burns or death, but the use of an instrument akin

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<sup>249</sup> First Inquest Record Vol 1 p 25.

<sup>250</sup> First Inquest Record Vol 1 p 26.

<sup>251</sup> First Inquest Record Vol 1 p 78. Exhibit E.

<sup>252</sup> First Inquest Record Vol 1 pp 81-2.

<sup>253</sup> First Inquest Record Vol 1 p 83.

<sup>254</sup> First Inquest Record Vol 1 p 83.

<sup>255</sup> First Inquest Record Vol 1 p 83.

<sup>256</sup> First Inquest Record Vol 1 p 82.

to an old telephone crank would not produce a mark at all.<sup>257</sup> Dr Kemp stated that receiving electric shocks as punishment could cause depression and anxiety.<sup>258</sup>

183 Dr Kemp stated that a continuous period of 62 hours in the interrogation room was abnormal.<sup>259</sup> Dr Kemp accepted that he, as chief district surgeon, along with his colleagues and his department, would be responsible for the physical and mental well-being prisoners such as Aggett.<sup>260</sup> If the Security Police did not want a doctor to visit a detainee then a doctor would not visit him.<sup>261</sup> If he had visited while this interrogation had been ongoing Dr Kemp would have told the police that such treatment usually results in people becoming mental wrecks.<sup>262</sup>

184 Detainees were dependent on the goodwill the Security Police to bring their detention to the attention of the district surgeon.<sup>263</sup> Asked “*who protects the detainees from their protectors*”, Dr Kemp answered that he “*did not know*”.<sup>264</sup> If a prisoner was wounded the SB had a discretion as to whether that prisoner would be brought to the attention of the district surgeon.<sup>265</sup> No district surgeon saw Aggett.<sup>266</sup>

185 Dr Kemp accepted that if proper inspections on the initiative of the district surgeons had taken place as required by the Prisons and Mental Health Act,

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<sup>257</sup> First Inquest Record Vol 1 p 82.

<sup>258</sup> First Inquest Record Vol 1 p 83.

<sup>259</sup> First Inquest Record Vol 1 p 85.

<sup>260</sup> First Inquest Record Vol 1 p 86.

<sup>261</sup> First Inquest Record Vol 1 pp 86-7.

<sup>262</sup> First Inquest Record Vol 1 p 91.

<sup>263</sup> First Inquest Record Vol 1 p 89.

<sup>264</sup> First Inquest Record Vol 1 p 89.

<sup>265</sup> First Inquest Record Vol 1 p 89.

<sup>266</sup> First Inquest Record Vol 1 p 90.

evidence may have been discovered of ill-treatment.<sup>267</sup> Despite the Act entitling the district surgeon to access detainees, Dr Kemp considered that he required permission from the Security Police to access a detainee.<sup>268</sup> Dr Kemp stated that he did not have the required staff to conduct unannounced inspections, but wished he had.<sup>269</sup>

186 Dr Kemp did not see the injury to Aggett's back described in the statement but would not have expected to see evidence of that injury as it had occurred a month ago.<sup>270</sup> Dr Kemp states that there should have at least been a residual mark, which he could not find, but admits that the state of the body would have made it difficult for him to find.<sup>271</sup> Ultimately, the existence of the scab could not be excluded by the results of the post-mortem.<sup>272</sup>

187 The irregular scar with a slight pink tinge occurred within three months, it was a superficial injury that could be sustained in ordinary life almost at any time, and it was not the kind of injury that one would see a doctor for.<sup>273</sup> However, Dr Kemp pointed out that such an injury is often treated by doctors in police cells.<sup>274</sup>

188 Dr Kemp observed that at the time of death, Aggett had sustained a bruise to the back of the right shoulder.<sup>275</sup> The fact that Aggett had not sustained more injuries at the time of death, particularly to his hands, did not exclude the possibility of

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<sup>267</sup> First Inquest Record Vol 1 p 90.

<sup>268</sup> First Inquest Record Vol 1 pp 90-1.

<sup>269</sup> First Inquest Record Vol 1 p 90.

<sup>270</sup> First Inquest Record Vol 1 p 106.

<sup>271</sup> First Inquest Record Vol 1 p 107.

<sup>272</sup> First Inquest Record Vol 1 p 108.

<sup>273</sup> First Inquest Record Vol 1 p 109.

<sup>274</sup> First Inquest Record Vol 1 p 110.

<sup>275</sup> First Inquest Record Vol 1 p 117.

him being murdered.<sup>276</sup> The injury to the scapula was consistent with hanging.<sup>277</sup> The only injury that occurred prior to the hanging, or during the course of the hanging, was the bruise behind the right shoulder.<sup>278</sup>

- 189 Dr Kemp admitted that it would be possible for the skin to conceal bruising below its surface, and that muscular bruising was found on Aggett's upper cheek on the left side.<sup>279</sup> At the time of the autopsy rigor mortis was complete in the muscles throughout the body, indicating that Aggett had been dead for more than eight hours.<sup>280</sup> There was still compressible lividity, which could be moved by finger pressure, but which wasn't completely fluid, giving the appearance that it was about to become non-fluid, or non-compressible.<sup>281</sup> However, the anoxic state rendered the blood more fluid.<sup>282</sup>

#### Evidence of Dr Scheepers

- 190 Dr Nicolaas Jacobus Scheepers ("Dr Scheepers") was a registered medical practitioners and a senior state pathologist employed by the Department of Health in Johannesburg.<sup>283</sup> On 8 February 1982, he examined a piece of brain, a piece of the heart, a lung sample, a piece of skin of the neck, and a piece of skin from the back – all coming from Aggett.<sup>284</sup>

- 191 Dr Scheepers observed that:

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<sup>276</sup> First Inquest Record Vol 1 p 118.

<sup>277</sup> First Inquest Record Vol 1 p 118.

<sup>278</sup> First Inquest Record Vol 1 p 120.

<sup>279</sup> First Inquest Record Vol 1 p 125.

<sup>280</sup> First Inquest Record Vol 1 p 126.

<sup>281</sup> First Inquest Record Vol 1 p 126.

<sup>282</sup> First Inquest Record Vol 1 p 126.

<sup>283</sup> First Inquest Record Vol 1 p 141.

<sup>284</sup> First Inquest Record Vol 1 p 141.

- 191.1 The brain was relatively bloodless.<sup>285</sup>
- 191.2 The heart was relatively bloodless, and no histological changes of the myocardium can be seen.<sup>286</sup>
- 191.3 There was a moderate degree of pulmonary oedema in the lung.<sup>287</sup> Microscopic areas of the lung collapse were seen.<sup>288</sup>
- 191.4 There was an extravasation of red blood cells in the subcutaneous tissues. No evidence of any inflammatory reaction was seen.<sup>289</sup>
- 191.5 No histological changes were seen on the skin from the back except for slight dilation the capillaries in the dermis of the skin.<sup>290</sup>

Evidence of Dr Botha

- 192 Dr Jan Barend Christiaan Botha ("Dr Botha") was a pathologist in private practice. He attended an autopsy performed on Aggett at the government mortuary on 5 February 1982 on the instructions of the Aggett family lawyers.<sup>291</sup> He attended the further autopsy performed on Aggett's spinal cord on 10 February 1982.<sup>292</sup>
- 193 Dr Botha arrived at the mortuary at approximately 09:45 on the morning of 5 February 1982.<sup>293</sup> By this time Aggett's skull had been opened, the brain had

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<sup>285</sup> First Inquest Record Vol 1 pp 141-2.

<sup>286</sup> First Inquest Record Vol 1 p 142.

<sup>287</sup> First Inquest Record Vol 1 p 141.

<sup>288</sup> First Inquest Record Vol 1 p 142.

<sup>289</sup> First Inquest Record Vol 1 pp 142-3.

<sup>290</sup> First Inquest Record Vol 1 p 143.

<sup>291</sup> First Inquest Record Vol 1 p 176.

<sup>292</sup> First Inquest Record Vol 1 p 178.

<sup>293</sup> First Inquest Record Vol 1 p 178.

been sectioned and the thoracic and abdominal cavities had been examined with the dissection to be continued in the vicinity of the neck.<sup>294</sup>

194 Dr Botha regarded the injury about 5 cm above the right wrist as being between 3 weeks and 3 months in age.<sup>295</sup> This injury arose from contact with a hard and sharp object and corresponded to Aggett's allegation in his statement that he was assaulted.<sup>296</sup>

195 Dr Botha did not regard that the injury to Aggett's left arm would have bled profusely as the skin in that part of the arm was not vascular.<sup>297</sup> However, it could have bled sufficiently to require the interrogator to wash the blood off him.<sup>298</sup> Dr Botha did not regard the injury as one that required specific medical attention.<sup>299</sup>

#### Evidence of Dr Naidoo<sup>300</sup>

196 Dr Steve Naidoo ("Dr Naidoo") is an independent forensic pathologist who was briefed on behalf of the Aggett family in the re-opened inquest proceedings to study the records of the original inquest and provide a specialist forensic pathology opinion on the cause, mechanism and nature of the death of Dr Aggett.

#### *Shortcomings in the medical death investigation*

197 Dr Naidoo's report expressed several concerns regarding the original medical death investigation.

<sup>294</sup> First Inquest Record Vol 1 p 178.

<sup>295</sup> First Inquest Record Vol 1 p 187.

<sup>296</sup> First Inquest Record Vol 1 p 187.

<sup>297</sup> First Inquest Record Vol 1 p 192.

<sup>298</sup> First Inquest Record Vol 1 p 193.

<sup>299</sup> First Inquest Record Vol 1 p 195.

<sup>300</sup> See also the summary of Dr Steve Naidoo's evidence in Annex B.

198 First, Dr Naidoo notes that the state pathologist imprudently failed to attend the scene of death contrary to the prevailing guidance in terms of section 3.4 of the Manual for the Performance of Post Mortems (Form GW 7/71).<sup>301</sup> Had there been a scene examination by a pathologist, Dr Naidoo notes that the following might have been more confidently expressed by the experts:<sup>302</sup>

- 198.1 findings regarding a more accurate time of death from body temperature and early post-mortem changes of hypostasis (lividity) and rigor mortis,
- 198.2 the precise nature of the ligature and the intricacies of its knot as it was found around the deceased's neck,
- 198.3 status of any bodily injuries before handling and transportation; and
- 198.4 an on-site assessment of the capacity of the deceased to mount up onto the bars to suspend himself.

199 Second, Dr Naidoo expressed concern that the autopsy examination was seemingly hurried and conducted within some 7 hours of death. This was contrary to prevailing guidance that an autopsy should not be unduly rushed and should not be conducted before a full circumstantial and medical history, which is an indispensable part of death investigations, has been established.<sup>303</sup>

200 Dr Naidoo indicates that this failure made it questionable whether the next-of-kin of the deceased were given adequate information about the circumstances of the death, and suitable notice and time to digest the news, aside from contemplating

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<sup>301</sup> G21 p 11 paras 6.2.1-6.2.5

<sup>302</sup> G21 p 13 para 6.2.6, Second Inquest Record 2020 pp 1493-1498

<sup>303</sup> G21 p 14 paras 6.2.8-6.2.10, Second Inquest Record 2020 pp 1498-1508

appointing their own pathologist to attend the post-mortem. The result was that Dr Kemp was only informed that Dr Botha would be attending the autopsy after he had begun the examination, and the procedure semi-completed.<sup>304</sup>

- 201 The result was that Dr Botha was prejudiced and placed at some disadvantage and discomfort of having to contend with a largely opened body, probably contaminated at its outer skin surface with blood and fluids, and needing to do a meticulous external examination himself. Dr Botha would possibly not have had the best opportunity of examining the ligature as it lay around the neck, nor an uncontaminated view of the external skin lesions.<sup>305</sup>
- 202 Third, Dr Naidoo questioned the failure of the post-mortem examination to include comprehensive and wide subcutaneous skin-flap dissections under the skin of the trunk and limbs to look for concealed bruising. This would be expected in the case where the circumstantial history suggested that a particular deceased was subject to blunt blows of assault, and more especially in cases where abuse or torture of persons in custody is suspected.<sup>306</sup>
- 203 The failure to carry out this procedure means that the possibility of deep-seated bruising of the subcutaneous tissue and muscles of the trunk and limbs may not be excluded, notwithstanding that the deceased was white and light skinned. Dr Naidoo indicated that this was a substantial shortcoming in post-mortem practice

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<sup>304</sup> G21 p 14 paras 6.2.11-6.2.12, Second Inquest Record 2020 pp 1509-1514

<sup>305</sup> G21 p 15 para 6.2.13

<sup>306</sup> G21 p 15 para 6.2.15, Second Inquest Record 2020 pp 1514-1516

given that the flap dissection technique was an established autopsy procedure by that time.<sup>307</sup>

204 Dr Naidoo also testified that it was troubling that there were no autopsy photographs in the record in what was an important and high-profile case.<sup>308</sup>

205 These shortcomings may explain the discrepancies between Dr Naidoo's observations and those that were presented to the first inquest court. Indeed, when Dr Naidoo considered the injuries observed at the post-mortem he indicated that the descriptions of the external wounds were scanty and imprecise in the medical records, and insufficient to frame a clear idea of their nature, appearance, age and location, or to determine causation with much confidence.<sup>309</sup>

#### *Nature of injuries*

206 Dr Naidoo identified that Dr Aggett's body had sustained the following wounds:

206.1 five scars over Dr Aggett's back. The absence of descriptive features, however, left Dr Naidoo unable to clearly conclude on their origin;<sup>310</sup>

206.2 a triangular shape wound on Dr Aggett's right forearm. Dr Naidoo concludes this was very likely a deeper injury than the left wrist injury above and possibly a superficial laceration (an actual skin tear), or a deep abrasion.<sup>311</sup> This wound could be attributed to the assault on Dr

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<sup>307</sup> G21 pp 14-15 paras 6.2.16-6.2.18

<sup>308</sup> Second Inquest Record 2020 pp 1488-1489

<sup>309</sup> G21 p 25 para 6.10.1

<sup>310</sup> G21 p 26 paras 6.10.2-6.10.3

<sup>311</sup> G21 p 26 para 6.10.4

Aggett by Van Schalkwyk as reported in Dr Aggett's statement of 4 February 1982.<sup>312</sup> Dr Naidoo was satisfied that the wound would have bled profusely enough to have contaminated the clothing of Dr Aggett and easily smudge Van Schalkwyk's arm or hand on contact;<sup>313</sup> and

206.3 a triangular injury described as a very fresh bruise over Dr Aggett's upper right scapula.<sup>314</sup> Dr Naidoo regards it to be unlikely that this injury resulted from Dr Aggett convulsing while hanging or pinching his skin against the bars.<sup>315</sup> The more possible cause, in his view, is that this bruise was an ante-mortem injury from blunt-force impact such as a fall or assault not long before the suspension given its characteristics and Dr Kemp's testimony that the bruise was a fresh bruise.<sup>316</sup>

206.4 If not a bruise, Dr Naidoo mentioned that it could been an erythema, which could have been caused "by application of a surface that may have been heated, or by scalding, or alternatively being chemically or similarly irritated, or an electric burn cannot be excluded".<sup>317</sup> This suggests that the injury could have been caused by electric shocks. In this regard we note that Jabu Ngwenya complained that he had been electrically shocked on his shoulder blades.<sup>318</sup>

207 Dr Naidoo also considered those injuries Dr Aggett referred to in his affidavit, but which were not seen at the autopsy.

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<sup>312</sup> G21 p 26 para 6.10.5

<sup>313</sup> G21 p 27 para 6.10.7

<sup>314</sup> G21 p 27 para 6.10.8

<sup>315</sup> G21 p 28 paras 6.10.11

<sup>316</sup> G21 p 29 para 6.10.13; see Annex B, p71, para 162.

<sup>317</sup> Exhibit G45, page 8.

<sup>318</sup> Exhibit G45, page 8, B2 p4, para 2.

