

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

Case number: I01/ 2017

In the matter of:

**REOPENED INQUEST: LATE AHMED TIMOL**

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**SHORT HEADS OF ARGUMENT  
ORAL PRESENTATION ON BEHALF OF TIMOL FAMILY**

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## INTRODUCTION

1. The story of Ahmed Timol's ("**Timol**") brutal death at the hands of members of the South African Police's (SAP) notorious Security Branch (SB) did not begin with an impromptu road block on Fuel Street, Coronationville in Johannesburg on the night of 22 October 1971. Its roots can be traced to the beginnings of the Apartheid system itself and its pathological obsession with race. This system did not tolerate any serious dissent and crushed those who would stand up to it.
2. There were many men and women of all races, young and old, who stood up to this pernicious system. They did so notwithstanding the considerable risks to themselves. Ahmed Timol was one of many who stood up to the formidable machinery of the Apartheid State. To the most, this machinery must have been seen as all powerful and invincible.
3. The Stormtroopers of the Apartheid State was the hated Security Branch.<sup>1</sup> The SB, acting under the instruction and blessing of their political overlords, targeted those like Timol who questioned the legitimacy of the entire system. They did not hesitate to brutalize, and where necessary, to murder in an attempt to stem the tide of freedom. Some 21 detainees died in security detention before Ahmed Timol died and by the time of the demise of Apartheid that figure would climb to 89. Eight of them perished

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<sup>1</sup> The Security Branch was the intelligence wing of the former SAP, falling directly under the Commissioner of the SAP and operating in a separate, parallel structure to the Uniform and Detective branches of the SAP. The Goldstone Commission of Inquiry regarding the Prevention of Public Violence and Intimidation described the SB as operating an "*illegal criminal and oppressive system*" and that their: "*involvement in violence and political intimidation is pervasive and touches directly or indirectly every citizen in this country*" ('*Report to the International Investigation Team.*' April 1994). The Security Branch served as the 'political wing' of the South African Police. The target of their activities became any person or organisation which opposed the government and its policies. Their activities included the close monitoring of the affairs and movements of individuals, the detention of tens of thousands of citizens and the torture of many, as well as trials and imprisonment of suspects. (Cawthra G, *Policing in South Africa*, Zed London, 1993).

in John Vorster Square (JVS).<sup>2</sup> Thirty three were alleged suicides.<sup>3</sup> Six involved falls from buildings or down stairs.<sup>4</sup>

4. Ahmed Timol would pay the ultimate price for standing up to Apartheid. In so doing he joined the illustrious ranks of Steve Biko, Griffiths and Victoria Mxenge, Neil Aggett, Babla Saloojee, Fabian and Florence Ribeiro and others. These names will be forever remembered and cherished by South Africans. The names of their tormentors will live on, but only in ignominy.
5. The Timol story is also a story of great injustice. It is a story of how dark forces were able to cover up crimes of torture and murder for some 46 years. It is the story of unbridled brutality meted out to young men and women held on the 10<sup>th</sup> floor of John Vorster Square. It is the story of ugly collusion between police officers, who were meant to uphold law and order, but instead who cover up crimes of torture and murder. It is the story of a Magistrate<sup>5</sup>, his assessor<sup>6</sup> and a senior public prosecutor<sup>7</sup> engaging in a charade of justice, happily playing their part in suppressing the truth – and providing the imprimatur of legitimacy to the murderous conduct of the police.
6. It is sadly, also a shameful story of great neglect, as the authorities in our new democratic order failed or declined to take action while the key suspects were still alive. This was an inexcusable lapse. It regrettably points to a design on the part of the authorities to permit the perpetrators of the past to avoid a reckoning with the

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<sup>2</sup> Exhibit O, pp1 – 7.

<sup>3</sup> *Ibid* p 8.

<sup>4</sup> *Ibid* p 10.

<sup>5</sup> Magistrate J J L de Villiers

<sup>6</sup> Professor I W Simson

<sup>7</sup> PAJ Kotze regularly appeared in political trials in the Eastern Cape and the Transvaal, and ten years later was the chosen Magistrate to preside over the Neil Aggett inquest.

truth, and escape justice.<sup>8</sup> With the reopening of this inquest, the National Prosecuting Authority has a wonderful opportunity to start afresh and to respond to the pleas of long suffering families of apartheid-era victims searching for answers and justice.

7. The Timol story is also a story of great inspiration and perseverance. The Timol family, in particular, Ahmed Timol's nephew and brother, Imtiaz Cajee and Mohammad Timol, refused to let go of their quest for truth and justice.<sup>9</sup> Their resolve and determination has been rewarded with an inquest before the High Court of South Africa. For the first time in 46 years there has been a serious investigation into the circumstances of Ahmed Timol's demise. As far as humanly possible each aspect of the case has been closely scrutinised. This Court has permitted the family the latitude to explore the full truth and for that they are deeply grateful.
8. The family extended an open hand to the surviving police witnesses. They went on record to say that they are only interested in the full truth. They sought no vengeance or retribution. If the full truth was disclosed they would not seek a prosecution on any charge.
9. This plea was spurned by the police witnesses. They doggedly stuck to the hymn sheets concocted by their masters decades ago. The police version, largely adopted by the first Inquest Court, asks us to suspend our belief in reality.
  - 9.1. They will have us believe that the Security Branch did not carry out torture;

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<sup>8</sup> Imtiaz Cajee affidavit, Vol H, p 27, para 27 – 29.6

<sup>9</sup> *Ibid*, p 29; Mohammed Timol affidavit, Vol C, p 121.

- 9.2. They will have us believe that they only heard about torture through wild claims made in the media;<sup>10</sup>
  - 9.3. They will have us believe that Timol was treated with care and compassion by the SB, just like one of their own children;<sup>11</sup>
  - 9.4. They will have us believe that Timol's interrogators were honest and fair men;<sup>12</sup>
  - 9.5. They will have us believe that Timol would have preferred death to a long prison sentence;
  - 9.6. They will have us believe that they did what they could for the critically injured Timol;
  - 9.7. They will have us believe that the police carried out a rigorous and methodical investigation in reaching the conclusion that nobody was to blame.
10. None of it is believable. None of it bears any relationship with the truth. In the circumstances the Timol family seeks justice against the police witnesses who continue to perpetrate the cover up of the crimes committed against Timol.

### **Main heads**

11. Our main heads are some 125 pages long. We would test the patience of this Court, and the wider public, if we attempted to raise all the detail in our main heads in oral

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<sup>10</sup> Oral testimony of Neville Els, Vol 9B, p RR (line 10) – SS (673), line 3; p VV (673), lines 10 - 23; Oral testimony of Seth Sons, Vol 15, p 1078, lines 12 – 24;

<sup>11</sup> Evidence of Col Piet Greyling (Officer Commanding SB at JVS) in the Interdict proceedings to restrain the SB from assaulting Salim Essop: Affidavit of George Bizos, Vol C, pp 71 – 72, para 54.

<sup>12</sup> Translated Finding of Magistrate de Villiers vol A p 41 – 42

argument. These submissions will be supplied in writing to this Honourable Court.

They cover:

- 11.1. The factual background, which includes tracking the history of Timol's life from his early years, his political involvement leading to his arrest, detention and death at JVS, as well the aftermath.
- 11.2. The purpose behind these proceedings and the law dealing with inquests as well as the standard of proof employed in inquests.
- 11.3. Evidential considerations, including the issue of the incomplete record from the first inquest.
- 11.4. Summaries of the evidence before these proceedings, including:
  - 11.4.1. The versions advanced by the SB at the first inquest;
  - 11.4.2. The finding of the Magistrate in the first inquest;
  - 11.4.3. Oral testimony and affidavits in relation to the conduct of the SB;
  - 11.4.4. Expert medical, scientific and architectural evidence;
  - 11.4.5. Expert evidence on torture in South Africa;
  - 11.4.6. Expert evidence on investigations and the cover-up;
  - 11.4.7. Evidence of civilian eye-witnesses;
  - 11.4.8. Evidence on suicide as a policy of the SACP;

- 11.5. Analysis of all the evidence:
- 11.6. Recommendations and conclusion.

