

THE TIMOL INQUIRY

to Jacobsen or the co-conspirators.

He had deliberately not attacked General Buys' evidence because cross-examination of the General had not finished when he collapsed, he said.

"Mr. Timol's death is a matter of acute controversy and acute contradiction," Mr. Maisels said.

It was common knowledge from a day after he went out of the window. It had received wide publicity both in anti- and pro-Government newspapers.

The Rapport reporter told the court that his version was, to the best of his belief, what General Buys said had happened. His version was consistent with that given by Brig. Patille, but inconsistent with that given by Sgt. Rodrigues.

The fact that General Buys could not say what Sgt. Rodrigues had told Brig. Patille could, perhaps, be attributed to the fact that he was not feeling well when giving evidence.

"I hope I am looking at it objectively," Mr. Maisels said.

Dealing with the medical evidence, Mr. Maisels said that unless the ante-mortem injuries were inflicted at least a certain period before death, they would be indistinguishable from those sustained at death.

If Mr. Timol had been seriously injured just before he went through the window, those marks would not show.

The Senior State Pathologist, Dr. N. J. Schepers, and the pathologist for the Timol family, Dr. J. Gluckman, agreed on the probable age of the older abrasions and bruises.

The court had also had the assistance of what was observed in the histological slides by the medical assessor, Professor I. W. Simson. Dr. H. van P. Koch, who assisted counsel for the police did not agree with the other pathologists, however.

"One man saw things nobody else saw, and those things which nobody else saw made that man disagree with both Dr. Schepers and Dr. Gluckman," Mr. Maisels said.

When Dr. Koch was asked to give the basis of his reasoning, the basis completely disappeared.

"It just was not there," Mr. Maisels said.

The most charitable interpretation is that he does not know what hyperplasia is.

Mr. Maisels said he had no hesitation in asking the court to accept the evidence of Dr. Schepers and Dr. Gluckman—evidence given after careful thought and analysis.

Whether Major Flick did or did not make the affidavit previously asked for, it was clear the police must have made investigations as to where Mr. Timol had been in any brawl, fight, ping-pong match, wrestling or football match, he said.

It was quite true that many of the abrasions and bruises found on Mr. Timol's body were superficial. But one had to consider this in conjunction with police evidence that they

had not laid a finger on this man.

The approach of the court should be that of the reasonable man advised by the medical assessor.

If a man had abrasions on the left arm as well as on the chest, one had to ask as a matter of ordinary common sense, whether there was not some connection.

It had been said that if blows were very hard, the ribs should have been broken. But Dr. Gluckman's evidence was that this depended on the age, the force used and the amount of clothing worn.

If Mr. Timol had been injured before being taken into police custody, one would have expected that the police would have found somebody to give evidence on it, Mr. Maisels said.

Counsel for the Timol family had put evidence before the court that Mr. Timol had not been injured before being taken into custody, and this was not challenged.

The attention of the court had to be drawn to the "desperate attempt" by the police to put the injuries outside the period of detention, Mr. Maisels said.

"I do say it is quite impossible for the court to find that every single one of these injuries was not inflicted while he was in police custody."

The police in their evidence, had been on a "whitewashing expedition." One could not be satisfied with their account.

"I can understand that it is extremely unpleasant for any police officer to investigate a case against another police officer," he said.

The court should be satisfied that it was unable to determine whether death had been by any act or part of an injury.

If the injuries had not occurred, the doubt on the cottonwool case said.

Mr. Clillers said that Maisels' address as entered in the report was not correct.

There was nothing in the report about the different statements of Sgt. Rodrigues.

The report in Rapport was "as hopeless and unreliable as the reporter had conceded himself to be an unreliable quoter," he said.

It was understandable that there might have been inconsistencies in Sgt. Rodrigues' different statements, considering the state of stress he was in after the death.

The sergeant, who was coincidentally a witness in the trial, was mentioned in the report as a man worth his word.

Mr. Clillers said that Maisels' argument that the screw on the window was not tightened at

Mr. Maisels' phraseology was not objective.

Brig. Patille had only wanted to find out if there had been foul play. Both he and General Buys had been satisfied on this point and it could not be expected that they would trouble to "check out their stories."

Far from casting a doubt on the veracity of the police, this indicated that, at that early stage, both believed Sgt. Rodrigues.

The reason for the taking of a statement from Rodrigues at a late stage was that statements were taken from the other interrogators in the meantime.

"General Buys is a busy man. He had other things to do," Mr. Clillers said.

The names "Quentin, Martin and Henry" had been mentioned in documents found in Mr. Timol's car. Also, Mr. Timol was not mentioned in the Jacobsen case as a co-conspirator because the Attorney-General's staff "elected not to name a dead man."

Police evidence was that they did not know why Mr. Timol had jumped through the window. But if there was a reason, the only one they could think of was that he had been upset by the mention of the three names by Mr. X.

There was no question of "an act or omission amounting to an offence," Mr. Clillers said.

Mr. Maisels had accepted that Mr. Timol had not been out of the window. "There were no questions there was no question of a murder."

The court could only find that there was an assault within the first or second-half days of detention. Mr. Timol was in custody for four days and 17 hours. On the medical evidence he could not have received injuries of a serious nature within the one-and-a-half days. These injuries happened on the day of the hearing or on the day of the reason for the window.

The one, and possibly offence was culpable homicide. No admission had been made by Maisels to show how this offence could have been committed.

Nobody is under a legal obligation to stop another from committing suicide.

The facts of the case showed that Sgt. Rodrigues intended to prevent Mr. Timol committing suicide, but could not.

Although it had been said that Dr. Schepers' evidence was detrimental to the police, much of the conflict had been resolved.