207.1 The injury on Dr Aggett's back sustained from falling or being thrown against the edge of the desk/table on 4 January 1982. Dr Naidoo indicated that as the injury was a scab, he would have expected the scab to have fallen off and fully healed by the time of Dr Aggett's death. Dr Naidoo also noted that this injury may be one of the several injuries observed on Dr Aggett's back;<sup>319</sup> and

207.2 The injury on Dr Aggett's left wrist that he sustained on 29 January 1982 as a result of being handcuffed and electrocuted through the handcuffs.<sup>320</sup> Dr Naidoo indicated that such an abrasion would heal completely within a week and it was not surprising that the injury was not visible at the post-mortem.<sup>321</sup>

208 On the basis of these findings, Dr Naidoo stated that in his opinion it was "highly likely that all the three initial injuries complained of by Dr Aggett in his affidavit had occurred, but two of these had healed or were in such advanced healing so as to be not readily visible at the post-mortem". He also noted that the fresh bruise on Dr Aggett's back was "most likely a patterned bruise that ante-dated the deceased's suspension".<sup>322</sup>

209 In addition to these injuries Dr Naidoo also analysed the other evidence of ill-treatment of Dr Aggett to conclude that:

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<sup>319</sup> G21 p 29 paras 6.11.1, 6.11.3

<sup>320</sup> G21 p 30 paras 6.11.4-6.11.5

<sup>321</sup> G21 p 30 para 6.11.6

<sup>322</sup> G21 p 31 para 6.12.1

- 209.1 Dr Aggett would have been suffering from sleep deprivation, the effects of which were cumulative and would have been of greater consequence given that Dr Aggett was subjected to physical activity and exertion;<sup>323</sup>
- 209.2 The electric shocks applied to Dr Aggett would have caused intensely painful and sustained muscle contraction causing disabling, distressing, and incapacitating effects;<sup>324</sup>
- 209.3 Dr Aggett would have experienced marked strain in both his upper and lower limbs and trunk, leading to spasm, pain, and exhaustion because of prolonged standing and sustained exertion;<sup>325</sup>
- 209.4 The blows on Dr Aggett's temple and thigh observed by Smithers would not show any physical indications at the autopsy, as tenderness would fully resolve within days, visible bruising may not easily occur at these body regions and a period of nine to 10 days had elapsed by the time of Dr Aggett's death;<sup>326</sup>
- 209.5 Dr Aggett's testicles were squeezed. Dr Naidoo indicates that this may cause swelling of the testes and may have affected Dr Aggett's gait in the early period after injury but will generally resolve spontaneously and rapidly. This was not only extremely painful but also a sexual humiliation;<sup>327</sup> and

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<sup>323</sup> G21 p 31 para 6.13.2

<sup>324</sup> G21 p 32 para 6.13.4

<sup>325</sup> G21 p 32 para 6.13.5

<sup>326</sup> G21 p 33 paras 6.13.7-6.13.8

<sup>327</sup> G21 p 33 para 6.13.9

209.6 The psychological *sequelae* of the detention, including its psychological, psychophysiological, and psychosocial were likely to be very profound.<sup>328</sup>

210 Dr Naidoo concluded that the injuries complained of by Dr Aggett in his affidavit of 4 February 1982 are consistent with the findings (both their presence and absence respectively) at the autopsy.<sup>329</sup> And, Dr Naidoo's opines that the history of the circumstances as detailed by the deceased and other witnesses indicate both degrading and inhuman treatment and assault under the physical constraints of his detention.<sup>330</sup>

## DEATH IN DETENTION

211 In this section we examine the immediate antecedents to Aggett's death, the death scene itself, the mechanics and instrument of death, and the forensic cause of death.

### ***Death Scene***

212 Constable Sehloho last saw Dr Aggett (by peeping through the keyhole) lying and reading in his cell with the cell light on at 23h00 on 4 February 1982.<sup>331</sup> Sgt Agenbach had last seen Dr Aggett alive at 22h30.<sup>332</sup>

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<sup>328</sup> G21 p 33 para 6.13.10

<sup>329</sup> G21 p 34 para 7.1.7

<sup>330</sup> G21 p 35 para 7.1.8

<sup>331</sup> B1.40

<sup>332</sup> B8.41, B1.40

213 No patrols took place thereafter for three hours in the late evening / early morning of 4-5 February 1982, being the very time during which Dr Aggett's died.<sup>333</sup>

214 Constable Sehloho along with Sgt Agenbach first found Dr Aggett's body hanging in his cell 209 at JVS at the time of the next patrol; being 01h30 on 5 February 1982.<sup>334</sup>

215 The cell numbering at the second floor of JVS has since changed. Keith Coleman, however, pointed out that Dr Aggett was in cell B16 on a modern diagram of the cell block.<sup>335</sup>

216 The SB selected Captain Carel Victor of the detective branch at JVS to investigate the case with Brigadiers Rooi Rus Swanepoel and Hennie Muller overseeing the investigation.<sup>336</sup>

217 An inventory of the items in Dr Aggett's cell reflected the apparent presence of some 60 items in the cell, including eighteen books.<sup>337</sup> Copies of the books Zorba the Greek opened at pages 196-197 as well Go Down Moses opened on pages 246-247 were recorded in the inventory.<sup>338</sup> The inventory was compiled by Captain Victor on the instructions Brig Rooi Rus Swanepoel, one of the most notorious police officers in the erstwhile SAP. He had been closely associated with the deaths of other detainees in detention.<sup>339</sup>

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<sup>333</sup> Exhibit B8.31 pp 136-137

<sup>334</sup> B1.40

<sup>335</sup> G27, Annexure "A".

<sup>336</sup> G75 p 16 para 41

<sup>337</sup> B1.22

<sup>338</sup> B1.4

<sup>339</sup> G75 pp 16-27 para 42

218 Mr Lamprecht testified that when he arrived at the crime scene there were quite a lot of people in the cell.<sup>340</sup> The cell was not cordoned off and multiple SB and uniform branch officers were inside.<sup>341</sup> Mr Lamprecht then took four photographs of Dr Aggett, two of his body suspended; a close up of his face, neck and the material around his neck; and one depicting a cement bunk in the cell with various articles on it.<sup>342</sup> Only the two very poor copies of the photos depicting Dr Aggett suspended from the front and rear were found and placed before this Court.<sup>343</sup>

219 Cpt Victor pointed out to Lamprecht the areas that he had to photograph.<sup>344</sup> Mr Lamprecht claimed another photographer was present on the scene but could not identify him nor did he see those photos.<sup>345</sup>

220 No forensic pathologist attended the death scene.<sup>346</sup>

### ***Mechanics and Instrument of Death***

221 The instrument of Dr Aggett's death was a cloth or kikoi that was found encircling Dr Aggett's neck and double knotted just below his right ear.<sup>347</sup> The first inquest court found that the kikoi was given to Dr Aggett while he was in his cell and he was allowed to keep the cloth.<sup>348</sup>

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<sup>340</sup> Lamprecht testimony second inquest record p 2838

<sup>341</sup> Lamprecht testimony second inquest record pp 2839-2840

<sup>342</sup> Lamprecht testimony second inquest record pp 2841-2842

<sup>343</sup> FGK7.1, FGK7.2

<sup>344</sup> Lamprecht testimony second inquest record p 2843

<sup>345</sup> Lamprecht testimony second inquest record p 2848

<sup>346</sup> G21 p 11 paras 6.2.1-6.2.5

<sup>347</sup> First Inquest Record Vol 1 p 24.

<sup>348</sup> First Inquest Record p 3530.

222 Mr Paul Erasmus located a photograph of the kikoi that was taken by the official SB in-house photographer, Roy Baker, who was summoned to the death scene on the morning in question and photographed the body and the kikoi.<sup>349</sup>

223 Dr Floyd provided drawings from memory of her recollection of the kikoi.<sup>350</sup> The second of these drawings indicates that when she received the kikoi it was cut into three pieces, one of which was crumpled up on the end and the other had which was straight on the end.<sup>351</sup>

#### Solitary fingerprint

224 Only one identifiable fingerprint was lifted from the entire grille from which Dr Aggett had climbed and allegedly hanged himself.<sup>352</sup> Mr Lamprecht, the SAP forensic investigator,<sup>353</sup> claimed before the first inquest that the fingerprint could only have been made by somebody who climbed up the grille to the bar in question.<sup>354</sup> It happened to be a print of Aggett's left forefinger (index) finger,<sup>355</sup> and it was located at the top of the grille behind the vertical bar where the ligature had been tied.

225 Lamprecht testified that he dusted for prints on the back of the grill and, after Dr Aggett's body was cut down, the front of the grill.<sup>356</sup> He testified that he lifted no other fingerprints because during the investigation he found no fingerprints that

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<sup>349</sup> FGK15, Second Inquest Record p 2043, 2046

<sup>350</sup> G4, Annexures EKF3, EKF4

<sup>351</sup> G4, pp 11-12 para 40

<sup>352</sup> Second Inquest Record 2020 p 2860

<sup>353</sup> See Annex B for a summary of his full evidence.

<sup>354</sup> First inquest record p 343

<sup>355</sup> See report at exhibit B.1.3.

<sup>356</sup> Lamprecht testimony second inquest record pp 2854-2855

showed a ridge pattern.<sup>357</sup> He indicated that he found other non-identifiable marks on the cell bars.<sup>358</sup>

226 Various witnesses, including Lamprecht, agreed that if Dr Aggett climbed the cell bars they would have expected him to grip various areas to do so.<sup>359</sup> Two forensic experts, Mr Mothupi<sup>360</sup> of the SAPS fingerprinting unit and Mr Sietze Albertse,<sup>361</sup> an independent expert briefed by the Aggett family, testified that they would have expected a person climbing the bars to grip at multiple points and leave multiple fingerprints, including fingerprint series given that a person climbing the grille will use a handgrip involving several fingers.<sup>362</sup>

#### Kikoi dimensions

227 Thivash Moodley, an aeronautical engineer of 19 years' experience in aeronautical and mechanical engineering, prepared a report that analysed the suspension of Dr Aggett above the ground; the weight being suspended by Dr Aggett's neck; and the strength of the shawl to support Dr Aggett's weight without tearing or stretching.<sup>363</sup>

228 Mr. Moodley's report found that the dimensions of the grille that Dr Aggett hung from indicated that Dr Aggett was suspended approximately 175mm above the

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<sup>357</sup> Lamprecht testimony second inquest record p 2860

<sup>358</sup> Lamprecht testimony second inquest record p 2864

<sup>359</sup> Lamprecht testimony second inquest record p 2866

<sup>360</sup> See Annex B for a summary of his full evidence.

<sup>361</sup> See Annex B for a summary of his full evidence.

<sup>362</sup> Second inquest record 2020 p 2268, 2274-2275, 2336-2337, G33.1 p 9

<sup>363</sup> G72.1

ground rendering his hanging a complete hanging as no parts of his body were partially suspended.<sup>364</sup>

229 The entire material breadth of 950mm was wrapped around Dr Aggett's neck which supported his entire weight of 64 kgs.<sup>365</sup> Moodley tested the shawl and found that the material was capable of supporting Dr Aggett's mass without any strain.<sup>366</sup>

230 The evidence is thus that Dr Aggett was suspended by his neck from the cell grille by a kikoi of sufficient strength to support his body mass. It is unclear, however, whether Dr Aggett climbed the cell grille himself or he was lifted and suspended by others.

### ***Forensic Cause of Death***

#### **Evidence of Dr Kemp**

231 Dr Kemp, the District Surgeon of Johannesburg,<sup>367</sup> conducted a post-mortem of Aggett's body on 5 February 1982 at 08h45; being 7 hours and 15 minutes after the recorded time of death of 01h30.<sup>368</sup> The essence of Dr Kemp's testimony before the first inquest was that the cause of Dr Aggett's death was "*from hanging*".<sup>369</sup>

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<sup>364</sup> G72.1 p 6 para 2.1, G72.2, See also G33.1 p 6 and G32.4

<sup>365</sup> G72.1 p 6 para 2.2

<sup>366</sup> G72.1 p 8

<sup>367</sup> First Inquest Record Vol 1 p 22.

<sup>368</sup> First Inquest Record Vol 1 p 23, p 127.

<sup>369</sup> First Inquest Record Vol 1 p 24.

232 Dr Kemp found a sub-endocardial haemorrhage, which indicated that Aggett had a very rapid fall in blood pressure and this could have been brought about by the pressure of the knot at the side of his neck pressing on the carotid body.<sup>370</sup> The haemorrhages described by Dr Kemp arose from a degree of anoxia and a degree of compression of the neck, the airway and of the blood flow of the neck.<sup>371</sup> These were vital reactions that occurred during life.<sup>372</sup> This implied that Dr Aggett was alive at the time that of the hanging.

233 The criteria used by Dr Kemp to establish death by hanging were: the band of abrasion around Aggett's neck in the typical hanging way; the abrasion was an ante-mortem abrasion; Aggett had bruising underlying the knots of the cloth around his neck; the extravasation of bloods in a similar area at the one end of the hyoid bone; the ballooning of the lungs; the sub-pleural particular haemorrhages and sub-epicardial particular haemorrhages.<sup>373</sup> These findings were also compatible with any other force being supplied to the neck, including a manual mark or throttling.<sup>374</sup>

234 Dr Kemp's diagnosis was based on the ligature mark about Aggett's neck, and the fact that people had told him that Aggett had been found suspended by the neck, along with supportive evidence in the form of the petechiae and the injuries to the neck.<sup>375</sup>

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<sup>370</sup> First Inquest Record Vol 1 p 124.

<sup>371</sup> First Inquest Record Vol 1 p 124.

<sup>372</sup> First Inquest Record Vol 1 p 124.

<sup>373</sup> First Inquest Record Vol 1 p 129.

<sup>374</sup> First Inquest Record Vol 1 p 129.

<sup>375</sup> First Inquest Record Vol 1 p 130.

235 Dr Kemp stated that it was unlikely that anyone would manage to hang a person who was conscious without leaving marks of a struggle.<sup>376</sup> A person who was either unconscious or semi-conscious or at a low level of consciousness, such as a person recovering from a faint, would not be able to put up a struggle.<sup>377</sup> This could be caused by anoxia, a lack of oxygen to the brain.<sup>378</sup> Anoxia may be induced by hanging.<sup>379</sup>

236 Anoxia may also be induced by the “*Adam’s Apple*” torture method.<sup>380</sup> Dr Kemp stated that this method would leave no marks on the victim’s neck if the victim were unable to get his own fingers on his neck.<sup>381</sup> This could be achieved by handcuffing the victim behind his back.<sup>382</sup> However, while there would be no marks left on the neck there would very likely be indications of strangulation left elsewhere, as one might find haemorrhages in the eyes and skin.<sup>383</sup> Dr Kemp accepted that a person may be killed by this method either deliberately or as a result of miscalculation.<sup>384</sup> Dr Kemp accepted that it would be impossible at a post-mortem to determine whether or not there was hanging or non-manual strangulation in certain cases.<sup>385</sup> If a person were unconscious or semi-conscious and were strung up, it would not be possible to distinguish between hanging and non-manual strangulation.<sup>386</sup>

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376 First Inquest Record Vol 1 pp 91-2.

377 First Inquest Record Vol 1 p 92.

378 First Inquest Record Vol 1 p 92.

379 First Inquest Record Vol 1 p 92.

380 First Inquest Record Vol 1 pp 93-4.

381 First Inquest Record Vol 1 p 94.

382 First Inquest Record Vol 1 p 94.

383 First Inquest Record Vol 1 p 94.

384 First Inquest Record Vol 1 p 94.

385 First Inquest Record Vol 1 p 95.

386 First Inquest Record Vol 1 p 95.

237 There would be a different diagnosis if vital reactions were present.<sup>387</sup> Vital reaction occurs in tissues like skin and will not occur where a person dies at the time of an injury or very shortly after the injury.<sup>388</sup> Dr Kemp noted that where someone was rendered semi-conscious or unconscious and then strung up shortly thereafter there would be no vital reaction.<sup>389</sup> If the cause of the vital reaction were within a few minutes prior or after death it would be impossible to distinguish whether they were ante or peri-mortem.<sup>390</sup>

238 Dr Kemp also accepted that it was possible to hang a person who had already died without being able to tell the difference because of the absence of vital reaction if it was done quickly enough.<sup>391</sup> But, if someone was hanged, and a ligature of any sort was around his neck while he was alive, then it would cause an abrasion of the skin and that skin abrasion would lose blood, which would give rise to an ante-mortem abrasion.<sup>392</sup> If that person were already dead the abrasion of the skin caused by the ligature would not use blood and would cause a different appearance called a post-mortem abrasion.<sup>393</sup> However, it would be very difficult to tell the difference if the two events followed each other quickly.<sup>394</sup>

239 Dr Kemp accepted that there was nothing in his report that would show that Aggett was not unconscious or semi-conscious due to anoxia or any other cause, shortly before his death.<sup>395</sup> Dr Kemp accepted that there may be as much as two

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<sup>387</sup> First Inquest Record Vol 1 p 95.

<sup>388</sup> First Inquest Record Vol 1 p 95.

<sup>389</sup> First Inquest Record Vol 1 p 95.

<sup>390</sup> First Inquest Record Vol 1 p 134.

<sup>391</sup> First Inquest Record Vol 1 p 96.

<sup>392</sup> First Inquest Record Vol 1 p 96.

<sup>393</sup> First Inquest Record Vol 1 p 96.

<sup>394</sup> First Inquest Record Vol 1 p 96.

<sup>395</sup> First Inquest Record Vol 1 p 96.

hours of anoxia or hypoxia without any morphological change on the brain visible post-mortem.<sup>396</sup>

- 240 There were two features that Aggett had on his neck that indicated he was alive at the time of hanging; namely, bruises on the right side of his neck and the spot of light that was found at the right side of the thyroid cartilage, the thyroid bone.<sup>397</sup> Dr Kemp accepted that death could have occurred either by hanging or non-manual strangulation, and that both were possible causes of death.<sup>398</sup>
- 241 Dr Kemp stated that when a person is strangled by a ligature that person would expect to find an impression left by the ligature around the neck; some pressure build-up in the head; sub-pleural particular haemorrhages on the lungs and sub-endocardial haemorrhages on the heart; haemorrhages of the mucosa; and pulmonary oedema.<sup>399</sup> Dr Kemp pointed out that the post-mortem found that Aggett had suffered a pulmonary oedema, injuries to the neck; sub-pleural particular haemorrhages.<sup>400</sup>
- 242 Dr Kemp observed that at the time of death, Aggett had sustained a bruise to the back of the right shoulder.<sup>401</sup> The fact that Aggett had not sustained more injuries at the time of death, particularly to his hands, did not exclude the possibility of him being murdered.<sup>402</sup>

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<sup>396</sup> First Inquest Record Vol 1 p 97.