### ***Outline of short heads***

- 12. In these short oral submissions we can only provide some snippets of the detail from our main heads. We will not provide a factual background or attempt to provide summaries of the evidence. We do however annex to these heads a chronology<sup>13</sup> that provides in table format and abridged form all the relevant facts. The chronology is annexed hereto marked “**A**”.
- 13. In these heads we will confine ourselves to:
  - 13.1. Setting out in condensed form the police version and the finding of the first Inquest Court (also referred to as “the Magistrate”) on 2 issues:
    - 13.1.1. the question of whether Timol was tortured, and
    - 13.1.2. Whether he committed suicide.
  - 13.2. We will then submit that the police version and the Magistrate’s finding are untenable and demonstrate that Timol was tortured and could not have committed suicide.
  - 13.3. We then briefly deal with the cover-up carried out by the police and argue that such cover-up can only be consistent with the desire to conceal unlawfulness, in this case torture and murder.

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<sup>13</sup> Exhibit T.

13.4. We then turn to the probabilities and set out what we contend likely took place during those fateful days in October 1971.

13.5. Finally, we set out our recommendations and conclusions.

#### **HIGHLIGHTS FROM THE CHRONOLOGY**

14. The Chronology provides a useful bird's eye view of this entire case and the evidence before this Honourable Court. It allows one to connect the dots. Connections can be made between events and between individuals over time. It really does place the fateful days of the last days of October 1971 into its proper context.

15. We wish to take a little time to highlight a few entries in the Chronology that we believe will help this Court to connect the dots behind the death of Ahmed Timol.

#### **POLICE VERSION (SUPPORTED BY THE FINDING OF FIRST INQUEST)**

16. Essentially the police version, and the finding of Magistrate De Villiers, is that late Ahmed Timol (Timol) was not mistreated<sup>14</sup> by the Security Branch (SB) and the cause of his death was attributable to Timol taking his own life.<sup>15</sup>

#### ***No torture or abuse of any form***

17. The police version on the question of abuse comprise the following assertions:

17.1. Timol was never tortured or abused in any way.<sup>16</sup>

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<sup>14</sup> Translated Finding of Magistrate de Villiers dated 22 June 1972, p 49, Vol A.

<sup>15</sup> *Ibid*, p 51, Vol A.

<sup>16</sup> Translated Finding of Magistrate de Villiers dated 22 June 1972, p 49, Vol A.

- 17.2. The SB did not torture or assault their detainees. They merely read about such allegations in the newspapers.<sup>17</sup>
- 17.3. Timol was treated in a “civilised and humane” manner.<sup>18</sup>
- 17.4. The police would not have harmed Timol since he was regarded as a “*big fish*”<sup>19</sup> and to be of “*inestimable value*”<sup>20</sup> to the SB and it “*was clear*” that Timol “*and his followers were busy with a campaign of sabotage and even mass murder*”.<sup>21</sup>
- 17.5. Any pre-fall injuries reflected in the Post Mortem Report are likely explained by “*a brawl where Timol was possibly pushed around and possibly also fell*.”<sup>22</sup>

### ***Timol committed suicide***

18. The first Inquest Court (also referred to as “the Magistrate”) accepted the police version that Timol committed suicide on the strength of:
- 18.1. The evidence of a pay clerk, one Sergeant Joao Rodrigues (Rodrigues), who claimed to have witnessed Timol “*diving*” through the window of Room 1026;<sup>23</sup>
- 18.2. The speculative claims of the police that Timol committed suicide because:
- 18.2.1. He feared a long prison sentence;<sup>24</sup>

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<sup>17</sup> Transcribed record, Els testimony, pp RR673 – SS673.

<sup>18</sup> Translated De Villiers Finding, p 49, Vol A.

<sup>19</sup> Essop affidavit Vol C paras 26 p 31

<sup>20</sup> Translated De Villiers Finding, p 3, Vol A.

<sup>21</sup> Translated De Villiers Finding, p 9, Vol A.

<sup>22</sup> *Ibid*, p 48, Vol A.

<sup>23</sup> Translated De Villiers Finding, p 6, Vol A.

<sup>24</sup> Vol B: van Niekerk, exhibit F, p15, para 5; Gloy, exhibit G, pp18 – 19, para 4; and Van Wyk affidavit, Vol B, p10, para15.

- 18.2.2. It was Communist Party policy or doctrine to commit suicide rather than to betray the party or your comrades.<sup>25</sup>

### **POLICE VERSION IS UNTENABLE**

19. In our respectful view there is little or nothing in the police version that can be accepted. The police version, as well as the finding of Magistrate De Villiers, that Timol was not assaulted or mistreated has to be rejected. It does not bear the slightest resemblance to the similar fact evidence or the hard forensic medical evidence.
20. The finding of suicide rests exclusively on the evidence of Rodrigues whose evidence must be regarded as wholly unreliable. Indeed the bulk of his evidence before both Inquest Courts was manifestly false. The police resorted to false claims and relied on fabricated documents to suggest why Timol might have committed suicide.

### ***Similar fact evidence of torture, assault and abuse***<sup>26</sup>

21. The finding by the Magistrate that Timol “*was treated in a civilised and humane way*” rests entirely on the say so of the police witnesses.<sup>27</sup> It is our respectful submission that this Honourable Court will have little difficulty in reaching a diametrically opposite conclusion.

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<sup>25</sup> Van Wyk affidavit, Vol B, p10, para15; and Vol A, p1 155, Translated inquest judgment, p49.

<sup>26</sup> Similar facts are facts that are directed at showing that a party to the proceedings (usually the accused) or a witness in the proceedings (such as a complainant) has behaved on other occasions in the same way as he is alleged to have behaved in the circumstances presently being considered by the court. Similar fact evidence will be admissible when it is both logically and legally relevant. (See Schwikkard and Van der Merwe *Principles of Evidence* 4<sup>th</sup> Edition (Juta & Company, Capet Town, 2016) at pp76 – 77.

<sup>27</sup> Translated De Villiers Finding, p 49, Vol A.

22. The Timol family have placed substantial similar facts of the most brutal torture and abuse sustained by detainees at the hands of the SB throughout the 1960s through to the 1980s, and in particular by detainees held on the 9<sup>th</sup> and 10<sup>th</sup> floor of John Vorster Square (JVS) between 23<sup>rd</sup> and 27<sup>th</sup> October 1971. In this regard we draw the attention of this Honourable Court to the summary of the witness testimony in our main heads of argument, the chronology, and to the table of deaths in detention marked as exhibit O. These include the following statements (and in some cases the oral evidence):

22.1. Dr Salim Essop,<sup>28</sup> Dr Dilshad Jetham,<sup>29</sup> Prof Kantilal Naik<sup>30</sup> and Mohammad Timol<sup>31</sup> who were detained in the same time period as Timol.

22.2. Stephanie Kemp,<sup>32</sup> Shantie Tweedie (formerly Naidoo),<sup>33</sup> Snuki Zikalala,<sup>34</sup> Laloo Chiba,<sup>35</sup> Abdulhay Jassat,<sup>36</sup> Peter Magubane,<sup>37</sup> and Monica Dube<sup>38</sup> who were detained and tortured in the 1960s and 1970s and 1980s.

22.3. Alwyn Musson,<sup>39</sup> Hanif Vally,<sup>40</sup> Parmanathan Naidoo,<sup>41</sup> Ismail Momoniat,<sup>42</sup> Kevin Martin<sup>43</sup> and Rashidahmed Valli Moosa<sup>44</sup> who were assaulted and abused by SB officer Seth Sons in the 1970s and 1980s.

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<sup>28</sup> Vol C, pp 22 – 58; Transcripts: Vol 1, p 36 – 98 (26 June 2017), p 100 – 134 (27 June 2017), Vol 2, p 135 -141 (28 June 2017).

