

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

CASE NO: 101/2017

In the matter between:

REOPENED INQUEST: LATE AHMED TIMOL

TIMOL FAMILY'S MAIN HEADS OF ARGUMENT

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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.¹ 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 demise of Apartheid that figure would climb to 89. Eight of them perished in John Vorster Square (**JVS**).² Thirty three were alleged suicides.³ Six involved falls from buildings or down stairs.⁴
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,

¹ 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).

² Exhibit O, pp1 – 7.

³ *Ibid* p 8.

⁴ *Ibid* p 10.

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 the story of unbridled brutality meted out to young men and women held on the 10th 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 covered up crimes of torture and murder. It is the story of a thoroughly corrupt investigating officer;⁵ as well as a story of a Magistrate⁶, his assessor⁷ and a senior public prosecutor⁸ 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. It is a story of how dark forces were able to suppress the truth of what happened to Timol for some 46 years.
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 truth, and escape justice.⁹ 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.¹⁰ Their resolve and determination was 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 death. 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.

⁵ Major General Christoppel Andries Buys, then Head of the SAP detective service.

⁶ Magistrate J J L de Villiers.

⁷ Professor I W Simson.

⁸ 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.

⁹ Imtiaz Cajee affidavit, Vol H, p 27, para 27 – 29.6

¹⁰ *Ibid*, p 29; Mohammed Timol affidavit, Vol C, p 121.

8. The family extended an open hand to the surviving police witnesses. They went on record to say that they were 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;
 - 9.2. They will have us believe that they only heard about torture through claims made in the media;¹¹
 - 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;¹²
 - 9.4. They will have us believe that Timol's interrogators were honest and fair men;¹³
 - 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.

¹¹ 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.

¹² 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.

¹³ Translated Finding of Magistrate de Villiers vol A p 41 – 42

11. In these main heads, at the request of this Honourable Court we have supplied summaries of all the available evidence from the first inquest, as well all the evidence led in these proceedings. These summaries are annexed hereto marked “**A**”.

OUTLINE OF NEW EVIDENCE

12. The original inquest record is incomplete. That record comprises 1157 pages, of which the first 652 pages of the record are missing.¹⁴ All the transcripts of evidence the other police witnesses are missing. All the exhibits of the first inquest are available, except for 5 paragraphs from Mr Rodrigues’ 4 page affidavit deposited to on 11 November 1971.¹⁵ We suspect that it is no coincidence that all the transcripts of the police evidence are missing as well as a crucial page from the affidavit of Rodrigues.
13. Legal argument on the implications of the missing portions of the record are annexed to these submissions, marked “**Annex B**”. Legal argument is also annexed hereto marked “**C**” in respect of the purpose behind inquests and the standard of proof to be employed.
14. Nonetheless substantial new evidence, generated in the most part by the representatives of the Timol family, has been placed before this Honourable Court.
- 14.1. These include the similar fact evidence of torture Dr Salim Essop (“**Essop**”),¹⁶ who was detained with Timol, and Dr Dilshad Jetham (“**Jetham**”), who heard Timol’s screaming¹⁷, and Professor Kantilal Naik (“**Naik**”)¹⁸ who were held on the 10th floor of JVS at the same time Timol was detained there.
- 14.2. Another 5 affidavits were supplied from detainees who sustained considerable torture at the hands of the SB during the 1960s and 1970s.¹⁹ This evidence set

¹⁴ See Vol A in the List of Exhibits as at 5 September 2017 for a list of the police witnesses who testified. This list includes Rodrigues, Captains Gloy and Van Niekerk, Sergeants Bouwer and Louw and others.

¹⁵ Volume B, Exhibit M.

¹⁶ Essop affidavit, Vol C, pp30 – 45, paras 22 – 59. See particularly pp42 – 43, paras 52 – 53, regarding what he says about seeing Timol for the last time. Oral testimony, Vol 1 – 2, pp 36 – 141.

¹⁷ Jetham affidavit, Vol C, p95, para 26; oral testimony, Vol 4 pp 264 – 328.

¹⁸ Naik affidavit, Vol C, pp109 – 110, paras 18 – 25; oral testimony, Vol 3 pp 197 – 228.

¹⁹ Vol H, pp 45 – 101 and exhibit H18.

out particularly powerful similar fact evidence to demonstrate that torture was routine practice of the SB. A further 6 affidavits were made by detainees held at JVS directly contradicting the evidence of former SB officer, Seth Sons, that he never assaulted any detainee and did not even witness any assaults.²⁰

- 14.3. This similar fact evidence on torture was reinforced by the testimony of former SB officer Paul Erasmus²¹ (“**Erasmus**”) and the expert evidence of Professor Don Foster (“**Foster**”) who has extensively researched abuses in apartheid era detention.²²
- 14.4. The affidavit and testimony of George Bizos SC (“**Bizos**”), the junior counsel for the Timol family in the first inquest, provided a first-hand account of those proceedings; and he referred extensively to his book “*No One To Blame*”²³ which provides details about that inquest and other deaths in detention.
- 14.5. The affidavit and testimony of the family’s investigator, Frank Dutton (“**Dutton**”) sets out his investigation into the death of Timol and powerfully demonstrates how the original investigation was little more than a cover-up aimed at suppressing the truth.²⁴
- 14.6. Two forensic pathologists, Dr Shakeera Holland (“**Holland**”)²⁵ and Dr Segaran Naidoo (“**Naidoo**”),²⁶ reviewed the original pathologist report by Dr Schepers,²⁷ demonstrate that Timol sustained severe injuries that are not consistent with a fall from height. Dr Holland called “*into question the original inquest process that the manner of death was “suicide”, therefore the finding must be challenged*”.²⁸ In his report and oral testimony Dr Naidoo reached a similar conclusion and pointed out a number of shortcomings with Dr Schepers’ Post Mortem report.²⁹

²⁰ Exhibits H21 – H26.

²¹ Exhibit H1; oral testimony, Vol 5A pp A375 – S375.

²² Exhibit K; oral testimony, Vol 8 pp 591 – 614.

²³ Bizos SC affidavit, Vol C, p85, para 29; oral testimony, Vol 2 pp 142 – 183.

²⁴ Exhibit H7; oral testimony, Vol 8 pp 614 – 671.

²⁵ Vol C, Dr Holland Report, pp135 – 154; oral testimony, Vol 6 pp 472 – 529.

²⁶ Exhibit C3; oral testimony, Vol 7 pp 536 – 588.

²⁷ Vol B, exhibit X and X1 - 2, pp48 – 59.

²⁸ Vol C, Dr Holland Report, p152.

²⁹ Transcribed reopened inquest record, Vol 7, pp 543 – 545.

- 14.7. Both pathologists provided supplementary reports on the question of the timing of the fall³⁰ and Dr Naidoo testified again in this regard.³¹ Naidoo filed a further supplementary report supplying his comments on the better quality photos of Timol's body.³²
- 14.8. Aeronautical engineer, Mr Thivash Moodley ("**Moodley**") provided evidence on the trajectory of Timol's. In his report Mr Moodley drew up six scenarios based on witness statements, of how Timol could have fallen from John Vorster Square.³³ Of the 6 (six) scenarios, only two are consistent with position and orientation of the body at the impact site. Both involve a push.
- 14.9. Professor Kenneth Boffard, Trauma Director and Academic Head at the Department of Trauma Surgery at Milpark Hospital and Professor Emeritus and Honorary Consultant Surgeon at the Department of Surgery at the University of the Witwatersrand ("**Boffard**"), testified that Timol should not have been moved until an ambulance arrived. He testified that even in the 1970s it was the practice of the police not to move critically injured persons and that the experience police officers ought to have known this. He asserted that the moving of Timol and the failure to call an ambulance contributed to the cause of death.³⁴
- 14.10. Three civilian witnesses testified as to what they saw and heard on 27 October 1971. Adv Ernest Matthis ("**Matthis**"), who was in a lower floor office in the south wing of JVS, saw Timol's body fall past the window.³⁵ Mr Ali Thoken ("**Thoken**")³⁶ and Mr Abdullah Adam³⁷ ("**Adam**") were both present at the Dollars Filling Station when Timol fell and they testified as to what they witnessed. All testified that the fall took place in the morning.

³⁰ Exhibits C16 and C17; oral testimony.

³¹ Oral testimony, Vol 13 pp 985 – 996.

³² Exhibit C7.9.

³³ Trajectory Report, exhibit C10, pp7 – 15; oral testimony, Vol 9A pp B673 – HH673.

³⁴ Exhibit C15 and oral testimony, Vol 5, 422 – 445.

³⁵ Vol C, pp 118 – 120; oral testimony, Vol 5 pp 330 – 338.

³⁶ Vol H, 1 – 4; oral testimony, Vol 11 pp 850 – 867.

³⁷ Oral testimony, Vol 13 pp 966 – 985; exhibit H20.

- 14.11. Dr Farouk Dindar (“**Dindar**”)³⁸ and Ms Gadija Chothia (“**Chothia**”)³⁹ provided affidavits stating that they had seen Timol on the 21st and 22nd October 1972, respectively, and saw him in good shape with no visible injuries.
- 14.12. Evidence was led from Mohamed Timol (“**MT**”), who testified that his brother would not have opted for suicide.⁴⁰ Stephanie Kemp (“**Kemp**”), explained how she corresponded secretly with Timol, and dismissed the “suicide” documents as fabrications.⁴¹ Essop Pahad (“**Pahad**”), who lived with Timol when he was in London, testified as to his interactions with Timol in London and also rejected the claims of suicide as highly improbable.⁴² Ronnie Kasrils (“**Kasrils**”) testified to the training that the recruits received and dissected the “suicide” documents concluding that they were blatant forgeries.⁴³
- 14.13. The document relied upon by Magistrate De Villiers to reach his suicide finding, ‘*Inkululeko Freedom No.2*’, which was not an exhibit and which was surreptitiously placed before him, was introduced as an exhibit in these proceedings (after it had been discovered in the record of the Neil Aggett inquest).⁴⁴
- 14.14. Former Truth and Reconciliation Commission investigator, Mr Piers Pigou (“**Pigou**”), put up an affidavit stating that he approached Rodrigues during 1996 but he refused to cooperate and declined to make an affidavit or appear in a hearing.⁴⁵
- 14.15. The **personal files** (from the erstwhile Directorate of Security) of Timol, Naik, Jetham, Mohamed Timol and Quinten Jacobsen were put up as exhibits.⁴⁶ The

³⁸ Exhibit H5.

³⁹ Exhibit H6.

⁴⁰ Vol C, pp 121 – 134; oral testimony, Vol 3 pp 228 – 257.

⁴¹ Vol H, pp 12 – 18; oral testimony, Vol 5 pp 400 – 419.

⁴² Vol H, pp 5 – 11; oral testimony, Vol 5 pp 448 – 467.

⁴³ Exhibit H10; oral testimony, Vol 11 pp 869 – 903.

⁴⁴ Exhibit C1.

⁴⁵ Exhibit H11a.

⁴⁶ Exhibits G3 – G7.

personal file of Naik disclosed that some 17 SB officers interrogated him around the clock to deprive him of sleep.⁴⁷

- 14.16. The **police files** of six (6) SB officer were entered into the record as exhibits.⁴⁸ These included the files of Rodrigues,⁴⁹ Captain Van Niekerk,⁵⁰ Neville Els⁵¹ and others. The file of Rodrigues disclosed that he had been convicted of perjury⁵² and he had received a letter of commendation from the police 2 days before the first inquest finding was handed down.⁵³ The file of Captain Van Niekerk disclosed a conviction for 2 counts of assault (in which the victim died)⁵⁴ and multiple complaints of torture against him and Captain Gloy.⁵⁵
- 14.17. Architect Colin Savage ("**Savage**"), took the court through various building plans of JVS and explained the dimensions of the garden outside the south wing of JVS, the 9th and 10th floors, including room 1026, and the roof.⁵⁶
- 14.18. Imtiaz Cajee ("**Cajee**"), the nephew of Timol, testified how in 2003 he attempted to get the NPA to investigate his uncle's death, while key role-players such as General Buys and Captains Gloy and Van Niekerk were still alive.⁵⁷ This investigation was closed in 2006.⁵⁸
- 14.19. During the first inquest there were a large number of **newspaper reports** about the proceedings and the death of Timol. These newspaper reports have been provided to this Court to provide additional context.⁵⁹

⁴⁷ Exhibit C12.

⁴⁸ Exhibits J1 – J7.

⁴⁹ Exhibit J1.

⁵⁰ Exhibit J2.

⁵¹ Exhibit J3.

⁵² Vol J1, p 83

⁵³ Vol J1, p 77

⁵⁴ Vol J2, p 31

⁵⁵ Vol J2, pp 25, 122, 138 – 141.

⁵⁶ Exhibits M1 – M11; oral testimony, Vol 11, pp 907 – 933.

⁵⁷ Vol H, pp 9 – 34, para 27; exhibit Q, oral testimony Vol 14, pp 1006 – 1028.

⁵⁸ *Id.*

⁵⁹ See exhibits Vol D – 1971 newspaper clippings; Vol E – 1972 newspaper clippings; and Vol E1 – additional newspaper clippings from Dec 1971 – April 1972.