<sup>397</sup> First Inquest Record Vol 1 p 98.

<sup>398</sup> First Inquest Record Vol 1 p 97, 104.

<sup>399</sup> First Inquest Record Vol 1 pp 116-7.

<sup>400</sup> First Inquest Record Vol 1 p 117.

<sup>401</sup> First Inquest Record Vol 1 p 117.

<sup>402</sup> First Inquest Record Vol 1 p 118.

- 243 The injury to the scapula was consistent with hanging.<sup>403</sup> Aggett's conjunctivae were clear, meaning that his face was not flushed or congested.<sup>404</sup> There were no facial or ocular petechiae.<sup>405</sup> Dr Kemp was hesitant to state that the brain was bloodless, but rather that the brain showed no abnormalities.<sup>406</sup>
- 244 The fact that Dr Aggett was alive at the time of hanging was also apparent from the fact that the well-marked band of abrasion around Aggett's neck was a vital reaction, or ante mortem abrasion – meaning it occurred during life.<sup>407</sup> The only injury that occurred prior to the hanging, or during the course of the hanging, was the bruise behind the right shoulder.<sup>408</sup> However, there was no vital reaction present that indicated that there was some interference with the body prior to hanging.<sup>409</sup>

#### Evidence of Dr Scheepers

- 245 Dr Nicolaas Jacobus Scheepers was a senior state pathologist employed by the Department of Health in Johannesburg.<sup>410</sup> On 8 February 1982, Dr Scheepers examined various samples from the body: a piece of brain, a piece of the heart, a lung sample, a piece of skin of the neck, and a piece of skin from the back.<sup>411</sup>

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<sup>403</sup> First Inquest Record Vol 1 p 118.

<sup>404</sup> First Inquest Record Vol 1 pp 118-9.

<sup>405</sup> First Inquest Record Vol 1 p 119.

<sup>406</sup> First Inquest Record Vol 1 p 119.

<sup>407</sup> First Inquest Record Vol 1 p 119.

<sup>408</sup> First Inquest Record Vol 1 p 120.

<sup>409</sup> First Inquest Record Vol 1 p 120.

<sup>410</sup> First Inquest Record Vol 1 p 141.

<sup>411</sup> First Inquest Record Vol 1 p 141.

246 Dr Scheepers differed from Dr Kemp in that he testified that death by hanging and ligature strangulation would result in different histological observations.<sup>412</sup> In Dr Aggett's case the histological report found that the brain was bloodless, which was symptomatic of hanging.<sup>413</sup> In cases of strangulation by means of ligature, the brain should be congested with blood.<sup>414</sup> This is because hanging entails cutting off the blood supply to the brain as a person typically does not tense his neck muscles to prevent hanging from happening and the blood pressure does not go up as when he fights and resists himself.<sup>415</sup>

247 Dr Scheepers testified that when a person is strangled he will fight back by lowering his chin and tensing his neck muscles, which will raise his blood pressure and force blood to his brain.<sup>416</sup> His veins will be obstructed causing the blood returning to rupture the small capillaries.<sup>417</sup> Dr Scheepers would expect to see petechial haemorrhages underneath the skin and underneath the conjunctivae; and the ligature marks lower down on the neck and not underneath the chin.<sup>418</sup>

248 Dr Scheepers, however, accepted that:

248.1 There was no differential diagnosis between the method of ligature strangulation and hanging merely by reporting that the brain was bloodless.<sup>419</sup>

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<sup>412</sup> First Inquest Record Vol 1 p 145.

<sup>413</sup> First Inquest Record Vol 1 p 146.

<sup>414</sup> First Inquest Record Vol 1 p 146.

<sup>415</sup> First Inquest Record Vol 1 p 147.

<sup>416</sup> First Inquest Record Vol 1 p 148.

<sup>417</sup> First Inquest Record Vol 1 p 149.

<sup>418</sup> First Inquest Record Vol 1 p 149.

<sup>419</sup> First Inquest Record Vol 1 p 150.

248.2 The fact that the lungs were congested and oedematous indicates that there was a degree of asphyxia, meaning the inability to take in oxygen and exhale carbon-dioxide.<sup>420</sup> This state of the lungs can be found in both suicidal and homicidal strangulation.<sup>421</sup>

248.3 The state of the petechial are a non-specific sign and could arise in either ligature strangulation or hanging.<sup>422</sup>

248.4 The lack of blood in the brain could be caused by a person succumbing to death or if a person is hung when unconscious.<sup>423</sup>

249 Dr Scheepers accepted that while it may not be possible for one person to lift a person after he has died and suspend him without leaving any marks, where there are a few people (3, 4 or 5), lifting the person, then it would be possible to put a person in a hanging position without causing injury.<sup>424</sup>

#### Evidence of Dr Botha

250 Dr Jan Botha was a private pathologist who attended the Aggett autopsy on 5 February 1982 at the request of the Aggett family lawyers.<sup>425</sup>

251 According to Dr Botha, the findings at the autopsy are consistent with those of hanging<sup>426</sup> and he did not find any evidence to suggest any other mechanism of

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<sup>420</sup> First Inquest Record Vol 1 p 150.

<sup>421</sup> First Inquest Record Vol 1 p 151.

<sup>422</sup> First Inquest Record Vol 1 pp 153-4

<sup>423</sup> First Inquest Record Vol 1 p 157.

<sup>424</sup> First Inquest Record Vol 1 pp 163-4.

<sup>425</sup> First Inquest Record Vol 1 p 176.

<sup>426</sup> First Inquest Record Vol 1 p 188.

death.<sup>427</sup> Dr Botha stated that he could not accept that the deceased died and was then suspended post-mortem as the haemorrhage in the vicinity of the right carotid sheath, which corresponded with the position of the knot, indicated that this was what caused Aggett's death.<sup>428</sup>

252 Dr Botha agreed that he was unable to say whether Aggett voluntarily elevated himself with a cloth around his neck or whether he was elevated in an unconscious, semi-conscious or low conscious state.<sup>429</sup> Dr Botha could not exclude the possibility that Aggett had died by way of the Adams Apple torture technique.<sup>430</sup>

#### Evidence of Dr Naidoo

253 Dr Steve Naidoo is an independent forensic pathologist who was briefed on behalf of the Aggett family in the re-opened inquest proceedings.<sup>431</sup>

254 Dr Naidoo testified that the only reasonable conclusion to draw in this case is that Dr Aggett's death was caused by a state of suspensory hanging of the body by constrictive ligature around the neck.<sup>432</sup> Unconsciousness would set in rapidly and the body will sag or slump with the entire body weight fully drawn against the ligature.<sup>433</sup> Death by vagal cardiac arrest mechanism would have been almost

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<sup>427</sup> First Inquest Record Vol 1 p 188.

<sup>428</sup> First Inquest Record Vol 1 p 189.

<sup>429</sup> First Inquest Record Vol 1 p 190.

<sup>430</sup> First Inquest Record Vol 1 p 190.

<sup>431</sup> See annex B for a summary of his full evidence.

<sup>432</sup> G21 p 21 para 6.5.9, Second Inquest Record 2020 p 1528

<sup>433</sup> G21 p 22 para 6.7.1, Second Inquest Record 2020 p 1528

instantaneous. Death by bilateral carotid artery occlusion would have taken several minutes.<sup>434</sup>

255 Dr Naidoo testified that there was no medical or physical finding that will determine whether Aggett was in a state of consciousness or unconsciousness at the time of his suspension and neither possibility could be excluded on the objective evidence.<sup>435</sup> In both scenarios, the victims would be alive and the dynamics of the gravitational traction of the body's weight and the effects of the constrictive and compressive strains to the neck region would be largely the same.<sup>436</sup>

256 Dr Naidoo testified that if Aggett was in a state of unconsciousness or low consciousness, it could possibly have been induced by various causes, including drugs,<sup>437</sup> a traumatic concussion<sup>438</sup> or brain damage from lack of oxygen.<sup>439</sup> Dr Naidoo compiled a supplementary report dated 23 March 2020.<sup>440</sup> This report elaborated on each of the possible causes of unconsciousness: (1) intoxication of some sort; (2) concussion (traumatic); (3) electric shock-induced; (4) hypoxia-induced; and (5) hypoxia/anoxia from carotid arterial obstruction.<sup>441</sup>

257 Dr Naidoo concluded that:<sup>442</sup>

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<sup>434</sup> G21 p 22 para 6.7.2, Second Inquest Record 2020 p 1528

<sup>435</sup> G21 p 22 para 6.8.1, Second Inquest Record 2020 pp 1529-1530

<sup>436</sup> G21 p 24 para 6.9.3

<sup>437</sup> Second Inquest Record 2020 p 1531

<sup>438</sup> Second Inquest Record 2020 p 1533

<sup>439</sup> Second Inquest Record 2020 p 1534

<sup>440</sup> G45 p 1 para 1

<sup>441</sup> G45 pp 3-6. See Annex B, p 66, p 69 at para 157.4.

<sup>442</sup> G1 p 34 para 7.1 *et seq*

- 257.1 Dr Aggett was alive at the time of his suspension,
- 257.2 The immediate physiological mechanism of death was likely the effects of reflex vagal inhibition of the heart and cardiac arrest,
- 257.3 The most derivable cause of death from the objective medical evidence was from neck constriction by hanging,
- 257.4 It was possible, in his view, for Dr Aggett to have ascended the grille, hitched a ligature around the grill cage and his neck and caused himself to hang,
- 257.5 The medical evidence was not able to differentiate between self-inflicted hanging and hanging by other persons; and
- 257.6 It could not be excluded that the deceased may have been suspended by others whilst in a state of unconsciousness.

#### **THE SECURITY BRANCH VERSION**

- 258 In this section we consider the version of the Security Branch in relation to the treatment of Dr Aggett, the treatment of detainees more generally and the alleged motivation for suicide.

##### ***Treatment of Aggett***

- 259 It has already been pointed out that the SB version before the first inquest court was that Dr Aggett was always well cared for and was mentally and emotionally

stable, healthy, calm, agreeable and co-operative.<sup>443</sup> The SB claimed that Dr Aggett's sudden death on 5 February 1982 came as a complete shock and surprise given his sound state of physical, mental and emotional health.<sup>444</sup>

260 The SB officers that testified before this Court persisted with this version. This included Deetlefs, Woensdrecht, Visser, Chauke and Swanepoel.<sup>445</sup> They presented evidence to the effect that they had a good relationship with Dr Aggett.<sup>446</sup> Dr Aggett's interrogators testified that they did not resort to violence or abuse in interrogating Dr Aggett, but rather adopted non-threatening and cordial styles of interrogation.<sup>447</sup> Dr Aggett was not assaulted by the SB officers and made no complaints about his treatment.<sup>448</sup>

261 Nicolaas Deetlefs (Deetlefs) testified that:

261.1 he was called by Lt Whitehead to interrogate Dr Aggett over the long weekend, but received no briefing from Lt Whitehead regarding the interrogation beforehand;<sup>449</sup>

261.2 when he interrogated Dr Aggett during the long weekend, he was comfortable, relaxed and Deetlefs had a good relationship with him.<sup>450</sup>

261.3 Dr Aggett was not assaulted by him or any other officer;<sup>451</sup>

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<sup>443</sup> Exhibit C2 pp 8-9 paras 4.3-4.4

<sup>444</sup> Exhibit C2 p 9 para 4.4

<sup>445</sup> See Annex B for summaries of the full evidence provided by these officers.

<sup>446</sup> Deetlefs testimony second inquest record p 2427, Woensdrecht testimony second inquest record 20210125

<sup>447</sup> Deetlefs testimony second inquest record p 2449; Swanepoel testimony second inquest record 20210209; Woensdrecht testimony second inquest record 20210128

<sup>448</sup> Deetlefs testimony second inquest record p 2503

<sup>449</sup> Deetlefs testimony second inquest record p 2560

<sup>450</sup> Deetlefs testimony second inquest record pp 2565 - 2566

<sup>451</sup> Deetlefs testimony second inquest record pp 2502-2503

261.4 he had reported to Lt Whitehead and Major Cronwright his fear that Dr Aggett would commit suicide.<sup>452</sup> While his affidavit before the reopened inquest included an allegation that he reported the suicide risk to Whitehead it did not mention that he had also reported this to Major Cronwright. Deetlefs could not explain why this critical detail was omitted from his affidavit save to blame it on a 'mistake';<sup>453</sup>

261.5 he, along with Major Cronwright and Lt Whitehead, covered-up the evidence of reporting to Major Cronwright his fear that Dr Aggett would commit suicide before the first inquest court;<sup>454</sup>

262 Joseph Petrus Woensdrecht (Woensdrecht) testified that:

262.1 he never assaulted or abused Dr Aggett in any way during his detention at JVS, this included depriving him of sleep or food, forcing him to stand for prolonged periods of time or adopting difficult body positions;<sup>455</sup>

262.2 after Dr Aggett's interrogation on Saturday, 30 January 1982, concluded at 11pm he did not return him to the second-floor cells but let him sleep on a camp bed until 3.30am and then returned him to his cell,<sup>456</sup> and

262.3 Dr Aggett appeared to be in good shape and under no difficult circumstances at the time he was interrogated.<sup>457</sup>

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<sup>452</sup> Deetlefs testimony second inquest record p 2510, 2513

<sup>453</sup> Deetlefs testimony second inquest record p 2512

<sup>454</sup> Deetlefs testimony second inquest record p 2518

<sup>455</sup> Woensdrecht testimony second inquest record pp 852-858

<sup>456</sup> Woensdrecht testimony second inquest record pp 944-945

<sup>457</sup> Woensdrecht testimony second inquest record p 999

263 Nicolaas Johannes Visser (Visser) testified that he was unaware that Dr Aggett had been deprived of sleep for approximately 50 hours prior to Visser interrogating him.<sup>458</sup>

264 Magezi Eddie Chauke (Chauke) testified that:

264.1 the claims made by Dr Aggett that he was assaulted in Chauke's presence were false;<sup>459</sup>

264.2 the evidence of Mr Smithers that he witnessed SB officers forcing Dr Aggett to exercise and striking him with a newspaper was false;<sup>460</sup>

264.3 the interrogation of Dr Aggett conducted Lt Whitehead was well mannered and normal;<sup>461</sup>

264.4 Dr Aggett was not downcast or depressed following his long interrogation;<sup>462</sup>

264.5 despite his previous statement to the contrary, Lt Whitehead was not angered by Dr Aggett's complaint to Sgt Blom and did not want to exact revenge upon him;<sup>463</sup> and

264.6 Dr Aggett was in a good condition and that he disputed the evidence that he was not.<sup>464</sup>

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<sup>458</sup> Visser testimony second inquest record pp 1224-1225

<sup>459</sup> Chauke testimony second inquest record pp 1695-1696, 1702-1703

<sup>460</sup> Chauke testimony second inquest record p 1698

<sup>461</sup> Chauke testimony second inquest record pp 1702, 1712-1713

<sup>462</sup> Chauke testimony second inquest record p 1726

<sup>463</sup> Chauke testimony second inquest record p 1728

<sup>464</sup> Chauke testimony second inquest record pp 1737-1738

265 Daniel Swanepoel (Swanepoel) testified that:

- 265.1 prior to interrogating Dr Aggett on 30 January 1982, he had no knowledge of him or that he would be interrogating him;<sup>465</sup>
- 265.2 he and Major Visser did not intimidate or assault Dr Aggett when they interrogated him;<sup>466</sup>
- 265.3 he had no knowledge, and was not informed, as to how Dr Aggett had been assaulted and tortured the night before or that Dr Aggett had been subjected to 44.5 hours continuous interrogation by the time he commenced his interrogation;<sup>467</sup>
- 265.4 he received no briefing regarding Dr Aggett on the interrogation he was required to perform;<sup>468</sup> and
- 265.5 Dr Aggett preferred to stay in the office in which he was interrogated over the 'long weekend' rather than return to his cell.<sup>469</sup>

### ***Treatment of detainees***

266 SB officers who testified in the Reopened Inquest largely persisted with the version they had put before the first inquest court, which was to deny assaulting any detainee, or even witnessing a detainee being assaulted at JVS. These palpably false versions were advanced by Deetlefs, Woensdrecht, Visser, Venter, Chauke and to an extent, Swanepoel.

