

REPUBLIC OF SOUTH AFRICA

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 445/2019

CASE NO: 139/1985

REPORTABLE: YES / NO

OF INTEREST TO OTHER JUDGES: YES/NO

REVISED.

04 MARCH 2022

In the matter of:

**THE RE-OPENED INQUEST INTO THE DEATH OF
DR NEIL HUDSON AGGETT**

JUDGMENT

MAKUME J:

INTRODUCTION

[1] Dr Neil Hudson Aggett (Neil) a 28-year-old medical practitioner turned trade Unionist died on the 5th February 1982 whilst being held in custody at the then John Voster Square Police Station in terms of Section 6 (1) of the Terrorism Act No. 83 of 1967.

[2] His lifeless body was found hanging in cell number 209 on the 2nd floor. A scarf or cloth of Kenyan origin was found around his neck and tied to the grill.

[3] Neil was the youngest in the family of 3. He was born in Kenya in the year 1955. The family emigrated to South Africa early in 1960 and settled in the Cape Colony where the young Neil later qualified as a medical practitioner in the year 1976 from the University of Cape Town.

[4] During his days at the University he met an equally human rights conscious medical student Elizabeth Floyd (Liz). A romantic relationship developed between them and after Neil qualified the two lived together in a cottage on a wine estate. Liz told the court that it was a simply home with no electricity.

[5] Neil was against taking part in the military activities of the South African Army having seen how they dealt with the 1976 Soweto Youth uprising. He became a conscription dodger, left Cape Town and settled in Johannesburg where he joined the trade union movement for no salary whilst working part time as a medical practitioner at the then Baragwanath Hospital (Chris Hani) as well as other clinics in Soweto including Tembisa Hospital.

[6] It was during this time that he met a number of trade union and human rights activists amongst then Oscar Mphetha, Frank Chikane, Maurice Smitthers, Barabara Hogan, Parmanaith Naidoo, Firoz Cachlia, Jan Theron and others.

[7] It is that association that attracted the attention of the security branch police to him. Liz had by then joined him and they both lived a modest life in a flat in Fox Street, Johannesburg. Liz had also in the meantime become qualified as a medical practitioner. It seems that it was their style of living which the security police could not understand why a young white couple with good qualifications chose to abandon all privileges that were available to white people and associated with people who according to them where intend to topple the white minority government.

[8] On the 27th November 1981 in the early hours Neil and Liz were arrested whilst spending the night at a friend's place in Crown Mines. Liz was taken to Hillbrow police station whilst Neil was taken to Pretoria and later to John Voster Square both in terms of Section 6 of the Terrorism Act. They never saw each other again.

[9] On the morning of the 5th February 1982 the security police announced that Neil had committed suicide by hanging himself in his cell overnight. When the news was broken to Liz at about 10am she screamed “You killed him” referring to the security police. That has indeed been the belief of not only the progressive South African community but also international organisations.

[10] His death in detention drew wide spread international attention and condemnation that had not been seen since the death of Steve Biko and Ahmed Timol (both in detention). Workers downed tools, commemoration rallies were organised addressed by prominent Community and Human rights activists amongst them the late Bishop Tutu at Wits University and elsewhere.

[11] Neil was the first white person to die whilst in police custody. In the Citizen Newspaper of the 8th February 1982 it was reported that General Mike Geldenhys the then commissioner of police had released a statement that “Dr Neil Aggett 28 a Transvaal Secretary for the Food and Canning Workers Union was found hanged in his cell at Security Police headquarters and everything indicated he had taken his own life.”

[12] An Inquest was held in 1982 presided over by Magistrate Kotze who found that no one was to blame for the death. Kotze accepted the version of the police despite overwhelming evidence to the contrary.

[13] That finding was never accepted by the family, the international community and the large friends and colleagues of Neil. It left the family devastated, the legal community asked questions, newspapers reported widely and condemned the finding. It was to the South African Government business as usual starting with Timol, Biko, Mapetla Mohapi etc. They all took their own lives to withhold information and protect their friends who were organising a revolution to take over the government.

[14] With the advent of the democratic dispensation in South Africa in 1994 renewed attempts were made to find the truth about Neil’s death. The law firm

Webber Wentzel duly assisted by private investigators as well as counsel went about gathering evidence which enabled them to approach the National Director of Public Prosecution (NDPP) with information that had not been available or had not been properly considered by the Magistrate who conducted the Inquest in the year 1982. The office of the NDPP made recommendations to the Minister of Justice and Correctional Services for a reopening of the Inquest in terms of Section 17(A) (1) of the Inquest Act 58 of 1959 ("the Act"). After some years it was only when the present Minister of Justice Honourable Lamola took office that the matter was expedited. The Minister in turn issued a directive to the Judge President of this Division to designate a judge to preside over the re-opened Inquest. This is the second such Inquest following that of Ahmed Timol which was presided over by my brother Mothle J during the year 2017.

[15] It was brought to my attention by the evidence leader during the pre-hearing meeting that because of the long wait since 1994 some documents had gone missing and attempts were being made to search for some in archives, some witnesses especially those involved in the arrest and detention period had passed away.

[16] Despite these shortcomings it did not deter the evidence leader to proceed and present available evidence in the form of affidavits in the first Inquest as well as affidavits by persons who had been detained prior to and during Neil's death. Some former detainees not only deposed to affidavits but availed themselves freely and gave oral evidence before this court. This court is indebted to all of them as it is their evidence which was widely publicised in the media that assisted in informing not only this court but the general public as to what exactly used to happen on the 10th floor of John Voster Square those days. One of the detainees Naidoo told this court that during his torture the Security Branch Officer told him that the 10th floor which they referred to as "Timol" floor will be renamed Naidoo when they are finished with him.

[17] David Smuts a Namibian Judge in his book titled "Death Detention and Disappearance" writing about the activities of Koevoet a South African Police Unit as to how they treated Swapo detainees and other insurgents in the 1980s writes as follows:

“A system of torture was central to political trials (and for that matter: to detention without trial) in Namibia in the 1980s. Not only were the defendants subjected to torture to extract confessions and admissions but witnesses were also detained and tortured. This was because there were frequently civilian collaborators who would be tortured to incriminate insurgents and other civilians’ collaborators who would then be charged under the Terrorism Act. Once information was coercively obtained from witness detainees they would be threatened with prosecution or further incarceration unless they testified along the lines of what had been extracted from them by third degree methods. Almost all defendants ended up making confessions and admissions after undergoing gruelling torture.”

[18] The Sharpeville Massacre on 21 March 1960 had opened a new chapter in the history of political violence in South Africa. It led to the banning of the African National Congress (ANC) and the Pan Africanist Congress (PAC). It is those bannings and the resultant torture of their members that drove thousands of South Africans even those not aligned to the two political movements to leave the country and go into self imposed exile.

[19] The late Adv George Bizos a renowned and well respected Human Rights Lawyer writing in his book “No one to Blame” said the following:

“The acquittal of the political leaders at the end of the Treason Trial in 1961 probably marked the end of the administration of justice in accordance with generally accepted procedural safeguards, such as habeas corpus. And when the African National Congress (ANC) embarked upon the armed struggle in December 1961 it gave Voster the excuse he needed, if indeed one was needed, to introduce detention without trial. The Sabotage Act of 1962 was passed to allow house arrest despite heavy criticism, mainly from organisations such as the Congress of Democrats and the Black Sash. In 1967, Section 6 of the Terrorism Act Empowered the Police to prolong detention without trial for an indefinite period. Generally, a prisoner is at the mercy of his or her captors, that is why in most civilised countries procedural

safeguards, have been introduced such as visits by doctors senior officers and members of the family and the companionship of fellow prisoners. Detention without trial in South Africa did away with all that even judges who had the right to visit prisoners at any time were effectively excluded from visiting political detainees. No wonder many detainees died in detention. The only witnesses to the circumstances of their detention were policemen or prison warders, but the shots were called by the Security Police who were charged with ensuring the safety of the state and were a law unto themselves. They could hold detainees for as long as they liked keep them awake by working shifts, deprive them of reading material isolate them from humanity.”

EVENTS THAT LED TO THE ARREST AND DETENTION OF NEIL

[20] It is common cause that Neil was a dedicated medical practitioner and trade union organiser. In his own words he was an idealist. He only wanted the best for his country and identified with the oppressed people of South Africa. He was deeply offended by the inequalities imposed on black people and other people of colour under the Apartheid system.

[21] Neil chose to use his skills, his education and energy to make a meaningful difference to the oppressed and in this regard he chose to intervene as a doctor/trade unionist in the areas of health and care

[22] When the ANC leadership went into exile and others arrested and jailed, those left inside the country recruited others to start mobilising. One of those recruited was a young student activist Ms Barbara Hogan. Marius Schoon and Jeanette Curtis who were in exile and based in Botswana instructed Barbara to set up a dead letter box. If she needed to report anything to Marius and Jeanette she would do it in writing and leave such document at a certain place where it would be picked up by an ANC courier person who would then take that document outside of the country.

[23] Barbara opened a post box under a false name in Johannesburg. She had been taught how to encode documents as a result any document she sent out used codes not actual names, and the courier who she did not know and never met had a duplicate key to the box.

[24] Miss Hogan (Barbara) was at that time involved in support work for the trade union, consumer boycotts and various other community related activities. She met Neil and Liz whilst all three worked for the Industrial Aid Society in the late 70s around 1977 – 1979. It was at that time that National Intelligence a separate structure within the security police branch started following up on the activities of all the white people who were either sympathetic or actual members of the banned ANC. Barbara became a target and was being followed.

[25] During or about June 1981 and in the process of carrying out instructions from the ANC in exile she was asked to compile a list of the names of persons in the country with whom she was working. She did so and compiled a list which she titled “Close Comrades” (See exhibit 3.5.21). The document itself had categories. The first three names were those of Cedric De Beer, Gavin Anderson and Aurret Van Heerden. She indicated that she met with the three regularly and all three were deeply committed to the ANC. Then followed the names of Frank Haysom and Alan Fine. Alan worked in the trade union movement and was a good friend of Marius Schoon and Jeanette Schoon. The last group which she titled to be a reference group consisted of Neil Aggett, Liz Floyd, Merle Favis, Mohammed Vally Moosa, Ishmail Momoniat and Monty Nasoo. It is this last group that she says she strategized with in the trade union movement, she valued their opinion, their wisdom as well as their experiences and insight in working with people. To her they were an advisory group and she never discussed ANC activities with them. She also never tried to recruit them to be ANC members. This last group was only engaged in consumer boycott issues in support of trade union workers. Their work was legitimate and above board.

[26] The last group consisted of Barbara Creecy, Barbara Klugman, Joanne Yawiton, Jo-Anne Smithers, Neil Coleman and Jane Barrett. These were a younger

group of activists who post 1976 became very committed and involved in organising the black working class.

[27] That list titled “Close Comrades” was intercepted by the security police and on the 22nd September 1981 Barbara Hogan, and Barbara Klugman were arrested. The raid and arrest was carried out by one Major Arthur Benoni Cronwright whose name would later appear prominently in the detention. He according to Barbara was a very aggressive and extremely angry person his staff referred to him as “Hitler”.

[28] Acting on this list the security police followed Neil and Liz and watched their movements and ultimately arrested both of them in the morning of the 27th November 1981. Neil was first taken to Pretoria then later to John Voster Square whilst Liz was held at Hillbrow SAP and later to Bronkhorspruit.

THE INQUEST ACT 58 OF 1959 AS AMENDED BY SECTION 1 OF ACT 145 OF 1992 (“THE ACT”)

[29] Inquests including re-opened Inquests are regulated by the Act stated above. The purpose of holding an inquest is to investigate the circumstances of death that occurred from other than natural causes and where a prosecutor has declined to prosecute.

[30] Section 17A(1) of the Act provides thus:

“The Minister may on the recommendation of the Attorney General concerned, at any time after the determination of an inquest and if it deems it necessary in the interest of justice, request a Judge President of a Provisional division of the Supreme Court of South Africa to re-open that inquest, whereupon the judge thus designed shall re-open such inquest.”

[31] During or about June 2016 the pro-bono department of the law firm Webber-Wentzel acting on behalf of the Aggett family threatened National Prosecuting Authority with litigation to compel them to reopen the inquest. This threat fell on deaf ears. Three years later during April 2019 the present Minister of Justice Honourable

R Lamola announced the re-opening of the Neil Aggett inquest. This happened during the same week when one of Neil's interrogators Warrant Officer Stephen Whitehead passed away. Evidence will show that Warrant Officer Stephen Whitehead played a major role in events that eventually led to Neill's death. It is accordingly regrettable that he was not there to put his version of events.

[32] This re-opened inquest is neither an appeal nor a review of the initial inquest held in 1982. It is however, a reconsideration of the entire evidence considered by the initial inquest at the time of death which for one or other reason was not or could not be considered during the initial inquest proceedings and has now become available.

THE SECURITY LEGISLATION IN OPERATION AT THE TIME OF THE ARREST AND DETENTION OF DR NEIL AGGETT

[33] It is common cause that both Neil and Liz were detained in terms of Section 6 of the Terrorist Act number 83 of 1967. That Act defined Terrorism as anything that might endanger the maintenance of law and order in the Republic of South Africa. It authorised detention of persons for a period of 60 days which is renewable at the pleasure of the security police for purposes of further interrogation. It was only the commissioner of police subject to the directives from the Minister who was authorised to release such a detainee "when satisfied that such a detainee has satisfactorily replied to all questions at the said interrogation or that no useful purpose will be served by that detainee's further detention."

[34] Section 6 prohibited access to detainees and excluded judicial intervention by the courts to enquire into conditions of detention. It placed the wellbeing of detainees completely at the mercy and discretion of security police officers who were a law unto themselves and when anything happened to the detainee they were the only eye witnesses to such occurrences and could do as they wish with the quality of evidence they chose to present to the courts.