BRIEF FACTUAL BACKGROUND⁶⁰

The early years

15. Ahmed Timol met his untimely death on 27 October 1971 after being arrested and detained for almost 5 (five) days at the then John Vorster Square in Johannesburg. The official explanation for Timol's death is that he committed suicide by jumping from the tenth floor of John Vorster Square.
16. Prior to his death Timol was a teacher at the then Roodepoort Indian High School ("**RIS**"). He commenced his teaching career at RIHS in 1963⁶¹ where he taught history and commercial subjects.⁶² As a teacher, he was well loved and respected by colleagues and students. Considered a gifted teacher, he would inspire and motivate his students and was one of the most popular teachers at RIHS.⁶³

London and recruitment into political activities

17. On 26 December 1966, Ahmed Timol leaves for London, United Kingdom and *en route* stops at Mecca, Saudi Arabia. He performs the Hajj (pilgrimage) with Dr Yusuf Dadoo (National Chairman of the SACP).⁶⁴ His intention was that after the Hajj he would study in Cairo at Al Azhar University, however due to the Six Day war in the Middle East he left Cairo for London.⁶⁵
18. Upon his arrival in London, Timol shared a flat with his childhood friend, Essop Pahad ("**Pahad**"). He decided to stay in England to study towards his A-levels and whilst in London, he found a teaching job. Being both politically aware, Timol and Pahad had numerous political discussions. Timol was later recruited into the London underground structures of the South African Communist Party ("**the SACP**") by Dr Yusuf Dadoo ("**Dr**

⁶⁰ A complete and thorough background of this matter has been captured in the chronology that has been handed up to this Honourable Court as exhibit T. For a complete picture of events, we refer this Honourable Court to this chronology.

⁶¹ Essop affidavit, Vol C, p25, para 8; Mohammed Timol ("**MT**") affidavit, Vol C, p123, para 11.

⁶² Prof Naik affidavit, Vol C, p106, para 8.

⁶³ MT affidavit, Vol C, p123, para 11.

⁶⁴ MT, Vol C, pp123, para 12; Mr Hajee Timol affidavit, Vol B, exhibit H, p21.

⁶⁵ MT affidavit, Vol C, p123, para 12.

Dadoo”). Following his recruitment, Timol went to the Lenin Party School in Moscow where he received his training. Upon his return to London he received further training in SACP policies and how to operate underground from Jack Hodgson.⁶⁶ After he completed his SACP training, Dr Dadoo sent Timol back to South Africa to commence his underground work.⁶⁷

Return to South Africa and continuation of political activities

19. Timol returned to South Africa in February 1970 and resumed teaching at the RIHS.⁶⁸ While in South Africa he was involved in the reproduction and distribution of materials that were sent to him from London. In addition to this, he was also tasked with mobilising people within the Indian community.⁶⁹
20. Part of the training that Timol received under Jack Hodgson was to distribute SACP and African National Congress (“**ANC**”) literature through the mail or leaflet bombing (bucket bombs).⁷⁰ During 1970 and 1971 multiple leaflet bombs were detonated in five major cities throughout South Africa.⁷¹ The South African Police did not have any idea who was behind these bombings and they were enormously embarrassed.⁷² Although Timol was trained in leaflet bombings, he was not involved in these particular bombings that caused the SAP a great deal of embarrassment which were carried out foreigners recruited by Ronnie Kasrils, known as the ‘London Recruits’.⁷³
21. In July 1971, Timol received an original printed copy of a newsletter titled “*Inkululeko – Freedom No. 1*”⁷⁴ from London. Upon receipt of this newsletter, Timol reproduced the

⁶⁶ Jack Hodgson: 1910 – 1977: founder member of the Congress of Democrats and Umkhonto we Sizwe. In World War II he served in the “Desert Rats” in North Africa. Played a leading role in the formation of the Springbok Legion; Indicted in the Treason Trial of 1956. 1966 – 1967 was a member of the London based SACP special committee supporting under underground operations in South Africa: <http://www.sahistory.org.za/people/jack-hodgson>

⁶⁷ Pahad affidavit, Vol H, p8, para 13.

⁶⁸ MT affidavit, Vol C, p123, para 13.

⁶⁹ Pahad affidavit, Vol H, p8, para 14.

⁷⁰ Kasrils affidavit, Vol H, p39, para 14.

⁷¹ Kasrils affidavit, exhibit H10, para 18; Sgt Paul Steyn, Vol B, Exhibit VV, p 156; Pamphlet bombs blast again, Rand Daily Mail, 11 August 1971.

⁷² Kasrils affidavit, Vol H, p40, para 18.

⁷³ Kasrils affidavit, Vol H, p40, para 19.

⁷⁴ Vol B, pp86 – 93.

document and distributed it by post within South Africa.⁷⁵ He did this with the assistance of Dr Salim Essop (“**Essop**”) whom he had worked closely with for a period of about 20 (twenty) months before they were both arrested on 22 October 1971. As the SACP was celebrating its fiftieth anniversary at the time, it wanted to use the newsletter to mark this milestone.⁷⁶ A second edition of this newsletter, “*Inkululeko – Freedom No.2*” was published in February 1972 after the death of Timol.⁷⁷

Arrest and detention at Newlands

22. On Friday 22 October 1971 at about 23h00, while out on a social evening, Timol and Essop were stopped at a roadblock by two uniformed members of the SAP, Sergeant Leonard Kleyn (“**Kleyn**”) and Constable Adam Thinnies (“**Thinnies**”), on Fuel Road, near the then Coronationville Hospital, Johannesburg.⁷⁸ Essop was the driver of the car while Timol sat on the passenger side.⁷⁹ After being stopped by the police, they were ordered to open the boot of the car. The police discovered several political pamphlets and a number of Timol’s letters in the boot of the car.⁸⁰ These documents were hidden in newspapers.⁸¹ After making this discovery, the police officers immediately arrested the two men and took them to the Newlands Police Station (“**Newlands**”).⁸² At the time of their arrest, Timol and Essop were travelling in a yellow Ford Anglia (“**the Anglia**”) that belonged to Mrs Amina Desai.⁸³
23. After being detained at Newlands for a couple of hours, the two men were then separated. Essop was taken to an office in the police station where he was interrogated about where he and Timol were going. During this questioning he was assaulted. He was later handed over to Colonel Piet Greyling (“**Greyling**”). Greyling congratulated Kleyn and Thinnies for arresting Timol and he referred to Timol as “*a big fish*”. Together

⁷⁵ Stephanie Kemp affidavit, Vol H, p17, para 23. See also Vol B, exhibit LL, pp86 – 93.

⁷⁶ Essop affidavit, Vol C, pp25 – 27, paras 10 – 14.

⁷⁷ Captain Ben Nel affidavit, Vol C, pp15 – 21.

⁷⁸ Essop affidavit, Vol C, p29, para 19.

⁷⁹ Vol A, translated inquest judgment, p1.

⁸⁰ Essop affidavit, Vol C, p28, para 15.

⁸¹ Vol A, translated inquest judgment, p1.

⁸² Essop affidavit, Vol C, p29, para 20.

⁸³ Essop affidavit, Vol C, p28, para 15.

with Kleyn he transported Essop to John Vorster Square.⁸⁴ Later, Timol was transferred to John Vorster Square by Kleyn (who must have returned to Newlands) and Captain Carel Johannes Dirker (“**Dirker**”) at about 02h40 in the early hours of the morning of Saturday, 23 October 1971.⁸⁵

Detention and torture at John Vorster Square

24. Upon his arrival at John Vorster Square Timol was interrogated by Dirker and Lt Colonel Willem Petrus Van Wyk (**Van Wyk**) (SB, Head Office, Pretoria) about the documents found in the Anglia.⁸⁶ He was later handed over for interrogation to Captains Johannes Hendrik Gloy (“**Gloy**”) and Johannes Zacharias van Niekerk (**Van Niekerk**).⁸⁷
25. Other than being interrogated throughout his detention (mostly by Gloy and van Niekerk) at John Vorster Square, it is unclear what transpired to Timol before his death. All the statements given by members of the SB who interrogated or guarded him claim, unconvincingly, that he was never assaulted, tortured or otherwise abused. Those who claimed that Timol was never assaulted include Kleyn, Dirker, Van Wyk, and Gloy and Warrant Officer Jacobus Johannes Schoon (SB JVS) (**Schoon**).⁸⁸
26. In the light of the new evidence by Essop; Dr Dilshad Jetham (“**Jetham**”);⁸⁹ and Professor Kantilal Naik (“**Naik**”),⁹⁰ who were arrested and detained at John Vorster Square at the same time as Timol. We now know that Timol must have been severely tortured until he most likely was beaten into a state of unconsciousness.
27. On his arrival at John Vorster Square on Saturday 23 October 1971, Essop was viciously tortured until he collapsed into a state unconsciousness on the morning of Tuesday, 26 October 1971. He had to be rushed to hospital.⁹¹ On Monday 25 October

⁸⁴ Essop affidavit, Vol C, pp30 – 32, paras 24 – 27. See entry 54 in the Chronology.

⁸⁵ Captain Carel Joseph Dirker (“**Dirker**”) affidavit, Vol B, exhibit MM, p95, para 8.

⁸⁶ Dirker affidavit, Vol B, exhibit MM, p95, paras 9 – 12; Van Wyk affidavit, Vol B, p8, para 3; Kleyn affidavit, Vol B, exhibit A, p6.

⁸⁷ Van Niekerk affidavit, Vol B, exhibit F, p15, para 2; and Gloy affidavit, Vol H, exhibit G, p18, para 2.

⁸⁸ Kleyn affidavit, Vol B, exhibit A, p6; Dirker affidavit, Vol B, exhibit MM, p96, para 15; Van Wyk, vol B affidavit, para 13; Schoon affidavit, Vol B, Exhibit N, p 31.

⁸⁹ Dr Jetham affidavit, Vol C, pp90 – 104.

⁹⁰ Prof Naik affidavit, Vol C, pp105 – 117.

⁹¹ Essop affidavit, Vol C, pp32 – 46, paras 29 – 63.

1971, the day before Essop collapsed and had to be rushed to hospital, he caught a fleeting sight of a man he believes was Timol. While in the vault of room 1013, in the north wing of the tenth floor of JVS, Essop saw a man with a black hood over his head being dragged by two SB members, as he was unable to walk normally. Essop is certain that this hooded figure was Timol because he was familiar with his physique and height.⁹²

28. Just as Essop's torture commenced at John Vorster Square upon his arrival on Saturday 23 October 1971, the situation was no different for Naik. Naik's torture was so severe that he needed physiotherapy treatment for almost four months to repair the acute damage sustained to the muscles in his hands. This serious damage to his hands was as a result of the brutal method of torture (called "the helicopter treatment") inflicted upon him by the SB while at John Vorster Square.⁹³ Although Naik's torture had ceased by the Monday he was held for several months in detention and only released on 7 March 1972⁹⁴ in order to ensure his injuries were healed.⁹⁵ He was placed under considerable pressure not to pursue assault charges against the SB.⁹⁶
29. Jetham was detained and humiliatingly tortured at John Vorster Square from Saturday 23 October 1971 until the morning of Wednesday 27 October 1971.⁹⁷ On the evening of Sunday 24 October 1971, Jetham heard Timol screaming from a nearby room in the south wing of the tenth floor of John Vorster Square.⁹⁸ On the evening of Monday 25 October 1971, Dr Dilshad again heard Timol screaming nearby on the tenth floor.⁹⁹ As the night of Tuesday 26 October 1971 wore on, Timol's screams grew louder and became more desperate. He was shouting and crying, begging his torturers to stop.¹⁰⁰ According to Jetham, at dawn of Wednesday 27 October 1971, Timol's screams suddenly stopped.¹⁰¹

⁹² *Id*, pp42 – 43, paras 52 – 54; and John Vorster Square inspection *in loco* 27 June 2017.

⁹³ Prof Naik affidavit, Vol C, pp108 – 110, paras 14 – 25.

⁹⁴ Naik file: Exhibit G3, p 16

⁹⁵ Prof Naik affidavit, Vol C, pp108 – 110, para 30.

⁹⁶ *Id*, paras 26 – 31; and 37 – 38.

⁹⁷ Dr Jetham affidavit, Vol C, pp93 – 98, paras 13 – 39.

⁹⁸ *Id*, p95, paras 26 – 27.

⁹⁹ *Id*, Vol C, p96, para 30.

¹⁰⁰ *Id*, Vol C, p98, para 38.

¹⁰¹ Jetham affidavit, Vol C, p98, para 39.

30. It is on the basis of this evidence by these witnesses, read with the new medical reports, that we submit that Timol must have been brutally tortured. Given the level of his involvement in underground activities he must have sustained considerable more brutality than his fellow detainees. Timol was probably tortured to a point where he may have been rendered entirely incapacitated. Eventually, on 27 October 1971, Timol met his death while still in police custody at John Vorster Square.

Death at John Vorster Square

31. According to the police, Timol spent considerable time in room 1026 which is located on the south wing of the tenth floor of John Vorster Square.¹⁰² According to witness testimony in the first inquest, on the evening of Tuesday 26 October 1971, Timol was interrogated from about 20h30¹⁰³ to about 15h30 on the afternoon of Tuesday 27 October 1971.¹⁰⁴
32. At 15h30, Sergeant Joao Anastacio Rodrigues' ("**Rodrigues**") allegedly entered room 1026 where Gloy and van Niekerk were interrogating Timol. He claims that he came to John Vorster Square from the SB headquarters in Pretoria after being called by Gloy in the morning to bring his and van Niekerk's salary cheques.¹⁰⁵ Along with these salary cheques, Rodrigues was apparently requested to bring a sealed envelope with Gloy's name on it.¹⁰⁶
33. When Rodrigues came into room 1026, he alleged he was given 3 (three) cups of coffee to hand over to Gloy, van Niekerk and Timol. The three men, including Timol, allegedly drank their coffee.¹⁰⁷ At about 15h45, Rodrigues claimed that an unidentified member of the SB entered room 1026 and announced that he knew the whereabouts Quinten

¹⁰² van Niekerk affidavit, Vol B, exhibit F, p15, para 5; Gloy affidavit, exhibit G, Vol B, p18, para 4; and Sergeant Joao Anastacio Rodrigues' ("**Rodrigues**") affidavit, Vol B, exhibit M, p27, para 2.