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<sup>465</sup> Swanepoel testimony second inquest record p 1978

<sup>466</sup> Swanepoel testimony second inquest record p 1980

<sup>467</sup> Swanepoel testimony second inquest record pp 1984-1985, 2001

<sup>468</sup> Swanepoel testimony second inquest record pp 2020-2021

<sup>469</sup> Swanepoel testimony second inquest record pp 2069-2070

267 Deetlefs testified that:

- 267.1 if he witnessed an officer assaulting a detainee, his responsibility would be to prevent the officer from interrogating the detainee and ensure that the detainee received appropriate medical treatment;<sup>470</sup>
- 267.2 he had never had to take a detainee that was assaulted to a doctor;<sup>471</sup>
- 267.3 he would be obliged to cover-up a serious crime committed by a senior officer against a detainee;<sup>472</sup>
- 267.4 he had never had to engage in such a cover-up as he had never witnessed a senior officer assaulting a detainee;<sup>473</sup>
- 267.5 he had heard detainees being assaulted on the 10<sup>th</sup> floor of JVS but did not intervene because it was not his business;<sup>474</sup> and
- 267.6 if he had believed a detainee could die in detention, he would report this to his commanding officer and propose steps be taken, such as transferring the detainee to a psychiatric hospital.<sup>475</sup>

268 Woensdrecht testified that:

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<sup>470</sup> Deetlefs testimony second inquest record p 2480, 2481  
<sup>471</sup> Deetlefs testimony second inquest record p 2488  
<sup>472</sup> Deetlefs testimony second inquest record p 2485  
<sup>473</sup> Deetlefs testimony second inquest record p 2486  
<sup>474</sup> Deetlefs testimony second inquest record p 2496  
<sup>475</sup> Deetlefs testimony second inquest record p 2506

- 268.1 if he witnessed a SB officer on the 10<sup>th</sup> floor of JVS assaulting a detainee he would bring this to the attention of his superior officers and ensure that a criminal charge was laid before a court of law;<sup>476</sup>
- 268.2 he had never had occasion to take such a step because he never witnessed any assault or abuse on the 10<sup>th</sup> floor during his career with the SB at JVS;<sup>477</sup>
- 268.3 he denied that the culture in the SB was that members would stand together and protect each other if one of their members engaged in a crime;<sup>478</sup>
- 268.4 he had never abused any detainees while stationed at JVS and never heads of detainees being abused;<sup>479</sup> and
- 268.5 the only reason detainees made complaints was because they were frustrated and angry and wanted to get back at the SB by making false claims.<sup>480</sup>

269 Visser testified that:

- 269.1 he had no knowledge of the SB employing sleep deprivation on detainees;<sup>481</sup>

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<sup>476</sup> Woensdrecht testimony second inquest record pp 827-828

<sup>477</sup> Woensdrecht testimony second inquest record pp 828

<sup>478</sup> Woensdrecht testimony second inquest record pp 831-832

<sup>479</sup> Woensdrecht testimony second inquest record pp 861-862

<sup>480</sup> Woensdrecht testimony second inquest record p 875

<sup>481</sup> Visser testimony second inquest record p 1215

269.2 the various detainees that had accused him of ill-treatment and abuse had made false claims;<sup>482</sup>

269.3 he had a good relationship with detainees;<sup>483</sup> and

269.4 it was untrue that detainees would be kept back from seeing magistrates and doctors until their injuries from assault or torture were healed.<sup>484</sup>

270 Roelof Jacobus Venter (Venter) testified that:

270.1 no assaults on detainees at JVS took place in his presence;<sup>485</sup>

270.2 he never heard a detainee cry out in pain when he was present on the 10<sup>th</sup> floor of JVS;<sup>486</sup>

270.3 he denied allegations made by detainees against him of assault;<sup>487</sup> and

270.4 he had no knowledge of electric shocks being used in interrogations.<sup>488</sup>

271 Chauke testified that:

271.1 he never had occasion to refuse to carry out an instruction;<sup>489</sup>

271.2 he never saw or even heard of any detainee being forced to do exercises on the tenth floor;<sup>490</sup>

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<sup>482</sup> Visser testimony second inquest record pp 1234-1239

<sup>483</sup> Visser testimony second inquest record pp 1240-1242

<sup>484</sup> Visser testimony second inquest record p 1249

<sup>485</sup> Venter testimony second inquest record p 1381

<sup>486</sup> Venter testimony second inquest record p 1382

<sup>487</sup> Venter testimony second inquest record pp 1389-1390, 1401-1408, 1416-1418

<sup>488</sup> Venter testimony second inquest record p 1409

<sup>489</sup> Chauke testimony second inquest record p 1692

<sup>490</sup> Chauke testimony second inquest record p 1699

271.3 he never heard cries of detainees on the 10<sup>th</sup> floor of JVS;<sup>491</sup> and

271.4 he had no knowledge of torture or assault of detainees.<sup>492</sup>

272 Swanepoel testified that:

272.1 he was never involved in physical assaults, or serious physical assaults;<sup>493</sup>

272.2 it was not routine practice under the Hogan investigation for interrogators to use physical assault, or to disparage and insult detainees;<sup>494</sup> and

272.3 he was, however, aware of other abusive techniques such as sleep deprivation, assuming difficult body positions and holding heavy objects above the head.<sup>495</sup>

#### ***Motivation for alleged suicide***

273 The explanation offered by the SB for Dr Aggett's sudden suicide before the first inquest court was that his decision was based on his betrayal of his comrades when he made disclosures on the four pages of notes furnished to WO Deetlefs.<sup>496</sup> This explanation was persisted with before the Reopened Inquest. It was advanced by Deetlefs, Woensdrecht, Visser and Swanepoel.

274 Deetlefs testified that:

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<sup>491</sup> Chauke testimony second inquest record p 1741

<sup>492</sup> Chauke testimony second inquest record pp 1741-1742

<sup>493</sup> Swanepoel testimony second inquest record pp 1987, 1989

<sup>494</sup> Swanepoel testimony second inquest record p 1989

<sup>495</sup> Swanepoel testimony second inquest record p 2080

<sup>496</sup> Exhibit C2 p 82 para 23

- 274.1 he had a good rapport with Dr Aggett and persuaded him to disclose evidence of various crimes relating to his union activities;<sup>497</sup>
- 274.2 Aggett disclosed information about Jan Theron and confirmed that he was the underground leader of SACTU and that he was organising the unions to bring down the economy of South Africa;<sup>498</sup>
- 274.3 Aggett told him he could not forgive himself for disclosing this information because he was betraying his best friend;<sup>499</sup>
- 274.4 Aggett decided to take his own life because of having disclosed evidence that incriminated him and his comrades during his interrogation over the long weekend (28 – 31 January 1982);<sup>500</sup> and
- 274.5 the highly incriminating four pages of notes extracted from Dr Aggett over the long weekend was not a fabrication.<sup>501</sup>

275 Woensdrecht testified that:

- 275.1 the reason Dr Aggett committed suicide was that on the night that he, Whitehead and Deetlefs interrogated him, Aggett had made disclosures about his friends and comrades and could no longer live with himself;<sup>502</sup>
- 275.2 when he heard Whitehead and Deetlefs question Aggett he got the impression that Deetlefs had information that he was not privy to;<sup>503</sup>

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<sup>497</sup> Deetlefs testimony second inquest record p 2582

<sup>498</sup> Deetlefs testimony second inquest record p 2583, p 2592

<sup>499</sup> Deetlefs testimony second inquest record p 2589

<sup>500</sup> Deetlefs testimony second inquest record pp 2457-2459, 2682.

<sup>501</sup> Deetlefs testimony second inquest record p 2685

<sup>502</sup> Woensdrecht testimony second inquest record pp 910-911

<sup>503</sup> Woensdrecht testimony second inquest record p 940

275.3 he was given no briefing on Aggett before the interrogation and did no prior research on him;<sup>504</sup>

275.4 the contents of the four-page note provided by Dr Aggett were sensitive and incriminating and were withheld for national security reasons<sup>505</sup> but he could not recall the contents;<sup>506</sup> and

275.5 he was shocked and surprised to hear of Dr Aggett's death.<sup>507</sup>

276 Visser testified that:

276.1 he was able to persuade Dr Aggett to tell him the truth about his illegal activities;<sup>508</sup> and

276.2 Aggett gave him names of people involved with SACTU and the ANC, including Jan Theron.<sup>509</sup>

277 Swanepoel testified that:

277.1 he was surprised to learn that Dr Aggett had committed suicide;<sup>510</sup>

277.2 he was able to gain Dr Aggett's confidence during the interrogation and he was willing to 'open up' and tell the truth of his involvement and membership with banned organisations;<sup>511</sup> and

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<sup>504</sup> Woensdrecht testimony second inquest record p 942

<sup>505</sup> Woensdrecht testimony second inquest record p 961

<sup>506</sup> Woensdrecht testimony second inquest record p 963

<sup>507</sup> Woensdrecht testimony second inquest record p 1029

<sup>508</sup> Visser testimony second inquest record pp 1218-1219

<sup>509</sup> Visser testimony second inquest record p 1220

<sup>510</sup> Swanepoel testimony second inquest record pp 1971-1972

<sup>511</sup> Swanepoel testimony second inquest record pp 2030, 2043

277.3 Aggett said this to him 10 to 15 minutes before the end of Swanepoel's shift and he then left Aggett with Lt Whitehead.<sup>512</sup>

## **SECURITY BRANCH COVER-UP**

278 In this section we consider the all-embracing cover-up perpetrated by the Security Branch in the Aggett case. The cover-up was aimed at concealing the torture and abuse of Aggett and the fabrication of a motivation for suicide. The cover-up commenced the moment the body was discovered in the early hours of 5 February 1982 and extended to the full duration of the first inquest.

279 The history and practice of SB cover-ups has already been referred to above. The affidavits of George Bizos SC<sup>513</sup> and Frank Dutton<sup>514</sup> set out in detail the long and sordid history of this practice in the SB. Summaries of their evidence can be found in Annex B.

### ***Cover-up of torture***

280 We have dealt with the evidence of abuse and torture at JVS that was meted out to Aggett and to the security detainees more generally. We have submitted that this evidence is overwhelming.

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<sup>512</sup> Swanepoel testimony second inquest record p 2073

<sup>513</sup> Exhibit G1

<sup>514</sup> Exhibit G75

- 281 The cover-up of this abuse in the first inquest in the statements of SB officers typically amounted to one-line denials. In their testimony before the first inquest all the SB officers adhered strictly to the same hymn sheet.
- 282 Before the reopened inquest most of the SB officers, perhaps realizing how obviously absurd their total denials of assault and torture must sound, attempted to massage their evidence. Some claimed they only engaged in milder forms of abuse and soft versions of assault. Some conceded that they heard cries of detainees on the 10<sup>th</sup> floor. Some conceded others carried out torture but never themselves. All denied being present when torture was carried out. All denied involvement in serious assault and torture. All claimed disingenuously that their method of interrogation involved gaining the trust and confidence of the detainees. We refer this Court to **Annex C3** which is a table titled “SB Officers – *Denials and Admissions*”, which provides examples of these fabrications.
- 283 We submit that all this evidence belongs firmly in the puerile category. All these witnesses have perjured themselves in giving such patently false evidence. We contend that this Court will have no difficulty in concluding that the evidence<sup>515</sup> of these witnesses, before both the first and reopened inquests, amounted to a cover-up aimed at concealing the unrelenting abuse of Aggett.

#### ***Fabrication of the suicide motive***

- 284 We have set out above under the heading “Security Branch Version” the versions of the SB officers as to why Aggett apparently decided to take his life.<sup>516</sup>

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<sup>515</sup> Summarised above under “Evidence of Abuse and Torture at JVS” and in Annex B.

<sup>516</sup> See also the summaries of the evidence of the SB Officers in Annex B.

Essentially, they argue that over the ‘long weekend’<sup>517</sup> of interrogation Aggett suddenly decided to come clean and betray his comrades. Once the betrayal had happened, Aggett could no longer with himself.

285 The evidence, on its face, smacks of the crudest of cover-ups. No less than 6 of the interrogators proudly claimed to have made breakthroughs with Aggett.<sup>518</sup> If the circumstances were not so tragic the claims would be laughable. This they claimed, ironically, was because they treated him well and gained his trust and confidence.<sup>519</sup> In fact, Aggett had been chronically sleep deprived and on the night of 29 January 1982 he been through hell with electric shock torture. Captain Daniel Swanepoel who was one of the officers who took over the interrogation at 06h00 on the morning of the 30<sup>th</sup>, like the other officers, made repeated claims that he was able to gain the trust of Aggett. It was put to him:

*MR VARNEY: But just as a matter of logic Mr Swanepoel, the detainee in question was treated like an animal the night before, he was electrocuted. You might be aware that animals, livestock [are subjected to] electric prods ...., so Dr Aggett was treated like an animal the night before. You are now aware of that, logically I put it to you that the prospects of gaining somebody's confidence and winning him over in those circumstances are not good, in fact they are probably close to zero.*

*MR SWANEPOEL: I agree with that, M'Lord.*

*MR VARNEY: So, then I want to put it to you that, your claim in 1982 and before this Court that you had won over his trust and gained his confidence through your soft approach, cannot be correct.<sup>520</sup>*

286 The story goes that the so-called “four pages” were so explosive and sensitive that the contents could not be disclosed to the first inquest court. Indeed, the

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<sup>517</sup> From 16h18 on 28 January 1982 to 03h30 on 31 January 1982.

<sup>518</sup> Oral testimony of DE Swanepoel, 2021 consolidated transcripts pages 2013 - 2016

<sup>519</sup> See for example evidence of Visser: 2021 consolidated transcripts page 1220 onwards.

<sup>520</sup> Oral testimony of DE Swanepoel, p 109, line 12, 2021 transcripts p 1982

mysterious four pages have since vanished into thin air. Deetlefs, who claimed to have been present when Aggett unburdened himself in the four pages, did not have the foggiest idea of its contents and could only speculate on what might have been there. When asked he responded ironically:

*“I would lie, I would have to lie if I have to tell you what was contained in those pages.”*<sup>521</sup>

287 The irony is that Deetlefs does in fact disclose an element of truth. He would have to lie if he had to come up with contents of a document that never existed. When pushed to describe the general contents of what might have been in the pages Deetlefs (and others) brazenly lied and said that it would have included sensitive names, information on crimes against the state, and the links of Aggett's comrades to the ANC and SACTU.

288 It was put to Deetlefs and the other SB officers that when such explosive information is handed over it typically leads to action on the part of the SB, such as arrests and detention. While they agreed, none could point to any such action being taken in this instance.<sup>522</sup> When Deetlefs was asked whether names that Aggett had previously mentioned in an earlier statement (without incriminating them), namely Oscar Mpetha, Auret van Heerden and Jan Theron featured in the four pages, he answered that they probably did. When Deetlefs and others were asked whether any action was taken against these three they were completely clueless as to whether steps had been taken. It was put to the SB officers under cross examination that in fact no action arising from Aggett's interrogation had

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<sup>521</sup> Oral testimony of NJ Deetlefs, 2020 consolidated transcripts page 2673.

<sup>522</sup> Oral testimony of NJ Deetlefs, 2020 consolidated transcripts page 2630

been taken against the three. Deetlefs claimed dishonestly that this may have been due to a “shortage of manpower”.<sup>523</sup>

289 It was ultimately put to the SB officers that in fact the four pages were a fabrication concocted to provide the first inquest court with a motivation for the suicide.<sup>524</sup> Magistrate Kotze bought the transparently obvious fabrication lock, stock and barrel.

290 We submit that this Honourable Court will have little difficulty in concluding that the purported motive for murder advanced by the SB was quite obviously a fabrication aimed at spoon feeding the first inquest and securing a finding that “nobody was to blame.”

291 All the SB officers who persisted with the fabrication of a suicide motive in the reopened inquest perjured themselves and should face the consequences.

### ***The investigation was a cover-up***

292 It is our submission that the police investigation into the death of Neil Aggett amounted to a cover-up. We contend that the cover-up commenced at the very start of the investigation.

293 Private investigator, Frank Dutton, set out in his affidavit what kind of investigation should have taken place, together with his view of the multiple

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<sup>523</sup> Oral testimony of NJ Deetlefs, 2020 consolidated transcripts page 2630 - 2643

<sup>524</sup> 2021 consolidated transcripts page 1220 onwards

shortcomings that occurred.<sup>525</sup> This section is drawn largely from the expert evidence supplied by Dutton.

### Crime Scene Investigation

294 According to Dutton the crime or death scene investigation was plagued by many shortcomings.

#### *No forensic pathologist was called to the scene*

295 According to Dutton, a forensic pathologist ought to have carried out an on-site examination of the scene while it was undisturbed, in particular the suspended body.<sup>526</sup> The pathologist should have established the level of rigor mortis compared to temperature recordings to allow for an accurate estimate of time of death. This lapse leaves the time of death an open question.

296 In Dutton's view, the estimate of time of death was of particular importance because of the apparent failure by the police to conduct cell visits for some 3 hours during the night of 4 February and early morning of 5 February 1982. This all creates suspicion as to time of death and the possibility that other activities may have occurred during this time.