THE SECURITY BRANCH OFFICES AND ENTRANCES AT JOHN VOSTER SQUARE

[35] At the inspection in loco held on the 21st January 2020 the following is an outlay and access to the security branch offices including the detention cells.

[36] The second floor comprises of a number of solitary confinement cells. It is a square building located at the rear of the John Voster Square and comprises of three floors. Three of the right angled corridors are for male detainees the further one is separate for female detainees. Black and White detainees were locked alongside each other.

[37] There are two ways or routes to access the security cells including the interrogation offices located on the 9th and 10th floors. The first is via the main charge office then you walk to a flight of stairs on the ground floor. These stairs lead you directly to the second floor. The second route is via the parking garage at the back of the building. The second floor as well as the 9th and 10th floors can also be reached via a separate lift situated at the ground floor close to the flight of stairs.

[38] When one reaches the second floor either via the lift or the stairs there is a locked gate at which is a Black security guard who will then open for you to proceed to a separate charge office where a register is kept to sign your name and your reasons for being there.

[39] There is in that charge office an inventory room where all the personal items of detainees are kept and recorded. An officer is in charge of that and when a detainee requires something it is recorded in a register which is kept in that room.

[40] There is also a consultation room used by medical practitioners' who come to consult with detainees. It is also used by Magistrate who come and consult with detainees.

[41] There is an open area on the second floor which is used as an exercise area by detainees under supervision.

[42] Each cell on the second floor comprises of a solid door and an inner grill. The grill is about 1 meter away from the solid door. The grill is locked with a normal lock as well as with a padlock. The officer who is stationed at the entrance to the second floor cells keeps the key to the cell door whilst the padlock key is kept by the White Warrant Officer in charge and when he knocks off at 16h30 that padlock key is kept in an office in the main charge office on the ground floor.

[43] Inside each cell is a toilet, a hard cement bed and a blanket. The solid door on the outside of each cell has a peephole through which the officer guarding the detainees will peep to see if an inmate was still inside or not.

[44] At the inspection in loco the court observed and was informed that access to the second floor cells could also be accessed via a corridor behind the charge office without anyone noticing.

[45] The diagram depicting the second floor also indicate that there is a gate opposite second floor cell B24A which leads directly to the staircases descending to first floor cell A52 which route bypasses the second floor charge office.

[46] The Tenth floor where all the interrogations took place was strictly occupied by members of the security branch and was accessed via the 9th floor using a dedicated lift. Entrance is through the parking garage. There is always a security branch officer sitting inside a bullet proof glass cubicle. The two dedicated lifts to this floor compulsorily stop on the 9th floor. There are four other lifts that service the rest of the building.

[47] The 10th floor aptly known as “Timol Heights” named after Ahmed Timol a detainee who was pushed to death from that floor during 1971 houses a number of offices where interrogations took place it also according to witnesses had a room called “Ware Kamer” (truth room). It is structured in a way that it is noise proof. Evidence by Maurice Smithers one of the detainees at the same time as Neil revealed that Neil was seen in office number 1012 performing excersises. He could see that from office number 1019 where he was taken for questioning.

DR NEIL AGGETT'S INVOLVEMENT AND ACTIVITIES THAT LED TO HIS ARREST AND DETENTION

[48] Shortly after qualifying as medical practitioner Neil worked as an intern at Umtata Hospital. He later moved to Tembisa hospital. It was during this time that he developed an interest in trade unionism. He and Liz lived together in a flat in Fox Street, Johannesburg. He had made up his mind that he will not undergo military training. Whilst working at Baragwanath hospital he developed an interest in emergency surgery probably as a result of what he was exposed to at that hospital.

[49] Oscar Mpetha a South African trade union leader and founder member of SACTU (South African Congress of Trade Union) came up to Johannesburg from Cape Town to open a branch of The Food and Cannery Workers Union (FCWU). He stayed with Neil and Liz and in the process recruited Neil into the Trade Union Movement. Neil was later to be mentored by amongst others Emma Mashinini who ran CAWU (Congregated and Allied Workers Union of South Africa) as well as Thozamile Gqwetha and Sisa Njikelana from a sister union called SAAWU (South African Allied Workers Union).

[50] Neil's interest had developed and he began to work full time in the emerging labour movement whilst doing part time work at Baragwanath hospital. Whilst working as an organiser he was not paid any salary.

[51] It was this association with the trade union movement that drew the attention of the security police to him and Liz. Lieutenant Whitehead was assigned to follow and watch his and Liz's movements. Amongst the people that he had come into contact with was Miss Barbara Hogan an underground member of the ANC.

[52] Barbara Hogan as she testified was tricked by the security police and the list of "Close Comrades" that she had compiled for the information of the ANC in exile landed in the hands of the security police. In the list was Neil's name. Barbara was arrested and whilst in detention Neil and a number of other trade unionists and underground ANC members were taken into custody in a security swoop during November 1981. In the mind of the security police they had cracked the inside

operation of the ANC and were now preparing for the second and biggest Treason Trial since the 1956 Treason Trial.

THE ROLE PLAYERS IN THE DETENTION OF DR NEIL AGGETT 1981 TO FEBRUARY 1982

[53] Major Arthur Cronwright the then head of the Security Branch at John Vorster Square was desperate to use the “Close Comrades” list to prove a wider conspiracy. In the list Neil was described by Barbara Hogan as belonging to the Advisory/Reference group and was never referred to an ANC member.

[54] Captain Martin Naude was the first to interrogate Neil from around the 15th December 1981 until about the 23 December 1981. He came from East London and was relieved of that duty early in January 1982. His evidence in 1982 as well as in the reopened inquest was consistent he could not link Neil with any involvement with the banned ANC or SACTU and according to him Neil should have been released.

[55] Lieutenant Stephen Whitehead took over the interrogation of Neil from January 1982 shortly after Captain Naude had left. He with the assistance of one Schalkwyk a Railway Police Officer intensified the interrogation from that period until the death of Neil. Whitehead had come to the conclusion that the statement made by Neil to Captain Naude was insufficient hence the intensified effort to get a confession. Whitehead passed away in the year 2019.

[56] Johan Nicholas Visser together with Captain Swanepoel interrogated Neil on the 30th January 1982 from 06h00 to 18h00. Visser occupied an office on the 9th floor and was in control of the “non-whites” department dealing with ANC matters.

[57] Joseph Petrus Woensdregt, together with Whitehead and Nicholas Johannes Deetlefs interrogated Neil on the 30th January 1982 from 18h00 until the following morning at 3am on the 31st January 1982.

[58] Magezi Eddie Chauke, joined the Security Branch during November 1981 and was stationed at John Vorster Square. His duty was to escort detainees from their

cells on the second floor to interrogation offices on the 10th floor and back. He at times sat in with Whitehead and Schalkwyk during Neil's interrogation. He told the Court that he did not take part in interrogation and merely sat there at times reading a newspaper.

[59] The 1982 Inquest judgment indicates that all in all the deceased Dr Neil Aggett was interrogated by 14 (fourteen) security police officers who took shifts that culminated in the non-stop 62hour interrogation that commenced on the 28th January 1982 until the 1st February 1982. This interrogation was authorised by Major Arthur Cronwright.

THE 1982 INQUEST PROCEEDINGS

[60] The procedure about checking on detainees in their cells was narrated by amongst others Constable Mosoeu Paul Sehloho. He was a Constable stationed at John Voster Square in the Security Branch office. He reported for duty at 21h45 on the evening of the 4th February 1982. At 22h30 he accompanied Sergeant Agenbach and Warrant Officer Marais on an inspection of the cells on the 2nd floor. He testified that both Agenbach and Marais entered cell 209 and spoke to Dr Neil Aggett who told them that all was in order. He closed the door and they left to do inspection of other detainee cells.

[61] Sehloho testified that at about 11h00pm he alone went on an inspection of the cell but this time he only peeped through the opening on the door. He noticed Dr Neil Aggett lying on his bed reading.

[62] At 1h30am the 5th February 1982 he accompanied Sergeant Agenbach on an inspection of the cells and after opening cell 209 Sergeant Agenbach went in and then called him in he saw the body of Dr Neil Aggett hanging on a scarf from the inside grill door. Warrant Officer Marais was called.

[63] Sehloho testified that in terms of the standing order or procedure he is supposed to peep through each cell door at 1 hourly intervals. When asked why on this particular day he did not visit the cells at Midnight and at 1am he answered that:

“I thought everything was still in order because those detainees were not troublesome.”

[64] Something happened to Dr Neil Aggett between 23h00 on the night of the 4th February 1982 and 1h30am on the morning of the 5th February 1982. The 1982 Inquest was tasked to find out if his death was caused by any act or omissions on the part of any person and to make a finding therein.

[65] Of importance Constable Sehloho under cross-examination confirmed that at times the security police do come at night to take away detainees and bring them back in the morning but that on the night of the 4th February 1982 no security officer came there to remove any detainee. He did not know Warrant officer Stephen Whitehead. Sergeant Agenbach and Warrant officer Marais said the same.

[66] At the conclusion of the hearing before Senior Magistrate P Kotze on the 20th December 1982 he made the following findings in concluding that Dr Neil Aggett committed suicide:

- i) That Neil was a man devoted to a cause and worked with a number of close associates to achieve his goal.
- ii) That during the period of detention Neil disclosed particulars of his activities and more important names of his associates.
- iii) That the disclosures must have brought about a feeling of uncertainty about his future and the realisation that steps could be taken against his associates. The possibilities of a sense of guilt towards his associates, a sense of betrayal of his friends and associates.
- iv) That he had to face some of his associates and to admit the disclosures, an anticipation or feeling of rejection by them could not be excluded.

[67] In the final analysis the Magistrate Mr P Kotze concluded that Dr Aggett's death was not brought about by any act or omission involving or amounting to an offence on the part of any person.

[68] Evidence presented on behalf of the Aggett's family which included sworn affidavits by fellow detainees was to the effect that Dr Aggett had been subjected to intense interrogation which included a continuous period of 62 hours of sleep deprivation and assault and torture that drove Dr Aggett to suicide. It was argued that Major Cronwright and Lieutenant Stephen Whitehead knew that suicide was a likely result of their unlawful conduct and took no steps to prevent this when in fact it is their duty to safeguard detainees.

[69] In dismissing the version presented by the Aggett family the Magistrate accepted the version of the police that Dr Aggett was well and in good condition and decided to take his life because he had a sense of guilt, that he had exposed other people to arrest and detention and rather than face humiliation and embarrassment from his associates he decided to take his own life.

[70] In accepting the versions of the various police officers the Magistrate made serious errors of judgment. His decision was a product of a conspiracy by the security police to subvert justice. He failed to note that this was a big cover up by the police or even if he did notice it he justified their version on dubious grounds.

[71] Amongst the glaring dubious summaries of the version, the Magistrate in justifying why it was not possible for Sergeant Agenbach and Warrant Officer Marais to have done hourly visits between 22h30 and 01h30 on the 4th to the 5th February 1982 the Magistrate says the following:

"Sergeant Agenbach and his colleagues were criticised for not visiting the cells regularly and quite right so. But I find no reason to believe or think that more visits to the cells would have prevented the hanging."

[72] I find this conclusion astonishing to say the least and can only be attributed to the fact that the Magistrate decided to accept the evidence of Constable Sehloho

and that of Sergeant Agenbach the two who were in charge of the cells on the second floor during the 2 hours when no visits were done. Sehloho says he did not do visits on an hourly basis because the detainees were not troublesome on the other hand Agenbach says he did not do the visits between 10h30 and 1h30am because everything was in order and that he was busy with other work.

[73] The Magistrate in summarising this aspect says that Agenbach visited the cells at 12h45 and yet only discovered the body of Dr Aggett at 1h30am. On the other hand, Sehloho says it was only at 1h30am that Agenbach came to him to instruct him to open the gate leading to the cells so that he goes and does inspection.

[74] What I find further strange about these purported cell visits that night is that Constable Andre Martin who was also on duty with Sehloho and Agenbach made an entry of cell visits at 12h56 (Exhibit T) and then the Magistrate noted that Agenbach only visited the actual cell no 209 at 1h25am. The entry of a cell visit at 12h45 was at the instance of Agenbach who instructed Constable Martin to make that entry which was in fact a false entry. The question to be asked is why did Agenbach instruct Martin to make such an entry which was false. This in my view clearly indicates that Agenbach knew that something untoward was happening to Dr Aggett either that he was being carried back to his cell from an interrogation and torture or that some other unlawful act was being done to him in the cell.

[75] Keith Coleman a Section 6 student detainee told the 1982 Inquest that a few days before his death Dr Neil Aggett was unresponsive and seemed to be in deep thought. He also told the court that Neil had told him about an assault on him when his shirt was torn. This he said was done because his interrogators wanted to put more pressure on him and had taken away his privileges to an extent that he Coleman had to now and then give Dr Aggett something to eat like sweets as well as cigarettes.

[76] Thabo Lerumo a detainee told the 1982 Inquest that when he saw Dr Aggett in the second half of January 1982 he no longer looked happy. His manner of walking had changed. He was walking with some difficulty and did not look healthy

and was no longer laughing easily. The day before his death namely the 4th February 1982 he saw Dr Aggett in the company of Constable Chauke and another police officer it was at about 3pm to 4pm. Dr Aggett was not walking normally and tears were running down from his eyes and did not respond to greetings.

[77] Sisa Njikelane a detainee also testified that when he saw Dr Aggett in January 1982 he appeared morose and very depressed. Earlier during the same month, he had met Dr Aggett in the medicine room and Aggett pointed to him a red mark on his right arm.

[78] Jabu Ngwenya also testified about the state of depression that he saw on Dr Aggett while in detention during January 1982 and when he last saw him on the 3rd February 1982 he could not walk properly he walked wide legged.