¹⁰³ Captain Richard Bean ("**Bean**") affidavit, Vol B, exhibit D, pp12 – 13, paras 2 – 6; Detective Sergeant Louw ("**Louw**") affidavit, Vol B, exhibit R, p37, para 4; and Detective Sergeant Bouwer's ("**Bouwer**") affidavit, Vol B, exhibit Q, p36, para 7.

¹⁰⁴ *Id.*

¹⁰⁵ Rodrigues oral testimony, Vol 9B, p EEEEE (673), lines 16 – 20.

¹⁰⁶ Translated inquest judgment, Vol A, p5, p16 and p18; and transcribed reopened inquest record, Vol 9, pp696 – 697; p743, p747; and p751.

¹⁰⁷ Rodrigues affidavit, Vol B, exhibit M, p27, paras 2 – 3.

Jacobsen, Henry Jacobsen and Martin Cohen.¹⁰⁸ According to Gloy and Van Niekerk Mr X arrived at 15h50.¹⁰⁹ According to Rodrigues, when Timol heard these names a shocked and distressed look appeared on his face.¹¹⁰ His eyes looked wild as he turned his head from side to side.¹¹¹ In his oral testimony at the reopened inquest, Rodrigues testified that Timol's "eyes were big and he was looking from one side to the other."¹¹²

34. At about 15h48, Gloy and van Niekerk left room 1026 and Gloy instructed Rodrigues to guard Timol while they went outside.¹¹³ Rodrigues then sat down on the chair that Gloy had just vacated.

34.1. A little while after Gloy and van Niekerk left the room, Timol asked to go to the toilet. Rodrigues believed that this was a "reasonable request" and stood up to take Timol to the toilet.¹¹⁴

34.2. According to the first inquest finding, as Rodrigues was manoeuvring his way around the left hand side of the table, moving a chair that was on his way, he noticed – from the corner of his eye – that Timol was standing on the right hand side of the table. Timol rushed towards the window, the window was already open, and he dived out. In an attempt to stop Timol, Rodrigues stumbled over one of the chairs, which prevented him from even grabbing Timol.¹¹⁵

34.3. This finding is inconsistent with an earlier finding of the Magistrate that Rodrigues first had to "push" the window open.¹¹⁶ In his oral testimony (evidence in chief) at the reopened inquest, Rodrigues testified that Timol first had to open the window before diving out.¹¹⁷ He testified that he stumbled over

¹⁰⁸ Van Niekerk affidavit, Vol B, exhibit F, p16, para 8; Gloy affidavit, exhibit G, Vol B, p19, para 5; and Rodrigues affidavit, Vol B, exhibit M, p27, para 4.

¹⁰⁹ Van Niekerk affidavit, Vol B, exhibit F, p16, para 8; Gloy affidavit, exhibit G, Vol B, p19, para 5.

¹¹⁰ Rodrigues affidavit, Vol B, exhibit M, p28, para 5.

¹¹¹ Translated inquest judgment, p27. See the transcribed reopened inquest record at Vol, 9, p699.

¹¹² *Id.*

¹¹³ Rodrigues affidavit, Vol B, exhibit M, p28, para 6.

¹¹⁴ Rodrigues oral testimony, Vol 9B, p JJJJJ (673), lines 9 – 12.

¹¹⁵ Translated inquest judgment, p28. .

¹¹⁶ *Id.*, p 6.

¹¹⁷ Rodrigues oral testimony, Vol 9B, 782, line 17 – p 783, line 15.

one of the chairs, lost his balance and fell to the floor. When he jumped up he realized that Timol was no longer in the room.¹¹⁸

- 34.4. The police provided three different versions as to what had happened after Rodrigues was left alone with Timol. The different versions had Timol running towards the door turning and then running towards and jumping through the window; and Rodrigues running in different directions around the table and in the process tripping over different chairs.¹¹⁹
35. Rodrigues looked out the window of room 1026 and saw Timol lying on the ground next to the building. He immediately ran to Greyling's office to report.¹²⁰ Greyling's office is on the 9th floor. In his oral evidence he appeared to suggest that he met Greyling in an office on the 10th floor.¹²¹ As he ran down the corridor he shouted that Timol had jumped.¹²² He and Greyling descended by stairs to the impact site. On arrival there were already other officers present, including Gloy and van Niekerk.¹²³ Nobody called for an ambulance to assist Timol.¹²⁴
36. On arrival it was discovered that Timol was alive, and even though he was critically injured, he was moved and rolled onto a blanket and taken into the foyer of the building.¹²⁵ This was done in order to get Timol out of the '*public eye*'.¹²⁶ While in the foyer it was discovered that Timol no longer had a pulse, so his body was taken to the ninth floor¹²⁷ where Dr Vernon Denis Kemp ("**Dr Kemp**"), who was the District Surgeon in Johannesburg at the time, declared Timol dead.¹²⁸ Dr Kemp who had been

¹¹⁸ Inquest Running Transcription (Case No. I01-2017) Volume 9 pages 673-765 at page 704 (Lines 21 - 23).

¹¹⁹ Vol B: Gloy, exhibit G, p17; Pattle affidavit, Vol B, exhibit S, pp39 – 40, para 10; Bizos affidavit, Vol C, paras 61.6 – 69.

¹²⁰ Translated inquest judgment, p28.

¹²¹ Rodrigues oral testimony, Vol 9, p 712, lines 1 – 25. .

¹²² Transcribed reopened inquest record, Vol 9, p711.

¹²³ Transcribed reopened inquest record, Vol 10, p790.

¹²⁴ Rodrigues oral testimony transcript, Vol 9, p 793, lines 12 – 19

¹²⁵ Deysel affidavit, Vol B, exhibit S1, p41, paras 2 – 4.

¹²⁶ Rodrigues oral testimony transcript, Vol 10, p 792, line 5.

¹²⁷ Deysel affidavit, Vol B, exhibit S1, p41, paras 2 – 4.

¹²⁸ Dr Kemp affidavit, Vol B, exhibit T, p44.

telephoned at 15h55 to come to JVS, somehow, and improbably, appeared on the 9th floor of the building at 16h05 to declare Timol “*pas dood*”.¹²⁹

37. The security police advanced this version of how Timol fell to his death and the Magistrate accepted it. It became the official version that the Timol family, as well as the general public, have had to content with for the past 46 years. However, at the hearing of these proceedings, three (3) witnesses, who were at or near the John Vorster Square precinct, testified that Timol’s fall happened in the morning between 10h00 – 11h00 on that day.¹³⁰
38. These three witnesses (and potentially several others) were not interviewed during the 1971 investigation into this incident. The original inquest was finalised without the benefit of their testimony. These statements – from three unrelated witnesses – raise very serious questions about the police version.

Post mortem by Dr Schepers and investigation into the fall

39. On 29 October 1971, Dr Nicolaas Jacobus Schepers (“**Schepers**”), who was a Senior Government Pathologist in Johannesburg, conducted a post mortem on Timol’s body. In his report he noted several injuries that were sustained by Timol and he concluded that Timol’s cause of death was as a result of multiple injuries.¹³¹
40. Soon after Timol’s fall, Major General Christoffel Andries Buys (“**Buys**”) – who was the head of the Criminal Investigation Department (“**the CID**”) of the SAP – was appointed to investigate the circumstances that led to Timol’s fall. On 31 October 1971, before the investigation had been completed, Buys told the media that Timol had committed suicide.¹³² The investigation of Buys would prove to be a cover-up from start to end.

¹²⁹ *Id.* See also exhibit **R**, Google Maps printout of the route from 77 – 84 Harrison Street (Office of the District Surgeon) to Johannesburg Central Police Station – John Vorster Square (1 Commissioner Street).

¹³⁰ See affidavits by: Ernest Alexander Matthis (“**Matthis**”), Vol C, pp118 – 120, transcribed reopened inquest record; Muhammed Ali (“**Thokan**”), Vol H, pp1 – 4, transcribed reopened inquest record, p853; and Abdulla Goolam Mohammed Adam (“**Adam**”), exhibit H20, p1, transcribed reopened inquest record.

¹³¹ Dr Schepers SAP 183 and post mortem report, Vol B, exhibit X pp48 – 58. The post mortem report is dated 4 November 1971.

¹³² Bizos SC affidavit, Vol C, pp67 – 68, paras 36 – 37. See also 1971 Newspaper clips, Vol D, p95.

Formal inquest into the death of Ahmed Timol and the reopening of the inquest

41. On 1 December 1971 a formal inquest into Timol's death commenced at the Johannesburg Magistrates Court (“**the original inquest**”) presided over by Magistrate de Villiers (“**the Magistrate**”). The original inquest was concluded on 22 June 1972 when the Magistrate's finding was handed down. The magistrate *a quo* found that Timol committed suicide and that no living person was to blame for his death.¹³³
42. Dissatisfied with this finding, Timol's family uncovered new evidence, which led to these reopened inquest proceedings. It took some 46 years to achieve this result.

HIGHLIGHTS FROM THE CHRONOLOGY

43. 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. The highlights from the chronology place those fateful days in October 1971 into their proper context.

- 43.1. Within months of joining the SAP, Rodrigues is convicted of statutory perjury, pointing to his propensity and readiness to lie under oath.

9 February 1956	Sergeant Joao Anastacio Rodrigues (Rodrigues) joins the South African Police force	Joao Rodrigues police file Vol J1 (JR) p 35
27 June 1956	Rodrigues is convicted of Statutory Perjury for contravening Section 9 of Act 16 of 1914.	JR Vol J1, p 83

- 43.2. Johannes Zacharias van Niekerk (**Van Niekerk**), who was one of the main interrogators of Timol – and likely tormentor – was convicted in **1959** of assault in a case in which a detainee died from his injuries. This points to his propensity and predilection for brutalizing detainees.

2 February 1959	Police docket opened against Johannes Zacharias van Niekerk (Van Niekerk) on a charge of murder that was reduced to culpable homicide in relation to the death in custody of a detainee.	Johannes Zacharias Van Niekerk police file, Vol J2 p8
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¹³³ Volume A, p1157, paras (c) – (d).

1 July 1959	Van Niekerk settles a civil claim brought by the wife of a man who died in police custody in Brooklyn Police Station, Pretoria A number of suspects were assaulted during a drunken interrogation by van Niekerk and other officers. One suspect died.	Vol J2 (VN) p 36 Vol J2 (VN) p 71-118
19 May 1960	Captain Johannes Zacharias Van Niekerk (van Niekerk) convicted of 2 counts of common assault for assaulting a detainee in his custody. ¹³⁴	Vol J2 (VN) 31

43.3. Rodrigues received only one promotion in **1963**. It is apparent that he was expecting a promotion in return for cooperating with the Security Branch on the Timol matter. He testified in his evidence in chief that he did not tell anyone about the request to fabricate a fight with Timol as his “*promotion could have been held back*”.¹³⁵

1963	Rodrigues is promoted to Sergeant. He receives no further promotions.	Vol J1 p. 81
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43.4. In **1964**, Suliman “Babla” Saloojee fell to his death from the SB building in Johannesburg. SB officer, Theunis Jacobus ‘Rooi Rus’ Swanepoel (**Rooirus Swanepoel**), was implicated in his death by the TRC. Rooi Rus Swanepoel is closely connected to Johannes Hendrick Gloy (**Gloy**), (who with Van Niekerk, was a lead interrogator of Timol). They attended a course together in France in **1968** on interrogation and counter-terrorism.

43.5. Rooi Rus Swanepoel is also closely connected to Rodrigues who “*knew Rooirus Swanepoel very well*” and significantly, he conceded that it was Rooirus that recruited him into the SB.¹³⁶ We do not believe such connections to be merely coincidental and it may be that the modus operandi employed in the Saloojee case was also employed in Timol.

9 September 1964	Death of Suliman “Babla” Saloojee in detention who falls to his death from Grays Building in Johannesburg.	TRC Final Report 29 Oct 1998, p 540-541, Exhibit H12
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¹³⁴ Entries 8 – 10 deal with the same event.

¹³⁵ Oral testimony, Vol 9, p 727, line 22; Vol 10, p 799, line 21 – p 800, line 6.

¹³⁶ Oral testimony, Vol 9, p 687, lines 15 – 20.

	In 1997, the Truth & Reconciliation Commission finds that Brigadier Theunis Jacobus 'Rooi Rus' Swanepoel (Rooi Rus Swanepoel) tortured Saloojee and implicates him in the death of Saloojee.	
1968	'Rooi Rus' Swanepoel, Johannes Hendrick Gloy (Gloy) and other SB officers undergo training in interrogation and counter-interrogation techniques in France in or about 1968.	TRC Report Vo1 2 Ch. 3 subsect. 14, para 125, H19
1969	Rodrigues is transferred to the salary section of Security Branch (SB) headquarters in Pretoria	JR VolJ1 p 82

43.6. The police failed to stop the leaflet bombings taking place throughout South Africa in **1970 – 1971**, placing huge pressure on them. Warrant Officer Neville Els (**Els**) conceded that this was “*a big embarrassment*” to the police.¹³⁷

1970 – 1971	Multiple leaflet bombing (bucket bombs) and banner unfurling campaigns in 5 cities throughout South Africa.	Kasrils affidavit, exhibit H10, para 18
13 August 1970	Leaflet bomb detonates in downtown Johannesburg.	Sgt Paul Steyn, Vol B Exhibit VV, p 156.