<sup>29</sup> Vol C, pp 90 – 104; Transcript: Vol 4, p 264 – 328 (30 June 2017).

<sup>30</sup> Vol C, pp 105 – 117; Transcript: Vol 3, p 197 – 228 (29 June 2017),

<sup>31</sup> Vol C, pp 121 – 134.

<sup>32</sup> Vol H, pp 12 – 18, Transcript, Vol 5, p 400 – 419 (24 July 2017).

<sup>33</sup> Vol H, pp 45 – 52.

<sup>34</sup> Vol H, pp 53 – 62.

<sup>35</sup> Vol H, pp 63 – 75.

<sup>36</sup> Vol H, pp 76 – 95.

<sup>37</sup> Vol H, pp 95 – 101.

<sup>38</sup> Exhibit H18.

<sup>39</sup> Exhibit H21.

23. Types of torture included *inter alia* physical assault; placing a hessian bag over a detainees head for suffocation; mule kicks; sleep deprivation; and electrocution. For a complete list of the torture methods used by the SB, see exhibit **C14**; and the document titled "*Allegations of assault, torture and abuse by the Security Branch (1963 – 1984)*" annexed to these heads marked "**B**".
24. Perhaps the starkest example of similar fact evidence comes from Dr Salim Essop's (Essop) harrowing account of torture.
- 24.1. At the time of Essop's arrest with Timol on the night of 22 October 1971 he was only 22 years old. He was a medical student who abhorred the system of Apartheid and did what he could do oppose racism and oppression.<sup>45</sup>
- 24.2. Aside from his other activities such as running a bursary scheme for disadvantaged black students he assisted Timol in reproducing and distributing SACP literature.<sup>46</sup>
- 24.3. Essop was not a member of the SACP and was not in communication with the organisation.<sup>47</sup> He did not know who Timol was communicating with in London.
- 24.4. Notwithstanding his subordinate and support role to Timol, he was subjected to some of the most barbaric forms of torture ever recounted in a South African court. It was vicious, sadistic and unrelenting. By Tuesday morning Essop was in

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<sup>40</sup> Exhibit H22.

<sup>41</sup> Exhibit H23.

<sup>42</sup> Exhibit H24.

<sup>43</sup> Exhibit H25.

<sup>44</sup> Exhibit H26.

<sup>45</sup> Vol C, Essop affidavit, p27, para 13.

<sup>46</sup> Vol C, Essop affidavit, p25, para 8.

<sup>47</sup> Transcribed reopened inquest record, p884.

a comatose state and close to death. He had to be rushed to hospital and his father had to obtain an urgent court order to restrain the brutality.<sup>48</sup>

- 24.5. The police will have us believe that Timol was never assaulted, indeed they treated him with care and compassion as one of their own children.<sup>49</sup> It is a version that would be laughable if it were not so tragic.
- 24.6. It begs the most obvious question: why would the SB torture Essop to near death, but treat the '*big fish*' with kid gloves. It makes no sense whatsoever. We respectfully submit that this Honourable Court will have little difficulty in concluding that the '*big fish*' in the form of Timol was tortured with equal if not greater ferocity that that endured by Essop.
- 24.7. It is no coincidence that Essop was kept locked up incommunicado while the first inquest was underway. This was part of the cover-up. If his evidence had been heard in 1972 it would have completely discredited the police version that security detainees were not brutalized.
25. The evidence of Essop and the other detainees demonstrate that torture was a routine and systematic practice of the SB between the 1960s and 1980s.
- 25.1. This is confirmed by the research carried out Professor Don Foster<sup>50</sup> as well as the experiences related by George Bizos SC in representing numerous detainees over decades.<sup>51</sup>

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<sup>48</sup> Exhibit E1, pp3 – 6.

<sup>49</sup> Evidence of Col Piet Greyling (Officer Commanding SB at JVS) in the Interdict proceedings to restrain the SB from assaulting Salim Essop: Affidavit of George Bizos, Vol C, pp 71 – 72, para 54.

<sup>50</sup> Exhibit K, p102 and p105; and Transcribed reopened inquest record, pp591 – 614.

<sup>51</sup> Bizos SC affidavit, Vol C, p60, para 5. Also see: Bizos G (1998) *No one to Blame In Pursuit of Justice in South Africa*, Cape Town South Africa, David Phillip Publishers

25.2. Some of the most vicious torture was meted out to detainees held on the 10<sup>th</sup> floor of JVS. This much was confirmed by former SB officer, Paul Erasmus who witnessed such torture first hand as an interrogator.

25.3. Erasmus also advised about the existence of a “*waarheid kamer*” (truth room) which he advised was a storeroom just around the corner from room 1026.<sup>52</sup>

### ***Forensic medical evidence of torture, assault and abuse***

26. The forensic medical evidence puts it beyond question that Timol was brutally tortured before he died. This is because the Post Mortem report (PM Report) of Dr Nicolaas Jacobus Schepers (Schepers), a senior government pathologist, sets out considerable ante mortem injuries.<sup>53</sup>

27. Two forensic experts who testified on behalf of the Timol family, Dr Shakeera Holland (Holland) and Dr Segaran Ramalu Naidoo (Naidoo) and who studied the PM Report and photographs of the body, concluded that Timol must have endured sustained physical assault while in police custody prior to his death.<sup>54</sup>

28. They noted that the following serious injuries are not consistent with a fall from a height:

28.1. Several abrasions, which according to Dr Holland were not related to the fall because they showed scab formation indicating that they were present before the fall.<sup>55</sup>

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<sup>52</sup> Transcribed reopened inquest record, pp338 – 392 (see p376 – 380)

<sup>53</sup> Dr Schepers SAP 183 and post mortem report, Vol B, exhibit X pp48 – 58. The post mortem report is dated 4 November 1971.

<sup>54</sup> Vol C, Dr Holland Report, pp135 – 154; and Exhibit C3.

<sup>55</sup> Holland Vol C P145 - 146

- 28.2. Bruises that were diffusely distributed all over Timol's body. According to Holland, bruises in falls from height tend to be more irregular and poorly defined, whereas most of the bruises that can be seen in the photographs are well defined patterned bruises.<sup>56</sup> Naidoo also agrees that these injuries are not consistent with the fall.<sup>57</sup>
- 28.3. According to Holland the depressed skull fracture of the left parietal bone with loose bone fragments is not consistent with the fall because isolated depressed skull fractures are not commonly seen in falls from a height.<sup>58</sup>
- 28.3.1. Naidoo agrees this injury is not consistent with a fall from a height.<sup>59</sup> Impacts at diametrically opposite sides of the head cannot occur from one fall because the body and head does not bounce about on impact such as a football would do but impacts more like sack of potatoes which remains in the position and profile of its impact.<sup>60</sup>
- 28.3.2. In oral evidence Holland said that she believed this injury could have been caused by Timol being struck on the head with a blunt instrument such as an iron rod or hammer.<sup>61</sup>
- 28.3.3. According to Naidoo the Impact that struck the head probably caused Timol to fall to the floor from a standing or sitting position. It is likely that

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<sup>56</sup> Holland Vol C pg146

<sup>57</sup> Naidoo Vol C3 pg7

<sup>58</sup> Holland Vol C pg. 146

<sup>59</sup> Naidoo Vol C3 pg8

<sup>60</sup> Naidoo Vol C17 pg7.