[79] Aurett Dennis Van Heerden a detainee also told the 1982 Inquest that until early January 1982 Neil was in a fit mental and physical state but later noticed that he was limping. Neil told him that he had been assaulted on the 10th floor and forced to do extraneous exercises whilst naked.

[80] In the morning of the 4th February 1982 Van Heerden noticed Neil in a very slumped over and listless position. He looked like a Zombie. Neil walked with very little purpose, he dragged his feet and shuffled along.

[81] Later that evening whilst asleep Sergeant Agenbach did a cell visit to him and left. At some stage during the night he could hear commotion in the passage outside his cell. He heard voices and footsteps he also noticed people peering at him through the peephole of his cell door. His lights were still on. He had a feeling that the worst had happened. The next morning, he learnt that Neil had committed suicide. He made a statement which Major Conwright refused to accept telling him that his men worked hard to protect South Africa from terrorists.

[82] The Magistrate dismissed and disbelieved the evidence of the witnesses who testified about the events of the 3rd and 4th February 1982 on flimsy basis for example Keith Coleman testified about Neil's condition and yet the Magistrate

concentrated on the issue of the torn shirt as if it was the main issue and failed to address Coleman's observation.

[83] Similarly the witness Thabo Lerumo's evidence was dismissed without any factual basis save to mention that he was uneasy in the witness stand. That may well be so but it does not weaken his evidence which was corroborated by that of Coleman and Aurett Van Heerden to the effect that on the morning of the 4th February 1982 Neil walked with difficulty.

[84] The Magistrate also treated the evidence by Sisa Njikelane in the same manner as that of Thabo Lerumo. All that the Magistrate concluded was that Sisa Njikelane was hesitant in his replies without being specific. This is despite Njikelane's evidence that he met Dr Aggett who looked morose and that Aggett showed him a red mark on his hands.

[85] Mr Jabu Ngwenya's evidence about the condition of Dr Aggett was in the same breath dismissed on the basis that he was arrogant and selective without being specific. This is despite his evidence being corroborated by Njikelane, Lerumo and Coleman specifically about his observation on the 3rd February 1982.

THE 2019 RE-OPENED INQUEST

[86] This re-opened inquest as already indicated started off in January 2020 and has been fraught with difficulties caused by the time delayed during which time some of the witnesses who testified during 1982 had passed away others have faint memories and some documents could no longer be traced including the docket.

[87] I have already set out the picture and layout of the detention cells and the 9th and 10th floor interrogation offices which this court observed during the inspection in loco in January 2020.

[88] An inspection of cell 209 in which the deceased Dr Neil Aggett was found hanging demonstrates that access into it is through two doors. The outer door being

a solid one with a peeping hole and the inner door made of steel grill with a separate lock.

[89] Mr Colin Savage an Architect inspected the building plans of John Vorster Square as it was during 1982. He testified that besides the access points already indicated herein it would have been possible to gain access to the security cells on the second floor through the female cells via a door that had by now been sealed up.

[90] When cell 209 was inspected on the 5 February 1982 a number of items were found therein which should not have been there. Nyampula one of the 1982 police witnesses who also testified in this re-opened inquest described it as a “five-star cell”

[91] Despite evidence to the contrary the 1982 Inquest accepted that Dr Aggett was treated well based on the evidence of the security police. In this re-opened hearing this court has heard evidence by detainees who were in detention prior to and during Aggett’s detention and after his death. There was also placed before me transcripts of several amnesty Application hearings before the Truth and Reconciliation Commission by Senior Security Police Officers. This evidence in no uncertain terms proves firstly that detainees were subjected to torture, sleep deprivation and assaults. Secondly as Paul Erasmus a former Security Branch Officer testified it was a culture in the Security Branch to cover up evidence of ill treatment to detainees. Erasmus provided information regarding the activities of the Security Branch in particular manufacturing of evidence. He testified about the secret trip sanctioned by the Head Office during 1982 when he and Stephen Whitehead went to Somerset West at the house of Dr Aggett’s parents in search of evidence to prove that Dr Aggett was suicidal and therefore took his own life.

[92] Erasmus gave evidence on the Security Police training courses. In his affidavit dated the 11th February 2020 which was not challenged he detailed that the following were methods employed during interrogation of detainees namely:

- i) Sleep deprivation.
- ii) Assault always with a flat hand so as not to leave any mark.

- iii) Forced and strenuous exercises that would bring a detainee to a point of complete exhaustion so that he or she loses concentration.
- iv) Making a detainee strip naked.
- v) Crunching in a squatting position for a long time including standing and balancing on a plank or bricks.
- vi) Electric shocks, strangulation and suffocation using a wet bag.

[93] Erasmus told this court that the Security Branch were a law unto themselves. He indicated that they retained keys off site which they could use to enter the second floor cells and avoided second floor control office. They could gain access to the detainees in their cells without creating any paper trail.

[94] I do not in this judgment deem it necessary to repeat the evidence of each and every witness in detail save in so far as it relates to the happenings and treatment meted to Dr Aggett between the 24th January 1982 to the 4th February 1982 including the period referred to as the 62 hours of continued interrogation and torture.

[95] It is common knowledge that in the 1982 Inquest the Magistrate accepted evidence by the Security Police and in particular dismissed any notion that detainees in particular Dr Aggett was tortured and assaulted. In his words Dr Aggett committed suicide because he had divulged information about his colleagues and that those disclosures brought about a feeling of uncertainty and discomfort to him.

[96] According to the Magistrate Kotze Dr Aggett felt that he had betrayed his friends and associate and was embarrassed to meet them and face rejection and as an escape route Dr Aggett decided to end his life.

[97] Both Constables Nyampule and Makhetha whose duties amongst others included escorting detainees from their cells on the second floor to the 10th floor for

interrogation informed this court that they were aware of assaults and torture on detainees during 1981 and 1982 but were scared to tell the 1982 Inquest Court about their observation.

[98] According to Nyampule detainees would be kept for interrogation for long hours and he would often find that a detainee had not been returned to their cells by 16h00 when he knocked off and would only be returned to their cells the following morning having obtained keys after hours from the Uniformed Police stationed on the second floor cells.

[99] Constable Nyampule concluded that the absence of cell visit by the night duty staff comprising of Constable Sehloho, Sargent Agenbach and Warrant Officer Marais for a period of three hours in the late evening to the early morning of the 4th to 5th February 1982 was extraordinary and should have been the subject of a disciplinary enquiry which thing never happened.

[100] Both Nyampule and Paul Erasmus testified that it was irregular for McPherson to have permitted that Dr Aggett keep the Kikoi cloth with him in his cell as this was contraband. Once more no disciplinary action was taken against McPherson.

[101] Maurice Smithers a detainee had testified and was cross-examined at length by Adv Schabot and De Vries during the 1982 Inquest when he detailed about what he observed on the 25th January 1982 when Dr Aggett was being assaulted and tortured in office 1012. In opposing his version the security police tendered a statement by Constable G Makhetha who had on that day escorted Aggett to the tenth floor for interrogation.

[102] In this inquest Constable Makhetha told the court that what he testified to in 1982 was a lie fabricated for him by Major Cronwright. He testified that whilst he was waiting on the 10th floor to take Smithers to an optometrist he saw Whitehead and two other police officers making Dr Aggett exercise by jumping up and down, running on the spot and being hit with what looked like a rolled up newspaper. He now corroborated what Smithers said during 1982. Constable Makhetha testified that he agreed to lie to the court in 1982 because he was intimidated by the security police

and feared for his life. He confirmed that his statements before the first inquest were all false.

[103] Two former detainees in the persons of Sisa Njikelane and Jabulani Ngwenya testified not only about the assault and torture on them by various security police officers during the period December 1981 to February 1982 including their observation of Dr Aggett a few days before his death. They testified in 1982 as well as in this reopened inquest. They were cross-examined at length on why certain aspects of their evidence was not there in their testimony in the 1982 inquest. They responded that they were scared because of the presence of a number of their interrogators who sat in court as they would have then been subjected to harsher methods of interrogation or even be killed.

[104] Nicolas Deetlefs one of Aggett's interrogators during the long weekend of 62 hours' interrogation told the Court in the re-opened inquest that there was pressure put on him and others by Major Cronwright not to disclose in the 1982 inquest evidence that Whitehead had left him with Aggett on the night of 30th January 1982 also that he should not tell the inquest court that he had told him Cronwright that he was worried that Aggett would commit suicide.

[105] He conceded that he was aware that some detainees were assaulted on the 10th floor though he himself did not assault any detainee including Dr Aggett. He testified that whilst he lied in 1982 about certain aspects he is now telling the truth as there was no longer any pressure on him to protect fellow members of the security branch.

[106] Deetlefs confirmed the culture of protecting fellow officers and stated that Major Cronwright stressed the fact that it was in the interest of the country that it be protected from communists and the African National Congress.

[107] He testified further that during the time when he was alone with Dr Aggett on the night of the 30th January 1982 Dr Aggett disclosed to him about the involvement of Johan Theron in labour unrest and that this disclosure upset him.

[108] Joseph Petrus Woensdragt testified about his involvement with Dr Aggett on the night of the 30th January 1982 when Deetlefs and Whitehead interrogated Aggett. He as in 1982 denied any ill treatment on Dr Aggett and further said that he was not aware at that time that Aggett had been on interrogation non-stop since the 28th January 1982.

[109] He testified further that Dr Aggett wrote a four-page statement that evening about the involvement of Jan Theron in labour unrest but could not recall the exact contents thereof.

[110] What is strange is that it is that four-page statement that was telexed to Security Branch Head Office the following day which was meant to result in further arrests and detention. The Security police refused to produce that four-page statement in the 1982 inquest neither was it produced in this re-opened Inquest. The police claimed national security for their refusal to produce that four-page statement and the telex. When Deetlefs was asked what the four-page statement contained he replied as follows:

“I would lie; I would have to lie. If I have to tell you what was contained in those pages.”

[111] Similarly Woensdragt responded at this re-opened enquiry that he was not present when Aggett made a four-page confession. He however, said that he did have a look at the information therein but cannot recall what it contained. He denied under cross-examination that the four-page confession was a cover up by the police to bolster their suicide theory. He persisted that the four-page document had serious incriminating evidence against Aggett's friends.

[112] I am not persuaded that anything incriminating was in that four-page document. I also have serious doubts that such a document ever existed. It was one of the cover-up incidents to distance the security police from the death of Aggett.

[113] Former detainees in the persons of Ms Barabra Hogan, Reverend Frank Chikane, Jabu Ngwenya, Sisa Njikelane, Ismail Momoniat, Keith Coleman, Liz Floyd

all testified about the torture and assault at the hands of the Security Police at John Vorster Square during and after the death of Dr Aggett. They corroborated each other in all material aspects and confirmed the methods of assault as detailed by Paul Erasmus a former Security Branch Officer.

[114] The late Advocate George Bizos in his affidavit both in this re-opened inquest as well as the re-opened Inquest of Ahmed Timol pointed out that apartheid era inquest Courts tended to minimise evidence of ill-treatment of detainees. He went on to say that improbable testimony of police witnesses was invariably rubber stamped by Inquest Magistrates especially of police versions that deceased detainees were treated with care and consideration.

EVENTS OF THE 4TH JANUARY 1982 TO THE 5TH FEBRUARY 1982

[115] It is against this background that I now wish to deal with what happened to Dr Aggett which led to his death in the early hours of the 5th February 1982.

[116] On the 4th January 1982 Dr Aggett was interrogated by Van Schalkwyk, Captain Naude as well as Whitehead all of them members of the Security Police. The interrogation took place from 10h00 until 15h15. Dr Aggett in his statement to Sargent Blom said that Van Schalkwyk assaulted him in the presence of Whitehead by slapping him and also squeezing his testicles. This was vehemently denied by both Van Schalkwyk and Whitehead and as already indicated the Magistrate accepted the version of the two police officers.

[117] On the same day as well as on the 6th January 1982 the Inspector of detainees Abraham Johannes Mouton as well as Magistrate AJ Wessels were denied access to consult with Neil Aggett. McPherson lied to both officials by telling them that Dr Aggett was out on investigation when he knew very well that he was present on the 10th floor where he was being interrogated and assaulted.

[118] It was only on the 18th January 1982 that Magistrate Wessels was able to consult with Dr Aggett who told him about the assault on him that had taken place on the 4th January 1982 Aggett had an injury on his forearm that corroborated the event.

This injury was also noted on the post-mortem report. Nothing was done about this complaint until the 4th February 1982.

[119] On the 25th January 1982 Maurice Smithers a detainee as well as one Constable Mohanoe Gerdens Makhetha noticed Aggett being assaulted by being struck with a rolled up paper Aggett was also forced to do strenuous exercises for many hours interrogation took place from 8h25 to 15h45. He was assaulted by Whitehead, Du Bruyn and Carr all Security Branch Officers. Once again the Magistrate Kotze accepted the denials by the Police Officers and dismissed the evidence of Maurice Smithers on flimsy grounds by pointing out contradiction which were not material for instance that he had spelt his name differently on two separate statements. He also dismissed Smithers evidence on the basis that Dr Aggett did not mention the assault to Sargent Blom on the 4th February 1982. Also that Neil Aggett never told Aurret Van Heeden about these assault.

[120] Magistrate Kotze made a fundamental error both in law and on fact when he disbelieved Smithers only to believe Constable Makhetha who has now in the re-opened inquest said that he was instructed to lie to the 1982 Court. Constable Makhetha testified in the re-opened inquest and said that it was a norm to deny any assault on detainees should such allegation be stated.

[121] The long weekend interrogation of Dr Neil Aggett commenced on Thursday the 28th January 1982. This was after Dr Aggett had penned a number of statements which Whitehead had simply torn because they did not contain the type of confession that he wanted Aggett to agree to. He with the permission of his leader Major Cronwright decided to step up interrogation. They then devised a plan to keep Aggett awake for long periods and in order to achieve that Whitehead enlisted the services of other Security officers to go on shift work working in pairs day and night questioning Dr Aggett with the intention to break him so that he confesses to being an active member of the banned ANC and SACP.