43.7. Just **months before** Van Niekerk and Gloy interrogate Timol they are accused of multiple instances of assault and torture, including electric shock treatment, enforced standing for prolonged periods, sitting on an imaginary chair, assault with a stick and an iron rod, strangulation and enforced exercise.

15 December 1970	Van Niekerk accused of assaulting a detainee who was kept in a small house in Bizana for 3 days.	Vol J2 (VN), p 141
16 December 1970	Van Niekerk accused of assaulting a detainee, tied to a tree for four days and blindfolded. Detainee was subject to electric shock treatment.	Vol J2 (VN), p 139
20 January 1971	Van Niekerk and Gloy accused of assaulting a detainee and taking him to Pondoland where he was told to stand the entire night.	VOL J2 V(N) p 140
2 February 1971	Van Niekerk forced a detainee to sit on an imaginary chair and he was assaulted	Vol J2 (VN) p 143

¹³⁷ Oral evidence, Vol 9B, p EEE (673) lines 4 – 24.

10 February 1971	Van Niekerk accused of forcing a detainee to sit on an imaginary chair, repeatedly slapping him, pouring hot water on his hands and body. Another detainee alleged that Van Niekerk forced him to sit on an imaginary chair, stand on bricks, run on the spot while holding bricks above his head.	Vol J2 (VN) p 138-139
March 1971	Van Niekerk, Gloy and others allegedly assaulted a complainant with a stick, an iron rod and strangled him during an interrogation.	Vol J2 (VN) p 25
1971	Two allegations of assault against suspects are made against Van Niekerk, Gloy and seven other officers	Vol J2 (VN) p122

43.8. Leaflet bombs are detonated in 11 cities on **10 August 1971** piling even more pressure onto the SB.

10 August 1971	Leaflet bombs go off in 11 cities across South Africa	'Pamphlet bombs blast again', Rand Daily Mail, 11 August 1971
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43.9. In the **early morning of 23 October 1972**, Lt Colonel Van Wyk called Captain Van Niekerk ordering him and Gloy to report to JVS. It is our submission that Van Niekerk and Gloy were called in because of their well-known reputation for brutality.

43.10. They were presumably called in order to quickly break Timol during the **24 – 72 hours period** before others connected to Timol could escape or hide. Warrant Officer Els conceded under cross examination that it was a tactic of the SB to extract as much information in this initial time period through "*intense questioning*" in order to go after "*collaborators*".¹³⁸

23 October 1972, 04h30	Van Wyk calls Captain van Niekerk at Head Office, Pretoria and instructs him to report to JVS at 06h00.	Van Wyk affidavit, Vol B, p8, para 9.
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¹³⁸ Oral evidence, Vol 9B, p ZZZ (673), line 13 - p AAAA (673), line 23.

- 43.11. Van Wyk boasts in his affidavit that notwithstanding Timol's non-cooperation in respect of Quinten Jacobsen and Martin Cohen they had already obtained their addresses by **Tuesday, 26 October 1971**. The Jacobsens openly ran a photographic studio in Pritchard Street in downtown Johannesburg.¹³⁹ Van Wyk's boast and this last mentioned fact tend to refute the claims made by Rodrigues, Gloy and Van Niekerk that the apparent discovery of the whereabouts of Quinten and Martin by the so-called Mr X was cause for Timol's alleged shock.

Tues, 26 October 1971 08h30 – 20h00	Bean and Van Wyk interrogate Ahmed Timol. Timol was questioned about names in the documents such as Quinten and Martin. He was not prepared to disclose their addresses. Timol said Quinten was a coloured but we found out he was white. Even their addresses have also been obtained and further evidence that Timol and Quentin have very closely linked and plans to commit sabotage in the RSA.	Van Wyk, vol B Affidavit, para 12.
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- 43.12. Essop collapses on the **morning of Tuesday 26 October 1971** and is taken to hospital. It is our submission that Timol was similarly incapacitated by Wednesday morning, probably in a much more serious condition. It is our further submission that the SB sought to avoid the storm of criticism that would follow another "Essop" occurring in 24 hours.

Morning of Tues, 26 Oct 71 probably around 11am	After days of unrelenting torture, Salim Essop collapses and Greyling calls Dr Kemp to examine him in the vault. Essop is transported to Johannesburg General Hospital and thereafter to HF Verwoerd Hospital in Pretoria.	Vol C, Salim Essop affidavit from para 58, p 44-46
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- 43.13. According to Jetham, in the **early hours of Wednesday morning, 27 October 1971** Timol's screams¹⁴⁰ suddenly stop, followed by a hive of activity on the 10th floor and she is removed to a cell.

¹³⁹ Essop oral evidence, Vol 2, pp130 – 133.

¹⁴⁰ Warrant Officer Jacobus Johannes Schoon claimed he was busy with typing in room 1024 at approximately 4 pm on 27 October 1971 and that he did not believe Rodrigues was interrogating Timol in room 1026 because he did not hear them speaking (Schoon affidavit, Vol B, Exhibit N, p 31). This evidence tends to support the claim of Jetham that she heard Timol screaming and crying.

27 Oct 71: Dawn (approx. 04h00)	<p>According to Jetham, Ahmed Timol's screams stop. Jetham thinks that Timol is probably incapacitated or unconscious. Morning call to prayer called not long afterwards.</p> <p>Soon after this, there is frantic activity on the 10th floor with officers scurrying around.</p>	<p>Jetham affidavit, Vol C, p98, paras 39 - 40;</p> <p>Jetham oral testimony, Vol 4, p 291, line 20 – p 293, line 24.</p>
06h00	<p>Jetham is moved to a cell several floors below the 10th floor.¹⁴¹</p>	<p>Vol C, Dilshad Jetham affidavit para 41</p>

43.14. Three civilian witnesses all put the fall of Timol taking place in the **morning**.

27 Oct 71: Morning	<p>Matthis sees a body falling past the window of either the 4th or 6th floor in JVS. Body is lying prone with the right arm bent and beyond the head. Head in the direction of the freeway. Body fell next to shrubbery, not on shrubbery. Looking up he noticed all windows were closed.</p>	<p>Matthis affidavit, Volume C, p118, paras 2 – 3;</p>
Mid – morning approximate (10h00 – 10h15)	<p>Abdulla Adam, bookkeeper at the then Dollars Filling Station (Dollars) (located across the road from JVS) is asked by his boss to check the commotion across the road at JVS. He observes a body lying on the shrubs in the JVS garden from a distance of 10 m from the pavement. He is chased away by white policemen who were already at the scene.</p>	<p>Adam Affidavit, Exhibit H20, paras 1 – 5;</p>
(10h30 – approximate)	<p>Ali Thokan was filling his vehicle at Dollars when he hears a loud thud. No shouts or screams are heard. Someone says a person had fallen from JVS. He attempted to inspect but was stopped in the middle of the road by policemen and could not see the body. Area was cordoned off quickly.</p>	<p>Thokan affidavit, Vol H, p 2 – 3; paras 4 – 9.</p>

43.15. If the fall had taken place in the morning, then it is our submission that Rodrigues was called in to help with the construction of the story for public consumption in the late afternoon. If it took place in the afternoon then he was called in to prepare for the “fall” in the afternoon and play his role in the aftermath of the fall. More specifically his role would be to remove scrutiny of the interrogators and/or guards – as the official version would be that he was alone in room 1026 with Timol.

¹⁴¹ The cells were located in the east wing of JVS.

- 43.16. Rodrigues was trusted given his close relationship with Gloy and Van Niekerk (and Rooirus Swanepoel). Under cross examination Rodrigues conceded that he was on friendly terms with them and their families who he knew “very well”.¹⁴²

27 Oct 71: Mid-morning	Rodrigues receives a telephone call from Gloy to bring salary cheques for himself and Van Niekerk and a sealed envelope to JVS.	Rodrigues oral evidence, Vol 9B, p EEEEE (673), lines 16 - 20.
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- 43.17. The District Surgeon, Dr Kemp, is called at **15h55 and by 16h05** he is on the 9th floor of JVS declaring Timol dead. Since these were the days before cell phones, Dr Kemp must have been in his office in Harrison Street but still managed to get from his office to the 9th floor in 10 minutes. It is implausible.¹⁴³

27 Oct 71: 15h55	District surgeon Dr Vernon Denis Kemp (Kemp) receives a telephone call to go JVS.	Dr Kemp affidavit, Vol B, exhibit T, p44.
16h05	Dr Kemp arrives on the 9th floor of JVS and, with investigation, ascertains that Timol was already dead. He was just dead.	Dr Kemp affidavit, Vol B, exhibit T, p44.

- 43.18. It is likely that the SB got wind of this urgent application on **27 October 1971**.

28 October 1971	Ismail Essop brings an application in the Supreme Court in Pretoria for a restraining order against the police from assaulting his son, Salim Essop. Essop does not appear in court. Mr Justice Margo issues an interim order restraining the Security Police from assaulting Essop or interrogating him unlawfully.	Vol C, Salim Essop affidavit, paras 63 - 66, p 46 The Star, 29 October 1971
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- 43.19. The investigating officer concludes in the press on **31 October 1971** that it was suicide barely 3 days after Timol’s death (which means that Buys must have spoken to the journalist on the 30th October, or earlier).

¹⁴² Oral evidence, Vol 9, p 744, line 14 – p 745, line 12; p 746, lines 7 – 15.

¹⁴³ See exhibit R: Google Maps print out of routes from 77 – 84 Harrison Street to Johannesburg Central Police Station – (1 Commissioner Street, Jhb).

31 October 1971	Rapport publishes article quoting Investigating Officer Major Christoffel Andries Buys (Buys) informing the media that Ahmed Timol committed suicide.	1971 Newspaper clips, Vol D, p95.
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43.20. Notwithstanding the claims of the SB, Jacobsen is only arrested on **2 November 1971**.

2 November 1971	Quinten Jacobsen is arrested	Jacobsen police file, exhibit G7, p73
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43.21. The Post Mortem Report signed off on **4 November 1971** reveals ante-mortem injuries (not connected to the fall) prompting, in our submission, the investigating officer (Buys) as well as Gloy and Van Niekerk to attempt a further fabrication, namely that Rodrigues fought with Timol before the fall. In our view, Rodrigues declines to go this far because of the obvious risks, namely that he would be held responsible for such injuries, and also the death of Timol.

4 November 1971	Post mortem report by Schepers is signed.	Post Mortem Report, Vol B, p 49
Unknown date(s) and time before 11 November 1971.	Rodrigues claims that Buys, Gloy, Van Niekerk and two other officers approached him to change his version and he refused. Buys wanted him to fabricate a version that he and Timol fought/wrestled before he exited the window. Rodrigues is approached by Gloy, Van Niekerk and two other officers who he cannot recall to similarly change his version.	Rodrigues oral evidence, Vol 9, p 675 line 10 – p 677, line 10; p 683, line 12 – p 684, line 9; p 719, line 22 – p 720 line 10.
17h00	Rodrigues deposes to his affidavit, commissioned by Buys.	Rodrigues affidavit, Vol B, exhibit M, p27 – 30.

43.22. The entry below reflects an attempt on the part of the SB to fortify its version of suicide by digging up a document (the Frelimo Memorandum) apparently seized in 1966 and which was subsequently fabricated by the insertion of the reference to suicide.¹⁴⁴

¹⁴⁴ Kasrils oral evidence, Vol 11, p 884, line 23 – p 888, line 7.

<p>1 December 1971</p>	<p>Major Gert Jansen Van Rensburg (SB JVS) makes out an affidavit saying that on 18 March 1966 he raided a flat in Raleigh St, Yeoville rented by Victor Finkelstein and Charles Katz.</p> <p>Van Rensburg seized books, pamphlets, letters, a <u>typewriter</u> and other documents. One of the documents was titled "FRELIMO MEMORANDUM".</p>	<p>Van Rensburg, Vol B, Exhibit WW, p 158, paras 2 – 6</p> <p>Van Rensburg, para 7</p>
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43.23. In the entries below it should be noted that judgment in the final interdict against the SAP was handed down on **28 February 1972**, yet it features nowhere in the available record of the first inquest or the Magistrate's finding.

43.23.1. We submit that the investigating officer, Prosecutor Kotze and Magistrate de Villiers would have been aware of both the interim order and the final judgment, yet deliberately chose to ignore it. Indeed the judge in summing up the evidence of Col Van Wyk noted that Van Wyk "*admitted that it was general knowledge that Essop went to hospital.*"¹⁴⁵ They would have intentionally ignored references in the judgment such as noting the evidence of the nurses that Essop was "*so ill as to require nasal feeding.*"

43.23.2. If the judgment was placed before the Magistrate he would have had to concede that a detainee arrested with Timol, and held at the same time as Timol on the 10th floor, was brutally tortured. This would have severely undermined the version of the police, accepted by the Magistrate, that no torture took place.