<sup>61</sup> Holland transcript oral evidence Vol

the blow rendered him unconscious. It could have taken place any time within 12 hours before the fall.<sup>62</sup>

28.3.4. Both agree that the depressed fracture is a very serious injury which have rendered Timol unconscious and since it would have caused swelling and bleeding on the brain,<sup>63</sup> if left untreated would have resulted in death.<sup>64</sup>

28.3.5. In oral evidence Dr Holland stated that at the very least this injury would have resulted in a concussion, with possible revival, but at worst it could have caused a stroke and in some instances, paralysis. It is possible for a person with this type of injury to slip in and out of consciousness.<sup>65</sup>

28.4. Naidoo was of the view that the fractures on the face were due to the fall except for the left-sided jaw fractures. The left-sided jaw fractures are not readily explained by the fall because the “recess-and-buttress” principle.<sup>66</sup> He believed this injury may have been caused by a blunt force impact to the area.<sup>67</sup> Holland was of the view that the right upper jaw fracture was also not consistent with the fall.<sup>68</sup> This type of injury would have made it very difficult for Timol to talk, eat or drink any beverage like coffee<sup>69</sup>

28.5. Holland identified the further non-fall injuries:

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<sup>62</sup> Naidoo Vol C17 pg9

<sup>63</sup> Naidoo and Holland transcript of oral evidence Vol 7 pg558 Vol 6pg 508

<sup>64</sup> Naidoo and Holland Vol 7 pg558 Vol 6pg 508

<sup>65</sup> Holland transcript oral evidence Vol 6 pg 508-509

<sup>66</sup> Naidoo Vol C3 pg 8

<sup>67</sup> Naidoo transcript of oral evidence Vol 7 pg560

<sup>68</sup> Holland Vol C pg146

<sup>69</sup> Holland transcript oral evidence Vol6 pg 503

- 28.5.1. Contusion in Timol's mouth, which she believed could have been caused by being slapped or kicked on the face in the region of the mouth.<sup>70</sup>
- 28.5.2. Fracture of the lateral aspect of the first rib on the left is also not consistent with the fall, according to Holland because it is a relatively protected structure it is likely that a blunt force to this area would have caused this injury.<sup>71</sup> Naidoo also agrees that this injury is not consistent with the fall.<sup>72</sup>
- 28.5.3. Bruising on the thigh and groin area which was likely caused by multiple blows to the area, such as mule kicks,<sup>73</sup> which would have impacted on Timol's ability to move and would have made standing difficult.<sup>74</sup>
- 28.6. Naidoo highlighted further injuries not related to the fall to his lower limbs. He noted that these injuries are inconsistent with the fall because the patterns of injuries indicate that Timol landed on the right side of his body and not on his feet.<sup>75</sup>
- 28.6.1. Extensive bruising on the right calf.<sup>76</sup> Naidoo explained in oral evidence that the injury could have been caused by force of a blunt impact such as an iron rod.<sup>77</sup>

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<sup>70</sup> Holland transcript oral evidence Vol 6 pg 481

<sup>71</sup> *Ibid*

<sup>72</sup> Naidoo Vol C3 pg7

<sup>73</sup> Holland transcript oral evidence Vol 6 pg 504-5

<sup>74</sup> Holland transcript oral evidence Vol6 pg 504-5

<sup>75</sup> Naidoo oral evidence transcript Vol 7 pg 555-6

<sup>76</sup> *Ibid*

<sup>77</sup> *Ibid*

- 28.6.2. Dislocated left ankle: .This type of injury usually harbours a fracture and brings into focus Salim Essop's testimony of seeing someone of Timol's stature being dragged along by SB officials on the 10<sup>th</sup> floor.<sup>78</sup>
- 28.6.3. Contusions on the top of the three toes of the left foot .Naidoo suggested in oral testimony that it is possible that this type of injury could be caused by stamping on his bare foot.<sup>79</sup>
29. This medical evidence directly contradicts the police version that Timol was never assaulted and that he was treated in a "*civilised and humane way*".<sup>80</sup> On the basis of this evidence alone, we submit that the police's version that Timol was never assaulted and that he committed suicide cannot be given any credence.

***Magistrate's finding of no assaults by the SB***

30. Magistrate De Villiers (the Magistrate or De Villiers) had to concede that there were some ante mortem injuries however he concluded that such injuries were not caused through assault or torture while Timol was in police custody.<sup>81</sup>
31. The Magistrate resorted to conjecture to explain away the pre-fall injuries. He speculated that perhaps these injuries were sustained by Timol during a brawl where he was pushed around and possibly fell.<sup>82</sup> However the Magistrate also accepted the evidence of the SB that Timol was not assaulted and indeed was free of visible injuries. If Timol had been involved in a bar brawl or any other altercation before his

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<sup>78</sup> Naidoo Vol C3 pg7

<sup>79</sup> *Ibid*

<sup>80</sup> Translated inquest judgment, p49.

<sup>81</sup> Finding of Magistrate De Villiers (translated) vol A p 45-46

<sup>82</sup> Judgement de Villiers translated vol A page 48

detention then it is unlikely he would have been free of visible injuries. This glaring contradiction was never resolved in the Magistrate's finding.

32. He accepted without exception, and without question, the evidence of the police witnesses that none of them assaulted Timol and that none saw any visible injuries.<sup>83</sup>

Indeed the Magistrate spoke in positively glowing terms of the SB members:

*"I got the impression that **Captain Dirker** was honest when he testified and I do not have any reason to be suspicious about, or to doubt his testimony. ....He is also corroborated by Sergeant Leonard Kleyn who was with him all the time he questioned the deceased ...*

*As far as **Colonel van Wyk** is concerned... My impression is that he is honest and trustworthy. He is corroborated by **Captain Bean**.... I find Captain Bean honest and reliable.*

*As far as **Captain Gloy** and **Captain Van Niekerk** are concerned... Both gave their testimony in a calm and controlled way and I was especially impressed with Captain Van Niekerk who left me with a feeling of complete faith in his honesty and fairness. I do not have the least difficulty to accept these two witnesses as reliable and trustworthy."<sup>84</sup>*

33. Essentially the Magistrate accepted the version of the police because they corroborated each other and because of their apparent calm demeanour. There is evidence before this Court that the one corroborator, Sergeant Kleyn, was responsible for a "furious assault" of Salim Essop, not long before he assisted Dirker with his interrogation of Timol.<sup>85</sup>
34. The Magistrate appeared to be seduced by Van Niekerk who left him "with a feeling of complete faith in his honesty and fairness." Needless to say Magistrate De Villiers and senior public prosecutor, PAJ Kotze, conducted no background checks into Van Niekerk and his colleagues. If they had they would have discovered a veritable history of brutality, including convictions of 2 counts of assault (in which the victim

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<sup>83</sup> Finding of Magistrate De Villiers (translated) vol A p 2 – 5

<sup>84</sup> Finding of Magistrate De Villiers (translated) vol A p 41 – 42

<sup>85</sup> Essop affidavit Vol C para 29.

died)<sup>86</sup> and multiple complaints of serious assault and torture in 1970 and 1971, in which he and Captain Hans Gloy, were accused of, *inter alia*, assaulting detainees with iron rods and electric shocks.<sup>87</sup>

35. The Magistrate was also quick to accept the evidence of Detective Sergeants F R Bouwer (Bouwer) and J W S Louw (Louw) who guarded Timol each night and claimed to have seen no injuries or marks on Timol, even though they saw him sleeping with his shirt off and in his underpants (in the bathroom).

35.1. Given that there were in fact multiple marks and bruises on Timol the Magistrate accepted the rather breath-taking claim that it would be difficult for lay persons to spot marks on a dark skin.<sup>88</sup>

35.2. Not only did the Magistrate accept such a nonsensical excuse he found that while “*the deceased was in their custody, they treated him well and in a civilised manner.*”<sup>89</sup>

35.3. A picture emerges of a Magistrate who would find for the police, come what may, no matter what; no matter how ridiculous or glaringly false their claims were.

36. If the circumstantial evidence of the torture survivors is accepted, as we submit it must be, then Bouwer and Louw must be responsible for particularly vicious crimes against Timol. They were charged with keeping Timol awake all night and subjecting him to long hours of abuse. All the torture victims while held on 10<sup>th</sup> floor were denied sleep.

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<sup>86</sup> Vol J2 (VN) 31

<sup>87</sup> Vol J2 (VN) 25 and 139.