[122] Whitehead, Carr and De Bruin interrogated Aggett from 08h25 until 14h41 on the 28th January 1982. When they knocked off they handed Aggett over to Johann

Lucas at 16h18. Aggett was kept on the 10th floor until 06h00 on Friday the 29th January 1982 all the time being interrogated.

[123] When Lucas and Whitehead knocked off at 06h00 they handed him over to De Bruin who kept him awake with questions and assault until 16h00 on Friday the 29th January 1982. During this time Aggett was given electric shocks. Sergeant Blom to whom Aggett made a statement on the 4th February 1982 confirmed that electric shocks constitute serious or grievous bodily harm. She also confirmed that Dr Aggett told her that he had been electrically shocked. She also conceded that it was necessary to have taken Aggett to see a Doctor but according to her Dr Aggett said he does not need any medical attention. When cross-examined by the late Adv George Bizos, Blom gave a series of conflicting reasons why she did not deem it necessary to take Dr Aggett to the doctor. The Magistrate in the 1982 inquest did not deal with that anomalous situation in his findings.

[124] From 16h00 on Friday the 29th January 1982 up to 06h00 on Saturday the 30th January 1982, Dr Neil Aggett was continuously in the presence of Whitehead and De Bruin who applied electric shocks on him and from 06h00 till 18h00 on the 30th January 1982 Dr Aggett was in the presence of Captain Visser and Captain Swanepoel who continued to interrogate him.

[125] When Visser and Swanepoel knocked off they handed him over to Woensdragt, Deetlefs and Whitehead who kept him awake until the following morning the 31st January 1982 at 3h30 am when they took him to his cell on the second floor.

[126] Dr Aggett in his statement to Sergeant Blom on the 4th February 1982 complained about this long interrogation and lack of sleep and when she was cross-examined by Adv Bizos during the 1982 inquest Blom downplayed and minimised the effect of such long interrogation. The Magistrate Mr Kotze in a strange finding on this aspect said the following in his judgment:

“At the instance of Lieutenant Whitehead and with the approval of Major Cronwright Dr Aggett was kept and interrogated on the 10th floor from the

28th January 1982 until 3h30 am on the 31st January 1982. On the evidence before us I cannot find without any reasonable doubt or on the preponderance of probabilities that this was not done with his consent and collaboration. I cannot find that he was deprived of sleep or ill-treated in any unlawful manner.”

[127] The Magistrate made this disgusting finding notwithstanding the fact that Aggett in his statement on the 4th February 1982 complained about the long interrogation and lack of sleep during which he was slapped electrocuted and his scrotum squeezed. It therefore boggles my mind how he Mr Kotze came to the conclusion that Dr Aggett agreed to all that.

[128] Adv George Bizos in referring to the conduct of Magistrates during that era pointed out that the majority of apartheid era Magistrates had no real desire to reach the truth. They saw it as their duty to protect organs of the state such as the police. They the Magistrate’s tendered not to interrogate police versions vigorously and accepted ridiculous versions like in this matter that detainees preferred to commit suicide when “the truth about them had been found.”

[129] On the 4th February 1982 Sergeant Blom-Visser took a statement from Dr Aggett at about 9h45am which statement she later handed over to her superiors and did nothing further because according to her the suspect Lieutenant Whitehead was her senior and in terms of the rules she as a junior police officer cannot investigate any case against her seniors. In my view this is when all things started going wrong. Dr Aggett was now left to the mercy of Whitehead, Cronwright and others to decide how to discipline him how dare he makes such a serious complaint against a senior ambitious security police branch officer.

[130] Sergeant Blom-Visser when testifying in the re-opened inquest used her marital surname of Visser. Her evidence regarding taking of the statement and how she went about was consistent to a large extent with what she told the court in the inquest. However, under cross-examination in the re-opened inquest she played ignorant about whether she knew that prior to the death of Aggett other detainees namely Wellington Tshazibane, Elmon Malele, Mathews Mabelane had died whilst in

security police custody at John Vorster Square she said she did not know. I find that not possible to believe. She clearly was still playing the cover-up card.

[131] Dr Aggett in making a statement to Sergeant Blom (Visser) related two incidents of assault the first that took place on the 4th January 1982 wherein he pointed out Whitehead, Chauke and Van Schalkwyk as the culprits. The second incident took place over the long interrogation weekend when he was deprived of sleep and was assaulted by Whitehead who had blind folded him and electrocuted him. Aggett also showed her a scratch on his left radial nerve pulse. Aggett told her that despite him having complained to Warrant Officer McPherson, McPherson did not make arrangement that he be seen by a doctor.

[132] In the 1982 inquest Sergeant Blom (Visser) was cross-examination at length as to why she did not take Dr Aggett to see the district surgeon at first she had told the court that she did not do it because the security police were still busy with interrogating Dr Aggett she later said it is because Dr Aggett said he does not want to be taken to a doctor. Now in the re-opened inquest whilst being led by Adv Singh in evidence she testified as follows:

Ms Singh: you also told Major Cronwright that as they were busy with him, you were making arrangements or you made arrangements for him to be taken to the district surgeon. Am I correct?

Mrs Visser: That is correct.

Ms Singh: When did you make arrangements to take him to the district surgeon ma'am?

Mrs Visser: When I went to excuse myself.

Ms Singh: Ja?

Mrs Visser: No just a second no arrangements were made. No arrangements were made. Sorry I am withdrawing what I said with Aggett investigation, my hands were tied I could not do anything further.

Ms Singh: When I asked you earlier as to whether you had arranged medical attention before you changed your mind you said yes you went to

Major Cronwright and you spoke to him and told him that arrangements had been made for him to be taken to the doctor where did you get that from.

Mrs Visser: It is long usually that is what happened.

[133] Mrs Blom (Visser) clearly contradicted herself on a very material aspect of this case. She hid behind the issue of seniority and later shifted the blame of not having taken Dr Aggett to the district surgeon to her commander and later said it is the duty of the security police to see to it that detainees be taken to a doctor. Mrs Blom (Visser) was clearly still on the trajectory to protect Whitehead and Cronwright even at this late stage when it is known that both have passed away.

[134] If she now says that she had told Cronwright and her own superiors that Dr Aggett needs medical attention Why did Cronwright and Whitehead in their evidence in 1982 say there was nothing wrong with Dr Aggett and that he was in good spirits that afternoon.

[135] In the late hours of the night of 4th February 1982 into the early hours of the 5th February 1982 three detainees namely: Sisa Njikelane; Keith Coleman and Jabu Ngwenya heard commotion and observed unusual activity in the corridor of the second floor. In particular Keith Coleman saw four figures hurrying past and thereafter all the cell windows were banged closed one by one and the main gate to the cell block was slammed and locked.

[136] Of great importance is what Sisa Njikelane told the court namely: that he heard the main gate being opened and several low voices and when he heard that he stood on top of the toilet seat and looked out into the passage where he saw approximately six persons carrying Aggett in the direction of lifts. He says they carried Dr Aggett in the way Muslims carry their dead at funerals and they were moving quickly. Jabu Ngwenya saw police officers who stood in front of each cell door observing the peephole into the cell corridor.

[137] This incident described by the three detainees is of crucial importance. The incident must have taken place during the period when no cell visitings were recorded by the night duty staff it is the period between 22h30 and 1h30am. It is at

that time that something was done to Dr Aggett which led to his death. The question that remains is who were those people seen by the three detainees in the corridor.

[138] Sisa Njikelane was adamant that when he stood peering into the corridor he saw Dr Aggett being carried shoulder high the people carrying him were moving from the lifts towards the showers.

[139] Under cross-examination by Adv Coetzee Sisa Njikelane maintained that he did not tell the 1982 court about that incident because he was scared that his interrogators who were in court all the time would have later subjected him to further torture or even kill him. Mr Njikelane informed the court that when he consulted with his attorneys Mr David Dison he did relate to him that version.

[140] When pressed further by Adv Coetzee on that issue Sisa Njikelane expanded in response as follows:

Mr Njikelane: “But I am trying to also to illustrate the State of mind I was in and I never saw myself as just an individual. I was part of a whole. Maybe if my Lord can be allowed to, to..... you know even David Dison himself from time to time he was quite harsh with me saying that I was not forthcoming when I was testifying. I cannot remember whether I did respond to him or whether I just spoke internally because to me I just could feel for him when he was saying that because in his view I must say as much as I can and in my view I am measuring what I can say because I do not know what will happen to me and my conclusion or my view is that the greatest of probabilities is that whatever I say determines my future relations with the special branch and I knew that even in future I was still going to interact with these people. Whether through a bullet in my head down the line or whether through detention inside with more tortures in whatever form.”

[141] It must be recalled that Mr Njikelane had been in and out of detention even before the detention of Dr Aggett. His second arrest took place when he was at the Aggett residence in Johannesburg so for all intents and purposes he knew a lot about the activities of Dr Aggett. In my view to protect himself and with the type of

fear he had for the police he in his view was justified to withhold that crucial information.

[142] Keith Coleman who was detained in a cell facing the long corridor heard a commotion in the early hours of the 5th February 1982. He ran to the window of his cell and saw figures going past a moment later all windows were slammed closed. He could not make out who were the officer walking past.

[143] He was released from detention on the 26th March 1982 and immediately placed under a banning order. Later he was to be called as a state witness in the case against Barbara Hogan and Cedrick Mayson.

[144] Mr Coleman did not see much save for the fact that the people moved from the main gate leading into the second floor cells inwards to the rest of the cells. When he heard this commotion he was in cell B3 which is close to the main gate.

[145] Mr Jabu Gabriel Ngwenya also testified in both inquests. He saw Dr Aggett being assaulted on the 10th floor on the 25th January 1982 by Whitehead and others. This information he did not tell the 1982 inquest and when asked the reason why his response was that he was scared because the security police had in the past killed people and as for him one day they picked him up and one of them stabbed him and they left him for dead. He felt vulnerable even though he had been released at the time he testified in 1982.

[146] Mr Ngwenya further testified about his chance meeting with Dr Aggett on the 3rd February 1982 in the room where they keep clothing and Dr Aggett told him that he had been badly tortured and also showed him a wound on his forearm. He concluded his evidence with what he saw in the early hours of the 5th February 1982. When he heard a commotion in the corridor he peeped through the window and saw a number of white police officers moving about. They closed- the window and blocked the peepholes. Mr Ngwenya found that to be strange.

[147] This evidence although not presented during the 1982 Inquest corroborated that of Keith Coleman to a large extent. The possibility is that the commotion they

heard or witnessed could have been at the time the security police were rushing to Dr Aggett's cell after he had been found hanging. This only leaves the evidence on Sisa Njikelane who is the only one who says he saw Dr Aggett being carried shoulder high in the corridor.

[148] Shortly after Sargent Blom-Visser had taken the statement from Dr Aggett she not only informed Major Cronwright about who the suspects were she handed the docket to her senior one Ferreira. It is common knowledge that Whitehead got to know about the accusation levelled against him and this angered him and 15 hours later Aggett was dead. Whitehead, Carr and Warrant Officer De Bruyn confronted Dr Aggett and Whitehead said to Aggett: "Is this the way you treat us now after we have been so good to you."

[149] This remark by Whitehead cannot and should not have been viewed in isolation in the 1982 inquest. It came against the background of Neil having been kept awake for 62 hours and each day Whitehead told Neil that he has not as yet told the truth.

Whitehead's affidavit filed in the 1982 inquest reads like a well-rehearsed cover up story parts of which reads as follows:

"Om 06h00 het ek weer van diens gegaan. Dit was 1981/01/30. Dieselde dag om 18h00 het ek weer diens rapporteur. Ek het toe weereens gemerk dat daar nog n paar leemtes in sy verklaring is, wat Dr Aggett moes opklaar. Ek het hom toe weer in verband met die leemtes ondervra."

[150] That rewriting of one statement went on for the next three days. It is therefore inconceivable that the interrogation and re-writing could have been taking place in a manner described by Whitehead as being peaceful and orderly. He was lying.

[151] In his affidavit filed in the 1982 Inquest Whitehead said the following after Dr Aggett had rewritten his statement over and over again:

“Ons het tot die gevolgtrekking gekom dat of Dr Aggett ons nie die volle besonderhede van sy bedrywighede in die betrokke organisasies verskaf het, dat hy sekere inligting waaroor ons beskik het van ons weerhou. As gevolg hiervan het on besluit dat Dr Aggett nou meer intensief ondervra moes word en om die kontinuïteit van die ondervraging te behou het ek nie die noodigheid gesien om hom terug na die selle teneem en ook om dat daar behoorlike fasiliteite in die kantoor vir hom beskikbaar was om behoorlik te kan rus.”

[152] This statement marked the start of the 62 hours non-stop interrogation by various officers. He was assaulted and tortured simply because he did not confess to being a member of any banned organisation.

[153] Dr Aggett was taken back to his cell at 3h30 am on the 4th February 1982. The police claimed that the 62-hour interrogation session with Aggett was a success because according to him Aggett had confessed and implicated a number of his comrades. The police who were ultimately believed by Magistrate Kotze argued that it is those disclosures that led to Dr Aggett committing suicide that evening. This is despite the fact that no evidence besides what Deetlefs and Whitehead had told the court was produced to prove the comrades betrayal story.

[154] The strange thing about that betrayal story is that no one alleged to have been named by Aggett was ever arrested. Once more Whitehead and Deetlefs lied in order to cover up their assault and torture on Dr Aggett during the 62 hours of interrogation.