43.24. Since Essop appeared in the Magistrate's Court on **8 March 1972** he potentially could have been summoned to appear before the Inquest Court. This Honourable Court sought submissions on whether s 6 of the **Terrorism Act 83 of 1967** fell away once a detainee appears in court as an awaiting trial prisoner. We could find no such provision in that statute. Indeed s 5(f) precludes this since it provides that no person detained on a charge under the Act shall be released on bail before sentencing or discharge, unless the attorney-general consents to his release. Moreover, s 6(6) stipulates that no person other than the Minister,

¹⁴⁵ Magistrate's finding (Translated judgment), p 12. In summing up Van Niekerk's evidence the Magistrate noted that "*he only heard at one stage that Essop had gone to hospital*" (p 25).

or an authorised officer, shall have access to any detainee, or shall be entitled to any information relating to the detainee.

- 43.25. Rodrigues is issued with a letter of commendation from the Commissioner of Police on **20 June 1972**, 15 days after he buys his discharge from the SAP and 2 days before the Magistrate's finding is issued. The letter of commendation is particularly curious in the circumstances and suggests that he may have been commended for his role in covering up for the SB.¹⁴⁶

1 December 1971	Formal Inquest into death of Ahmed Timol commences in Johannesburg Magistrate Court, presided over by Magistrate J J L de Villiers assisted by Professor I W Simson	Inquest record
January 1972	Jetham is released	Vol C Dilshad Jetham affidavit para 53, p 101
20 January 1972	Van Niekerk and Swanepoel accused of depriving a detainee of sleep and denying him water.	Vol J2 (VN) p 140
February 1972	Date of Inkululeko Freedom No 2 February 1972. At the bottom of the last page of this document suicide was encouraged.	Vol C, Ben Nel affidavit, p 15 – 21; Frank Dutton affidavit, Exhibit H7, paras 79 – 82
25 February 1972	Judgment in the final interdict against the police in the Essop matter is handed down. Police are restrained from assaulting, interrogating or acting unlawfully against Salim Essop. The judges noted the evidence of the nurses that Essop was " <i>so ill as to require nasal feeding.</i> "	Vol G1 Essop, Vol C, p 48, para 67.
7 March 1972	Naik released from detention after his visible injuries have healed.	Exhibit G3, p 16; Vol C, p 111, para 30
8 March 1972	Salim Essop appears before the Magistrate's Court in Marshalltown, Johannesburg.	Vol C Salim Essop affidavit para 62 p 45
21 April 1972	Quentin Jacobsen is acquitted	Jacobsen Police file, exhibit G7, p45
5 June 1972	Rodrigues buys discharge from the South African Police force.	VoJ1 JR p 84

¹⁴⁶ Frank Dutton affidavit, exhibit H7, p32, paras 83 – 88.

13 June 1972	Salim Essop's trial begins.	Vol C, Essop affidavit, para 22, p 4
20 June 1972	Rodrigues receives a Letter of Commendation for "Service to the State" from Commissioner of Police, Gen. GJ Joubert	VolJ1 JR p 77
22 June 1972	Magistrate de Villiers finds that no living person is responsible for Timol's death, ruling that he committed suicide.	Judgment, Vol A, p 1157, paras (c) – (d); translated judgment, p 51.
31 October 1972	Salim Essop was convicted and sent to Robben Island for 5 years.	Salim Essop Affidavit, para 80,

43.26. It is particularly curious that the SAP permitted a pay clerk, with a record of some 300 sick leave days, to reenlist for purposes of undergoing training in combat and counter-insurgency,¹⁴⁷ unless Rodrigues was perhaps being rewarded for his past conduct.

1 December 1975	Rodrigues re-enlists in the SAP	Vol J1 JR p 38
30 September 1976	Rodrigues buys discharge from the SAP	Vol J1 JR p 39

43.27. In **1982** *Inkululeko Freedom No 2* was entered into the Aggett Inquest as an exhibit. It appears to be the 'go-to' document for inquests dealing with suicides in detention.

5 February 1982	Neil Aggett dies in detention in JVS by allegedly hanging himself.	SA History online, Vol O, p 3
24 February 1982	Captain Carel Jacobus Adriaan Victor (JVS) (Victor), investigating officer into the death of Neil Aggett, makes out an affidavit in which he says he located and certified <i>Inkululeko Freedom No 2 February 1972</i> which was retrieved from the files of the SB.	Victor Affidavit (p 12, Aggett record), Exhibit C1, para 13(4)

¹⁴⁷ Rodrigues oral evidence, Vol 9, p 740, p 19 – p 741, line 9.

43.28. In **1996**, Rodrigues spurned an invitation to make a statement to the TRC, and/or appear in a hearing. Efforts by the Timol family in **2003** to get the NPA to take the Timol case forward come to naught when the Timol file is closed before or during **2006**. If the NPA had pursued a serious investigation in 2003 the testimonies of Buys, Van Niekerk, Gloy and others could have been secured, while all were still alive

During 1996	TRC investigator Piers Pigou Rodrigues refused to cooperate with the TRC and declined to make a statement or appear in a hearing.	Affidavit of Piers Pigou, paras 7 – 9
2003	Imtiaz Ahmed Cajee (Cajee) approaches the NPA to investigate the Timol case	Cajee affidavit, Vol H, para 27
25 February 2004	Adv R C Macadam of the NPA wrote to Cajee advising of “negative results” and requested more information.	Cajee affidavit, Vol H, para 27
31 October 2006	Van Niekerk dies	Info provided by Capt. Ben Nel.
29 November 2006	Report on the Progress made by the NPA Task Team on TRC cases confirms that the Timol case was closed.	Cajee affidavit, Vol H, para 27
25 February 2007	Buys dies	Info provided by Capt. Ben Nel.
30 July 2012	Gloy dies	Info provided by Capt. Ben Nel.

POLICE VERSION

44. Essentially the police version, and the finding of Magistrate De Villiers, is that late Ahmed Timol (Timol) was not mistreated¹⁴⁸ by the Security Branch (SB) and the cause of his death was attributable to Timol taking his own life.¹⁴⁹

¹⁴⁸ Translated Finding of Magistrate de Villiers dated 22 June 1972, p 49, Vol A.

¹⁴⁹ *Ibid*, p 51, Vol A.

No torture or abuse of any form

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

- 45.1. Timol was never tortured or abused in any way.¹⁵⁰
- 45.2. The SB did not torture or assault their detainees. They merely read about such allegations in the newspapers.¹⁵¹
- 45.3. Timol was treated in a “civilised and humane” manner.¹⁵²
- 45.4. The police would not have harmed Timol since he was regarded as a “*big fish*”¹⁵³ and to be of “*inestimable value*”¹⁵⁴ to the SB and it “*was clear*” that Timol “*and his followers were busy with a campaign of sabotage and even mass murder*”.¹⁵⁵
- 45.5. 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.*”¹⁵⁶

Timol committed suicide

46. The first Inquest Court (also referred to as “the Magistrate”) accepted the police version that Timol committed suicide on the strength of:

¹⁵⁰ Translated Finding of Magistrate de Villiers dated 22 June 1972, p 49, Vol A.

¹⁵¹ Transcribed record, Els testimony, pp RR673 – SS673.

¹⁵² Translated De Villiers Finding, p 49, Vol A.

¹⁵³ Essop affidavit Vol C paras 26 p 31

¹⁵⁴ Translated De Villiers Finding, p 3, Vol A.

¹⁵⁵ Translated De Villiers Finding, p 9, Vol A.

¹⁵⁶ *Ibid*, p 48, Vol A.

46.1. The evidence of a pay clerk, one Sergeant Joao Rodrigues (Rodrigues), who claimed to have witnessed Timol “*diving*” through the window of Room 1026;¹⁵⁷

46.2. The speculative claims of the police that Timol committed suicide because:

46.2.1. He feared a long prison sentence;¹⁵⁸

46.2.2. It was Communist Party policy or doctrine to commit suicide rather than to betray the party or your comrades.¹⁵⁹

POLICE VERSION IS UNTENABLE

47. 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.

48. 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.

¹⁵⁷ Translated De Villiers Finding, p 6, Vol A.

¹⁵⁸ Vol B: van Niekerk, exhibit F, p15, para 5; Gloy, exhibit G, pp18 – 19, para 4; and Van Wyk affidavit, Vol B, p10, para15.

¹⁵⁹ Van Wyk affidavit, Vol B, p10, para15; and Vol A, p1 155, Translated inquest judgment, p49.

Similar fact evidence of torture, assault and abuse¹⁶⁰

49. 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.¹⁶¹ It is our respectful submission that this Honourable Court will have little difficulty in reaching a diametrically opposite conclusion.
50. 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 9th and 10th floor of John Vorster Square (JVS) between 23rd and 27th 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):
- 50.1. Dr Salim Essop,¹⁶² Dr Dilshad Jetham,¹⁶³ Prof Kantilal Naik¹⁶⁴ and Mohammad Timol¹⁶⁵ who were detained in the same time period as Timol.

¹⁶⁰ 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* 4th Edition (Juta & Company, Capet Town, 2016) at pp76 – 77.

¹⁶¹ Translated De Villiers Finding, p 49, Vol A.

¹⁶² 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).

¹⁶³ Vol C, pp 90 – 104; Transcript: Vol 4, p 264 – 328 (30 June 2017).

¹⁶⁴ Vol C, pp 105 – 117; Transcript: Vol 3, p 197 – 228 (29 June 2017),

¹⁶⁵ Vol C, pp 121 – 134.

- 50.2. Stephanie Kemp,¹⁶⁶ Shantie Tweedie (formerly Naidoo),¹⁶⁷ Snuki Zikalala,¹⁶⁸ Laloo Chiba,¹⁶⁹ Abdulhay Jassat,¹⁷⁰ Peter Magubane,¹⁷¹ and Monica Dube¹⁷² who were detained and tortured in the 1960s and 1970s and 1980s.
- 50.3. Alwyn Musson,¹⁷³ Hanif Vally,¹⁷⁴ Parmanathan Naidoo,¹⁷⁵ Ismail Momoniat,¹⁷⁶ Kevin Martin¹⁷⁷ and Rashidahmed Valli Moosa¹⁷⁸ who were assaulted and abused by SB officer Seth Sons in the 1970s and 1980s.
51. 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 our Short Heads of Argument marked “**B**”.
52. Perhaps the starkest example of similar fact evidence comes from Dr Salim Essop’s harrowing account of torture. The savage manner in which the SB tortured Essop is a far cry from the “*civilised and humane way*” they claimed Timol was treated in detention.¹⁷⁹

¹⁶⁶ Vol H, pp 12 – 18, Transcript, Vol 5, p 400 – 419 (24 July 2017).

¹⁶⁷ Vol H, pp 45 – 52.

¹⁶⁸ Vol H, pp 53 – 62.

¹⁶⁹ Vol H, pp 63 – 75.

¹⁷⁰ Vol H, pp 76 – 95.

¹⁷¹ Vol H, pp 95 – 101.

¹⁷² Exhibit H18.

¹⁷³ Exhibit H21.

¹⁷⁴ Exhibit H22.

¹⁷⁵ Exhibit H23.

¹⁷⁶ Exhibit H24.

¹⁷⁷ Exhibit H25.

¹⁷⁸ Exhibit H26.

¹⁷⁹ Translated inquest judgment, p49.

- 52.1. 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.¹⁸⁰
- 52.2. Aside from his other activities, such as running a bursary scheme for disadvantaged black students, he assisted Timol in reproducing and distributing SACP literature.¹⁸¹
- 52.3. Essop was not a member of the SACP and was not in communication with the organisation.¹⁸² He did not know who Timol was communicating with in London.
- 52.4. 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. His four days and seventeen hours of torture was vicious, sadistic and unrelenting. By Tuesday morning Essop was in 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.¹⁸³
- 52.5. The police will have us believe that detainees held on the 10th floor of JVS were never assaulted, indeed they treated with care and compassion as if they were the children of the police interrogators.¹⁸⁴ It is a version that would be laughable if it were not so tragic.

¹⁸⁰ Vol C, Essop affidavit, p27, para 13.

¹⁸¹ Vol C, Essop affidavit, p25, para 8.

¹⁸² Transcribed reopened inquest record, p884.

¹⁸³ Exhibit E1, pp3 – 6.

¹⁸⁴ 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.

- 52.6. 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 no 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.
- 52.7. It is no coincidence that Essop was kept locked up incommunicado while the first inquest was underway. This was part of the cover-up. Investigator Buys and prosecutor Kotze finalised their investigations into Timol's death without even bothering to interview Essop, Naik, Jetham and other detainees held on the 10th floor at the same time as Timol. If their evidence had been heard in 1972 it would have completely discredited the police version that security detainees were not brutalized.
53. 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.
- 53.1. This is confirmed by the research carried out Professor Don Foster¹⁸⁵ as well as the experiences related by George Bizos SC in representing numerous detainees over decades.¹⁸⁶
- 53.2. Some of the most vicious torture was meted out to detainees held on the 10th floor of JVS. This much was confirmed by former SB officer, Paul Erasmus who witnessed such torture first hand as an interrogator.¹⁸⁷

¹⁸⁵ Exhibit K, p102 and p105; and Transcribed reopened inquest record, pp591 – 614.