<sup>88</sup> Finding of Magistrate De Villiers (translated) vol A p 42

<sup>89</sup> *Ibid*

<sup>90</sup> All were tortured during interrogation. Timol would obviously have been no exception. As we have submitted, it stands to reason, that the SB would have unleashed the worst of their ferocity onto him. Timol would have borne the brunt of their vindictiveness.

37. In all probability the abuse meted out by Bouwer and Louw through the night of Tuesday, 26 October 1971 and the morning of Wednesday, 27 October 1971 rendered Timol seriously incapacitated. He probably could no longer speak and may have slipped into a comatose state, just as Essop had done the previous morning.
38. This submission would be consistent with the evidence of Dr Dilshad Jetham who testified that Timol's screaming and crying stopped abruptly early Wednesday morning, followed by scurrying around of SB members and her relocation to the cells.<sup>91</sup>

***Timol could not have committed suicide***

39. The forensic medical evidence and the trajectory evidence excludes the possibility of suicide as propagated by Rodrigues.

Forensic medical evidence

40. We have already described the forensic medical evidence that Timol's pre-fall injuries probably rendered him unconscious, or in a state of slipping in and out of consciousness. He may even have suffered a stroke and been in a state of paralysis.<sup>92</sup> Moreover both experts testified that the injuries sustained to Timol's jaw

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<sup>90</sup> Jetham affidavit, Vol C, p94, paras 18 – 20; Naik affidavit, Vol C, pp109 – 110, paras 22 – 23; and Vol C, Essop affidavit, p38, para 42.

<sup>91</sup> Vol C, Dr Jetham affidavit, p98, paras 39 – 40.

<sup>92</sup> Holland transcript oral evidence Vol 6 pg 508-509

prior to the fall, would have likely stopped him speaking, eating or drinking.<sup>93</sup> Such evidence is in direct conflict with that of Rodrigues and the police version.

41. Aside from his head injury, Naidoo doubted that Timol would be able to clamber up a window ledge as it would have required a time interval for him, as an injured person, to execute this movement and would likely need to use a chair or heater panel to assist in getting up to the window ledge.<sup>94</sup> It is worth quoting in full Dr Naidoo's summing of Timol's ambulation ability prior to the fall in the light of his left ankle injury and right calf bruising:

*“Ambulation ability of deceased before the fall: With bilateral below-knee injuries not explained by the fall being present on/ in the body, the deceased would NOT have been able to walk normally to get himself off the chair and to the window without being noticed and easily stopped and apprehended in the considerable time that this would have taken, and NOT have been able to effortlessly and without considerable difficulty and pain clamber upon a prop or ledge or chair to elevate himself up to the window sill, nor launch himself off the sill easily.”<sup>95</sup>*

42. In addition Holland testified that the injuries to his thigh and groin would have made both movement and standing difficult for Timol.<sup>96</sup>
43. This evidence is at odds with the version that Rodrigues advanced on what happened in room 1026. It rubbishes his claim that Timol moved around room 1026 with lightning speed and in a “split second” jumped (or dived) through the window. The suicide as claimed by Rodrigues simply did not happen.

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<sup>93</sup> Naidoo oral evidence transcript Vol 7 pg 572-573 and Holland transcript oral evidence Vol6 pg 503

<sup>94</sup> Naidoo Vol C3 pg12

<sup>95</sup> Naidoo Vol C17 pg12, para 32. See also Vol C3 pg12.

<sup>96</sup> Holland transcript oral evidence Vol6 pg 504-5

### Trajectory evidence

44. The trajectory evidence is also of considerable importance. Mr Tivesh Moodley (“**Mr Moodley**”), an aeronautical engineer,<sup>97</sup> provided 2 reports and gave evidence on the trajectory of Timol’s fall. In his first report Mr Moodley draws up six likely scenarios, based on witness statements, of how Timol could have fallen from John Vorster Square.<sup>98</sup> In his supplementary report he considered 2 further scenarios.<sup>99</sup>
45. Moodley excluded the possibility of a dive through the window because it would not be possible to run, open the window and dive simultaneously.<sup>100</sup>
- 45.1. He advises that given the specifications of the office and the arrangement of furniture it is highly unlikely this happened, even assuming that he had the athletic ability to execute such a manoeuvre.<sup>101</sup>
- 45.2. Nonetheless, assuming that Timol had the physical prowess to avoid Rodrigues and:
- 45.2.1. lift himself onto the window sill in a standing position and dived (like a swimmer) using his legs as thrust, he would have landed approximately 13 m away on the road (as scenario 1, ‘the jump’)<sup>102</sup>, or

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<sup>97</sup> Mr T Moodley is an aeronautical engineer His curriculum vitae appears at Vol C9 and his report at Vol C10

<sup>98</sup> Trajectory Report, exhibit C10, pp7 – 15.

<sup>99</sup> Supplementary Trajectory Report, exhibit C10a.

<sup>100</sup> Moodley Vol C10 pg1

<sup>101</sup> Supplementary Trajectory Report, exhibit C10a, p2.

<sup>102</sup> *Ibid*, p1.

- 45.2.2. lift his body onto the window sill and leaned over in a head first fall Timol would not have generated much forward impulse force and would likely have hit the concrete light well adjoining the bottom of the building, or part thereof.<sup>103</sup>
- 45.3. Both 'dive' scenarios can be safely excluded since Timol did not land in the road and did not strike the concrete light well.<sup>104</sup> If he had his injuries would have been considerably different.
46. Of the 6 (six) scenarios set out in Moodley's first report, scenarios 1 (jump) and 2 (step) involve a feet first exit with Timol landing at 13 m in the former and 4.5 m in the latter, with an orientation that has his head in the direction of Commissioner Street. None of the witnesses support these scenarios.
47. Only two scenarios are consistent with the statements given by two of the SB members in 1971 in relation to the position and orientation of Timol at the point of impact.<sup>105</sup>
- 47.1. It will be recalled that in his affidavit, Brigadier Cecil William St. John Pattle ("**Pattle**") stated that the point of impact, where Timol's body fell, was about 10 feet (3 meters) from the John Vorster Square building line, in the garden.<sup>106</sup> In his affidavit, Warrant Officer Gabriel Johannes Deysel ("**Deysel**") describes how he found Timol's body lying in the garden.<sup>107</sup>

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<sup>103</sup> *Ibid*, p1.

<sup>104</sup> Moodley also excludes the Gordon Winter scenario of Timol being held by his ankles and dropped since Timol would likely also to have struck the concrete light well, or part thereof. C10a, p2

<sup>105</sup> Trajectory Report, exhibit C10, pp10 – 12.

<sup>106</sup> Pattle affidavit, Vol B, exhibit S, pp39 – 40, para 10.

<sup>107</sup> Deysel affidavit, Vol B, exhibit S1, pp41 – 42, para 5.

- 47.2. According to Mr Moodley, the only way Timol could have fallen from the tenth floor of John Vorster Square, landing about 3 meters away from the building line and landing in the orientation described by Deysel (the Deysel orientation), is if he was pushed from the tenth floor window or the roof of John Vorster Square, namely scenarios 3 (push from sitting position) and 4 (push legs first body facing building).<sup>108</sup>
48. Of the remaining four scenarios, two are potentially consistent with the evidence provided by Ernest Matthis (“**Mr Matthis**”). These are scenarios 5 and 6.
- 48.1. In his oral testimony, Mr Matthis stated that he saw a body fall pass his window (on the 4<sup>th</sup> or 6<sup>th</sup> floor) at JVS on 27 October 1971. The body was parallel to the building (JVS) when it fell past his window.<sup>109</sup>
- 48.2. Scenario 5 is Timol thrown from the roof with a horizontal motion and his torso parallel to the face of the building.<sup>110</sup>
- 48.3. Scenario 6 is Timol rolled off the roof parapet with torso parallel to face of building.<sup>111</sup>
49. On considering the available witness evidence tested against the findings of Mr Moodley’s, it becomes clear that the only possible scenarios for Timol’s fall can be that::
- 49.1. he was pushed from room 1026 on the 10<sup>th</sup> floor (in one of 2 positions: scenarios 3 and 4), or h

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<sup>108</sup> Trajectory Report, exhibit C10, p 5.