[155] The late Adv George Bizos writing in his book “No one to Blame” at page 110 said the following about Whitehead:

“By the time Aggett had written and indexed a statement 75 pages long. The police were not satisfied, Aggett added 28 more pages. These too it turned out were insufficient for Aggett’s ambitious young interrogator. Lieutenant Whitehead had been with the Security Police for about six years. He was a determined man when he assumed command of Aggett interrogation on

Monday 25 January 1982, the day he heard of Aggetts complaint to the Magistrate and the same day that Smithers saw Aggett assaulted on the tenth floor. The suspect whom Whitehead had been watching for three years was finally within his grasp here at last, was a chance to prove that Aggett was involved in the illegal activity he had long suspected.”

[156] Constable Paul Sehloho, Andre Martin, Stephen Enslin, and Sergeant Agenbach as well as Warrant Officer Marais were the police officers on duty the night that Dr Aggett was found dead in his cell. The Standing operation and procedure is that cells be visited every one hour. However, this did not happen on the night of the 4th February between 22h30 and 1h30am of the 5th February 1982. This was a serious transgression which was never followed by any disciplinary hearing against the three police officers.

[157] There were contradiction in the evidence of Paul Sehloho and that of Agenbach as to what Dr Aggett did when they inspected his cell at 22h30 one said Dr Aggett made a thumbs up whilst the other one said that Aggett spoke and said he was fine. There is also the unexplained entry by Stephen Enslin of a visit having been done at 12h30 by Agenbach when in fact no visit was done.

[158] The Magistrate Kotze in his analysis of the evidence of the above mentioned police officers concluded that their evidence about the fact that nobody from outside including members of the Security Branch had no access that night to the cells was not contradicted or disputed. He said that he could find no inherent improbabilities that reflect adversely to their evidence he accepted their evidence as reliable. This finding leaves much to be desired and proved beyond doubt that Kotze was not prepared to subject the anomalies in that evidence to much scrutiny. We have now heard in this reopened inquest that Security Branch Officers had access to the cells and to the detainees at any time they wished. The fact that Aggett was returned to his cell at 3h30am on the 31st January 1982 proves that. Joseph Nyampule a retired Police Officer who worked on the 2nd and 10th floor during that period testified in the reopened inquest that the Uniform Branch had their own set of keys so did the Security Branch these were kept by Major Cronwright. He further testified that access to the second floor was also possible through the charge office. He also

emphasised that there was a way to access the second floor without going through the front charge office.

[159] The detainees Frank Chikane, Prema Naidoo, Barbara Hogan including Nyampule the police officer all testified that belts, shoelaces, scarfs were not allowed in detainees' cells because these were items that could be used by detainees to harm themselves. The question that was not answered in the 1982 inquest is how come all the banned items found their way into Dr Aggetts cell was it not a way to encourage him to commit suicide. When Agenbach and Marais last visited his cell at 22h30 they must have been aware of all the contraband and yet did nothing to remove same.

[160] Auret Van Heerden had expressed a fear so did Deetlefs who decided to keep quiet about the possibility of Aggett committing suicide. It must also be recalled that two days earlier during that long weekend interrogation one of the police officers said that he does not think that Dr Aggett will hold on for any longer. Deetlefs testifying in the reopened inquest said that after Dr Aggett had told him about Jan Theron being the leader of the underground movement he foresaw the risk that Dr Aggett may take his own life. It must be mentioned that he did not say so in the 1982 Inquest. He added that he did not mention it because they were threatened.

[161] He told the reopened inquest that both Major Cronwright and Lieutenant Whitehead threatened him not to tell the truth. It was an instruction from Major Cronwright that members of the Security Branch needed to stay together and not split. Clearly indicating covering up for each other and support each other at all costs. Major Cronwright told them they are all there for one purpose being to fight Communism. Deetlefs also conceded under cross-examination by Adv Varney that he committed a crime by not reporting assault on detainees and thus covered up crimes committed. Covering up was routine practice within the Security Branch.

[162] Deetlefs whilst admitting that electric shocks as a form of torture was used on detainees on the 10th floor found it difficult under cross-examination to tell the court how did he know about that and who in particular applied electric shocks on the

detainees he kept on saying that it was a general thing and commonly and spoken about in the corridors.

[163] I have no doubt that Deetlefs in responding to this question was trying his best to distance himself from the electric shock or torture treatment. On the one hand he was covering up for Whitehead and Cronwright and on the other hand he projected himself as a smart interrogator who never used any form of assault or torture on detainees. I have no hesitation to say that he was clearly lying he not only knew about this he observed it and probably also used electric shocks whilst interrogating detainees. Finally, under further cross-examination Deetlefs conceded that at some stage he did use force during interrogation and he stopped as he noticed that it was not yielding any positive results. He used to slap detainees across the face. He admitted that he used physical assault on Barbara Hogan.

[164] Deetlefs who had been left alone with Dr Aggett during the night of the 30th January 1982 told the court in 1982 and in the reopened inquest that Dr Aggett mentioned Jan Theron, Oscar Mphetha, Aurret Van Heerden and others as members of SACTU and that they were involved in organising workers to sabotage the economy of the country. When it was put to him that SACTU was not a banned organisation and also that in fact no action was taken by the police against the people Aggett had named, Deetlefs gave a nonsensical answer namely that there are different units in the police force. The statement that Deetlefs called the breakthrough statement was nothing and incriminated no one in fact it never existed.

[165] When Deetlefs told Whitehead and Cronwright about his fears that Aggett may commit suicide he says that Whitehead kept quite and he attributed this to the fact that Whitehead was inexperienced. Major Cronwright heard and understood him and did not tell him if he will take any steps. He left it there because Cronwright is his senior. He formed the opinion that both Whitehead and Cronwright did not take that statement seriously. He however conceded that both Major Cronwright and Lieutenant Whitehead were under a legal duty to protect the well-being and lives of detainees.

[166] The question that remains to be answered is whether Deetlefs having admitted that he lied during the 1982 inquest makes him an accessory after the fact in respect of the direct deeds and omission by Cronwright and Whitehead which led to the death of Aggett. What is of further importance is that Deetlefs heard Dr Aggett say he does not wish to live any longer and that he cannot forgive himself. This according to Deetlefs, Aggett said at the time that Whitehead was in the process of sending the four page telefax to head office and yet nothing was done.

[167] When it was put to Deetlefs that the whole issue about the four-page telex was a fabrication and that it was put up as a story to back up the police version as an explanation for suicide, Deetlefs vehemently disputed this and stood by his word that it did happen.

[168] If it is true as Deetlefs says that Aggett had incriminated people like Jan Theron and others and he was aware that Aggett had threatened suicide then they as the police should have had an interest in seeing to it that Aggett lives to give evidence against the people he had incriminated. The fact that all of them said nothing about Aggett having said he does not wish to live anymore proves that it did not happen that way. Aggett never contemplated suicide. What makes it further improbable is if he did say it why then go all the way to his High School and break into his parents' home in Somerset West in search of evidence to back up their ridiculous version that Dr Aggett committed suicide.

[169] The story of suicide becomes more ridiculous and a joke, when Deetlefs testified that he heard in the corridors of John Vorster Square that Dr Aggett hanged himself with a table cloth that his family had brought to him to have his lunch on. We all know that no table cloth was used in the hanging in any case table cloth would never have been allowed inside a detainee's cell.

[170] However, what is of importance is to note that in the final analysis Deetlefs conceded and admitted the following:

- i) That he slapped Barbara Hogan and made her sit under a table whilst being interrogated.

ii) That he insulted and verbally abused Reverend Frank Chikane by calling him a Kaffir-Predikant.

iii) That it was routine for members of the Security Branch as a whole which included fabricating of evidence and lying under oath.

iv) That he Deetlefs was forced by his seniors to lie and cover up in the case of Dr Neil Aggett.

[171] When cross examined by Adv Mlotshwa he agreed that he lied under oath when testifying in the case of assault against him by Barbara Hogan. Despite that the Magistrate believed him and acquitted him. He told this court he did so in order to protect his senior amongst them Lieutenant Whitehead. His exact words were as follows:

“Ek was deur my senior offisiere by die veiligheidstak daartoe gedwing en ek het nie ander keuse gehad nie alhoewe dit teen my grein is om sulke leuns te vertel. Ek was aangese om vals te getuig ten einde die aander lede van die veiligheidstak soos onder andere spesifiek Lieutenant Woensdregt a sook Lieutenant Whitehead te beskerm”

[172] Deetlefs conceded further that as far as he could recall during his time no Security Branch Officer was ever convicted of having assaulted a detainee. There was a lot at stake for the Security Police in respect of the Aggett inquest hence a lot of preparation was done for the inquest itself which included the trip by Paul Erasmus and Lieutenant Whitehead to Somerset East. The Police bugged the offices of George Bizos and rehearsed evidence.

[173] When it was put to him that a tie and five pairs of socks were found in Dr Aggett's cell after his death and also that the Police did not do cell visits between 22h30 and 1h30am on the 4th to 5th February 1982, Deetlefs said that the Police were negligent. He agreed that the responsible Police Officer should have been charged for neglect of duty by the Department. He also conceded that interrogation

was allowed to take place in the detainees cell he himself did it in 1985 in respect of Helena Pastoors.

[174] Deetelfs also told this court about a room situated on the 10th floor which was referred to as the “Waarheid kamer” or truth room. It was not occupied by anybody. It was completely sealed and had no windows.

[175] Deetlefs confirmed that Stanza Bopape was electrocuted and died on the 10th floor of John Vorster Sqaure and thereafter the Police took his body to Mpumalanga where the body was blow-up and thrown in a river full of crocodiles. He confirmed that the security police as usual covered up for each other and lied to the public that Stanza Bopape escaped en route to Vereeniging and was never seen again. It is on record that senior Police Officers namely of Hendrick Mostert, Charles Zeelie, Jacobus Engelbrecht and Johan Van Der Merwe applied for Amnesty which was granted after they told the truth.

[176] Deetlefs agreed with Counsel when it was put to him that if the Security Police successfully covered up and lied to the public about the disappearance and death of Stanza Bopape it goes without saying that they also covered up details leading to the death of Dr Aggett.

[177] In answering questions by the court Deetlefs said that he had no knowledge about Trade Unions and was not aware if SACTU was a banned organisation. In short he conceded that there was nothing specific that he wanted Aggett to tell him save that he had been told that the Trade Unions were busy planning to sabotage the economy of the country his actual words were as follows:

Court: So you did not want anything from him?

Deetlefs: Nee Edele want ek het nie geweet wat wat hy my kan vertel want ek het die Vakbonde nie geken nie.

[178] Dr Neil Aggett was the first White made detainee to die whilst in police custody at John Vorster Square. The events following the death of Steve Biko were

still fresh in the minds of the public and the international community, the security police had to do something to make certain that they are not to blame for the death. The big cover up as testified to by amongst others Paul Erasmus and Deetlefs commenced immediately on the discovery of the body of Dr Aggett.

[179] It is a known fact that where there is suspicion of a crime the scene should be cordoned off until arrival of forensic. When the photographs and fingerprint expert Mr Charles Wynand Lambrecht arrived at 3h40 am on the second floor the cell was full of Police Officers with some standing in the corridor in front of the cell. This does not exclude the possibility that the scene may have been contaminated already.

[180] Testifying in the 1982 Inquest James Agenbach a Sergeant told the court that at 12h45 am he and Constable Sehloho were first to find the body of Dr Aggett hanging on the grill and yet later it turns out that it was only at 1h30am when the body was found. What is further strange is that he cannot remember if the lights were on or off in the cell when he found the body this is despite the fact that at 22h30 he saw Aggett on his bed reading:

[181] Warrant Officer Lamprecht testifying in the reopened inquest told this court that when he arrived on the second floor there were a number of police officer in and around the cell and corridors. He took four photos of Dr Aggett whilst hanging on the grill and did not take any photos after the body had been brought down. He says he did not do it because the pathologist was already there and it is them who take such photos. He cannot remember if the light was on or off when he took photos and later looked for fingerprint. He had a torch and a lamp which he uses when doing crime scenes at night. He says visibility was good even though he cannot remember if the lights in cell 209 were on or not.

[182] When he took the photos Captain Victor the investigating officer pointed out to him what photos to take. It was pointed out to Lamprecht that in the 1982 inquest the four photos were not handed in he could not explain why and said that he handed up the photos to the investigating officer.

[183] Lamprecht testified as he did in 1982 that only one identifiable fingerprint was uplifted on the grill. He explained how he went about processing the bar by using an aluminium powder and a fingerprint brush. He dusted the whole area around where the deceased was hanging. He first dusted the back of the grill whilst the body was still hanging and after it was taken down he did the front portion.

[184] He elaborated that he found fingerprints not one fingerprint on the bars and out of all fingerprints found only one identifiable one being that of Dr Aggett was found. When asked what happened to other fingerprints Mr Lamprecht responded by saying that they were in fact not fingerprints but just marks on the bar itself. The identifiable fingerprint was found directly above the knot of the material on the bar.

[185] When Mr Lamprecht was asked a pertinent question as to how he managed to reach the top of the grill in order to locate the identified fingerprint his answer was in my view amazing he says the following:

Lamprecht: My Lord believe or not I do not recall, I do not know if they brought a ladder for me or whether I climbed there myself. I am honest I do not remember.

Ms Singh: But you would agree that you would have had to use some method to get a top.

Lamprecht: That is correct my Lord.

[186] What is critical and was not analysed by Magistrate Kotze in the 1982 inquest is the following:

- i) Why is it that only one fingerprint was found on the back of the vertical bar linking same to Dr Aggett.
- ii) What happened to the folien which indicated that other fingerprints were uplifted though not identifiable?

- iii) How did Warrant Officer Lamprecht manage to climb unassisted to the top most bar and take a picture there.