#### *Presence of non-investigators at the scene*

297 Prior to Lamprecht's arrival multiple police officers were present at the death scene. According to references in the first inquest record, at least 12 police

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<sup>525</sup> Exhibit G75

<sup>526</sup> See also the evidence of Dr Steve Naidoo in this regard (exhibit G21).

officers were in the Aggett cell post the death.<sup>527</sup> No less than five of those were Security Branch members:

297.1 Brig Hendrik Christoffel Muller, head of SB Johannesburg,<sup>528</sup>

297.2 Lt. Colonel Christian Stephanus Scholtz, SB JVS,<sup>529</sup>

297.3 Major Arthur Benoni Cronwright, head of SB, JVS,<sup>530</sup>

297.4 Capt. Andries Abraham Struwig, SB JVS<sup>531</sup>

297.5 Lt. Stephen Peter Whitehead, SB JVS, lead interrogator of Aggett.<sup>532</sup>

298 Two of these personnel were directly involved in the SB's investigation of Aggett, namely Cronwright who was ultimately in charge of the investigation and Whitehead who was the lead interrogator on the case. As has been pointed out above, complaints of serious torture and abuse were levelled against Whitehead by Aggett.

299 Struwig, who was part of the Barbara Hogan investigation, was present at the meeting called by Cronwright to arrange shifts for round the clock interrogation of Aggett over the 'long weekend'.<sup>533</sup>

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<sup>527</sup> This includes the 2 police officers who were on duty in the cell block that night: Sergeant James Agenbag and Constable Maseou Paul Sehloho.

<sup>528</sup> Exhibit B1.36

<sup>529</sup> Exhibit A1.2.11, p232 - 233

<sup>530</sup> Exhibit B1.39

<sup>531</sup> Exhibit A1.2.11, p232 - 233

<sup>532</sup> Exhibit B1.4 Para 10

<sup>533</sup> Exhibit A6.2, page 2033-34

300 It appeared that only four of the persons present had something of a legitimate connection to the investigation. These were

300.1 Captain Carel Jacobus Adriaan Victor (Investigating Officer SAP,

JVS)<sup>534</sup>,

300.2 Charl Wynand Lambrecht: (Detective Warrant Officer in SAP in the Finger Printing Department),<sup>535</sup>

300.3 Johannes Stephanus Marais (Warrant Officer in SAP, JVS),<sup>536</sup>

300.4 W/O Johannes Christian Pretorius, SAP JVS.<sup>537</sup>

301 The presence of SB officers on the scene was irregular and highly improper, especially given the roles of Cronwright, Whitehead and Struwig, who were connected to Aggett during his detention. Indeed, it was Struwig who cut down the body on orders of Rooi Rus Swanepoel.

302 According to Dutton, duty of the first officer on the scene, after confirming that Aggett was dead, was to secure the scene for forensic investigation. Only on completion of this investigation should the duly assigned investigators have been allowed access to the scene.

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<sup>534</sup> Exhibits B1.4 and B8.4

<sup>535</sup> Exhibit B1.34 and B 8.29

<sup>536</sup> Exhibit A1.3.4 - p324-339, Exhibit B8.37, Exhibit A1.2.10, p231 232, Exhibit B1.42

<sup>537</sup> Exhibit A1.2.14, page 236. He helped draw up the inventory of the contents of the cell.

*Dubious senior officers at the scene*

- 303 In addition to the five SB members, Brigadier Theunis Jacobus Swanepoel,<sup>538</sup> also known notoriously as 'Rooi Rus Swanepoel', was present in the cell. At the time of Aggett's death, he was the Divisional Inspector of the Witwatersrand Division of the SAP. He took charge of the death scene in cell 209 in the early hours of 5 February 1982. Swanepoel was one of the most tarnished police officers in the erstwhile SAP. He interrogated Suliman "Babla" Saloojee on the day he fell to his death from the 7<sup>th</sup> floor of Greys Building in Johannesburg on 9 September 1964. He also interrogated James Lenkoe on the day Lenkoe allegedly hanged himself in March 1969.<sup>539</sup>
- 304 Brigadier Hennie Muller who served as the Divisional Commander of the Security Branch in Johannesburg, at the time of Dr Aggett's death, was closely associated with criminality, including abductions, torture, and murder.<sup>540</sup> For example, the TRC found that Lieutenant H C Muller (as he then was) was one of the officers responsible for assaulting and torturing Suliman Saloojee in 1964, who fell to his death from the 7<sup>th</sup> floor of Security Branch Headquarters in Johannesburg.<sup>541</sup>
- 305 It appeared that Rooi Rus Swanepoel and Hennie Muller enjoyed a long history together, going back at least to the death in detention of Babla Saloojee in 1964. The Aggett death scene they saw was probably not a completely unfamiliar scene for the two of them.

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<sup>538</sup> Exhibit A1.2.13- p 234 235, Exhibit B1.34 and Exhibit B8.29

<sup>539</sup> See exhibits G15 to 15.7 for background on Rooi Rus Swanepoel; exhibit G37, para 42.

<sup>540</sup> Exhibit G37, para 25 – 25.3.

<sup>541</sup> TRC Final Report, Page (Original) 540, Vol 3, Ch. 6, Subsection 7, para 54

306 The investigating officer, Captain Carel Victor, was attached to the Detective Branch at John Vorster Square and was unlikely to act independently in the face of senior officers such as Brigadiers Rooi Rus Swanepoel and Hennie Muller who were overseeing the investigation of this case.<sup>542</sup> It is probably unsurprising that Captain Victor interviewed and took statements of SB members at JVS but did not take any statements from others at JVS at the time, including civilians and detainees.<sup>543</sup>

307 The seniority of non-detectives such as Brigadiers Rooi Rus Swanepoel, Hennie Muller and Arthur Cronwright would almost certainly have intimidated a junior forensic investigator such as Lamprechts, who would likely have done what he was told to do.

*Delayed crime scene forensic examination*

308 The forensic investigation should have been one of the first steps, if not the first step taken, to ensure that others do not disturb and interfere with the scene. This did not happen. Detective Warrant Office C W Lamprechts was only called at 3.40 am and apparently arrived at 4 am or thereafter, some 2.5 hours after the body was claimed to have been discovered at 1.30 am on 5 February 1982.

309 It must be asked what was going on in the cell for 2.5 hours? What 'investigation' was happening at that time. Why did the officers on the scene choose only to contact Lamprecht at 3.40 am? What were they doing that required more than 2 hours, before a forensic investigation could commence?

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<sup>542</sup> Exhibit G37, para 41.

<sup>543</sup> Exhibit A8.5 pages 2926, 2933, and 2940 – 2943

310 Lamprechts agreed that the crime scene in the Aggett cell was possibly interfered with:

*MR VARNEY: So we also asked Mr Albertse what would a good police crime scene processing have entailed and he said the following, and perhaps you can just comment, (1), To ensure that the scene is properly controlled, secured and protected. Would you agree with that proposition?*

*MR LAMPRECHT: Yes, M'Lord.*

*MR VARNEY: Now it does seem, given the numbers of people involved and given that you arrived several hours after the scene, that if that was the rule that applied, that it probably was interfered with.*

*MR LAMPRECHT: It is possible, M'Lord.*<sup>544</sup>

*Inadequate examination at the scene*

311 The scene was examined at night with the only light source being the ceiling light in the cell. In Dutton's view, this light source simply does not produce sufficient light for a proper examination whether at night or during the day. The scene ought to have been minutely examined under excellent lighting conditions.

312 The cell ought to have been examined for traces of blood, which did not happen.

*Dubious solitary fingerprint*<sup>545</sup>

313 According to Dutton, the fingerprint search of the grid or bars was hopelessly inadequate. Lambrechts from the SAP Fingerprint Department did not have good

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<sup>544</sup> Oral testimony of Charl Lambrechts on 20 February 2020; 2020 consolidated transcript bundle, page 2905 -2906.

<sup>545</sup> See Annex B for the summaries of the fingerprint evidence provided Thabo Mothupi, Sietze Albertse and Charl Wynand Lambrechts

lighting or a stepladder. A step ladder should have been used to facilitate a proper examination of the grille bars. A fingerprint expert clambering up the bars to conduct fingerprint examinations is not acceptable and could hardly be expected to have achieved reliable results.

- 314 Only a single fingerprint of Aggett was apparently found. Dutton regarded the claimed discovery of a solitary Aggett print on the cell bars to be highly suspicious. Aggett had after all occupied this cell for an extended period and there should have been several of his prints on the bars, at least at standing level.
- 315 Moreover, if Aggett had indeed climbed up the grille to hang himself there ought to have been multiple prints in different places, and such prints ought to have included a series of digits and part of the finger base, since he would have used a full grip of the hand, while climbing.
- 316 It was the evidence of Lamprechts that there was no sign of dust on the grille. Dust would have interfered with the print lifting process. The absence of dust makes the discovery of only one solitary print even more suspicious.
- 317 The main objective of the fingerprint search ought not only to have been to find Aggett's prints, but also to find other prints; signs of wiping the bars to clear them of prints; or indications that gloves had been used to avoid leaving fingerprint traces behind.

318 Lamprechts testified that the balance of the grille was covered in marks. He did not dispute that these could be drag marks. In Dutton's view, this raises the very real possibility that such marks were caused by the wiping of the bars.

319 According to Dutton the probability of finding only one liftable print on the entire grille is so remote it gives rise to the suspicion that the death scene was interfered with. In his view this most likely happened:

320 The fact that the one solitary print lifted happened to be located exactly above the slung kikoi, is in Dutton's view, nothing less than deeply suspicious. According to him, it stretches belief to breaking point that no other prints were lifted, and the only print that emerges happens to be directly above the ligature. This is astonishing given that, on the police version, Aggett would have had to firmly grasp the grille to climb up the bars and suspend himself. Moreover, there ought to have been prints from Aggett's daily handling of the bars.

321 According to Dutton, the following scenario explains the absence of prints, with only the single Aggett print found on the bar above the slung kikoi.

321.1 The grille was wiped before the fingerprint lifting commenced.

321.2 The wiping was presumably an endeavour to prevent the discovery of prints belonging to other persons present in the cell at or around the time of death.

321.3 The probability that the solitary print was placed in the precise location by design rather than by Aggett himself is highly likely.

322 In this regard Sietze Sibo Albertse (Albertse), a fingerprint expert<sup>546</sup> who was called to give expert evidence by the family legal team was asked to comment on the fact that Lambrechts (former SAP Detective Warrant Officer in the Finger Printing Department) only found one index fingerprint at the top of the grille, above the knot.<sup>547</sup> Albertse indicated in his report and testimony that one would have expected to find a sequence of fingerprints which would include, at least, the middle finger and possibly the ring finger and pinkie when lifting those prints.<sup>548</sup>

323 In his testimony, Albertse set out three possible scenarios that could have given rise to the solitary fingerprint:

323.1 the first is that Aggett climbed up the bar and committed suicide, leaving only one print.

323.2 the second is that he was suspended by others, and his finger lifted to make a print on the bar.

323.3 the third is that the print was taken from somewhere else, and it was then claimed that it was taken off the bar above the knot.<sup>549</sup>

324 We submit that in the circumstances the most likely scenario is the second one.

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<sup>546</sup> CV at G33.2.

<sup>547</sup> G33.1 page 10.

<sup>548</sup> Line 22 onwards; 2020 consolidated transcript bundle page 2346; and exhibit G33.1 page 11.

<sup>549</sup> Line 16; 2020 consolidated transcript bundle page 2370.

325 Lamprechts himself conceded that it would have been possible for the SB to place Aggett's print on the bar before he arrived on the scene.<sup>550</sup>

326 Lamprechts claimed that if the folien,<sup>551</sup> which was before the first inquest, may have reflected a series of fingerprints, indicating that a full grip may have been placed on the grille. However, he made no reference to this possibility in the first inquest and could not recall what was on the folien:

*MR VARNEY: But would you agree that nowhere in your evidence, which I assume you have had an opportunity to study, do you refer to a series of prints in that folien?*

*MR LAMPRECHT: Yes, M'Lord.*

.....

*MR VARNEY: Sir, is there any reason why you did not mention this to the first Court, that it was a series of prints and not just one print?*

*MR LAMPRECHT: I cannot remember, M'Lord. I do not know.*

#### *Inadequate photographic record*

327 According to Dutton, the purpose of photographs is to record the scene as it was found. The photographs should have recorded the whole scene and focussed on points of interest. The photographic record fell far short of establishing the scene within the cell, and the actual hanging scene. Only four photographs were

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<sup>550</sup> Oral testimony of Charl Lambrechts on 20 February 2020; 2020 consolidated transcript bundle, line 22, page 2908.

<sup>551</sup> Folien is a fingerprint lifter, such as scotch tape.

apparently taken of the scene. This is obviously an inadequate photographic record.

- 328 There are apparently no close-ups photos of the knots in the kikoi, nor do they depict exactly where on the bars the kikoi was tied, nor is there an official photograph of the opened kikoi so that it can be properly identified.
- 329 There are no photographs of the contents of the cells; nor of the open books "Go Down Moses" and "Zorba the Greek" which Brigadier Swanepoel and Captain Victor claim they found next to Aggett's bed. To demonstrate the importance of photographic evidence, the books "Zorba the Greek" and "Go Down Moses" do not appear on the inventory made by Captain Victor, the investigating officer. This points to very poor logging of the evidence or staging of the scene. Photographs would have resolved this discrepancy.
- 330 In his testimony in 2020, Lambrechts admitted that it could have been a shortcoming that he did not take more than four photos and that he did not take any photos once the body had been cut down.<sup>552</sup>

*Dressing up the cell*

- 331 In the absence of a photographic record of the contents of the cell, the only evidence of the contents is the list drawn up by Captain Victor on the instructions of Brigadier Rooi Rus Swanepoel. According to this inventory the following items were found in Aggett's cell: 19 books, a pillow, 2 puzzles, chess set, an

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<sup>552</sup> Line 14; 2020 consolidated transcript bundle page 2850

hourglass, a green plastic bag, tennis ball, round plastic container, multiple items of food and drinks, multiple items of clothing, including a tie, handkerchiefs, trousers, shirts, socks, underwear and “snake dress” pants, amongst other items.

- 332 This prompted Rooi Rus Swanepoel to say in his evidence in the first inquest that he got the impression that “*Aggett was treated better than any other detainee would normally expect to be*”. In Dutton’s view, the list of items allegedly found in the cell is so extensive as to be implausible. Indeed, other former detainees disputed that such items, particularly a tie and kikoi, would be allowed in cells. Joe Nyampule, a former SB officer, said that if such items were found in Aggett’s cell he may as well have been in a “*five-star hotel*”.
- 333 Dutton reached the conclusion that Aggett’s cell was most likely ‘dressed-up’ to give the impression that Aggett received particularly favourable treatment from the SB. He reached this conclusion in the light of the following facts:
- 333.1 some of the items supposedly found in the cell were so obviously contraband (items that detainees could harm themselves with, such as the kikoi, tie and plastic bag),
- 333.2 some of the items were so at odds with what other detainees were allowed, and
- 333.3 the evidence of former SB officers that such items were not permitted in the cells and would have been easily discovered.

334 In Dutton's view the cell was dressed up to encourage the inference that if a detainee was this well regarded and treated, he would never be tortured or harmed.

#### Disciplinary Inquiry

335 In addition to the inquest investigation, Aggett's death should have triggered an additional investigation in the form of an internal disciplinary inquiry. According to Dutton, this inquiry should have investigated:

335.1 How Aggett came to be in possession of a kikoi (which was an object that he could use to harm himself). Prevailing police standing orders and/or protocols prohibited a member of the police from permitting a detainee to possess an object which could be used to inflict self-harm or harm others. This would most certainly have applied to a kikoi (not even towels were allowed in cells) as well as other items allegedly found in Aggett's cell such as a tie and plastic bag. Failure to comply with this prohibition, either by giving a detainee such an object, or failing to conduct diligent searches to locate and confiscate such an object, was a disciplinary offence. However, no disciplinary inquiry was instituted.

335.2 Why no cell checks were conducted between 23h00 on 4 February and 01h30 on 5 February 1982. Instead, a false entry was made in the occurrence book. Both this omission and falsification are serious disciplinary offences and in respect of the false entry in an official register also a criminal offence. No disciplinary or criminal proceedings were conducted.

336 Criminal and/ or disciplinary inquiries ought to have been held to determine whether any police officers contravened the law, standing orders and/ or police regulations. These inquiries ought to have resulted in a formal decision by prosecutors and/ or police management as to whether criminal or disciplinary steps should have been instituted against any members of the force.

337 The fact that no consequences whatsoever flowed from these serious lapses, which cost Aggett his life, suggests that the police hierarchy were protecting those responsible, or ensuring that no inquiry sheds light on what happened.

### ***Motivation for cover-up***

338 We submit that this Court can safely conclude that the SB engaged in a cover-up of the matters described in this section. Indeed, the investigation into the death of Aggett itself constituted a cover-up, from start to end.

339 The question that arises is what was the motivation for these cover-ups? What was the SB ultimately trying to conceal? In our view the SB attempted to conceal facts that pointed to one of two scenarios:

339.1 the unrelenting, vindictive, brutal, and degrading treatment of Aggett pushed him over the edge and drove him to take his life, or

339.2 SB officers engaged in some sort of foul play, that rendered Aggett unconscious from which he could not be revived, and he was suspended from his cell grille using the kikoi, to give the impression that he had committed suicide.