<sup>109</sup> Vol C, pp 118 – 120. See also Transcribed reopened inquest record, pp330 – 338.

<sup>110</sup> Trajectory Report, exhibit C10, p 5.

<sup>111</sup> Trajectory Report, exhibit C10, p 6.

49.2. he was thrown or rolled from the roof (scenarios 5 and 6).

50. None of the possible scenarios involve suicide. In particular the version of Rodrigues has been demonstrated to be impossible.

#### Evidence of colleagues, family and friends

51. Those who knew Timol best vigorously disputed the notion that he committed suicide.

51.1. Timol's mother never accepted the official finding that her son committed suicide.<sup>112</sup> Her pain and anguish at the death of her son was evident when she gave testimony at the TRC on 30 April 1996.<sup>113</sup>

51.2. Essop Pahad ("Pahad") and his brother, Mohammed Timol, gave testimony that Timol's Islamic beliefs would have prevented him from committing suicide because Islam does not permit an adherent to take his own life.<sup>114</sup>

51.3. Mohammed Timol and Essop testified that Timol loved life and would never have committed suicide.<sup>115</sup> Pahad asserted that Timol was in love with Ruth Longoni and that he was sad to leave her in London and he had every intention of coming back to her.<sup>116</sup> These deeply personal testimonies suggest that Timol had no reason to commit suicide, in fact he had every reason to live.

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<sup>112</sup> See exhibit H2, SAHA DVD, video clip labeled "*Timol mother*".

<sup>113</sup> Vol H, Cajee affidavit, p24, para 20.

<sup>114</sup> Transcribed reopened inquest record, Mohammed Timol testimony, p254 and Pahad affidavit, Vol H, p10, para 18.

<sup>115</sup> Transcribed reopened inquest record, Dr Essop testimony pp118 – 119 and Mohammed Timol testimony, p254.

<sup>116</sup> Pahad affidavit, Vol H, p10, para 17.

52. The evidence led in respect of the SACP's so called policy on suicide destroys the police version that it was party doctrine to commit suicide rather than betray the organisation.

52.1. In their analysis of "*Inkululeko – Freedom no. 2*", Ronnie Kasrils and Stephanie Kemp meticulously demonstrated that the document is a fabrication and that SACP would never have issued such advice or directive.

52.2. They testified that suicide was not and has never been a policy of the SACP. Mr Kasrils dismissed the other notion that Timol committed suicide because he was afraid of a long prison sentence. He declared that SACP recruits saw lengthy prison sentences as a badge of honour.<sup>117</sup>

#### Mr. X and the Jacobsens

53. The apparent prompt for Timol's suicide was the entrance of the so-called Mr X into room 1026 and his pronouncement that it has been positively established where Quentin, Martin and Henry can be found.<sup>118</sup> This is odd even on the police's own version since the day before Lt Colonel Willem Van Wyk proudly boasted that notwithstanding Timol's claimed ignorance they "*had even obtained their addresses*"<sup>119</sup>

54. The whereabouts of the Jacobsen brothers were no mystery as they openly and publicly operated a photographic studio in Pritchard St.<sup>120</sup> Essop testified that he and Timol only met Quentin Jacobsen ("Jacobsen") once after being introduced to him by a friend and relative of Essop. This was because of their shared interest in

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<sup>117</sup> Transcribed reopened inquest record, p883.

<sup>118</sup> Van Niekerk affidavit, Vol B, exhibit F, p16, para 8; Gloy affidavit, exhibit G, Vol B, p19, para 5.

<sup>119</sup> Van Wyk, vol B affidavit, para 12

<sup>120</sup> Essop, transcribed reopened inquest record, pp130 – 133.

photography. The only time both he and Timol ever interacted with Jacobsen was when they went to his photographic studio on Pritchard Street. According to Essop, the Jacobsens were not members of any political organisation and were not involved in any organised political activity.<sup>121</sup>

55. Accordingly, Timol did not have any political association with Jacobsen. The SB can only have put up the Jacobsen story as pretence to explain the so-called sudden suicide. It is a crude fabrication. Indeed if there was any political link between Jacobsen and Timol, even a tenuous one, this would have been established at Jacobsen's trial in April 1972. There is not a single mention of Timol in Jacobsen's detention file nor any mention of Timol in the judgment that led to his acquittal.<sup>122</sup>
56. The SB concocted a version involving a mystery member of the SB, the so-called Mr X. Mr X could not testify at the original inquest apparently because of state security reasons.<sup>123</sup> We submit that the reason Mr X could not testify was because he did not exist.
57. Assuming that Mr X did indeed exist, he could have been used a secret witness in Timol's inquest. It was fairly common during the 1970s and 1980s for courts in 'terrorism' matters to hear the evidence of 'secret' witnesses in a manner which kept their identities secret.<sup>124</sup>
58. We know from history that during the Rivonia Trial the state's star witness was Bruno Mtolo ("Mr Mtolo"), known then only as Mr X. Mr Mtolo gave his evidence against the Rivonia Trialists in secret. The state afforded him this security in the interests of his

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<sup>121</sup> Transcribed reopened inquest record, pp130 – 133.

<sup>122</sup> Frank Dutton affidavit, exhibit H7, pp27 – 28, paras 74 – 78. See also Jacobsen detention file, exhibit G7 (see especially judgment of Marais J, pp 5 – 45).

<sup>123</sup> Bizos SC affidavit, Vol C, p73, para 61.2.

<sup>124</sup> Frank Dutton affidavit, exhibit H7, p20, para 41.

state security. He was presumably afforded this protection in accordance with the then section 156(4) provisions of the Criminal Procedure Act 56 of 1955 (“the CPA of 1956”).<sup>125</sup>

#### SACP policy on suicide and the ‘publications’

59. We have referred to the evidence Kasrils and Kemp in relation to the fabricated extracts in “*Inkululeko – Freedom no. 2*” and the “*Frelimo Memorandum*”.<sup>126</sup> In addition they point to the poor English and crass language, the naming of living persons working in South Africa, the fact that both references to suicide occur at the bottom of the publications.<sup>127</sup>
60. The reference to the CSPA rather than the SACP is a glaring mistake they would never have made. But the likes of Gloy and van Niekerk did make that mistake.<sup>128</sup> In fact the name changed from CSPA to SACP as far back as 1953.<sup>129</sup>
61. It is telling that our copy of “*Inkululeko – Freedom no. 2*” was discovered in the Neil Aggett Inquest record (another “suicide” case) attached to the affidavit of the investigating officer in that case, Captain Victor.<sup>130</sup>

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<sup>125</sup> The relevant provision of section 156 reads as follows:

**“(4) A superior court may, whenever it thinks fit and an inferior court may, if it appears to that court to be in the interest of good order or public morals or of the administration of justice, direct that a trial shall be held with closed doors or that (with such exceptions as the court may direct) females or minors or the public generally or any class thereof shall not be present thereat; and if accused is to be tried or is on trial on a charge referred to in sub-section (5) of section sixty-four, the court may, at the request of the person against or in connection with whom the offence charged is alleged to have been committed (or if he is a minor, at the request of that person or of his guardian) whether made in writing before the trial or orally at any time during the trial direct that every person whose presence is not necessary in connection with the trial or any person or class of person mentioned in the request shall not be present thereat.”**

<sup>126</sup> Kasrils affidavit, exhibit H10, p5, para 17; Kemp affidavit, Vol H, p16, para 22; and Pahad affidavit, Vol H, pp10 – 11, para 19.

<sup>127</sup> Kasrils affidavit, exhibit H10, para 25 - 28

<sup>128</sup> Vol B: van Niekerk, exhibit F, p15, para 5; and Gloy, exhibit G, pp18 – 19, para 4.

<sup>129</sup> Transcribed reopened inquest record, pp893 – 894.