¹⁸⁶ 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

¹⁸⁷ Transcribed reopened inquest record, Vol 5, pp338 – 392 (see p376 – 380)

53.3. 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 on the 10th floor where Timol spent considerable time during his detention.¹⁸⁸

54. It is also worth noting that most of the SB members who made affidavits stressed that they did not assault Timol, nor did they witness or hear Timol getting assaulted and, moreover they never saw any injuries or marks on him.¹⁸⁹

54.1. It is quite peculiar how all of them repeated the same claim in affidavit after affidavit. We know from Rodrigues’ oral testimony that he asserted that Buys insisted that this be inserted into his affidavit.¹⁹⁰

54.2. Most of the affidavits that were commissioned by Buys have that common refrain.¹⁹¹ Indeed the police statements are virtual carbon copies of each other in terms of structure and content. All of those who interacted with Timol make largely the very same allegations.

55. Former SB officer Paul Erasmus (“**Erasmus**”) testified about the use of sleep deprivation to break a detainee is entirely consistent with the evidence of the detainees who claimed they were deprived of sleep over periods running into days.¹⁹²

¹⁸⁸ *Id.*, p 371, line 371 – p 373, line 25.

¹⁸⁹ See entries 63 (Dirker), 65 (Van Niekerk and Gloy), 86 (Van Wyk and Bean), 94 (Van Niekerk and Gloy), 108 (Gloy) and 111 (Schoon) of the Chronology (Exhibit T and annexed to the Short Heads as annex A).

¹⁹⁰ Oral testimony, Vol 10, p 814, line 1 - p 816, line 10.

¹⁹¹ See entries in the Chronology: 141 (Thinnies), 142 (Van Wyk), 148 (Van Niekerk), 149 (Gloy), 153 (Liebenberg), 154 (Van Rensburg), 156 (Rodrigues) and 160 (Deysel).

¹⁹² Oral testimony, Vol 5, p 359, line 10 – p 360, line 1; p 375, lines 1 – 18.

- 55.1. Essop stated that at some point he was so exhausted from lack of sleep that he simply told his torturers to write out whatever they wanted in a statement and he would sign it.¹⁹³
- 55.2. The use of a roster system in the interrogation of detainees also shows that sleep deprivation was viewed as an essential torture method. Interrogators would be rotated periodically to ensure that the detainee did not sleep and was awake for prolonged periods of time.
- 55.3. The summary of the case docket into the assault complaint of Naik revealed that at least 17 interrogators questioned him around the clock for days.¹⁹⁴ Warrant Officer Neville Els (“**Els**”) who was involved in the interrogation of Naik testified that he “*would not call [sleep deprivation] torture*’ and that it was justified in order to extract information.¹⁹⁵
- 55.4. This is consistent with the testimony by the detainees that there was invariably two officers with them all the time and they were never left alone. Essop averred that he was never left alone and there was always one or more security officers with him, sometimes up to five. He was never left with a clerk or administrative person.¹⁹⁶
56. Erasmus’ testimony about the use of electric shocks corroborates the testimony of the detainees that they were electrocuted. It stands to reason that Timol also endured considerable electrocution before he died. Jetham’s testimony that while she was being

¹⁹³ Vol C, Essop affidavit, p38, para 42.

¹⁹⁴ Exhibit C12, Summary of case docket JVS ROM 1408/11/71.

¹⁹⁵ Oral Testimony, Vol 9B, VV (673), line 13; p QQQ (673), p 12 – p SSS (673), line 17.

¹⁹⁶ Vol C, Essop affidavit, p 56, para 93.

electrocuted, she heard Timol screaming and assumed that he was also being tortured with electric shocks.¹⁹⁷ Essop was also electrocuted during that period.¹⁹⁸

57. We submit that it is disingenuous in the extreme for Els and Sons to come to this Court and boldly claim that they did not abuse any detainee and moreover were not even aware of detainees being tortured at John Vorster Square. Their denials are nothing less than mendacious. Their assertion that they only learned of allegations of torture through newspapers cannot be taken seriously.¹⁹⁹ Particularly when one considers that after Sons testified that he never assaulted anyone in custody, a number of witnesses came forward to depose to affidavits contradicting his claim.²⁰⁰

58. In respect of Els, we know from Naik's detention file that Els was present when Naik was being tortured, more particularly when the helicopter method was being used on Naik.²⁰¹ In view of this, we submit that Els deliberately misled this Court when he said he was never involved in torture and never witnessed any torture during his police career.

59. The repeated denials of torture by these former members of the SB is yet another indication that to this day they are still prepared to routinely perjure themselves to conceal the truth of the abuse of detainees.²⁰² Their claims are not believable. Both Els and Sons witnessed and engaged in torture and should pay the consequences for lying under oath.

¹⁹⁷ Jetham affidavit, Vol C, p95, para 25.

¹⁹⁸ Essop affidavit, Vol C, p35, para 34(b) and p43, para 55.

¹⁹⁹ Oral Testimony, Vol 9B, VV (673), lines 19 – 23.

²⁰⁰ See exhibits H21 – H26, affidavits of A Musson; H Vally; P Naidoo; I Momoniat; K Martin; R Moosa. These detainees describe how Seth Sons and other members of the SB tortured [by assaulting and humiliating] them during the 1980s. See also *Mail & Guardian* online article dated 17 August 2017 about how Seth Sons and his colleagues tortured Ms Jessie Duarte. <https://mg.co.za/article/2017-08-17-timol-inquest-jessie-duarte-helps-apartheid-cop-remember-torture-he-couldnt-recall> accessed on 20 August 2017 at 11h00.

²⁰¹ Prof Naik detention file, exhibit G3, p10, para A.16 (see also C12); read with paras 18 – 22 of Naik's affidavit, Vol C, p 108.

²⁰² Bizos SC affidavit, Vol C, p61, para 10.

Forensic medical evidence of torture, assault and abuse

60. 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.²⁰³
61. 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.²⁰⁴
62. They noted that the following serious injuries are not consistent with a fall from a height:
- 62.1. 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.²⁰⁵
- 62.2. 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.²⁰⁶ Naidoo also agrees that these injuries are not consistent with the fall.²⁰⁷

²⁰³ Dr Schepers SAP 183 and post mortem report, Vol B, exhibit X pp48 – 58. The post mortem report is dated 4 November 1971.

²⁰⁴ Vol C, Dr Holland Report, pp135 – 154; and Exhibit C3.

²⁰⁵ Holland Vol C P145 - 146

²⁰⁶ Holland Vol C pg146

²⁰⁷ Naidoo Vol C3 pg7

62.3. 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.²⁰⁸

62.3.1. Naidoo agrees this injury is not consistent with a fall from a height.²⁰⁹ 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 a sack of potatoes which remains in the position and profile of its impact.²¹⁰

62.3.2. 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.²¹¹

62.3.3. 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 the blow rendered him unconsciousness. It could have taken place any time within 12 hours before the fall.²¹²

62.3.4. Both agree that the depressed fracture is a very serious injury which could have rendered Timol unconscious and since it would have caused swelling and bleeding on the brain,²¹³ if left untreated would have resulted in death.²¹⁴

²⁰⁸ Holland Vol C pg. 146

²⁰⁹ Naidoo Vol C3 pg8

²¹⁰ Naidoo Vol C17 pg7.

²¹¹ Holland transcript oral evidence Vol 6, p 499, line 5 – p 500, line 12.

²¹² Naidoo Vol C17 p9

²¹³ Naidoo and Holland transcript of oral evidence Vol 7 p 558 Vol 6 p508

²¹⁴ Naidoo and Holland Vol 7 p558 and Vol 6 p508

62.3.5. 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.²¹⁵

62.4. 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 of the “*recess-and-buttress*” principle.²¹⁶ He believed this injury may have been caused by a blunt force impact to the area.²¹⁷ Holland was of the view that the right upper jaw fracture was also not consistent with the fall.²¹⁸ This type of injury would have made it very difficult for Timol to talk, eat or drink any beverage like coffee.²¹⁹

62.5. Holland identified the further non-fall injuries:

62.5.1. 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.²²⁰

62.5.2. 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.²²¹ Naidoo also agrees that this injury is not consistent with the fall.²²²

²¹⁵ Holland transcript oral evidence Vol 6 p508-509

²¹⁶ Naidoo Vol C3 p8

²¹⁷ Naidoo transcript of oral evidence Vol 7 p560

²¹⁸ Holland Vol C p146

²¹⁹ Holland transcript oral evidence Vol 6 p503

²²⁰ Holland transcript oral evidence Vol 6 p 481

²²¹ *Ibid*

²²² Naidoo Vol C3 pg7

62.5.3. Bruising on the thigh and groin area which was likely caused by multiple blows to the area, such as mule kicks,²²³ which would have impacted on Timol's ability to move and would have made standing difficult.²²⁴

62.6. 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.²²⁵

62.6.1. Extensive bruising on the right calf.²²⁶ Naidoo explained in oral evidence that the injury could have been caused by force of a blunt impact such as an iron rod.²²⁷

62.6.2. 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 10th floor.²²⁸.

62.6.3. 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.²²⁹

²²³ Holland transcript oral evidence Vol 6 p 504-5

²²⁴ Holland transcript oral evidence Vol6 p 504-5

²²⁵ Naidoo oral evidence transcript Vol 7 p 555-6

²²⁶ *Ibid*, Vol 7, p 557, lines 1 – 15.

²²⁷ *Ibid*

²²⁸ Naidoo Vol C3 pg7

²²⁹ *Ibid*

63. This medical evidence directly contradicts the police version that Timol was never assaulted and that he was treated in a “*civilised and humane way*”.²³⁰ 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.

The ambivalent evidence of Doctors Schepers, Koch and Kemp

64. It does appear that Dr Schepers buckled under cross examination and made statements sought by the police, and indeed the first inquest court.

64.1.1. Although, Schepers did concede that injuries like a cracked jawbone and ribs were often the result of assault he then went onto say that they could have been caused by Timol bumping into furniture.²³¹

64.1.2. He testified that *"In die geval waar so 'n aanranding werklik ernstig is vind 'n mense dikwels dat die kakebeen gekraak is of die ribbes gekraak is of ander bene beseer is, ortropediese beseriends? ~~~ja, 'n mens vind dit dikwels"*, but then agrees that such injuries could be 12 days or older.²³²

64.1.3. Notwithstanding identifying possible serious pre-fall injuries as above, Schepers then rather astonishingly describes such injuries as not being serious and potentially caused by everyday accidents and sporting activity. He did however concede that such injuries could also have been caused by assaults.²³³

²³⁰ Translated inquest judgment, p49.

²³¹ Schepers transcript of oral testimony, Vol A page 776

²³² Schepers transcript of oral testimony, Vol A page 775

²³³ Schepers transcript of oral testimony Vol A page 779-780

65. In our *considered* view these concessions were improperly made, given Timol's ante-mortem injuries and the knowledge that Essop had been hospitalised with serious injuries following his interrogation.
66. Dr Koch, who placed virtually all the ante-mortem injuries well before his detention at 9-12 days,²³⁴ nonetheless conceded that if a deep bruise were to occur on the ribs it could have been caused by an object or instrument used, and links it to acts of "*direct violence*".²³⁵ Dr Koch was roundly criticized by his colleagues for his sloppy analysis.
- 66.1. In the **Memorandum on Dr Koch's Report**,²³⁶ Dr Koch was criticised for:
- 66.1.1. Basing his conclusion of "*new capillaries*" without offering any criteria for such a conclusion.
- 66.1.2. Relying on an authority that confused between dermis and epidermis.
- 66.1.3. Confusing pale cells with clear cells.
- 66.1.4. Relying on an inappropriate diagram dealing with the healing of incisions, surgical stiches and skin graft rather than that of an abrasion extending to the dermis.
- 66.2. The authors of the **Additional Report on Microscopy Sections**²³⁷ disagreed with Koch on a range of conclusions particularly his conclusions that certain lesions could be up to 12 days old.

²³⁴ Koch transcript of oral testimony, Vol A page 1007

²³⁵ Koch transcript of oral testimony, Vol A page 1067

²³⁶ Undated and unsigned: Annexed as "MS3" to Schrueder's affidavit: Exhibit C7.8

²³⁷ Undated and unsigned: Annexed as "MS4" to Schrueder's affidavit: Exhibit C7.8

66.3. The **Summary of Joint Examination of Slides by Dr Koch, Scheepers, Gluckman and Shapiro** conducted in the presence of Professor Simpson.²³⁸

This document disclosed considerable disagreement between Dr Koch and the other doctors.

66.4. In his affidavit George Bizos SC recalled that Koch was the same person who said that he had examined Salim Essop after his admission to hospital and that there were no injuries, as alleged by Mr Ismail Essop.. His failure to mention the 16 injuries that Dr Kemp had noted on Essop was disingenuous, to say the least.²³⁹ According to Bizos:

"It was obvious that Dr Koch had lied under oath when he stated that he had not seen any injuries. He attempted to explain himself by claiming that he was not asked by the lawyers to say whether there were any injuries on Essop, but merely to deal with the question whether or not Essop had the specific injuries described by his father in his original affidavit. Koch had said that the injuries he saw differed from those described by Mr Ismail Essop. It was also argued that disclosing the injuries would reveal information about a detainee. This was prohibited by the Terrorism Act unless those holding him consented. The Judges hearing the application did not adversely comment on Koch's lack of candour or the correctness or otherwise of his alarming interpretation of the Terrorism Act."²⁴⁰

66.5. The evidence of Dr Koch has to be considered in the light of the above. It is submitted that little weight can be attached to his evidence.