[187] Constable Thabo Mathupe testifying in the reopened inquest in relation to fingerprints taken in the cell and surfaces of the steel bar said that if he had attended the scene in 1982 he would have lifted more fingerprints by using various techniques available at the time. Mathupe's evidence on this aspect was corroborated by Mr Zietse Alberte a fingerprint expert who said that he would have expected that there be more fingerprints available on the steel-bars if Dr Aggett climbed up the grill, to attach the scarf and then hang himself. Frank Dutton a police specialist investigator with 38 years of experience in the police service also testified that the crime scene investigation into the death of Dr Aggett was done in such a way as to cover up real events.

[188] Mr Dutton had serious complaints regarding the manner in which the forensic investigation of cell 209 was carried out. He was particularly sceptical about the lack of proper photographs fingerprints and the fact that Captain Strugwig colleague of Lieutenant Whitehead removed the body of Aggett from the grill.

[189] The only photographs of Aggett's body in the reopened inquest were obtained from an SABC documentary and sourced by the law firm Webber Wentzel the attorneys for the Aggett family. Photos showing his body hanging as well as after it had been placed on the floor are missing there are suspicions that they were intentionally removed and destroyed by those who persist with the cover up.

[190] Dr Steve Naidoo an independent forensic pathologist who was briefed by the Aggett family in the reopened inquest to study records of the original inquest and to provide a specialist forensic pathology opinion on the cause, mechanism and nature of the death of Dr Aggett noted the following shortcomings:

- i) Firstly, he noted that the state pathologist failed to attend the scene of death contrary to the provisions of Section 3.4 of the Manual for the performances of Post Mortem (Form GW7/71) Dr Naidoo opines that had the state pathologist attended the scene there would have been a more accurate

time of death rather than the estimation done by the police. Also that he would have been able to give a more precise nature of the ligature and intricacies of its knot as it was found around the neck and lastly the state pathologist would have been able to give an on-site assessment on the capability of the deceased to mount onto the bars to suspend himself successfully.

ii) Secondly Dr Naidoo expressed concern that autopsy examination was hurried up and conducted within 7 hours and that the family had not been given adequate information about the circumstances of the death so as to enable them to make timeous arrangements to appoint their own pathologist. That is why Dr Botha the family pathologist arrived late when Dr Kemp had already commenced with the autopsy examination. Dr Botha was prejudiced and placed at some discomfort of having to content with an already opened body, he could not have had an opportunity to examine the ligature as it appeared around Aggett's neck.

iii) Dr Naidoo also questioned the failure of the post mortem report examination to include comprehensive and wide subcutaneous skin flap dissection under the skin of the trunk and limbs to look for concealed bruising. This would according to him been helpful in view of the history of torture and assault on Dr Aggett.

[191] Dr Kemp in his testimony had mentioned a triangular injury described as a fresh bruise over Dr Aggett's upper right scapula. Dr Naidoo regards this injury as unlikely to have been caused or resulted from Dr Aggett convulsing while hanging or pinching his skin against the bars. He is of the view that this fresh bruise was an ante-mortem injury from blunt force impact such as a fall or an assault at some time before the suspension.

[192] Ismail Momaniat one of the detainees saw Dr Aggett on the 3rd February 1982 and they were both on the first floor to be signed out. He noted that Aggett appeared to be in a terrible and dazed state, Aggett did not respond to his greetings on that day. The condition that he saw Aggett in made him doubt that Aggett had the

physical capacity and strength to commit suicide in the manner described by the police.

[193] Firoz Cachalia a detainee at the same time as Aggett saw him a day before his death being the 4th February 1982. He says that Aggett looked like he was at breaking point. He could not speak to him as there were about six police officers in the charge office.

[194] Mr Ronald Kasrils a veteran of the ANC/SACP movement testified about a document titled Inkululeko Freedom, February 1972 which he and the late Joe Slovo authored. He disputed that the original document had instructions that SACP members should rather commit suicide than to betray the organisation. This was a document that the Magistrate De Villiers relied heavily on in the Timol inquest in 1982. Mr Kasrils indicated that suicide was never a policy of the SACP.

[195] The evidence of Thabo Mothupi as well as that of Mr Albertze analysed together demonstrate that Aggett would not have been able to climb up the grill on his own unassisted. Thabo Mothupi is a fingerprint technician stationed at the Johannesburg Central Police Station. Mr Albertze is also a fingerprint expert. Besides their observation of the poor quality of the photographs both of them simulated the climb up the grill where Aggett was found hanging. Under cross-examination it was put to Mothupi that only the left forefinger of Aggett was found on the grill he responded that Aggett would have gripped the bar with his whole hand leaving prints of his palm, thumb and fingers.

[196] Mr Albertze performed a simulating in cell B18 on the second floor. He asked a colleague to climb the bars to see where he would touch and how he would climb up such bars and he took photos. That exercise left various fingerprints on the bars. His colleague made five (5) points of contact with the bars when climbing the grill. A second simulation after the bars had been cleaned also produced the same results which enabled him to lift five developed set of fingerprints that were clearer than when the bars were dusty.

[197] Commenting on the evidence of Charl Wynand Lambrecht who only found one fingerprint on the grill above the knot on the back of the bar Mr Albertze indicated 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.

[198] The taking and uplifting of the single finger print by Lamprecht is in my view undermined by inherent improbabilities attached thereto. Albertze used a stepladder to get to the top of the grill and had both his hands free to take pictures. On the other hand, Mr Lamprecht now says he could not recall if he used a stepladder to carry out his work on the grill. If Mr Lamprecht struggled to get up to the top how then did he manage to take a picture that only produced one identifiable fingerprint.

[199] Lamprecht confirmed that when he climbed up the grill he was wearing latex gloves and said that he had dusted those sections which would have been disturbed by his touching and pressure before ascending. He confirmed that he was not challenged by dust when attempting to lift the prints. He conceded that in 1982 he did not say anything about dust on the grills.

[200] Cross-examined by Adv Varney, Mr Lambrecht conceded that if the folien was available it would have depicted a number of prints and not one. This evidence he did not tell the 1982 inquest. No one could say what happened to the folien Mr Lambrecht answer was as follows:

Lambrecht: M'Lord I can only comment on it that would the folien have been available in the court, we could all see how it was made and the fingerprints in relation to one another that might be on the folien but it would not have only been one visible print.

Mr Varney: You see the problem we have Mr Lamprecht is there is literally a great deal of suspicion about what happened to Dr Aggett and everybody wants to put their minds at rest as to what actually happened and one has already heard the questions put to you by Adv Singh for the State, that there might have been other ways of getting the print there and if there had been a

reference in the first inquest proceedings to evidence to show that it was not just a solitary identifiable print but at least a series of prints even if the other prints were not necessarily that good, that would have helped the first court and certainly this court to come to a more definite finding on the matter.

Mr Lambrecht: That is why I am referring to the importance of the folien which unfortunately is not available. That would have shown it because I would never just take a small piece of folien and litt one print. I also cannot recall what was on the folien.

[201] The evidence by Frank Dulton who had been appointed to also investigate cases arising out of findings of the TRC and was also the first Chief Investigator of the Directorate of Special Operation (DSO) also known at the Scorpion Summarised the cover up relating to the death of Dr Aggett and many other detainees.

[202] Mr Dutton testified about his interaction with Eddie Chauke a former Security Police Officer on the 4th November 2015. Chauke was part of the Aggett's interrogation and was present at the last interrogation on the 4th February 1982. Chauke told Dutton that Whitehead had been angry with Aggett for opening an assault case against him and that in a rage Whitehead tore up Aggett's written statement. Whitehead exclaimed that it was all lies and that they will get the truth out of Aggett. Chauke told him that it was the intention of Whitehead to resume the interrogation later that night.

[203] Dutton concluded that the version put up by the Security Branch before the first inquest amounted to fabrication and a cover up to conceal the abuse and torture of Aggett and the conduct of the Security Branch Police in relation to his death.

[204] Captain Martin Johan Naude who had been called up from East London to assist in the interrogation at John Vorster Square had concluded in January 1982 that Aggett should be released because according to him there was nothing linking him to the so-called big treason swoop. Naude admitted that Aggett had made it clear to him that he was not a supporter of the ANC. In conclusion Dutton conceded

that it had now been proved that Security Police covered up crimes and where necessary they misled courts of law by fabricating evidence.

[205] Joseph Petrus Woensdregt was also involved in the interrogation of Dr Aggett on the night of the 30th January 1982. He Deetlefs and Whitehead worked together that evening. Woensdregt disputed Deetlefs evidence that he and Whitehead left him alone for a period of 5 hours with Aggett. In fact his whole evidence during 1982 and now is a denial or knowledge of any assault or torture on any detainee. This is despite wide evidence already given at TRC and in this inquest. He in most instances when confronted with real evidence refused to respond and claimed the right not to incriminate himself.

[206] It was put to Woensdregt that his statement that he was surprised why Aggett had complained to Sgt Blom-Visser since according to him Aggett was happy to spend the night in the 10th floor interrogation office than to go to his cell was a fabrication and a continuation of the cover-up that he conducted in 1982. It was put to Woensdregt that he misled the 1982 inquest and that he is continuing to do so in this inquest his response was that he will not break the oath he took. He told the court that when he joined the Security Branch he took an oath of secrecy not to disclose matters relating to certain issues about the Security Branch and to date hereof he still consider himself bound to that secrecy.

[207] That statement clearly indicates that Woensdragt still owes allegiance to the now disbanded and disgraced Security Branch Police. He does so despite overwhelming evidence of cover-up, murder deceit and torture which was placed before the Truth and Reconciliation Commission by his seniors. He is unrepentant. It is also interesting to note that him and Deetlfes were also involved in the interrogation of Ernest Dipale who also died by hanging in his cell at John Vorster Square in August 1982 a mere six months after the death of Dr Aggett.

[208] Woensdragt could not tell the court what the contents of the so called 4-page statement made by Aggett entailed save to say that Aggett incriminated his colleagues. Woensdragt like Deetlefs and one Visser all claimed not to know that Aggett had been kept awake since the 28th January 1982.

[209] Nicolas Johannes Visser and Captain Daniel Swanepoel both interrogated Agget from 6am to 6pm on the 30th January 1982 where after they handed him over to the team of Whitehead, Deetlefs and Woensdragt at 6pm. He like Woensdragt denied any knowledge of abuse against detainees perpetrated by his colleague save to say that he heard about assaults generally.

[210] Visser testified that he was not briefed about Aggett and also that he did not have any knowledge about Unions and claimed that Aggett was cooperative and the atmosphere was friendly. However, with all that being said he made a report to Whitehead at the end of his shift at 6pm that Aggett wants to talk the truth. He himself did not get from Aggett what that “truth” entailed. He also strangely does not recall the names that Aggett disclosed to him and Swanepoel. It is clear to his court that this talking of the truth was nothing else but a build-up and foundation that Deetlefs, Whitehead and Woensdragt worked on from 6am to 3h30am on the 31st January 1982.

[211] Visser whilst claiming not to have known that Aggett had been deprived of sleep for approximately 50 hours prior to him and Swanepoel taking over told this court that he would not have changed his approach to interrogate. The questions and answers went this way:

Mr Varney: So Mr Visser if I am hearing you correctly even if you had known that he had been kept awake for approximately two days you would have done everything the same, you would have continued with this abusive treatment, you would have kept him awake for another 12 hours in other words you would have continued to torture him by way of sleep deprivation.

Mr Visser: I was also going to talk to him.

Mr Varney: Because this was your instructions and so regardless of any knowledge of prior abuse and sleep deprivation since you were instructed to carry on for 12 hours you would have simply done that.

Mr Visser: That is what I said.

[212] Mr Visser is correct the instructions were to wear him out through continuous questioning Visser was carrying out the plan devised by Major Cronwright and Lieutenant Whitehead to intensify questioning. It is therefore not surprising that when Deetlefs, Woensdragt and Whitehead took over it was a continuation that resulted in the “so called” four-page incriminating statement.

[213] Roelof Jacob Venter was also a member of the Security Branch at John Vorster Square although he did not interrogate Dr Aggett he in his amnesty application before the TRC in respect of his conduct in the Barbara Hogan investigation admitted that when he interrogated detainees he applied the following forms of pressure on them namely:

- i) interrogation for long hours not always during the day.
- ii) prolonged standing.
- iv) tearing up statement after completion.
- v) push ups, running and sit ups.
- vi) insults.

[214] Venter also told this court that he had been trained that when torturing a detainee, he should make sure that no marks visible are left. He agreed with the statement and evidence by Deetlefs that “there was no space to split or accuse other members of irregularities. They had to stand together and cover each other in order to protect the security branch.” He accused former National Party President FW De Klerk and PW Botha for having abandoned the Security Branch and praised General Johan van der Merwe and Brigadier Cronje for having stood up for the Security Branch.

[215] Adv Varney put to Venter affidavits deposed to by various detainees namely: Prema Naidoo, Ishmail Momonial; Monty Narsoo in which they accused him of various forms of torture and assault. Venter denied the allegation. When it was put to him that he applied for Amnesty in respect of the assault with grievous bodily harm committed on Ms Reagan Shope, Venter responded that he did so on the advice of his lawyer. He gave the same nonsensical answer in respect of his amnesty application for assaulting Barbara Hogan.

[216] Mr Venter is clearly not telling this court the truth about what happened in police detention whilst he blames others. He cannot explain why he applied for amnesty. He has not played open cards and his evidence falls to be dismissed as false and misleading. He still is of the intention to cover up.

[217] Venter's partner in the interrogation of Aggett was Daniel Elardus Swanepoel. He as a young officer in the police force went on a security course which focused on banned organisations.

[218] Daniel Elardus Swanepoel a member of the Security Branch in Benoni together with Johan Nicholas Visser commenced interrogating Neil at 6am on the 30th January 1982 until 6pm when they handed him over for further interrogation to Whitehead, Woensdragt and Deetlefs.