340 We consider each scenario in turn.

## THE CASE FOR INDUCED SUICIDE

### *Facts supporting induced suicide*

- 341 Some of the evidence placed before this Reopened Inquest is consistent with the scenario that Aggett was broken by his treatment at the hands of the SB and committed suicide by hanging himself in his cell.
- 342 There is considerable evidence that Aggett was subjected to unrelenting abuse in detention for some 70 days. Certain detainees who managed to have fleeting interactions with Aggett in the cell block, and in corridors, noticed a deterioration in his condition, particularly in the days leading up to death. Some described him as appearing “broken”. This evidence has been set out in these heads of argument as well as in the summaries of detainees’ evidence in Annex B.
- 343 A tipping point may have been the tearing up of Aggett’s statement on the morning of 4 February 1982. It is uncontested that Whitehead did tear up Aggett’s statement or parts thereof, since even Whitehead admits he did.<sup>553</sup> We submit that this Court can accept that when Whitehead learned of Aggett’s assault complaint against him he flew into a rage and tore up Whitehead’s statement in an act of revenge.<sup>554</sup> From Aggett’s perspective this may have signalled that he was going to spend a lot longer in detention, subject to more cruelty, pointless interrogation and inane questions, pursued by malicious,

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<sup>553</sup> Exhibit A6.8, page 2345

<sup>554</sup> Exhibit G37, para 52 – 52.2.

irrational and clueless officers like Whitehead, who would accept nothing less than a full confession, albeit a false one. While others may have taken this route, it did not appear that Aggett was willing to make such a compromise.

- 344 On 4 February 1982 he was interrogated between 08h37 and 15h49, aside from the time he spent with Sgt Blom making his complaint.<sup>555</sup> Detainee Samuel Lerumo saw Aggett being escorted back to his cell by Chauke and another policeman on the afternoon of 4 February 1982, only hours before Aggett's death. Lerumo noticed that there was blood on Aggett's face, and his gaze was unsteady.<sup>556</sup> This suggests that Aggett had been terribly abused by Whitehead and De Bruin in his final official interrogation, presumably in retaliation to Aggett's complaint of assault against Whitehead. This would have added considerably to Aggett's duress.
- 345 As a medical doctor, who had worked at the casualty sections of hospitals and treated patients of failed suicides by hanging<sup>557</sup>, Aggett would have known the mechanics involved in carrying out an effective hanging.
- 346 The opinion of all the medical experts, including Dr Steve Naidoo called by the family, confirmed that death was caused by a state of suspensory hanging of the body by constrictive ligature around the neck.<sup>558</sup> While all the medical experts could not determine whether Aggett was conscious or unconscious at the time of

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<sup>555</sup> B8.47 (Whitehead affidavit) and B8.42 (De Bruin affidavit).

<sup>556</sup> A4.4 p 1350, B3.5.20, 2021 transcript p 1671.

<sup>557</sup> As mentioned in a conversation with Gavin Andersson with reference to "double knots", G34.

<sup>558</sup> G21 p 21 para 6.5.9, Second Inquest Record 2020 p 1528

hanging, if he was fully conscious, then the probabilities suggest that he executed the hanging himself.

347 Much of the evidence demonstrating the cover-up tends to support both scenarios of foul play and induced suicide.

347.1 The manufacture by the SB of a reason for suicide, namely the betrayal of his comrades in the non-existent four pages, may have been done to deflect attention from the brutal treatment he was subjected to.

347.2 The same applies to the lavish dressing up of the cell. This was almost certainly aimed at creating the impression that he was treated well and a favourite of the SB.

347.3 The inclusion in the police docket of the fabricated SACP document, "Inkululeko Freedom No.2", which had been crudely doctored by the SB to include a sentence calling on communists to commit suicide rather than betraying their comrades.

347.4 The secret and ill-fated mission of Whitehead and Erasmus to the Cape to search for support for the claim that Aggett was a "walking suicide".

348 All of these steps may have been taken to deflect attention away from the SB and their vicious treatment of Aggett and detainees in general; and to build the case that Aggett was not induced into taking his life but did so because of his so-called betrayal of friends.

### **Criminal Law Liability for Induced Suicide**

349 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.

350 This position was established by the Appellate Division 50 years ago in *Grotjohn*.<sup>559</sup> *Grotjohn* was recently applied by the SCA in *Stransham-Ford* 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 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>560</sup> (Underline added)*

<sup>559</sup> *Ex Parte Minister of Justice in re S v Grotjohn* 1970 (2) SA 355 (AD) 365G-H.

<sup>560</sup> *Minister of Justice v Estate Stransham-Ford* 2017 (3) SA 152 (SCA) para 53

351 Thus, the test this Court will apply in assessing whether any SB member is criminally responsible for the death of Dr Aggett is:

351.1 whether the SB member or members in question performed their actions with criminal intent; and

351.2 whether there was no break in the chain of causation between their actions and the ultimate death of Dr Aggett.

352 Aggett was detained by the SB in terms of section 6 of the Terrorism Act, 83 of 1967. Under law, the SB were obliged to maintain him 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. The SB were not entitled to subject him to any form of assault or torture in interrogating or attempting to obtain a statement from him.<sup>561</sup> The SB thus owed Dr Aggett, as a detainee in their custody, a legal duty of care and protection.<sup>562</sup>

353 On the established evidence, Aggett's interrogators, comprising Whitehead, Deetlefs, Woensdrecht, Visser and Swanepoel, acted in breach of this legal duty by applying sleep deprivation, forced exercise, abuse, assault and torture, including electric shocks on Dr Aggett while he was in their custody. They ramped up this treatment over the 'long-weekend' interrogation that preceded his death.

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<sup>561</sup> *Rossouw v Sachs* 1942(2) SA 551 (AD) 561D-F, 564H

<sup>562</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).

354 The SB engaged in this course of conduct knowing the conditions of Dr Aggett's detention were such that he could not (either as a matter of law or through their own unlawful conduct) access friends, family, a lawyer, a medical practitioner; or was unduly delayed in seeing a visiting magistrate and in lodging a complaint.

355 The SB engaged in this course of conduct despite the well-known history of political detainees dying in SB detention under their "care". The risk of suicide inherent in incarceration, particularly in solitary confinement or social desolation is increased and accentuated by physical and mental ill treatment, debilitation and the inducement of fear and anxiety.<sup>563</sup>

356 Indeed, only two days prior to Dr Aggett's death the Minister of Law and Order, in the House of Assembly alluded to the consequences of deaths in detention which had serious consequences not only for the persons concerned but also the country. He assured the public that:

*"All reasonable precautions are being taken to prevent any of them from injuring themselves or from being injured in some other way or from committing suicide."*<sup>564</sup>

357 Dr Aggett's interrogators must have foreseen, and by implication did foresee, that there was a reasonable possibility that there was a real risk that Aggett, given the conditions of his treatment, might take his own life given the means and opportunity to do so.

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<sup>563</sup> Salvatore, Tony & Dodson, Kimberly & Kivilalu, Trisha & Caulkins, Chris & Brown, Jerrod. (2018). Suicide in Prisons: A Brief Review.

<sup>564</sup> First Inquest Record p 2439

- 358 There was a legal duty on them, more than anyone else in JVS, to protect Dr Aggett by not abusing him; ensuing that he received medical attention; and taking steps to prevent Dr Aggett from harming himself.
- 359 Notwithstanding, they subjectively reconciled themselves with the foreseen consequences by persisting with Dr Aggett's ill treatment without taking positive steps to ensure that Dr Aggett did not pose a risk to himself by having the means to take his own life.
- 360 In particular this meant ensuring he did not have access to an instrument with which he could use to harm himself, such as the kikoi; and/ or placing him in a suicide proof cell; obtaining medical treatment; or properly monitoring Dr Aggett by subjecting him to observation or regular patrols of his cell.
- 361 The reasonable and foreseeable causal result of the interrogators' conduct, in direct breach of their legal duties, was that Aggett became a physical and emotional shadow of the person who arrived at JVS on 27 November 1981.
- 362 Notwithstanding holding such foreseeability, they failed to intervene to remove the means and stop the opportunity arising of him harming himself. In the circumstances, even if Dr Aggett did take his own life, this act would not interrupt the causal chain for purposes of attributing criminal law liability.
- 363 The fact that Dr Aggett made a coherent complaint to Sgt Blom on the morning of 4 February 1982 does not in any way suggest that he was not under considerable duress. There is no basis in law or fact to claim that because a

coherent complaint is made that the victim in question was not in a distressed state. Accordingly, the making of a complaint does not introduce a break in the chain of causation. There can be no artificial dividing line drawn between events that occurred before and after the complaint. They are all connected.

364 It can be argued that Dr Aggett's interrogators had the requisite intent in the form of *dolus eventualis* to kill Dr Aggett.<sup>565</sup>

365 At the very least, it is submitted that all of Dr Aggett's interrogators foresaw that Dr Aggett's suicide was a reasonable possibility of their conduct but negligently failed to take reasonable steps to guard against such occurrence, by failing to take reasonable steps to guard against Dr Aggett harming himself.

366 Moreover, Dr Aggett's interrogators conspired or made common purpose to conceal the true facts and circumstances behind Dr Aggett's death. 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>566</sup>

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<sup>565</sup> In *S v Sigwahla* 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>566</sup> In relation to what transpired in 1982, these crimes have prescribed in terms of s 18 of the Criminal Procedure Act.

### The Case of Deetlefs

367 The case of Deetlefs is even clearer. He specifically claimed that he observed that Dr Aggett was suicidal over the long weekend but reported this fact to Lt Whitehead.<sup>567</sup> He belatedly also claimed that he had reported Dr Aggett's suicidal condition to Maj Cronwright<sup>568</sup> and expressed the opinion that Dr Aggett should be taken to a psychiatric hospital.<sup>569</sup> Deetlefs then admitted that he took part in a conspiracy to keep this from the first inquest, since Whitehead asked him to withhold the information.<sup>570</sup>

368 However, that was not the end of the matter. He testified that on the morning of 1 February 1982, Whitehead was in his office with Aggett preparing to send a telex to head office, based on the four pages, when he was called in by Whitehead to clarify a few matters.<sup>571</sup> During this time, he claimed that Aggett said in the presence of himself and Whitehead, that he does not wish to live anymore. Deetlefs claimed that Whitehead had no response to this startling and alarming statement.<sup>572</sup>

369 Since this was now the second time that Deetlefs had heard Aggett speak in such terms it was put to him under cross examination that "*alarm bells must have been*

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<sup>567</sup> Oral testimony of NJ Deetlefs on 17 February 2020, Page 45, line 11, 2020 consolidated transcript bundle page 2462

<sup>568</sup> Oral testimony of NJ Deetlefs, Page 93, lines 10 to 15, 2020 consolidated transcript bundle page 2510

<sup>569</sup> Oral testimony of NJ Deetlefs on 18 February 2020, page 93, lines 13 to 16, 2020 consolidated transcripts page 2648

<sup>570</sup> Oral testimony of NJ Deetlefs on 17 February 2020, page 101, lines 11 to 25, 2020 consolidated transcript bundle page 2518

<sup>571</sup> Evidence from the first inquest suggests that alleged telex was prepared on the morning of 4 February 1982. See 1982 Consolidated Transcripts at 1023-4, testimony of AB Cronwright.

<sup>572</sup> Oral testimony of NJ Deetlefs, 2020 consolidated transcripts page 2680 – 3.

*ringing*" to which, he agreed. When asked what he did about it, Deetlefs said he went to Cronwright for a second time to advise him, who was "*cool and took note*". He was then asked why he did not speak to the officer in charge of the 2<sup>nd</sup> floor cells or report the matter to the Inspector of Detainees or a doctor. He responded that he "*did not do anything about it*" because he expected his commander to do something. He testified that he knew Whitehead and Cronwright did nothing and accepted that if something had been done, Aggett might be alive today.<sup>573</sup>

- 370 In the circumstances we submit that there was a heightened legal duty on Deetlefs to take meaningful steps to protect Aggett and save his life. This was because, on his version, Aggett by both word and conduct, expressed his desire to die. On the first occasion it was clear to him that both Whitehead and Cronwright had failed to act. On the second occasion, when Aggett indicated he did not wish to carry on living, there was an onus on Deetlefs to take the matter beyond Whitehead and Cronwright, especially in light of the apparent "cool" non-response of Cronwright.
- 371 There was a legal duty on Deetlefs, to take steps such as speaking to the commander of the second-floor cells, WO Macpherson, who had an office on the 10<sup>th</sup> floor, to bring this alarming news to his attention so that he could take the necessary steps. This may have involved seeking outside help, and/ or placing Aggett in a suicide proof cell (as was occupied at the time by Keith Coleman),<sup>574</sup> and to have him frequently monitored.

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<sup>573</sup> Oral testimony of NJ Deetlefs, 2020 consolidated transcripts page 2683 – 4.  
<sup>574</sup> Exhibit G27, para 41.

372 It should be noted that Deetlefs had the same rank as Warrant Officer Macpherson, and they were colleagues who both had offices on the 10<sup>th</sup> floor. Deetlefs did not need to lodge an official report but could have informally spoken to Macpherson to alert him to the alarming risk that Aggett may harm himself.

373 Woensdregt testified that he had no knowledge of Aggett being a suicide risk but if that was the case, he would have alerted the officers in the cells to observe him closely and monitor him every hour.<sup>575</sup>

374 The version of Deetlefs that he raised the alarm is open to considerable doubt. This is in the light of the evidence of Roelof Venter who reported that Prema Naidoo was suicidal to Cronwright, who then placed him on a 'suicide watch'.<sup>576</sup> According to Venter, Cronwright told him "to stay with the detainee".<sup>577</sup> Venter also indicated that the typical result of such a report was that the interrogation of the detainee would cease, and he would be taken to a psychologist.<sup>578</sup> If Deetlefs had in fact made the reports to Cronwright in respect of Aggett, it is odd to say the least, that Cronwright would issue such directions for Naidoo but not for Aggett.<sup>579</sup>

375 Nonetheless on Deetlefs' own version, he very clearly foresaw the possibility of that Aggett would take his own life but reconciled himself to that possibility and failed to take reasonable and meaningful steps to avert it, even when he knew

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<sup>575</sup> 2021 consolidated transcripts page 623 line 17

<sup>576</sup> First inquest record p 2501, Second inquest record 2021 pp 1385-1386, 1393-1394

<sup>577</sup> Oral testimony of RJ Venter, page 23, lines 5 to 13; 2021 consolidated transcripts page 1393

<sup>578</sup> Second inquest record 2021 pp 1390-1391

<sup>579</sup> Prema Naidoo made no reference of his alleged suicidal condition either before the first or reopened inquests.

his own superiors were not acting. We accordingly recommend that Deetlef's be criminally investigated on a charge of a murder based on *dolus eventualis*, with a view to his prosecution on this charge.

- 376 It is submitted that, for the Court to make such findings, it does not have to be satisfied beyond reasonable doubt as to the responsibility of persons in question. The Inquests Act does not impose the same onus that rests on the State in criminal trials.
- 377 All this court is required to determine at this stage is 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 Aggett.<sup>580</sup> The ultimate decision, whether to prosecute or not, will rest with the Director of Public Prosecutions after the record of proceedings is referred to him in terms of section 17(1)(a) and (b) of the Inquests Act.

## THE CASE FOR FOUL PLAY

- 378 Neil Aggett's family members and some of his friends and comrades 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.<sup>581</sup> There are certain factors that point to foul play in the demise of Aggett rather than suicide.

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<sup>580</sup> Section 16(1)(d) of the Inquests Act  
<sup>581</sup> G2, para 11

***Solitary fingerprint***

- 379 Perhaps the most striking fact that points to foul play is the fact that only one identifiable print (being of Aggett's index finger) was lifted off the grille, seen together with the remarkable fact that the only print happened to be lifted directly above the location of the ligature knot at the top of the grille.
- 380 An analysis of the fingerprinting saga has been provided above and is set out in the summaries of the fingerprint experts<sup>582</sup> in Annex B and will not be repeated in detail here. It suffices to say that Aggett, if he had committed suicide, would, according to expert evidence led by both the family and the State, have had to climb up the grille making at least 5 points of contact with the bars, and doing so with grasps of his hands, rather than with single fingers. Yet no identifiable series of prints depicting this were lifted.
- 381 The evidence is that the grille was dust free, which removes that issue as a possible obstacle to lifting prints. Mr Lambrechts, formerly of the SAP, speculated that perhaps the grille was "mottled" which prevented him from lifting other prints. However, no evidence, of this was put up in the first or second inquests, and it could hardly explain why not a single print was found anywhere else.
- 382 Lambrechts explained that the balance of the grille only contained various marks which were not worth lifting. According to Dutton this simply demonstrated that

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<sup>582</sup> See Annex B for the summaries of the fingerprint evidence provided Thabo Mothupi, Sietze Albertse and Charl Wynand Lambrechts

the grille had been interfered with, and the marks were most likely drag marks left from the wiping of the bars. If the grille had not been interfered with, and if Aggett had climbed the grille, then further prints would have been lifted. Indeed, other prints of Aggett would have been found on the grille from earlier daily use.