67. The conduct of Dr Kemp also raises disturbing questions as to his *bona fides* as is evident from the judgment of the Supreme Court in the Essop interdict below:

"On behalf of the respondents, Dr Guldenpfennig was called as a witness but not professor Koch. In evidence, the doctor describes the injuries in cross-

²³⁸ Undated and unsigned: annexed as "MS5" to Schrueder's affidavit: Exhibit C7.8

²³⁹ Bizos affidavit, Vol C, p 59 – 89, para 83.

²⁴⁰ *Id*, para 55.

*examination, confirming the testimony of Dr Kemp. Dr Guldenpfennig says he conceded that these injuries could have been caused by an assault. This view was also expressed by Kemp and went somewhat further, expressing the view that they probably were caused as the result of an assault; **although both witnesses at some early stage in their evidence, expressed the view that there are various other likely manners in which these injuries could have been explained; for instance an accidental fall by the detainee against an object (both of them mentioned a blunt object). However, at the stage when the affidavits were prepared it seems to me that it must have been abundantly clear to all concerned that the allegation made by the applicant was that his detainee son was assaulted by the security police.**" ²⁴¹*

[Emphasis added]

68. It seems that Dr Kemp was willing to play a servile role to the SB and to provide evidence under oath for the purpose of minimizing the conduct of the police, or exonerating them from wrongdoing. This raises serious questions as to his role in the Timol matter, in particular his recordal of the death of Timol.

Magistrate's finding of no assaults by the SB

69. Magistrate De Villiers ("**the Magistrate**") 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. ²⁴²
70. 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*".²⁴³ 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 detention

²⁴¹ Exhibit G1: Judgment by Theron J in the matter *Ismael Essop v The Commissioner of the South African Police and Another* Case number M1804/1971 at page 14.

²⁴² Finding of Magistrate De Villiers (translated) vol A p 45-46

²⁴³ Judgement de Villiers translated vol A page 48

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

71. 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.²⁴⁴

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."²⁴⁵ (Emphasis added).*

72. 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 one corroborator, Sergeant Kleyn, was responsible for a "furious assault" of Salim Essop, not long before he assisted Dirker with his interrogation of Timol.²⁴⁶
73. 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. If they had they would have discovered a veritable history of brutality, including convictions of 2 counts of assault (in which the victim died)²⁴⁷ and multiple complaints of serious assault and torture, in which he and Captain Hans Gloy, were accused of,

²⁴⁴ Finding of Magistrate De Villiers (translated) vol A p 2 – 5

²⁴⁵ Finding of Magistrate De Villiers (translated) vol A p 41 – 42

²⁴⁶ Essop affidavit Vol C para 29.

²⁴⁷ Vol J2 (VN) 31

inter alia, assaulting detainees with iron rods and electric shocks, some of which occurred just months before their interrogation of Timol.²⁴⁸

74. 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).

74.1. 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.²⁴⁹

74.2. 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.*”²⁵⁰

74.3. 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.

75. If the circumstantial evidence of the torture survivors is accepted, as we submit it must, 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 10th floor were denied sleep.²⁵¹ All were tortured during interrogation. Timol would obviously have been no exception.

²⁴⁸ Vol J2 (VN) 25 and 139.

²⁴⁹ Finding of Magistrate De Villiers (translated) vol A p 42

²⁵⁰ *Ibid*

²⁵¹ 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.

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.

76. 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.
77. 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.²⁵²

Timol could not have committed suicide

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

Forensic medical evidence

79. 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.²⁵³ Moreover both forensic pathologists testified that the injuries sustained to Timol's jaw prior to the fall, would have most likely stopped him speaking, eating or drinking.²⁵⁴ Such evidence is in direct conflict with that of Rodrigues and the police version.

²⁵² Vol C, Dr Jetham affidavit, p98, paras 39 – 40.

²⁵³ Holland transcript oral evidence Vol 6 p 508-509

²⁵⁴ Naidoo oral evidence transcript Vol 7 p 572-573 and Holland transcript oral evidence Vol6 p 503

80. 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. He would have needed to use a chair or heater panel to assist himself in getting up to the window ledge.²⁵⁵ It is worth quoting in full Dr Naidoo's summing up 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.”²⁵⁶

81. In addition Holland testified that the injuries to his thigh and groin would have made both movement and standing difficult for Timol.²⁵⁷
82. 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.

Trajectory evidence

83. The trajectory evidence is also of considerable importance. Mr Tivesh Moodley (“**Moodley**”), an aeronautical engineer,²⁵⁸ provided 2 reports and gave evidence on the trajectory of Timol's fall. In his first report Mr Moodley draws up six likely scenarios,

²⁵⁵ Naidoo Vol C3 pg12

²⁵⁶ Naidoo Vol C17 pg12, para 32. See also Vol C3 pg12.

²⁵⁷ Holland transcript oral evidence Vol6 p 504-5

²⁵⁸ Mr T Moodley is an aeronautical engineer His curriculum vitae appears at Vol C9 and his report at Vol C10

based on witness statements, of how Timol could have fallen from John Vorster Square.²⁵⁹ In his supplementary report he considered 2 further scenarios.²⁶⁰

84. Moodley excluded the possibility of a dive through the window because it would not be possible to run, open the window and dive simultaneously.²⁶¹

84.1. 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.²⁶²

84.2. Nonetheless, assuming that Timol had the physical prowess to avoid Rodrigues and:

84.2.1. 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 13m away on the road (as scenario 1, 'the jump')²⁶³, or

84.2.2. 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.²⁶⁴

²⁵⁹ Trajectory Report, exhibit C10, pp7 – 15.

²⁶⁰ Supplementary Trajectory Report, exhibit C10a.

²⁶¹ Moodley Vol C10 pg1

²⁶² Supplementary Trajectory Report, exhibit C10a, p2.

²⁶³ *Ibid*, p1.

²⁶⁴ *Ibid*, p1.

- 84.3. Both 'dive' scenarios can be safely excluded since Timol did not land in the road and did not strike the concrete light well.²⁶⁵ If he had his injuries would have been considerably different.
85. 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.
86. 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.²⁶⁶ .
- 86.1. 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.²⁶⁷ In his affidavit, Warrant Officer Gabriel Johannes Deysel ("**Deysel**") describes how he found Timol's body lying in the garden. According to Deysel, Timol was found lying on his stomach (face down), his face is slightly turned to the right; his head facing the building. There is a shrub on his right side roughly adjacent to his shoulders and chest. Some branches of the shrub lie under his shoulders and chest.²⁶⁸
- 86.2. 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

²⁶⁵ Moodley 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

²⁶⁶ Trajectory Report, exhibit C10, pp10 – 12.

²⁶⁷ Pattle affidavit, Vol B, exhibit S, pp39 – 40, para 10.

²⁶⁸ Deysel affidavit, Vol B, exhibit S1, pp41 – 42, para 5. See also Naidoo Report, C3, p 2 – 3.

was pushed from the tenth floor window or the roof of John Vorster Square, namely scenario 3 (push from sitting position) and scenario 4 (push legs first body facing building).²⁶⁹

87. Of the remaining four scenarios, two are potentially consistent with the evidence provided by Adv Ernest Matthis (“**Matthis**”). These are scenarios 5 and 6.

87.1. In his oral testimony, Matthis stated that he saw a body fall pass his window (on the 4th or 6th floor) at JVS on 27 October 1971. The body was parallel to the building (JVS) when it fell past his window, head facing the double decker highway.²⁷⁰

87.2. Scenario 5 is Timol thrown from the roof with a horizontal motion and his torso parallel to the face of the building.²⁷¹

87.3. Scenario 6 is Timol rolled off the roof parapet with torso parallel to face of building.²⁷²

88. On considering the available witness evidence, tested against the findings of Mr Moodley, it becomes clear that the only possible scenarios for Timol’s fall can be that::

88.1. he was pushed from room 1026 on the 10th floor (in one of 2 positions: scenarios 3 and 4), which is consistent with Deysel’s evidence, or

88.2. he was thrown or rolled from the roof (scenarios 5 and 6), which is consistent with the evidence of Matthis.

²⁶⁹ Trajectory Report, exhibit C10, p 5.

²⁷⁰ Vol C, pp 118 – 120. See also Transcribed reopened inquest record, pp330 – 338.

²⁷¹ Trajectory Report, exhibit C10, p 5.

²⁷² Trajectory Report, exhibit C10, p 6.

89. None of the possible scenarios involve suicide. The trajectory evidence demonstrates that the version of Rodrigues could not have taken place.

Evidence of colleagues, family and friends

90. Those who knew Timol best vigorously disputed the notion that he committed suicide.
- 90.1. Timol's mother never accepted the official finding that her son committed suicide.²⁷³ Her pain and anguish at the death of her son was evident when she gave testimony at the TRC on 30 April 1996.²⁷⁴
- 90.2. 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.²⁷⁵
- 90.3. Mohammed Timol and Essop testified that Timol loved life and would never have committed suicide.²⁷⁶ 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.²⁷⁷ These deeply personal testimonies suggest that Timol had no reason to commit suicide, in fact he had every reason to live.

²⁷³ See exhibit H2, SAHA DVD, video clip labeled "*Timol mother*".

²⁷⁴ Vol H, Cajee affidavit, p24, para 20.

²⁷⁵ Transcribed reopened inquest record, Mohammed Timol testimony, p254 and Pahad affidavit, Vol H, p10, para 18.

²⁷⁶ Transcribed reopened inquest record, Dr Essop testimony pp118 – 119 and Mohammed Timol testimony, p254.

²⁷⁷ Pahad affidavit, Vol H, p10, para 17.

91. 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.

91.1. 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.²⁷⁸

91.2. 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*."²⁷⁹

Mr. X and the Jacobsens

92. 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.²⁸⁰ 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*"²⁸¹

93. The whereabouts of the Jacobsen brothers were no mystery as they openly and publicly operated a photographic studio in Pritchard St.²⁸² 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 photography. The only

²⁷⁸ Kemp affidavit, Vol H, p16, paras 22 – 25; Kasrils affidavit, Vol H, p41, paras 20 – 28.

²⁷⁹ Kasrils oral evidence, Vol 11, p883.

²⁸⁰ Van Niekerk affidavit, Vol B, exhibit F, p16, para 8; Gloy affidavit, exhibit G, Vol B, p19, para 5.

²⁸¹ Van Wyk, vol B affidavit, para 12

²⁸² Essop oral evidence, Vol 2, pp130 – 133.

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.²⁸³

94. 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.²⁸⁴
95. The Magistrate made much of exhibits "M" and "N" in the first inquest record, which were letters written from the United Kingdom advising Timol to stay away from Quinten, since the writer was suspicious, and not to visit the photographic studio.²⁸⁵ According to Essop the writer of these letters was one of their social contacts, Ebrahim Lehare. Far from suggesting that Timol was in cahoots with the Jacobsens, these letters suggest that the Jacobsens were not to be trusted and Timol should have nothing to do them.²⁸⁶
96. It was wholly illogical for an 'undercover' or sensitive SB member to supposedly 'reveal' himself to Timol in the manner alleged. This would not have happened since Timol, if he had lived, could have later exposed him as an undercover agent.²⁸⁷

²⁸³ Essop oral evidence, Vol 2, pp130 – 133.

²⁸⁴ 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).

²⁸⁵ Translated Inquest Finding, p50.

²⁸⁶ Essop oral evidence, Vol 2, p131, line 10 – p 133.0pp00

²⁸⁷ Frank Dutton affidavit, exhibit H7, para 42.

97. 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.²⁸⁸ We submit that the reason Mr X could not testify was because he did not exist.
98. Assuming that Mr X did indeed exist, he could have been used as 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.²⁸⁹
99. 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 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").²⁹⁰

SACP policy on suicide and the 'publications'

100. We have referred to the evidence of Kasrils and Kemp in relation to the fabricated

²⁸⁸ Bizos SC affidavit, Vol C, p73, para 61.2.

²⁸⁹ Frank Dutton affidavit, exhibit H7, p20, para 41.

²⁹⁰ 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 subsection (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."

extracts in “*Inkululeko – Freedom no. 2*” and the “*Frelimo Memorandum*”.²⁹¹ In addition they pointed to

100.1. the poor English and crass language,

100.2. the naming of living persons working in South Africa, and

100.3. the fact that both references to suicide occur at the bottom of the publications.²⁹²

100.4. Inserting extracts at the bottom of the last page of the publication would have facilitated the fabrication. We have pointed to the fact that typewriters were seized from the Timol home as from other activists.²⁹³ These could easily have been used to fabricate “*Inkululeko – Freedom no. 2*” and other documents.

100.5. The reference to the CSPA rather than the SACP is a glaring mistake they would never have made by genuine writers of the SACP. In fact the name changed from CSPA to SACP as far back as 1953.²⁹⁴ But the likes of Gloy and van Niekerk did make that mistake.²⁹⁵

101. It was the evidence of former SB officer, Paul Erasmus that the fabrication of documents was routinely carried out by the SB.²⁹⁶ Erasmus asserted that, when a detainee died under torture, it was SB modus operandi to manufacture a version for public consumption. His testimony about how he broke into Dr Neil Aggett’s (“**Aggett**”) home,

²⁹¹ Kasrils affidavit, exhibit H10, p5, para 17; Kemp affidavit, Vol H, p16, para 22; and Pahad affidavit, Vol H, pp10 – 11, para 19.

²⁹² Kasrils affidavit, exhibit H10, para 25 - 28

²⁹³ Le Roux affidavit, Vol B, exhibit CC, p69; Vol C, Kantilal Naik affidavit, para 9; Oral testimony of Seth Sons on 16 August 2017; Van Rensburg, Vol B, Exhibit WW, p 158, paras 5 – 6.