[219] Both Swanepoel and Visser down played the interrogation methods they used in their interaction with Aggett. They said Neil was relaxed and did not show signs of exhaustion. They denied being aware that Neil had been kept awake since the 28th January 1982. They presented to this court a false evidence that though they heard that other interrogators tortured and assaulted detainees they themselves did not do so.

[220] In particular Swanepoel denied having smacked a detainee Ishmail Momonial but admitted that he may have made him stand for long periods. This last concession is corroborated by former police officers Paul Erasmus and Frank Dulton. Gideon Makhetha also a former police officer testified that a detainee Paul Langa was made to stand for 3 days after which he had swollen legs that looked like Elephant legs.

[221] Swanepoel and Visser jointly interrogated Neil about his Trade Union activities and possible involvement in the banned ANC. Visser was the senior of the two and he gave Swanepoel a general briefing. Swanepoel said that apart from information he had from informers he had no documents with him. Later during the day Neil told them that he now wanted to tell them the truth but there was not time as

their shift ended at 18h00. He claimed all along that Neil was physically and mentally relaxed which was a lie.

[222] Later in his evidence Swanepoel agreed that he made detainees run on one spot and further conceded that statement that he obtained from detainees were never made freely and voluntarily. He agreed that in the 1982 inquest he never admitted these acts of torture and yet in this inquest he still maintains that his 1982 evidence was correct as there was no physical torture. This is a clear act of still covering up.

[223] Under cross-examination by counsel from the Aggett family Swanepoel maintained that he had no regrets about his role in the security police because according to him he acted strictly within the law. He further disingenuously denied that there was a culture of cover up within the Security police. He claimed that if it had ever come to his knowledge that a crime had been committed during interrogation he would have reported it. This he said despite agreeing that he knew that members of the security police were required to do everything within their ability to protect the country against communism and the ANC. He however persisted that there was no cover up in respect of the death of Neil Aggett by the security police having produced a fabricated document allegedly penned by the communist party urging its members to commit suicide rather than tell the truth.

[224] Swanepoel admitted that sleep deprivation was a cruel and torturous form of interrogation and accepted that it was aimed at undermining the physical and mental health of detainees, disorientating them and weakening their resistance to questions.

[225] In the final analysis Swanepoel conceded that he had no intelligence linking Neil to the activities of the ANC and SACTU and that in effect all he wanted was a confession by Neil in which he implicates himself. He agreed that eventually the so called sensitive information allegedly given by Neil betraying his comrades amounted to nothing. Visser as a senior was pathetic and denied knowledge of assault and sleep deprivation and in the process perjured himself.

[226] The last hours of Neil's life were precipitated or triggered by Detective Blom (Visser) who after taking down a statement from him on the morning of the 4th February 1982 in which Neil implicated Whitehead in assault, torture and electrocution went ahead to tell the suspect Whitehead what Neil said. It is therefore not surprising that shortly after Blom-Visser had left Whitehead angrily confronted Neil about this.

[227] This act by Sergeant Blom-Visser was not only unprocedural but put Neil's safety in danger. According to Frank Dulton what should have happened is that once Neil had made the complaint Whitehead should have been removed from the interrogation. It was also strange that Sergeant Blom-Visser did not make arrangements to refer Neil to the district surgeon for medical report. All this in my view amounts to an orchestrated cover up.

[228] It was put to Mrs Blom-Visser by counsel for the Aggett family as follows:

Mr Varrney: So you are agreeing that the suicide in those circumstances, within hours of making a detailed statement in which he wants a reckoning is just very odd and very strange?

Mrs Visser: I agree.

[229] Evidence by both Constables Daniel Hendrick Zeelie and John Edward Lloyd demonstrates that procedures in respect of keeping of contraband items in the detainee cells was not followed judging by the inventory of items found in Neil's cell after his death. The question to be asked is why did the security police allow that, was it not a way of trying to prove that he was well looked after by the police when in fact the contrary was the truth? When Zeelie was reading out the contents of items found in Neil's cell he laughed and commented that he had never come across a detainee who was permitted to keep all his items of clothing in his cell to him it did not make sense. He was shocked to be told that amongst the items found was a tie for which there was no receipt. He agreed that on hindsight he himself should never have handed the kikoi scarf to Neil on the 11th December 1981.

[230] In the final analysis Zeelie conceded that in the circumstances all items found in Neil's cell may have been used to dress up the cell to create the impression that he was treated well.

[231] Mr Jan Theron a trade unionist who worked with Neil in the trade union movement confirmed that he never at any stage disclosed his ANC involvement to Neil and between him and Neil it was all about union work which was above board. Accordingly, there was no disclosure in the so called four-page document that could have made Neil to feel he had betrayed him. If there was such a document, he was never arrested and or interrogated about it by the security police. Theron told the court that he believes that the document was nothing more than a fabrication by the security police to justify the death of Neil and exculpate themselves of any wrong doing.

HOW DID DR NEIL HUDSON AGGETT DIE AND WAS THERE ANY PERSON RESPONSIBLE FOR THAT OR DID NEIL COMMIT SUICIDE?

[232] In this reopened inquest this court is called upon to make and record any finding that differs from the findings in the 1982 Inquest Section 17A (3)(b) reads as follows:

“3 A judge holding an inquest that has been reopened in terms of this section:

(b) shall record any finding that differs from a finding referred to in Section 16(2) as well as the respect in which it differs.”

[233] The findings by Magistrate Kotze in this matter is the finding referred to in Section 16(2). At the end of the inquest the Magistrate made the following finding in terms of Section 16 of the Act:

- a) The identity of the deceased person Neil Hudson Aggett.
- b) Cause of death: Suicide by 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.

[234] There is in my view sufficient evidence that was placed before this court that the conduct of the security police led directly to the death of Dr Neil Hudson Aggett. Not only did some of those security police who testified in 1982 concede that they lied but there is evidence which emerged during the TRC amnesty hearing by amongst other General Van der Merwe that the Security police committed acts of torture and assault on detainees in the name of getting rid of the ANC and communism.

[235] The version of the security police is that Neil on his own initiative got hold of the Kikoi scarf, then climbed up the grill to a point where he was able to use both his hands to tie a knot around one of the bars after tying it around his neck and then slid down thus constricting his neck until he died. This must have taken place sometime between the hour of 22h30 on the 4th February 1982 and 1h30am on the 5th February 1982.

[236] There is evidence supporting the view that statements by members of the security branch, the police officers investigating the death of Dr Aggett and the proceedings in the 1982 inquest were all part of an attempt to cover up or conceal the truth about how Dr Neil Aggett died. This view is supported by the unchallenged evidence of Frank Dutton, Paul Erasmus, Joe Nyampule and Gideon Makhetha all former police officers.

[237] This cover up started firstly with failure by the police to explain why no disciplinary action was taken against McPherson, Marais for failing to conduct inspection of the cells between the hours 22h30 and 1h30am. Secondly no action was instituted to find out why so much contraband was found in Neil's cell including a tie. Makhetha testified that this was totally against standing orders.

[238] The scene was tampered with in contravention with the standing rules. Frank Dutton's view which is unchallenged is that the police investigation failed on numerous counts firstly when the investigation commenced it was clear that the investigator had already adopted a view that Aggett had committed suicide. It is therefore not surprising that shortly thereafter the top brass which must have included major Cronwright and Hennie Muller instructed Stephen Whitehead to go look for evidence that may support that conclusion hence the trip to Somerset West by Whitehead and Paul Erasmus to look for evidence at Aggett's school and his home for any evidence of Aggett being suicidal. The question is if they were convinced that he committed suicide why go all the way to the Western Cape in search of non-existent evidence.

[239] Ms Jill Burger Aggett's sister as well as Dr Liz Floyd his partner all expressed the sentiment that there is no way that Neil would have contemplated suicide. This court has no reason not to accept that. Neil had made a detailed statement to Detective Blom-Visser on the 4th February 1982 in which he sought that those who tortured him be dealt with now why would he take his life instead of awaiting the outcome of his complaint?

[240] In Dutton's view the conduct of Sergeant Blom (now Visser) in immediately informing the suspects about the complaints of assault against them was reckless and improper. Hence Eddie Chauke a former security branch officer told Dutton that Whitehead was so angry about Aggett opening a case of assault against him and in a rage he Whitehead tore the 28-page statement that Aggett had been working on for weeks.

[241] Chauke told Dutton that when he last saw Neil Aggett it was at 3pm on the 4th February 1982 Aggett was visibly upset and depressed. Whitehead and the other white membership of the interrogating team said that they intended to resume further interrogation later that night.

[242] Neil did not commit suicide he was killed by members of the security police between 22h30 and 1h30am of the 5th February 1982. I have come to this conclusion because of the following unchallenged facts with appear herein.

[243] Dr Neil Aggett had been subjected to torture and sleep deprivation and no food for a period of 62 hours.

[244] His co-detainees Jabu Ngwenya, Ishmail Momoniat, Thabo Lerumo and Prima Naidoo “testified how he looked like a day before on the 3rd and 4th February 1982. One of them said he was like a Zombie whilst the other said he did not respond when greeted.

[245] In his weakened state caused by further electric shocks after he had laid a complained there was no way that he could have managed to climb up the grill and tie the kikoi around his neck and the grill.

[246] There has been no explanation why only one fingerprint being that of Neil was picked up on the grill. If it was him going up there would have been multiple fingerprints of him on the grill.

[247] The witness Thabo Mothupi testified that to climb to the top of the cell Neil would have touched at least 3 or 4 bars. Mothupi noted that the deceased would have gripped the bar with his whole hand leaving prints of his palm, thumb and finger.

[248] Mr Sietze Sibon Albertze a fingerprint expert corroborated the evidence of Thabo Mothupi and even performed an exercise of climbing up the grill. That exercise left various fingerprints on the bars. His colleague made five points of contact with the bars when climbing the grills.

[249] Professor Johan David Laubscher a chief government pathologist testifying in the 1982 Inquest was asked to commend if it is possible for the deceased to have gone up the grills himself he responded as follows: “

“Edelagbare die opset hier is vir my die volgende dat om hierdie eindresultaat te bereik naamlik om die liggaam dan in hierdie houding te plaas sekerlik as daar nie 'n blok and tackle beskikbaar was nie sou daar 'n

hele aantal persone nodig gewees net. Ek sou reken ten minste vyf om die leggaam dan in hierdie posisie te plaas op so n manier dat daar nie wesenlike naspeurbare fisiere versteurings is nie.

[250] There is evidence that Neil had not been taking meals for a few days. This explains why he walked sluggish and did not respond to other detainees who tried to speak to him. Jabu Ngwenya told the 1982 court as well as the reopened inquest that physically Neil looked depressed, his shoulders were slumped, he walked with very little purpose, he dragged and shuffled his feet along.

[251] When Whitehead became aware that a case of assault and torture had been opened against him he became infuriated and confronted Neil about that. Whitehead was more concerned about his career progression in the security branch and would not permit this complaint to stand in his way more so that he over 62 hours had failed to get a confession or admission from Neil. In his view the best was to get rid of Neil and eliminate him. After all this was one of the security police methods.

[252] Whitehead new that he had the support and backing of his superiors like major Cronwright and Theunis Swanepoel (also known as Rooi Rus).

[253] The Security police had access to the second floor cells at any time of the day and night. They could use the alternative entrance identified by the Architects Messrs Savage and Dodd Mr Savage testified that a detainee could be taken out of his cell through the gate that leads to the woman's section of the second floor and then down either staircase or the lift without being signed out at the control office. He concluded that it follows that the security police would access the male section without passing through the control office.

[254] We now know from the evidence of Joe Nyampule that detainees would be taken out of their cells during the day for interrogation and investigation and would never be back in their cells at 16h00 when the day shift knocks off only to find that the detainee was brought back late at night or in the early hours of the morning.

[255] Aurret Van Heerden testified in the 1982 Inquest that on the night of the 4th February 1982 that Sergeant Agenbach arrived at his cell opened it and just shouted greeting at him. Later that night he heard a commotion. Aurret repeated this evidence in the reopened inquest. Sisa Njikelane saw Neil being carried shoulder high along the corridor in the same manner muslim carry their dead.

[256] It was at that time i.e. between 22h30 and 1h30am that Neil was being carried back to his cell by members of the security branch after he had been tortured to a situation of unconsciousness.

[257] Black security police officer who were in possession of the keys to all the cells where according to Gideon Makhetha instructed to lie under oath. Nyampule one of them testified in the reopened inquest that they were treated like children, they had to do as they were told. He says they were forced to turn a blind eye to the inhuman condition of detainees. Paul Sehloho who was in possession of the key to cell 209 including McPherson who was in charge did not testify in the reopened inquest. I have no hesitation that in the 1982 Inquest they were instructed by Major Cronwright or Brigadier Muller to lie and tell that court that no security branch officer came to take Neil out of his cell that night.

[258] Dr Steve Naidoo a specialist forensic pathologist testifying in the reopened inquest at the instance of the Aggett family told this court that medical evidence indicates that the physiological trigger for death was the stopping of the heart by the carotid sinus pressure by the ligature (which causes immediate cardiac arrest) and or bilateral carotid artery occlusion. He says that this means that Aggett was alive at the time of suspension and it was the suspension that killed him however he says this could have happened in a conscious or unconscious state. The same medical findings would result with a conscious or unconscious person.

[259] Dr Naidoo referred to five (5) possible causes of unconsciousness namely: intoxication of some sort, concussion (traumatic), electric shock induced, hypoxia/anoxia from carotid arterial obstruction. Dr Naidoo added that these five possible causes of unconsciousness. If such unconsciousness had occurred it would

not necessarily have been mutually exclusive to one another and that a combination of one or several occurring together cannot be excluded.

[260] Electric shock and suffocation using a wet cloth was one of the methods that Whitehead and all other security officers were trained to use in order to get a detainee to confess.