383 According to Lambrechts and the other fingerprint experts it would have been possible to transfer a single print to the location it was found, for example by lifting Aggett and placing his finger on the bar.

#### ***Instrument of death in cell***

384 The item used in the hanging, the kikoi, was apparently permitted in his cell. Dutton questions whether items such as the kikoi and tie were in fact in the cell, given that they were contraband and could be used by detainees to harm themselves and others.

385 Detainees were not allowed items such shoelaces and belts. They were not even allowed to keep their bathing towels in the cells. Regular searches of the cells were conducted for contraband items. Former SAP officers who testified said such items would never be permitted in cells. Other detainees testified that they were not permitted such items, and none saw Aggett with the kikoi.

#### ***Medical evidence***

386 The evidence of all the medical experts accepted that Aggett was alive at the time of his suspension, but it was not possible to determine whether he was conscious or unconscious, and neither possibility could be excluded.

387 This raises the possibility that Aggett was rendered unconscious, and perhaps could not be revived, and thereafter the hanging staged.

388 The Supplementary Independent Medico-Legal Report of Dr Steve Naidoo considers the possible causes of unconsciousness.<sup>583</sup>

***No cell visits in crucial period***

389 There were no cell visits or patrols in between 23h00 on 4 February and 01h30 on 5 February 1982. It just seems too coincidental and too convenient that during this crucial period when there are no visits, Aggett died in his cell.

390 The police officers on duty that night in the cell block make a false entry into the occurrence book that a cell visit was conducted 00h55.<sup>584</sup> Yet there were no repercussions for this fraudulent and manifestly unlawful entry.

***No disciplinary action***

391 No disciplinary action was taken against those who supposedly permitted Aggett to keep prohibited and harmful items in his cell, in particular the kikoi, which was used in the hanging.

392 No disciplinary action was taken against those who failed to carry out the cell visits as required in terms of SAP Standing Orders.

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<sup>583</sup> See G45.

<sup>584</sup> Exhibit A1.3.2- p286-297, Exhibit B 1.41

393 No disciplinary action was taken against those who falsified the records of the cell visits.

394 Normally for such serious transgressions there would be consequences, unless the SB were protecting their own and those collaborating with them; or they wished to avoid scrutiny of what really happened.

***Complaint of assault 15 hours before death***

395 Aggett made a complaint of serious assault and torture against Whitehead and others on the morning of 4 February 1982, only 15 hours before he died.

396 The lodging of a complaint is not the conduct of someone who has given up. Aggett clearly sought a reckoning with those who had abused him.

***Chauke remarks of what happened on 4 February***

397 Dutton testified that he had a conversation with Eddie Chauke, a black SB officer, who was present with Aggett on the 10<sup>th</sup> floor on the morning of 4 February and who later escorted him back to his cell.

398 Chauke mentioned that Whitehead was furious with Aggett for opening an assault case against him and in a rage, Whitehead tore up Aggett's statement declaring they would now get the truth out of him. Chauke mentioned to Aggett that it was the intention of Whitehead and other white members to resume the interrogation later that night.<sup>585</sup>

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<sup>585</sup> G75, para 52

399 Chauke denied this conversation in his oral testimony but proved to be a most unreliable witness and we submit that this Court will have little difficulty preferring the evidence of Dutton over Chauke.

***Observations in 2<sup>nd</sup> floor cell block***

400 Later that night, or early the next morning, Sisa Njikelana heard a commotion outside his cell B10 at the 2<sup>nd</sup> floor cells. He heard sounds of the gate being opened and several low voices. He stood on top of his toilet bowl<sup>586</sup> and looked out the window into the passage and saw people carrying Aggett towards the showers.<sup>587</sup> Other detainees also heard some commotion around the same time.

***Considering the police version***

401 Investigator Frank Dutton expressed serious misgivings about the police version that they simply discovered Neil Aggett hanging in his cell; and that he committed suicide because he could no longer live with himself, following his betrayal of his friends and comrades.<sup>588</sup>

402 In the first place Aggett disclosed no unlawful activity on the part of anyone. As pointed out in these heads, the evidence demonstrates that the SB did not arrest or act against the persons the SB claimed Aggett had implicated, namely Oscar Mpetha, Jan Theron and Auret van Heerden. According to Dutton, since there was no betrayal, the SB in all probability resorted to fabricating a story about the

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<sup>586</sup> The photos of the 2<sup>nd</sup> floor cells in H2 confirm that the toilets faced the corridor. The photos also confirm the existence of a window next to and above the toilet. Jabu Ngwenya conceded that he had mixed up the location of the toilet bowl at page 1453 of the 2020 consolidated transcript.

<sup>587</sup> Exhibit G20 Para 40 to 43 and annexure SN1, 2021 transcripts pages 1192 - 1195

<sup>588</sup> G75, from para 54

“4 pages” and “the telex” to suggest that Aggett betrayed his comrades in those documents.

- 403 The SB never disclosed the contents of these documents in the first inquest, claiming “privilege”, and they have never been disclosed since and nobody can remember the contents. In the absence of any corroboration of the SB version, Dutton is of the view that that the ‘4 pages’ and ‘telex’ alleging betrayal of his comrades were fabrications to provide a motive for Aggett’s suicide.
- 404 The mission by Whitehead and Erasmus to the Cape to come up with something to prop up the claim of Aggett’s suicidal tendencies amplifies the lengths that the SB were prepared to go to dishonestly corroborate their version. Dutton questions the purpose of the mission, if in fact there was nothing more to Aggett’s death than a simple suicide.
- 405 Dutton noted that after some 66 days of detention and interrogation, the SB and Whitehead in particular, had extracted nothing of value from Aggett that could be used against him or anyone else. Whitehead’s level of frustration at this time was likely at breaking point.
- 406 As mentioned in these heads, the elaborate cover-up could also have served to deflect attention from any foul play that may have taken place on the night or morning in question.

## THE PROBABILITIES

407 We conclude that the SB sought to conceal the truth as to the real circumstances and cause of Aggett's death. We submit that this was done either to:

- 407.1 conceal the abuse and torture of Aggett during the 70 odd days he was held in solitary detention, which drove him to suicide, or
- 407.2 mask the fact that Aggett had been murdered by SB members.

408 There is no eyewitness evidence of what really happened to Aggett in his last hours. Given that many key witnesses have died in the intervening years we will probably never know what precisely transpired in those hours.

409 There is a body of evidence, that supports both the induced suicide scenario as well as that of foul play, and this Court has the unenviable task of having to discern which scenario is the most likely in the circumstances.

410 We submit that the key question this Court must consider is whether Aggett climbed the grille to commit suicide, and in so doing placed the solitary print that was lifted. If the Court finds that this was possible, and it finds a plausible explanation for the solitary print, then we would submit that a finding of induced suicide must follow, and the responsible parties must be held to account, in particular Deetlefs.

411 However, if this Court concludes that the death scene was tampered with, and in particular if it finds that the solitary fingerprint of Aggett was not placed on the

grille by Aggett himself, as we submit it should, then it must come to the conclusion that Aggett was suspended from the grille by other persons.

412 In that case we would submit that the Court make a finding that Aggett was murdered by persons, whose identities cannot be established at this time. However, the Court can safely assume that such persons were members of the Security Branch, as they would have enjoyed access to the cells and possess the means to carry out such an act. The leading suspect in such a scenario is Lt Whitehead, who died in 2019.

413 We note that torture, extra-judicial killings, and cover-ups were the order of the day for the SB in the 1980s. The disposing of Aggett through a staged hanging would not have been inconsistent with the modus operandi of the force at that time.

#### **RECOMMENDATIONS AGAINST FORMER SB MEMBERS**

414 The main purpose of the 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.

415 In **FUL v NDPP**,<sup>589</sup> Murphy J held as follows regarding the purpose of an inquest and what should ideally follow after 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. ...”*

416 In **Goniwe and Others**<sup>590</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 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>591</sup>*

417 Similarly, in **Padi v Botha**<sup>592</sup> it was held that –

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<sup>589</sup> *Freedom Under Law v National Director of Public Prosecutions and Others* 2014 (1) SA 254 (GNP).

<sup>590</sup> *In Re Goniwe and Others* (2) 1994 (2) SACR 425 (SE)

<sup>591</sup> *Ibid* at 428D – E.

<sup>592</sup> *Padi en 'n Ander v Botha No en Andere* 1995 (2) SACR 663 (W) at 665G.

*“...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.”*

418 In light of the aforesaid, it is submitted that this Court ought to recommend that the following charges be preferred by the NPA against certain of the former SB members.

***Nicolaas Johannes Deetlefs***<sup>593</sup>

419 If this Court finds that Aggett’s death was caused through induced suicide, then we recommend that that Deetlefs be charged with the murder of Dr Aggett.<sup>594</sup>

419.1 Deetlefs on his own admission foresaw that there was a reasonable possibility, given the conditions of his treatment, that Dr Aggett might take his own life, given the means and opportunity to do so.

419.2 Notwithstanding, Deetlefs, in breach of a legal duty, failed to:

419.2.1 take steps to protect Dr Aggett by not abusing him;

419.2.2 ensure that he received medical attention; and

419.2.3 take adequate steps to prevent Dr Aggett from harming himself, once he knew that Dr Aggett was suicidal and was aware that his own superiors were not taking action, including by:

(a) raising the alarm with WO Macpherson, a district surgeon or a magistrate,

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<sup>593</sup> See summary of evidence of Deetlefs at Annex B, pp 98 – 109.

<sup>594</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.

(b) ensuring that Dr Aggett was closely monitored, evaluated for transfer to a psychiatric hospital or, at least, moved to a suicide proof cell.

419.3 Deetlefs foresaw the possibility of his acts and omissions causing Dr Aggett's death but reconciled himself to that possibility and failed to take adequate steps to avert it.

420 Deetlefs be charged with perjury for making false claims under oath before this Court, knowing them to be false:<sup>595</sup>

420.1 Deetlefs advanced false testimony under oath before this Court on several issues relating to the treatment of detainees, knowing them to be false. For example:

420.1.1 Deetlefs' evidence that he did not know who was involved in electric shock treatment, considering his admission that electric shock treatment was commonplace and happening at JVS.<sup>596</sup> The reason for Deetlefs advancing this false testimony was to shield himself and other SB officers from the consequences of such conduct.

420.1.2 Deetlefs' testimony that detainees preferred sleeping on the tenth floor as it was a nicer atmosphere than the second-floor cells.<sup>597</sup> This claim is manifestly false in light of the evidence

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<sup>595</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) in the course of judicial proceedings; (e) unlawfully; and (f) intentionally. See Snyman *Criminal Law* 4<sup>th</sup> Edition (Juta, Cape Town, 2002) 341.

<sup>596</sup> Deetlefs testimony second inquest record pp 2542-2543

<sup>597</sup> Deetlefs testimony second inquest record p 2672

presented before this Court, including the torture visited upon detainees on the tenth floor.

420.1.3 Deetlefs made several other false claims, including that he never assaulted a detainee because this was against his principles and had never witnessed any assaults by other officers throughout his career at JVS.<sup>598</sup>

420.1.4 Deetlefs falsely claimed that he made a breakthrough with Aggett who then disclosed details of his own criminality and that of his closest comrades in the so-called four pages that were so sensitive they could not be disclosed to the first inquest court; and that betraying his colleagues led him to taking his own life.<sup>599</sup>

420.1.5 Deetlefs falsely claimed that he did not apply for amnesty or appear before the TRC because he did not know how to use the procedures of the TRC.<sup>600</sup>

420.1.6 While Deetlefs admitted under cross examination that the SB committed cover-ups on a routine basis, including the fabrication of evidence and lying under oath before courts,<sup>601</sup> he falsely claimed that he only lied under oath in the first Aggett Inquest and nowhere else.<sup>602</sup>

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<sup>598</sup> Deetlefs testimony second inquest record pp 2491-2492

<sup>599</sup> Deetlefs testimony second inquest record pp 2547 – 2643 and 2672 – 2676. See Annex B, p 103, paras 242 – 244 and pp 105 – 107, paras 250 – 252.

<sup>600</sup> Deetlefs testimony second inquest record pp 2668-9.

<sup>601</sup> Oral testimony of NJ Deetlefs on 18 February 2020, page 137, lines 7 and 2020 24, consolidated transcripts page 2692

<sup>602</sup> 2020 consolidated transcripts page 2693

***Johannes Nicolaas Visser<sup>603</sup>***

421 Visser should be charged with perjury, for making multiple false statements under oath, before this Court, knowing them to be false. Visser made several incredulous claims before this Court that irreparably tainted his credibility.

421.1 Visser claimed that Dr Aggett was willing to disclose incriminating evidence to him on the first occasion they met simply because he was nice to him<sup>604</sup> and because he treated Dr Aggett well.<sup>605</sup>

421.2 Visser falsely claimed that shortly before the end of his interrogation of Aggett, he suddenly announced that he wanted to tell the whole truth to him and Swanepoel.<sup>606</sup>

421.3 Visser falsely claimed that Captain Swanepoel possessed secret information about Dr Aggett.<sup>607</sup>

421.4 Visser denied that the SB employed sleep deprivation against detainees.<sup>608</sup> Visser also denied the purpose of his 12-hour interrogation shift over the long weekend was to exhaust and break Aggett.<sup>609</sup>

421.5 Visser falsely claimed that he heard of assaults at JVS but did not assault any detainee at any point during his policing career.<sup>610</sup> He lied under oath when claiming that he had no knowledge of assaults occurring while he

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<sup>603</sup> See summary of evidence of Visser at Annex B, pp 129 – 140.

<sup>604</sup> 2021 consolidated transcripts p 1218

<sup>605</sup> 2021 consolidated transcripts p 1219

<sup>606</sup> 2021 consolidated transcripts page 1120 line 20 to 1122 line 3

<sup>607</sup> 2021 consolidated transcripts p 1231

<sup>608</sup> 2021 consolidated transcripts p 1215

<sup>609</sup> 2021 consolidated transcripts page 1228

<sup>610</sup> 2021 consolidated transcripts page 1146 line 22, page 1147 to page 1148 and p 1177 line 6

was a police officer. He also falsely denied any knowledge of detainees being made to stand for prolonged periods, forced exercise and body positions.<sup>611</sup>

421.6 Visser falsely claimed that he did not assault Ismail Momoniat and Auret van Heerden or threaten and swear at Jabu Ngwenya and Barbara Hogan. He absurdly claimed that Van Heerden's injuries were sustained during "exercise".<sup>612</sup>

***Joseph Petrus Woensdregt<sup>613</sup>***

422 Woensdrecht should be charged with perjury for making false statements under oath before this Court, knowing them to be false:

422.1 Woensdregt lied under oath when he said that Aggett's physical appearance was normal and there was nothing strange about him at his interrogation on 30 January 1982. He falsely claimed that Aggett was not tired, and he did not know how long Aggett had been under interrogation.<sup>614</sup>

422.2 Woensdregt falsely denied that the "4 pages" was a cover-up to bolster the suicide theory.<sup>615</sup> He also falsely denied that that SB had no incriminating evidence against Aggett forcing them to extract a confession.<sup>616</sup>

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<sup>611</sup> 2021 consolidated transcripts page 1193 line 15 onwards

<sup>612</sup> See Annex B, pp 139 – 140, paras 342 – 345.

<sup>613</sup> See summary of evidence of Woensdregt at Annex B, pp 119 – 129.

<sup>614</sup> 2021 consolidated transcripts page 605 line 8

<sup>615</sup> 2021 consolidated transcripts page 969 - 970

<sup>616</sup> 2021 consolidated transcripts page 942 line 16 to 944 line 4

- 422.3 Woensdregt falsely claimed that from 11pm that night to 3.30 am Aggett was allowed to sleep on a camp-bed in office 1020, so he could be consulted on the “four pages”,<sup>617</sup> while Whitehead, Deetlefs and himself used another office to go over the information.<sup>618</sup>
- 422.4 Woensdregt lied under oath when he testified that he did not understand why Aggett made an assault complaint since in the interrogation he was happy and had no complaints. He also lied when he claimed that Aggett was probably happier in the office than his cell.<sup>619</sup> Woensdregt persisted with the fabrication even when it was put to him that after Aggett was returned to his cell he did not take meals and was unable to get out of bed.<sup>620</sup>
- 422.5 Woensdregt lied under oath when he claimed that he never verbally abused detainees,<sup>621</sup> and falsely claimed that he never assaulted detainees, deprived them of sleep or made them stand for long periods, do forced exercise or hold difficult body positions.<sup>622</sup> He most likely lied when he claimed that was never involved in suffocation, strangulation, electric shocks, forced holding of heavy objects, suspending detainees in the air, solitary confinement and making threats.<sup>623</sup> He brazenly lied when he claimed he had not even witnessed an assault at JVS.<sup>624</sup>

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617 2021 consolidated transcripts page 614-616

618 2021 consolidated transcripts page 613 line 17

619 2021 consolidated transcripts page 1001 line 7

620 2021 consolidated transcripts page 1004 line 3. See exhibits B1.20 and B4.1.1.