62. While the original inquest record is not complete we do have the index to the exhibits and most of the exhibits themselves are available. “*Inkululeko – Freedom no.2*” is not part of the exhibits and it was never handed up as an exhibit. However the Magistrate refers to it in order to buttress his suicide finding. In his unseemly rush to exonerate the police, the Magistrate blunders in monumental fashion: he says that Timol distributed the document.<sup>131</sup> However this document was published and distributed in February 1972, some three months after Timol’s death. It is little wonder that the majority of South Africans in those days had little or no trust in the legal system.

## THE COVER-UP

63. In our view it can be safely concluded that the investigation constituted a cover-up. In this regard we refer this Honourable Court to the evidence of Frank Dutton and George Bizos.

64. An examination of the investigative steps taken by the police in the aftermath of the fall reveals a most substandard investigation.<sup>132</sup> We know from the evidence of Paul Erasmus that the SB routinely engaged in cover-ups to conceal the truth about matters and they would falsify evidence to achieve their objectives.<sup>133</sup>

65. Dutton sets out in great detail in his affidavit what should have happened in the investigation but did not (paras 29 – 91). There was a litany of apparent errors:

65.1. Inadequate statements

65.2. No statements from eye witnesses or bystanders; black SB, other detainees.

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<sup>130</sup> Victor Affidavit (p 12 Aggett record), Exhibit C1, para 13(4)

<sup>131</sup> Translated inquest judgment, p49.

<sup>132</sup> Frank Dutton affidavit, exhibit H7, p32, para 89.

<sup>133</sup> Transcribed reopened inquest record, pp360 – 362.

- 65.3. Moving the body
- 65.4. No crime scene investigation on ground or room 1026;
66. He also points to the suspicious timing of the Rodrigues letter of commendation and the well-known history of cover-ups by the SB.
67. What was the SB covering up?
- 67.1. The torture,
- 67.2. That there was no suicide but a murder.
68. The main objective was to cover up the murder as there were other ways of dealing with torture, namely to hold the detainee until wounds have healed and intimidate him from taking legal action (as per Naik); or holding a detainee and only going to trial once injuries healed ( Essop).
69. We contend that the 'Naik' or 'Essop' options were not available to the SB because of Timol's near death or dire physical state; alternatively they wished to avoid the storm of censure that would follow if a second 'Essop' case occurred 24 hours after the last one.
70. The SB deliberately kept Dr Essop and Professor Naik in custody because they did not want them to give testimony at the inquest. Professor Naik was kept in detention to allow his hands to heal. This was an SB practice to ensure that by the time detainees leave detention their wounds would have healed.<sup>134</sup>

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<sup>134</sup> See Christopher Merret *Detention without trial in South Africa: The abuse of human rights as state strategy in the late 1980s* Africa Today 37(2) 1990 at p30.  
(<http://www.sahistory.org.za/sites/default/files/DC/rejan91.10/rejan91.10.pdf>) accessed on 22 August 2017 at 18h50.

71. Accordingly, the SB were covering up more than just the vicious torture of Timol they were covering up his disposal, that is his murder, and in so doing the cover-up would explain the torture injuries, namely he fell through shrubbery.

## **NO EMERGENCY SERVICES SUMMONED**

72. Professor Kenneth Boffard (Boffard) testified:<sup>135</sup>

72.1. The fact that the critically hurt patient should not be moved until help arrives was drummed into all emergency services personnel (including SAP) and the extent of the injuries did not matter because there was a general fear of civil liability, even patients injured in car accidents on busy highways.<sup>136</sup>

72.2. If an injured person was moved he/she should be placed on their side, one knee down up in a  $\frac{3}{4}$  position (coma position) until emergency services arrived. When emergency services arrived the patient should then be rolled onto a stretcher and transported to hospital. In Boffard's view, there was a general reluctance amongst police to move injured persons<sup>137</sup>

72.3. Timol should not have been moved until an ambulance arrived. Timol's fall occurred in central Johannesburg and emergency services available at that time could have been there in minutes.<sup>138</sup>

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<sup>135</sup> Professor Boffard is a professor at the University of Witwatersrand a qualified surgeon with additional training in the field of trauma surgery. His curriculum vitae appears at Vol C2 and Vol C 15

<sup>136</sup> Boffard oral evidence transcript Vol 5 pg429

<sup>137</sup> Boffard oral evidence transcript Vol 5 pg428

<sup>138</sup> Boffard oral evidence transcript Vol 5 pg440

72.4. The impact site was easily accessible from Commissioner Street with a low wall surrounding only the garden area and not the boundary of the police station. . Therefore emergency services could have stopped on roadside and stretchered Timol to an ambulance.<sup>139</sup>

73. We submit that the conduct in moving Timol – and failing to call ambulance / emergency services – can only be consistent with the desire on the part of the police to ensure his death and prevent a proper inquiry into the cause of his death.

### THE PROBABILITIES

74. An inquest is an investigatory process held in terms of the Inquests Act 58 of 1959 (“**the Inquests Act**”) which is directed primarily at establishing a cause of death where the person is suspected to have died of other than natural causes.<sup>140</sup> Ultimately, the aim is to uncover the truth and make a finding that is in the interests of justice. The same is applicable to reopened inquests in terms of section 17A of the Inquests Act.

75. By their nature inquest proceedings are inquisitorial. This is why the standard of proof in inquests is not as stringent like in criminal proceedings. In **Goniwe and Others**<sup>141</sup> the court held that the standard of proof required to make a finding in an inquest is not that as applied in a criminal trial. The test is less stringent in inquests. The court explained this rationale as follows:

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<sup>139</sup> Boffard oral evidence transcript Vol 5 pg440

<sup>140</sup> *Freedom Under Law v National Director of Public Prosecutions and Others* 2014 (1) SA 254 (GNP) at 77.

<sup>141</sup> *In Re Goniwe and Others (2)* 1994 (2) SACR 425 (SE) at 428D – E. See also *Padi en ‘n Ander v Botha No en Andere* 1995 (2) SACR 663 (W) at 665G, where it was held that:

*“section 16(2)(d) of the Act did not require proof beyond a reasonable doubt: a judicial officer was not required to make his finding with reference to the credibility and acceptability of the evidence before him as in a criminal trial.”*

*“Bearing in mind the object of an inquest it is my opinion that the test to be applied is not the ‘beyond reasonable doubt’ test but something less stringent. In my opinion the test envisaged by the Inquest Act is whether the judicial officer holding the inquest is of the opinion that there is evidence available which may at a subsequent criminal trial be held to be credible and acceptable and which, if accepted, could prove that the death of the deceased was brought about by an act or omission which involves or amounts to the commission of a criminal offence on the part of some person or persons.”*

76. Given that the standard of proof in inquests is not as stringent like in criminal matters, we respectfully submit that it apposite for us to advance the following probabilities of how Timol was murdered by the police. It is our submission that these probabilities will be of assistance to this Court in making the appropriate findings and recommendations.

77. In the light of the evidence before this Court, we briefly outline how Timol was murdered by the security police:

77.1. Timol was brutally tortured, by the morning of Wednesday 27 October 1971 he was close to death, probably in a comatose state.<sup>142</sup>

77.2. To avoid another situation, where a detainee (Dr Essop) is rushed to hospital from JVS, taking place within 24 – 36 hours the suicide was constructed.<sup>143</sup>

77.3. Sometime during 27 October 1971 (either in the morning or the afternoon) Timol was either placed in a:

77.3.1. sitting position on the window sill of room 1026 and pushed out; or pushed out as per Moodley’s 4<sup>th</sup> scenario;<sup>144</sup>

77.3.2. thrown off the roof above room 1026 and pushed over;<sup>145</sup> or

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<sup>142</sup> Vol C, Dr Jetham affidavit, p98, para 39 and Dr Essop affidavit, p44, para 58.

<sup>143</sup> Essop affidavit, Vol C, p45, para 60.

<sup>144</sup> Trajectory Report, exhibit C10, pp10 – 12.

<sup>145</sup> Trajectory Report, exhibit C10, pp13 – 14.