[261] Whitehead was frustrated after having subjected Neil to 62 hours of torture that he had nothing positive to report. The complaint against him just exacerbated the whole issue. When Neill could not recover his consciousness they took him back to his cell and propped him up and hanged him.

[262] They then filled up his cell with all the good things in an effort to cover up. Magistrate Kotze found that the evidence provided by the security police was unblemished. He concluded that the evidence by the police relating to the night Neil died was uncontradicted this is hardly surprising because only security branch police were present and decided all forms of cover up. This included the evidence by Professor Jan Plomp who despite having never met Neil Aggett concluded that Neil was suicidal.

[263] The evidence of Professor Charl Vorster a qualified clinical psychologist and that of Professor Jan Adriaan Plomp a qualified psychologist contradicts each other in respect of Neil being suicidal. It is surprising that Magistrate Kotze preferred the evidence Professor Jan Plomp over that of Professor Vorster without any plausible or convincing reason. Plomp amongst others says that the issue of the telex was the trigger to commit suicide. We know that no such telex existed. It was therefore surprising that Magistrate Kotze concluded that he was satisfied that Professor Plomp was an unbiased and honest witness and yet said nothing about the evidence of Professor Charl Vorster.

[264] The Magistrate Kotze misdirected himself on a number of issues for example:

- a) He curtailed cross-examination by counsel for the family.

- b) He disallowed detainees' statements that disclosed torture.
- c) He knit-picked the smallest inconsistencies in the detainees' testimony.
- d) He disregarded testimony by detainees because they were in custody for political crimes.
- e) He accepted evidence by the security police without question.

[265] I have no doubt that Mr Kotze was biased from the onset in the conduct of the inquiry. He did not have an open mind to find out what happened between 22h30 on the 4th February 1982 and 1h30am on the 5th February 1982. His intention was to find out why Neil committed suicide and nothing more or less. His finding as to how Dr Neil Aggett died and as to whether it was brought about by any act or omission falls to be set aside.

[266] It is strange that both Woensdragt and Deetlefs in their motivation and application to be medically boarded said that Neil committed suicide on the following day after they had interrogated him which means the 31st January 1982 or the 1st February 1982. Woensdragt himself under cross examination by Adv Varney for the Aggett family said that he after they had interrogated Neil had no suspicion that Neil would commit suicide. He does not know where Deetlefs got that because he did not tell the court in 1982.

[267] Mr Paul Erasmus in his evidence told the court that detainees would be strangled until they were of the believe that they were on the brink of death. This he said would be done by placing a wet bag over the detainee's head and suffocating him until near unconscious.

[268] The evidence presented in this reopened inquest directly challenges the conclusion and findings of the Magistrate in the 1982 inquest. This court is accordingly tasked with evaluating all the evidence of the two inquest proceedings taking into consideration whatever is left available of the 1982 inquest and the further evidence received in this inquest.

[269] The Magistrate concluded that Neil committed suicide by hanging himself as a result of the following reasons:

- a) That Neil was a man who was devoted to a cause who could with a number of close associates to achieve his goals.
- b) That during his period of detention Neil disclosed particulars of his activities and more important the names of his associates.
- c) That 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 could not be excluded and lastly that he had been told that a close friend of his could not provide him with a portable radio in the cell.

[270] An examination of the reasons preferred by the Magistrate will demonstrate that the Magistrate was at pains to at all costs exonerate the security police in the death of Neil Aggett.

[271] Firstly it is correct that Neil was devoted to the cause of the workers. This is evidenced by the fact that he agreed to serve the union without being paid. I find no valid reason why will this be a reason for him to commit suicide rather than pursue the ideas of bettering the workers' conditions. The fact of the matter is that the security police could not accept that Neil decided on this course rather than make lots of money as a doctor. One of the police officers said that in the reopened inquest. His sister Ms Jill Burger and his partner Dr Liz Floyd without mincing words told this court that Neil would never commit suicide he still had a long way in enhancing his medical qualifications. Sergeant Blom-Visser agreed with this.

[272] Secondly the Magistrate says one other reason is that Neill disclosed particulars of his activities and also named associates and this caused him embarrassment therefore decided to take his life. In the first place this is speculation by the Magistrate. There was no evidence placed before the 1982 inquest as to what Neil's activities were which he disclosed which were unlawful. Neil told them that he was a member of a legal trade union and denied being a member of any banned organisation. In any case Neil must have mentioned the name of Jan Theron and that of Oscar Mphetha because they were union officials. If there was anything sinister about that the question remains why no arrests were made pursuant to that disclosure.

[273] The reason that Neil anticipated a feeling of rejection from his close associates for having disclosed their names is in my view speculative and nonsensical. According to Visser and Deetlefs Neil made the disclosure on the 30th January 1982. The question is why would he then wait four days then decide to commit suicide and in fact after laying a complaint of assault against Whitehead and other police officers. Similarly, the reason that Neil committed suicide because a friend could not provide him with a radio in the cell is in my view laughable and has no merit.

THE DENIALS OF ASSAULT ON NEIL AGGETT BY THE POLICE

[274] The ill-treatment of detainees is often expressed in the form of physical assault. This form of assault is easier to prove because it leaves marks like scars and bruises. However, there are other forms of torture that were applied to detainees which did not leave any evidence for medical practitioners this include sleep deprivation, standing for long hours whilst being interrogated, suffocation with wet bag, sitting on an imaginary chair and being made to run on one spot whilst naked for long hours as well as electrocution.

[275] Despite overwhelming evidence by detainees in the 1982 inquest about the various forms of assault meted out to them the Magistrate preferred the evidence of the police and in one sentence said the following.

“I have already dealt with the possibilities ingrained in the allegation of assault, sleep deprivation and other forms of ill-treatment and concluded that nothing of that kind is proved.”

[276] The finding that Neil consented to be deprived of sleep for 62 hours boggles one mind it is so far from the truth and reality that it falls to be rejected with the contempt it deserves. The Magistrate without further enquiry accepted the lies from the police. If Neil consented, then why did he lay a complaint on the 4th February 1982.

[277] Visser was a defendant in an action by Aurret Ven Der Heerden against the police in which action Aurret cited various forms of assault and torture on him despite the court finding in Van Heerden's favour Visser persisted in his denial about the assault. He claimed to have been in the then South West Africa (now Namibia) when the case was instituted. The police must have settled the civil claim on the basis of their admission of such acts and nothing else.

[278] The evidence of assault and other forms of torture of detainees presented before this reopened inquest especially by Prima Naidoo, Reverend Frank Chikana, Jabu Ngwenya, Sisa Njikelane, Barbara Hogan is so overwhelming that the denial and lack of knowledge thereof by the security officers namely Chauke, Deetlefs, Woensdragt, Visser and Swanepoel who all testified in the reopened inquest is disingenuous and amount to an act of cover up.

[279] This court accepts on the basis of overwhelming similar pattern of torture on other detainees that Neil Aggett was tortured which torture included physical assault.

DR NEIL AGGETT PHYSICAL CONDITION SHORTLY PRIOR TO HIS DEATH

[280] It is common cause that Dr Neil Aggett was in a weakened condition since the long weekend of interrogation and torture. One detainee described his movement as sluggish and shuffling. He also said to another detainee that he had been tortured and that he cannot take it anymore. Dr Naidoo an expert pathologist testified that

Neil must have been unconscious when being popped up the grill either through suffocation, electric shock or intoxication of some sort.

[281] Paul Erasmus testified that the security police routinely covered up for each other. He cited the case of Stanza Bopape who it later appeared in the TRC hearing was killed at John Vorster Square by electrocution then the police with the assistance and advise of the branch had his body thrown in the crocodile river in Mpumalanga. It is therefore clear that the death of Dr Neil Aggett was a big cover up of the truth and this involved all the security police who were there on the morning of the 5th February 1982. This view is supported by the evidence of Frank Dutton and Paul Erasmus. Major Cronwright took it upon himself to write out statements for the Black police officers so that their evidence should fall in line with the general scheme of cover up. Sergeant Joe Nyampule testified to that.

[282] Evidence of cover up is further supported by the sloppy investigation conducted as well as failure to hold administrative enquiries in terms of the Police Act concerning certain breaches of protocol and police orders. Frank Dutton testified that at the time the investigation commenced it was clear that the investigators had already adopted the view that Aggett had committed suicide. This he said fell short of the required level of impartiality which requires an open mind as to the cause of death. In his view the selected investigator Captain Carel Victor who was attached to the detective branch at John Vorster Square was unlikely to act independently in the face of senior officers such as Brigadier Rooi Rus Swanepoel and Hennie Muller who were overseeing the investigation on the death of Neil Aggett. In particular Brigadier Rooi Rus took charge of the death scene in cell 209 in the early hours of the 5th February 1982 even before the arrival of any forensic pathologist. Frank Dutton reminded this court that Brigadier Rooi Rus Swanepoel interrogated Suliman Salojee on the day he fell to his death from the 7th floor of Greys Building in Johannesburg on the 9th September 1964 and also that he interrogated James Lenkoe on the day Lenkoe allegedly hanged himself in March 1969.

[283] There are a number of issues and events which if the Magistrate had applied his unbiased mind to the facts and evidence would have indicated that the police version was a lie and a sham meant to cover up the truth. One of the most obvious is

the non-disclosure of the 4- page document wherein Aggett is said to have incriminated others and the second most glaring is the mission by Lieutenant Whitehead who was a suspect to the core together with Paul Erasmus on a fishing expedition aimed at coming up with evidence of Aggett's possible suicidal tendencies.

[284] Mr Frank Dutton makes the point which in my view sums up the involvement of the security police in the death of Dr Neil Aggett that is that the gap in cell visits during the late night of 4th February and early morning of 5th February 1982 may not have been a mere coincidence. This he says may have been orchestrated to permit the death scene. There is ample evidence and indication that support this view I have dealt with same elsewhere in the judgment.

[285] The evidence of Dutton and Erasmus corroborated that of the detainees that it was general practice for the police to torture detainees to a point of death. In the event death occurs whilst in detention a cover up story would be devised and implemented so as to shield security police from blame. According to Dutton and Erasmus the cover up story must be handled by a unit within the security branch known as "resident sweepers."

CONCLUSION

[286] Having heard all the evidence I have come to the conclusion that Dr Neil Hudson Aggett was killed by members of the security branch. The evidence of Detainee Coleman supported by that of Jabu Ngwenya and Sisa Njikelane is vital. It is clear that something happened between 22h30 on the 4th February 1982 and 1h30am on the 5th February 1982.

[287] The fact remains that Aggett was assaulted and tortured. The suspects were known to him and he told Sergeant Blom-Visser who they were. Those suspects included Lieutenant Whitehead who became angry and promised to carry on with further investigation.

[288] Lieutenant Whitehead was extremely obsessed with getting his way with Aggett. After Martin Naude had given a report early in January 1982 to the effect that he could find nothing to justify further detention of Dr Neil Aggett, Lieutenant Whitehead removed him from further involvement and directed that Naude go back to East London.

[289] It is also clear that the claim by Deetlefs supported by Woensdregt and Whitehead that Neil produced a four-page document in which he incriminated his comrades was nothing but a fabrication used to justify the reason why he committed suicide. Warrant officer Deetlefs was probed as to the contents of that apparently explosive and sensitive information and was unable to give any precise details of what it contained not only in this reopened inquest but also in the 1982 inquest. The subsequent telex to Head office relaying that four-page sensitive information was never produced.

[290] It is therefore clear that this was a fabrication concocted to explain to the 1982 inquest some kind of basis that supposedly led to Dr Aggett taking his own life. This was followed by a well-orchestrated cover up engineered from the top police structure within the security branch.

[291] It is clear that Dr Neil Aggett had had enough of the torture and made a complaint on the 4th February 1982 and judging by his character he was prepared to proceed with the claim and it is for that reason that he died within 15 hours after making the complaint.

[292] When Liz Floyd asked Deetlefs "who was killed" he responded "Someone close to you." It is significant that Deetlefs did not tell Liz about suicide. It therefore means that he knew that Dr Aggett had been killed. It is also not surprising that when Whitehead was asked if he will be applying for amnesty in respect of the death of Dr Neil Aggett he responded to Dr Pretorius one of the TRC investigators that he will not apply for amnesty and as regards Neil's death he blamed Paul Erasmus. He told the investigators that Paul Erasmus strangled Dr Aggett with a wet towel.

[293] Accordingly it is my well-considered view that Dr Neil Aggett did not commit suicide he was killed by members of the security branch at John Vorster Square.

[294] There is evidence implicating Lieutenant Stephen Whitehead in the killing duly assisted by unknown police officers. There is also evidence that officer Vissers, Deetlefs, Chauke, Woensdregt and Swanepoel participated in the cover up in 1982 and in this court by denying knowledge of assault and torture. I recommend that investigation be undertaken in this regard.

FINDING

[295] In the result and in terms of Section 17A (3) (b) read with Section 16(2) of the Act this court finds as follows:

- a) The Deceased is Dr Neil Hudson Aggett.
- b) Cause of Death was hanging.
- c) Date of death 5th February 1982.
- d) The death was brought about by acts committed by members of the security branch stationed at John Vorster Square amongst them Lieutenant Stephen Whitehead and Major Arthur Cronwright.

DATED at JOHANNESBURG this the day of MARCH 2022

M A MAKUME
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

APPEARANCES:

DATE OF HEARING : 20 January 2020 to December 2021
DATE OF JUDGMENT : 04 March 2022

EVIDENCE LEADER : Adv JJ Mlotshwa
: With him Adv Singh
INSTRUCTED BY : Office of the Deputy Public Prosecution

FOR AGGETT FAMILY : Adv Varney
With him Adv Scott
And Adv Fakir
INSTRUCTED BY : Messrs Webber Wentzel

FOR IMPLICATED SAPS : Adv Coetzee
(previous SAPS)

FOR CURRENT SAPS : Adv A Amojee