621 2021 consolidated transcripts page 854 line 15

622 2021 consolidated transcripts page 855 - 861

623 2021 consolidated transcripts page 866 line 20 to 869

624 2021 consolidated transcripts page 617, 855 – 861, 862, 866

422.6 Woensdregt falsely claimed that the 50 odd cases of assault opened against him<sup>625</sup> was because detainees got angry and opened spurious cases against him to get back at him.<sup>626</sup>

422.7 Woensdregt also falsely made common cause with the fabricated version that Dr Aggett had incriminated himself in a four-page note.<sup>627</sup>

***Daniel Elhardus Swanepoel*<sup>628</sup>**

423 Swanepoel should be charged with perjury for making false statements before this Court, knowing them to be false:

423.1 Swanepoel lied under oath when he testified that he was not aware of any assaults taking place on the 10<sup>th</sup> floor of JVS.<sup>629</sup> He falsely claimed that he was only aware of insults, tearing of statements, slaps on the back of the head, forced exercises such as squatting and deprivation of sleep.<sup>630</sup> He falsely claimed that electric shocks had never been used in his presence.<sup>631</sup>

423.2 Swanepoel lied under oath when he denied that Ismail Momoniat had been abused and assaulted while under interrogation, claiming that he had only been forced to stand for a long period.<sup>632</sup>

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<sup>625</sup> 2021 consolidated transcripts page 871

<sup>626</sup> 2021 consolidated transcripts page 873 - 874

<sup>627</sup> 2021 consolidated transcripts page 969 - 970

<sup>628</sup> See summary of evidence of Swanepoel at Annex B, pp 157 – 173.

<sup>629</sup> 2021 consolidated transcripts page 1773

<sup>630</sup> 2021 consolidated transcripts page 1774

<sup>631</sup> Oral testimony of DE Swanepoel, page 57, line 1, 2021 consolidated transcripts page 1775

<sup>632</sup> Oral testimony of DE Swanepoel, page 49, line 14, 2021 consolidated transcripts page 1767; page 50, line 22, page 1768; page 54, lines 3 and 16, page 1772.

- 423.3 Swanepoel falsely claimed that Aggett looked relax when he was interrogated on 30 January 1982.<sup>633</sup> He lied under oath when he claimed that he had no idea that Aggett had been awake and under interrogation for some 44 hours at the time he commenced his interrogation.<sup>634</sup> He brazenly lied when he claimed that no pressure was placed on Aggett.<sup>635</sup>
- 423.4 Swanepoel lied under oath when he claimed that he had information linking Aggett to SACTU and the ANC.<sup>636</sup>
- 423.5 Swanepoel falsely claimed that there was no SB culture or practice of covering for one's colleagues. He lied when he claimed that if he knew of a serious crime by the SB, he would have reported it.<sup>637</sup>
- 423.6 Swanepoel lied under oath that he was able to gain Aggett's trust and confidence through a soft approach.<sup>638</sup> He also lied when he claimed to have made a breakthrough with Aggett.<sup>639</sup> He further lied when he claimed that the fact that no less than six SB officers claimed to have made breakthroughs with Aggett did not constitute a clumsy cover-up.<sup>640</sup>
- 423.7 Swanepoel lied under oath when he denied that arriving for a 12-hour interrogation with doing zero preparation, and not even knowing who he was going to interrogate, simply confirmed that he was there to keep the detainee awake and abuse him for purposes of breaking him.<sup>641</sup>

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<sup>633</sup> Oral testimony of DE Swanepoel, page 30, line 13, 2021 consolidated transcripts page 1901  
<sup>634</sup> 2021 consolidated transcripts page 1983

<sup>635</sup> Oral testimony of DE Swanepoel, page 12, line 6 to 12, 2021 consolidated transcripts p 1883

<sup>636</sup> Oral testimony of DE Swanepoel, page 78, lines 5 to 11, 2021 consolidated transcripts p 1949

<sup>637</sup> Oral testimony of DE Swanepoel, page 97, line 1 to line 11, 2021 transcripts page 1968  
<sup>638</sup> 2021 consolidated transcripts page 1982

<sup>639</sup> Oral testimony of DE Swanepoel, 2021 consolidated transcripts pages 2013 – 2016.

<sup>640</sup> Oral testimony of DE Swanepoel consolidated transcripts page 2016, page 7, line 3 and p 2021.

<sup>641</sup> Oral testimony of DE Swanepoel consolidated transcripts pages 2021, 2030 – 2031.

***Roelof Jacobus Venter*<sup>642</sup>**

424 Venter should be charged with perjury for making false statements before this Court, knowing them to be false:

424.1 Venter lied under oath when he claimed that an assault never took place in his presence.<sup>643</sup> Venter also brazenly lied when he testified that he never physically assaulted any detainee,<sup>644</sup> which was a remarkable claim to make given that he applied for amnesty for multiple acts of assault with intent to do grievous bodily harm.<sup>645</sup> He shamelessly lied under oath when he claimed he only did this “on the advice of his lawyers”.<sup>646</sup>

424.2 Venter falsely claimed that not only was he never involved in electric shock treatment, but he never heard of it being applied at JVS or indeed anywhere else in the country.<sup>647</sup>

424.3 Venter lied under oath when:

424.3.1 He claimed that he did not kick Prema Naidoo during interrogation or took a statement from him in a naked state.<sup>648</sup>

424.3.2 He denied taking Naidoo to the spot where Timol fell saying: "*in future, this is going to be known as Prima Heights.*"<sup>649</sup>

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<sup>642</sup> See summary of evidence of Venter at Annex B, pp 140 – 150.

<sup>643</sup> 2021 consolidated transcripts page 1381

<sup>644</sup> 2021 consolidated transcripts page 1273

<sup>645</sup> 2021 consolidated transcripts page 1419

<sup>646</sup> 2021 consolidated transcripts page 1420

<sup>647</sup> 2021 consolidated transcripts pages 1409 to 1412

<sup>648</sup> 2021 consolidated transcripts page 1334

<sup>649</sup> 2021 consolidated transcripts page 1340

424.3.3 He denied having placed a bag over Naidoo's head.<sup>650</sup>

424.3.4 He denied that he assaulted Prema Naidoo by bumping him on the head with a leg of a chair,<sup>651</sup> pulling his ear, and shooting his penis with elastic bands.<sup>652</sup>

424.3.5 He denied threatening Ismail Momoniat with electric shocks and forcing him to stand half naked and suggesting to him that he should retract his complaint to the District Surgeon of assault against Venter and Swanepoel.<sup>653</sup>

424.3.6 He denied being present when Shirish Nanabhai was seriously assaulted and tortured by a group of SB officers; and when he denied that a plastic bag was placed over Nanabhai's head, before he was punched, kicked and administered electric shocks.<sup>654</sup>

424.3.7 He denied beating Monty Narsoo on the penis<sup>655</sup> and holding a lit cigarette under his arm.<sup>656</sup>

424.3.8 He denied punching Samson Ndou on the chest.<sup>657</sup>

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<sup>650</sup> 2021 consolidated transcripts pages 1341, 1343 to 1347

<sup>651</sup> 2021 consolidated transcripts page 1389

<sup>652</sup> 2021 consolidated transcripts page 1389 and 1390

<sup>653</sup> 2021 consolidated transcripts page 1404 -1405; G18, para 32 ; G8, para 46.

<sup>654</sup> 2021 consolidated transcripts pages 1405 to 1407

<sup>655</sup> 2021 consolidated transcripts page 1408

<sup>656</sup> 2021 consolidated transcripts page 1408

<sup>657</sup> 2021 consolidated transcripts page 1418

424.4 Venter also made several other incredulous claims, including that not only had he never received an order to assault a detainee, but that it was not even expected of him.<sup>658</sup>

***Magezi Eddie Chauke<sup>659</sup>***

425 Chauke should be charged with perjury for making false statements before this Court, knowing them to be false:

425.1 Chauke lied under oath when he claimed to be shocked that railway policeman, Van Schalkwyk, had been accused of assault "given his peaceful manner."<sup>660</sup> Chauke brazenly lied when denied that Aggett was assaulted and given electric shocks by van Schalkwyk in his presence.<sup>661</sup> He claim that the interrogation was normal was manifestly false.<sup>662</sup>

425.2 Chauke, gave false evidence when he claimed never to have witnessed forced exercising on the 10<sup>th</sup> floor.<sup>663</sup> He also lied when he claimed only to learn of Aggett's complaint of assaults when this was brought to his attention by Maj Cronwright.<sup>664</sup>

425.3 Chauke falsely denied that he was told by Cronwright what the content of his statement should be regarding Aggett's assault claim.<sup>665</sup>

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<sup>658</sup> 2021 consolidated transcripts page 1411

<sup>659</sup> See summary of evidence of Chauke at Annex B, pp 150 – 157.

<sup>660</sup> 2021 consolidated transcripts page 1693 – 4.

<sup>661</sup> 2021 consolidated transcripts page 1695 line 5, 1703 line 1 to 18

<sup>662</sup> 2021 consolidated transcripts page 1695 line 5, page 1702 to1705

<sup>663</sup> 2021 consolidated transcripts page 1698 – 9.

<sup>664</sup> 2021 consolidated transcripts page 1700 - 1701

<sup>665</sup> 2021 consolidated transcripts page 1708

425.4 Chauke gave false evidence when he disputed the evidence of detainees of Thabo Lerumo,<sup>666</sup> Eric Mntonga<sup>667</sup> and Ismail Momoniati<sup>668</sup> that Aggett was in very bad shape on 4 February 1982.

425.5 Chauke lied when he maintained that he had no knowledge of assault and torture inflicted on detainees at JVS.<sup>669</sup>

425.6 Chauke falsely claimed that there would have been no issue for him reporting his white colleagues for assaulting detainees. He also lied when he claimed, that even as a black junior officer, he feared no pressure or intimidation from his superiors.<sup>670</sup>

425.7 Chauke lied under oath when he denied the contents of conversations, he held with Frank Dutton 4 November 2015 and 17 May 2018.<sup>671</sup> Chauke related to Dutton what occurred in his presence on 4 February 1982, namely that Aggett was thoroughly downcast<sup>672</sup> and that Whitehead was angry at Aggett for lodging an assault complaint<sup>673</sup> and in a rage tore up Aggett's statement<sup>674</sup> and said they would resume his interrogation later that night to get the truth out of him.<sup>675</sup>

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<sup>666</sup> 2021 consolidated transcripts page 1671 line 1 to 21

<sup>667</sup> 2021 consolidated transcripts page 1733 line 18 onwards; 1736 line 5.

<sup>668</sup> Exhibit G18 para 76; 2021 consolidated transcripts page 1737 line 5

<sup>669</sup> 2021 consolidated transcripts page 1692 line 16

<sup>670</sup> 2021 consolidated transcripts page 1687 – 8.

<sup>671</sup> 2021 consolidated transcripts page 1724 line 25

<sup>672</sup> 2021 consolidated transcripts page 1725 line 19

<sup>673</sup> 2021 consolidated transcripts page 1726 line 11 and page 1727 line 18

<sup>674</sup> 2021 consolidated transcripts page 1728 line 1

<sup>675</sup> 2021 consolidated transcripts page 1729 line 3

425.8 Chauke blatantly lied under oath when he claimed that he told Dutton he had no information to give, but that Dutton offered to compensate him for information.<sup>676</sup>

## CONCLUSION

426 South Africa's post-apartheid criminal justice system failed the Aggett family. They had to wait nearly 40 years for an accounting with the past. Hundreds of other apartheid-era families are still waiting for truth, justice and closure.

427 The finding of Magistrate Kotze that nobody was to blame for Neil Aggett's death in detention is a fraudulent finding that cannot stand. It stands as a deep affront to Neil's family, friends and comrades. Until it is overturned it remains a stain on history.

428 We have submitted that this Honourable Court will have little difficulty in seeing through the police cover-up and overturning the finding of the first inquest court.

429 We have submitted that Neil Aggett was murdered by members of the Security Branch, while in their custody. This murder was then covered up and the subsequent inquest stage-managed to give a veneer of respectability to the brutes of the SB. The presiding magistrate and prosecutor dutifully played their part.

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<sup>676</sup> 2021 consolidated transcripts page 1727 line 4

430 We have demonstrated that only two scenarios explain the killing of Aggett, namely:

430.1 The unrelenting abuse perpetrated against Aggett drove him to take his life. In this scenario SB officers reconciled themselves to this possible outcome and took no steps to prevent the suicide. A finding of murder, based on *dolus eventualis*, ought to be made in this scenario.

430.2 In the second scenario, Aggett was rendered into an unconscious state, from which he could not be revived, and suspended from his cell grille to stage a suicide. A finding of murder, based on *dolus directus*, ought to be returned in this scenario.

431 We pause to pay tribute to those young men and women who stood up to the Apartheid state and who were terribly abused in detention. People such as Liz Floyd, Barbara Hogan, Firoz Cachalia, Frank Chikane, Prema Naidoo, Jabu Ngwenya, Ismail Momoni, Sisa Njikelana, Auret van Heerden, Sydney Mufamadi, Ebrahim Ismail Ebrahim, Maurice Smithers, Gavin Andersson, Keith Coleman and many others. Some of them testified in these proceedings and had to relive the horrors of their detentions. We salute their courage.

432 We are grateful that there were some former police officers who were willing to come forward to speak the truth of what took place in JVS in the 1980s. In doing so they had to break free from the SB brotherhood which demanded total loyalty and silence. We thank Joe Nyampule, Mohanoe Makhetha and Paul Erasmus for shining a light on those dark days. In particular we pay tribute to Paul Erasmus who died on 14 July 2021. He was one of the few white SB officers who

acknowledged the harm and pain he had caused to South Africa. He suffered retribution and physical attack because of his disclosures, but this did not stop him from testifying in both the Ahmed Timol and Neil Aggett inquests. We thank his son Dylan for standing by his father and supporting him during his court appearances.

- 433 We acknowledge the incredible research and support of our expert witnesses, Dr Steve Naidoo, Ronald Kasrils, Colin Savage, Heather Dodd, Thivash Moodley and Sietze Albertse. They invested considerable time and effort to help us place reliable facts and evidence before this Court.
- 434 We are grateful to Frank Dutton, the family's private investigator, who painstakingly investigated this case and opened the door to the reopened inquest. We are indebted to our instructing attorneys, Moray Hathorn and Samantha Robb of the Pro Bono Department of Webber Wentzel who were towers of strength behind the scenes. We must also thank the Foundation for Human Rights which has stood by the apartheid-era families from the very beginning and supported the investigations into this case.
- 435 We are grateful to the Judge President of this division, who upon receiving the Minister's decision to reopen the inquest, acted expeditiously to set up the hearing of this matter.
- 436 As a young doctor, Neil Aggett worked in hospitals in Kuruman, Umtata, Thembisa and Soweto. Jill Burger, Neil's sister, together with the Aggett family, suggest that naming a hospital after him would be a fitting memorial. We are

aware that such a recommendation is beyond the remit of this Court, but we nonetheless place the proposal on the record.

- 437 South Africa is a much poorer place without people such as Neil Aggett, Steve Biko, Nokuthula Simelane, Ahmed Timol, Matthew Goniwe, Fort Calata, Sparrow Mkonto, Sicelo Mhlauli, Imam Haron, Hoosen Haffejee, Ashley Kriel, Rick Turner, Dulcie September, Mathews Mabelane and many others murdered by the Security Branch. Their sacrifices paved the way for our freedoms. In these turbulent times we could have used their wisdom and guiding hands. We take inspiration from their short lives.
- 438 Neil Aggett was not willing to live a lie. He refused to compromise on the truth, even if it meant his own demise. He believed that he could rely on the truth that he had not committed any crime and was simply working legally to advance the workers' struggle for social justice. However, he came up against the uncompromising wall of the Security Branch, comprised of thugs too incompetent and vacuous to fathom between fact and fiction. Whitehead and Cronwright would only be satisfied with a full confession, which would have required Neil to live a lie, a step he was not willing to take. This invited even greater abuse from insecure men out to prove themselves. They vented their fury on a defenceless man they believed had betrayed the supremacy of white people.
- 439 The Security Branch did crush Aggett, the physical man. In his last days he was a shadow of his physical self that his loved ones remembered so well. However, his enduring dignity and humanity remained intact till the very end.

440 Neil would have known why he was in John Vorster Square. He would have known that his unassuming and quite resistance to racial domination, and his methodical building of a trade union movement posed the greatest threat to his tormentors. He would have known that others would pick up where he left off, and they would not stop until the pernicious system of Apartheid was swept aside.

441 Neil's memory is treasured by freedom loving South Africans. He remains an inspiration to young South Africans working to make a difference in society. His contribution to a free and democratic South Africa lives on.

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**Howard Varney**

**Thai Scott**

**Naseema Fakir**

COUNSEL FOR THE AGGETT FAMILY

Chambers, Sandton

20 July 2021