77.3.3. lying position on the parapet of the roof above room 1026 and rolled off.<sup>146</sup>

77.4. According to the trajectory expert the first scenarios mentioned above could place the impact site at about three meters in the position recorded by Pattle. The last 2 scenarios would have a different impact site but is consistent with the evidence of Mr Matthis.

77.5. It does not matter whether this happened in the morning or afternoon (as per Dr Naidoo evidence). If it happened in the morning it would have allowed the SB time to finalize the cover-up for staging in the afternoon.

77.6. Rodrigues was brought in to assist in fabricating a version that would be able to explain that Timol committed suicide.

77.7. The cover-up unfolded with the police investigation orchestrated not to disclose any evidence linking Timol's torture to the security police.<sup>147</sup>

78. Buys played a crucial role in the cover-up by doing a poor job at investigating the incident and by making sure that he commissions most of the affidavits of the policeman who claimed that they did not assault Timol, they did not see Timol being assaulted or Timol was injury free.<sup>148</sup> When the inconsistencies came to light about what transpired in room 1026 that day, Buys downplayed the significance of the different versions, ascribing the discrepancies to a matter of interpretation. During

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<sup>146</sup> Trajectory Report, exhibit C10, pp14 – 15.

<sup>147</sup> See the following affidavits in Vol B: Kleyn, exhibit A, p6; Bean, exhibit B, p13, para 7; Lieutenant Colonel Willem Petrus van Wyk (“**van Wyk**”), exhibit C, p10, para 13; Gloy, exhibit G, p20, para 6; Rodrigues, exhibit M, p30, para 18; Warrant Officer Jacob Johannes Schoon (“**Schoon**”), exhibit N, p31; and Dirker, exhibit MM, p97, para 15.

<sup>148</sup> *Ibid.*

cross-examination he collapsed in the witness box and had to leave court. He was never recalled after that.<sup>149</sup> Buys made sure that the truth was suppressed.

## RECOMMENDATIONS

79. In the light of the evidence presented during these proceedings we submit that a case has been made out for the reversal of the original inquest findings. Rodrigues played a role in Timol's death. He should be investigated on charges of murder;<sup>150</sup> or accessory after the fact to murder;<sup>151</sup> and perjury.<sup>152</sup> In particular the following charges should be considered:

79.1. murder for his role in the orchestration of Timol's death; or

79.2. accessory after the fact for his role in the cover-up which persists to this day;  
and

79.3. perjury for providing false evidence under oath before this inquest.

80. We further recommend that Els and Sons should be investigated on charges of perjury for providing false evidence under oath, during these proceedings, in relation to their denials of assault and abuse of detainees.

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<sup>149</sup> Bizos SC affidavit, Vol C, p76, para 67.

<sup>150</sup> It is trite that the elements of murder are the following: (a) causing the death (b) of another person (c) unlawfully and (d) intentionally. See Snyman *Criminal Law* 4<sup>th</sup> Edition (Juta, Cape Town, 2002) at 421.

<sup>151</sup> A person is an accessory after the fact to the commission of a crime, if after the completion of a crime, he unlawfully and intentionally engages in conduct intended to enable the perpetrator of, or the accomplice in, the crime to evade liability for his crime, or to facilitate such a person's evasion of liability. See Snyman *Criminal Law* 5<sup>th</sup> Edition (Juta, Cape Town, 2008) at 278.

<sup>152</sup> The elements of perjury are: (a) the making of a declaration; (b) which is false; (c) under oath or in a form equivalent to an oath; (d) in the course of judicial proceedings; (e) unlawfully; and (f) intentionally. See Snyman *Criminal Law* 4<sup>th</sup> Edition (Juta, Cape Town, 2002) at 341.

81. In his testimony, Mr Imtiaz Cajee (“**Mr Cajee**”), who is Timol’s nephew, made several recommendations which he asked to this Court to consider when it makes its finding. Mr Cajee requested that this Court make some of the the following recommendations to the authorities:<sup>153</sup>

81.1. the erection of a sculpture outside the Johannesburg Central Police Station which pays tribute to all political detainees who died in police detention during the apartheid-era. Alternatively, or in addition, a memorial to Timol could be erected at the impact site in the garden outside the south wing; and

81.2. the energetic and vigorous investigation of outstanding apartheid era cases before it is too late, which may involve the creation of a dedicated team of carefully selected investigators and prosecutors. All state entities should be required to supply all information at their disposal to this team.

82. While this Court’s mandate is only limited to the provisions of the Inquests Act, we respectfully submit that this Court can make these recommendations over and above making findings in this inquest. It is important that these recommendations be taken seriously in view of the past history of our country.

## **CONCLUSION**

83. In conclusion, we would like to pay gratitude to all the people that assisted the Timol family in making sure that this inquest was able to proceed. Special mention must go to the National Prosecuting Authority (“**NPA**”) for reopening the original inquest; the NPA legal team (Mr Pretorius SC and Ms Singh) for their tireless dedication to this matter; the SAPS (especially Brigadier Eleanor Groenewald) for their support in assisting us get hold of the police files of the erstwhile SB members; the pro-bono

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<sup>153</sup> Cajee affidavit, Vol H, pp30 – 31, paras 35 – 35.4.

department from Webber Wentzel attorneys; the Legal Resources Centre (Johannesburg); and Mr Frank Dutton for all their invaluable contribution and dedication through out these proceedings. More importantly, a special thanks to the judiciary for setting aside valuable judicial resources so that this inquest would be able to proceed in the manner that it did.

84. While we hope that the finding in this matter will bring justice to the Timol family, it is concerning that some 46 years after Timol's death preceded by his torture in detention, the practice of torture and assaults is still prevalent in police detention. The recent statics by the Independent Police Investigative Directorate ("IPID") speak volumes on this issue.<sup>154</sup>
85. While undergoing training in London by the SACP, Timol and the other recruits were given books to read on how to deal with long prison sentences and how to cope with harsh interrogation.<sup>155</sup> Amongst the books that were provided was *Notes from the Gallows* by *Julius Fuchik* who wrote about his experiences at the hands of the Gestapo. Fuchik managed to smuggle out his story on scraps of paper before he was executed.
86. Timol would have drawn sustenance from this inspirational book. We commend to this Honourable Court the 1948 review of Fuchik's book by Howard Fast titled "*Hero's Diary*".<sup>156</sup> We have adapted the following extract from Fast's review, since we believe it applies with equal force to Timol and others who have died in security detention:

*"Like thousands of other Communists, Ahmed Timol died so that men and women may be free.*

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<sup>154</sup> See exhibits P and P1.

<sup>155</sup> Kasrils, para 17

<sup>156</sup> *Masses & Mainstream* July, 1948, p 75-76: <http://www.trussel.com/hf/heros.htm>

*In reliving Ahmed's life and struggle we cannot write objectively. We can only take his hand, which is so strong in death, and thank him. He leaves the world to the living, and the fight he bequeaths us is a fight worth making.*

*Press the hand of Ahmed and every comrade who did their duty and who endured his or her last battle.*

*Ahmed and his comrades, lived for happiness, for that they went to battle, for that they died. Let grief never be connected with their names."*

87. While Ahmed's body was battered his human spirit would have fought on till the very end.

As the blows rained down on him,

As he was repeatedly suffocated,

As electrical currents raced through his body,

As his life force slowly slipped away, he would have looked to the future of his country.

A future he had fought for and would die for.

88. The shining future Ahmed gazed upon in his final moments is our democratic South Africa: Our constitutional order in which fundamental rights are guaranteed for all.
89. He would have known that his approaching death would ultimately help pave the way for a new South Africa with its enshrined freedoms. A South Africa in which an independent judiciary would wash away the lies and deception and expose the truth of his final days and hours.
90. Ahmed would have wanted this, not for his own sake, but to ensure the eradication of torture and brutality in his beloved South Africa.

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**MUSATONDWA MUSANDIWA**  
Counsel for the Timol Family

Chambers, Sandton  
23 August 2017