The injuries had probably all occurred at the same time, and from them it looked as if Mr. Timol "had been involved in some form of physical activity—possibly even a brawl," Mr. Clillers said.

According to police evidence, there had been no reason for assaulting Mr. Timol.

"If you don't have to assault a man, why would you?" Both Prof. Koch and Dr.

Schepers said the injuries occurred before Mr. Timol's arrest. Although there might be a wide medical difference between them, there was no difference for the purposes of this case.

Mrs. Timol had told the court police had told her they were going to beat up her son, "but would a policeman say a thing like that?" asked Mr. Clillers.

Her evidence was "patently false because, after sitting in the court for four days, she said she still did not know why her son had been arrested."

Police witnesses said Mr. Clillers had understood the "severest and most competent cross-examination, as, perhaps, only Mr. Maisels can do it."

The police have hidden nothing.

"Never before in the history of inquiries have the police produced an inquest docket of this size, detail and length."

This was not "white-washing."

Your Worship has to find why Mr. Timol went through the window. He jumped out. There is no mystery about it any more. To suggest at this stage that the cause of death is unknown is "stupid," Mr. Clillers said.

Bizos, for the "not guilty" side, said that, according to the Act, it was wrong to say that Mr. Timol's detention was not a matter of concern.

If injuries had occurred during his detention, it meant some witnesses had not been telling the truth. If injuries were inflicted on the deceased while he was in police custody, there was a probability that injuries were inflicted on him during the final 24 hours of detention. Those injuries could not be determined after death.

At the conclusion of the evidence yesterday, Mr. G. A. Bizos, (for the Timol family) said he had information regarding a reporter from the Rand Daily Mail who wrote a report about an interview with Major-General C. A. Buys.

It was a Mr. Denis Beckett, not Mr. M. Engelbrecht as was intimated yesterday. Mr. Beckett was at present at the Southern Methodist University, Lawyer's Inn, Dallas, Texas.

Mr. Bizos said Mr. Ken Campbell, night news editor of the Rand Daily Mail, had written to him on the subject of the previous night's report.

Every attempt would be made to execute the affidavit in Dallas and to return it within a few days.

Mr. J. J. L. de Villiers, said he "wanted to conclude the matter not later than next Thursday."

"I would like to start giving my verdict by Wednesday next week. If the affidavit is not here by then, will you leave it at that?"

"It must be handed in before Wednesday," he said.

Mr. F. A. Clillers (for the police) said the case was "costing a lot of money. This evidence would be third-hand. It would be evidence of what the

reporter said of what General Buys had said Rodrigues said."

If this sort of evidence was produced, it might be necessary for him to obtain a further affidavit from General Buys.

General Buys, "although not well enough to face the strain of viva-voce evidence, might well be well enough to make an affidavit."

He would suggest that evidence should be concluded.

Mr. Bizos said that there had been mention of the Jacobsen case during the evidence. It was handed in a certified copy of the indictment in the case.

Mr. Clillers said he was reserving the right to produce further evidence from the Attorney-General's office to deal with that indictment, if necessary.

Mr. Bizos further said he had information that the investigating officers in this inquest had been to a number of people to find out if they knew of any fights or falls Mr. Timol might have been involved in before his death.

If Mr. Clillers was prepared to admit that these officers had made these inquiries, it would not be necessary to recall them, he said.

Mr. Clillers objected, saying he "did not know what sort of procedure this was by which counsel made allegations from the bar."

Evidence like that should be placed before the court on oath, he said.

Replying to the magistrate, Mr. Bizos said the senior investigating officer in the case in the absence of General Buys was Major J. F. C. Fick.

Mr. Clillers said that to the best of his knowledge Major Fick had been involved in other matters.

He asked if the magistrate required Major Fick to "go around the whole police force to inquire if anybody had done this."

Mr. De Villiers said Major Fick need give evidence only on what he knew himself.

"I accept then that this concludes the evidence, subject to the possible submission of one or two more affidavits."

Mr. I. A. Maisels, QC (for the Timol family) asked if the magistrate required assistance by way of an address. The magistrate said there was no provision for that in the Act. He had the benefit of complete cross-examination on all aspects.

If Mr. Maisels wanted to address him shortly on the medical aspects, however, he could.

"I would like you to give me an objective view, I have had in this case a peculiar situation. Although the witnesses were mine, you had to take up a certain attitude. I would appreciate a perfectly objective view from you and Mr. Clillers and would appreciate it if you would not try to persuade me one way or the other," the magistrate said.

Mr. Maisels said that he would "certainly make my remarks as objective as possible."

Mr. De Villiers: I am not trying to dictate to you, but you have been on the Bench yourself in Rhodesia.

At the start of proceedings yesterday Mr. Maisels said he had studied the authorities on hyperplasia given to him the day before by Professor H. van P. Koch, the pathologist assisting the police.

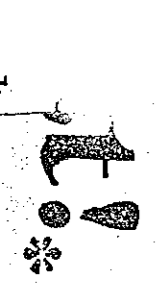
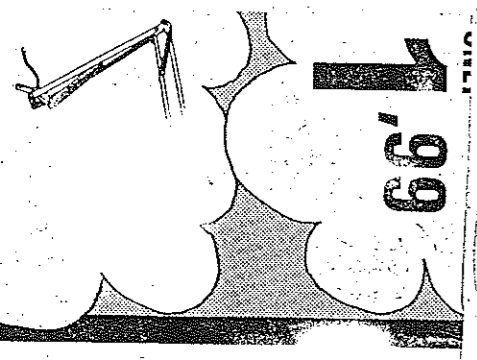
He asked Prof. Koch if he would agree with him that a student who did not know the difference between hypertrichosis and hyperplasia would be failed by any examiner. Prof. Koch agreed.

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