²⁹⁴ Transcribed reopened inquest record, pp893 – 894.

²⁹⁵ Vol B: van Niekerk, exhibit F, p15, para 5; and Gloy, exhibit G, pp18 – 19, para 4.

²⁹⁶ Transcribed reopened inquest record, Vol 5, p 366, lines 10 - 20.

in an effort to find something that would show that Aggett suffered from depression and had always been suicidal, is an example.²⁹⁷ It demonstrates the extraordinary lengths that the SB would go to mislead the courts and the public. Mr Erasmus testified that this culture of deception existed within the SB even before he joined in 1977.²⁹⁸ We submit that this culture existed in 1971 and the SB employed such deception in their efforts to construct the version that Timol committed suicide.

102. 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.²⁹⁹ It is apparent that this fabricated document was the SB's 'go-to' document to justify suicides in detention.

102.1. The document found its way to the magistrate through duplicitous means, and not only did the magistrate accept the document, he also relied on it to bolster the false contention that Timol committed suicide because of an ideological dictate.

102.2. While the original inquest record is not complete we do have the index to the exhibits and most of the exhibits themselves are available. However, "*Inkululeko – Freedom, February 1972, no 2*".is not part of the exhibits and it was never handed up as an exhibit. If it had been formally entered as an exhibit, counsel for the family could have cross examined the police witness who found the document for purposes of interrogating the authenticity of the publication.

102.3. The Magistrate relied on the document to buttress his suicide finding. In his unseemly rush to exonerate the police, the Magistrate blunders in monumental fashion when he concludes that Timol distributed the document:

²⁹⁷ *Id*, pp360 – 362.

²⁹⁸ *Id*.

²⁹⁹ Victor Affidavit (p 12 Aggett record), Exhibit C1, para 13(4)

“...It must be assumed that he was aware of all instructions to members and therefore also the following instruction about which an admission was made by Advocates Maisels and Bizos during the trial.

It appears in the record and reads as follows: “I just want to say that the documents were originally placed in my possession from which this is quoted; I excluded it because I did not want to embarrass the people whose names I do not want to mention now either.

This is the document which this deceased, in accordance with the evidence, was involved in distributing. It reads as follows: “Harass your enemy by going on hunger strikes, act insane, lodge complaints, whether true or false, resort to civil and criminal actions in courts as often as possible, make sure your complaints and actions the suppressors get the utmost publicity. [sic] Rather commit suicide than to betray the organisation”. Issued by the Communist Party of South Africa.”³⁰⁰

(Emphasis added)

102.4. The document was published and distributed in February 1972, some three months after Timol’s death. Quite obviously this made it impossible for Timol to have been involved in its distribution. Magistrate De Villiers did not even take the time to ensure his factual conclusions made any sense. The facts were of little concern to him. It is no wonder that the majority of South Africans in those days had no trust in the Apartheid legal system.

IMPROBABILITIES IN THE EVIDENCE OF RODRIGUES

103. The evidence of Rodrigues is riddled with inconsistencies and improbabilities, too numerous to enumerate in these heads. We set out below some examples.

104. Rodrigues was asked to transport a ‘secret’ document, yet he conceded that he did not have a security clearance to do so, “*unless it was done behind my back*”. His personal file discloses no such clearance. If he was in fact carrying a secret document he was

³⁰⁰ Translated Inquest Finding, p 49 – 50.

doing so illegally. He conceded that he had never been trained in such matters and had never before handled secret documents.³⁰¹

105. It is improbable that a pay clerk would be permitted to enter the wing of the 10th floor where interrogations and torture were taking place, unless he was particularly trusted not to disclose what he saw and/ or he was there to carry out particular mission on behalf of the SB. If it was only a question of dropping off documents then Gloy or Van Niekerk could have quickly walked to the 10th floor counter to collect the documents; or they could have sent a colleague. In response to this question, Rodrigues answered that “*maybe [they were] busy with something.*”³⁰²
106. According to the police version, as accepted by Magistrate de Villiers, following his handing over of the cheques and document, Rodrigues stayed in room 1026 for some 20 minutes before the claimed arrival of the so-called Mr X.³⁰³ If Rodrigues was in fact simply dropping off those documents there would have been no reason for him to linger for 20 minutes, particularly since it was his version that he did not drink any coffee and simply stood about.³⁰⁴
107. Given the evidence of the other detainees held at the same time as Timol, and given that Timol was the prized asset of the SB, indeed he was of “*onskatbaie waarde*” it is highly improbable that the SB would have left an important security detainee in the hands of an untrained administrative clerk, when there were large numbers of SB officers and trained police officers in the complex who could have been quickly and easily summoned.³⁰⁵

³⁰¹ Oral testimony, Vol 9, p 748, line 22 – p 749, line 11.

³⁰² Oral testimony, Vol 9, p 751, line 18 and p 755.

³⁰³ Inquest finding, p 5 of translated version

³⁰⁴ Oral testimony, Vol 9, p 690, 696 – 697; Vol 10, p 768 – 769.

³⁰⁵ Oral testimony, Vol 10, p 775.

108. In paragraph 13 of Rodrigues' statement he claimed that Timol was injury free when he saw him and persisted with this claim in oral evidence in these proceedings. In the light of the expert medical evidence he must have seen certain visible injuries on Timol.³⁰⁶
109. It was the first time Rodrigues had ever visited JVS and given the size of the complex it is unlikely that he would have known where the toilets were and which toilet was designated for use by security detainees. His response was to claim that he saw a sign for a toilet as he walked to room 1026.³⁰⁷ As it turns out the only toilet he could have walked past is designated as a female toilet.³⁰⁸ It is also improbable given the apparent practice of moving security detainees in the corridors of the 10th floor blindfolded or hooded.³⁰⁹
110. The version Rodrigues put up as to what transpired in room 1026 is simply not believable.
- 110.1. Rodrigues in 1971 was a man proficient in karate, wrestling and athletics.³¹⁰ In October 1971, his personal file disclosed no injuries or disabilities.³¹¹
- 110.2. According to his Medical Form for Re-attesting into the SAP on 1 December.1975 his height was 1m 89cm and he weighed 87 kg.³¹² Timol only weighed 61 kg and was 1.6 m tall.³¹³

³⁰⁶ Oral testimony, Vol 9, p 759 – 761: The Post Mortem Report read together with Dr Holland's report (C 135) suggests that he did see injuries, including at least the bruising/ swelling of upper lip (page 37); left wrist and hand (page 38); abrasions on the forehead and neck (page 139); fracture of the left upper jaw posterior and fracture of the left lower jaw at the angle of jaw.

³⁰⁷ Oral testimony, Vol 10, p 777.

³⁰⁸ At least as currently designated at the time of the inspection-in-loco in 2017. See photo 34, Vol F.

³⁰⁹ Oral testimony, Vol 10, p 778.

³¹⁰ Exhibit J1.

³¹¹ *Id.*

³¹² *Id.*

³¹³ PM report Vol B, Ex X, p53

110.3. Even without the effects of days of torture and sleep deprivation it is difficult to believe that Rodrigues could not have caught and restrained Timol.

110.4. This is particularly the case given the smallness of the room – only 2.6 m across.³¹⁴ Rodrigues was close to 1.9 m high; meaning that he was nearly 30 cm taller than Timol.

110.5. Since, as we have submitted, it must be accepted that by 27th October 1971 Timol had endured more than 4 days of torture, was largely incapacitated,³¹⁵ if not unconscious, and was severely sleep deprived, the version of Rodrigues is simply untenable, and can only be a mask to cover the torture and murder of Timol.

111. Rodrigues was adamant that he knew the difference between a dive and a jump and that Timol definitely dived out the window of room 1026.³¹⁶ However according to the forensic evidence this was impossible.

111.1. Mr Moodley averred that a dive option was not possible since Timol could not have run, opened the window and dived simultaneously.³¹⁷

111.2. Moodley also testified that if it was a head first dive he would have landed closer to the building – and in a different orientation.

³¹⁴ Exhibits M9 and M10 (floor plans of 10th floor) read with evidence of Savage, Transcript, Vol 11, p 907 – 933.

³¹⁵ See for example: Holland, C5, p 137 - 138; Naidoo, C6, para 31

³¹⁶ Oral testimony, Vol 10, p 785 - 786.

³¹⁷ Moodley report (C10) page 1

111.2.1. If Timol somehow managed to clamber up onto the window sill and then dived (like a swimmer) he would have landed up to 13 m, probably on the road.³¹⁸

111.2.2. If he raised his body through the window using his hands and legs and once his centre of mass was out of the window gravity took over and accelerated him towards the ground he would not have been able to generate a forward/ horizontal impulse force that would have thrust him 3 metres away from the building.³¹⁹

111.2.3. He would have landed much closer to the building and would have most likely impacted the ground with his head. There is a high probability that he would have hit the concrete light well adjoining the bottom of the building, or part thereof.³²⁰

111.3. Dr Naidoo also cast serious doubt on the version of Rodrigues:

“Could he have launched himself (dived through) out of the window? If this had been at all possible, and actually performed, I have great doubts whether the window aperture would have allowed such without the deceased being caught or snagged by his clothing (no clothing was described) and without his clothing being grossly torn, and without significant and deep linear scratch or friction abrasions and/or lacerations being seen upon the body (aside from the healing abrasions and bruises that were seen).”³²¹

112. Rodrigues will have us believe that the only fabrication related to the attempt by Buys and others to get him to concoct a story that he fought Timol just before he committed suicide. If this was the only fabrication then Rodrigues had ample opportunity to come

³¹⁸ Moodley supplementary report (C10a) pp 1 – 2.

³¹⁹ *Id.*

³²⁰ *Id.*

³²¹ Dr Naidoo (C3): page 13, para 39

forward with such truth, such as at the TRC or following the deaths of Buys, Gloy and Van Niekerk.

113. It is little wonder that counsel for Rodrigues in his closing argument cast doubt, given the glaring discrepancies, as to whether Rodrigues was even in the building at the time of Timol's fall:

***MR COETZEE:** If one then bear in mind the evidence of Mr Rodrigues and M'Lord one thing which I would submit to Your Lordship is that it seems clear that Mr Rodrigues was an administrative officer in service of Compal in Pretoria and that is a starting point from which one should evaluate his evidence. There is no indication that he is an operational officer or that he was in fact involved in the operational side of the security police.*

Bearing that in mind it is highly unlikely that he would have been involved in anything other than administrative functions when he went to John Vorster square. Now if one rejects his version outright then was he ever at John Vorster square? M'Lord, that is the conundrum that the court is faced with, is if one do not believe him, where do you stop believing him?

Do you stop believing him that he was bringing a cheque in an envelope to captain Gloy and captain Van Niekerk, because for what other reason would he have been there?

***COURT:** If ever he was there?*

***MR COETZEE:** If ever he was there.*

***COURT:** Because that in itself, because you see you remember when I questioned him, I said to him you went into the corridor shouting, someone has jumped, Timol has jumped but there is not a single witness that was called along that corridor to testify back then in 1972 to corroborate his presence there. Not one, and if you look at his affidavit and you look at that one of Deysel, he says for example that 'I went downstairs to the ground, taking the lift with colonel Greyling.'*

He says nothing about Deysel and Deysel in turn says 'I was told by colonel Greyling, I went, I rushed and I took a blanket and I went down the lift with colonel Greyling.' There is no mention of Rodrigues. Now, you have to look at that evidence very, very closely. The question whether he was indeed there or he came in just as part of this story, that he built, because no-one is corroborating him on that story, accept Van Niekerk and Gloy.

That is my difficulty with that, so the fact that he was working at Compal building, that is clear from his record, his file from ... that was brought by brigadier Groenewald, that one we have. But on that particular day, whether he carried cheques and all that, I do not know.

***MR COETZEE:** M'Lord, so far can I say, and that is not the instruction from Mr Rodrigues, I myself wondered about that, whether he was there. It came up to me as well, whether in fact he was there at John Vorster square when this happened.*

***COURT:** You see the difficulty, Mr Coetzee you will know in law, once you say that this part... this witness is talking the truth in regard to this part, and he is not talking the truth in regard to that other part of his evidence, you run into problems because then unless you were there and you knew as presiding officer, you are in no position to can say you are discredited in regard to part A of your evidence,*

but then part B you are talking the truth, it is not possible.

MR COETZEE: M'Lord, in this instance, and I do not say the necessary all instances of a witness is evidence, but in this instance I would argue to you it is an all or nothing situation.

COURT: Yes.

MR COETZEE: Either you believe Mr Rodrigues...

COURT: Yes.

MR COETZEE: Or you reject his evidence in totality.

COURT: Yes.

MR COETZEE: And as I once again say, that is not necessary in all instances where there is **some discrepancies in witness, but in this instance I think that would be the criteria. With ... [intervene]**

COURT: So it would seem, yes? ³²²

(Emphasis_added)

THE COVER-UP

114. 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. According to Frank Dutton, virtually none of the elementary investigative steps one would have expected to see were taken. In his view these multiple lapses are consistent with an effort to suppress the truth, that is, a cover-up.³²³
115. Timol's death ought to have triggered two investigations, a police investigation as well as administrative inquiry into his escape from the building. No administrative inquiry was conducted.
- 115.1. Regulations made under the Police Act 7 of 1958 prohibited a member of the police from allowing a prisoner or detainee to escape.³²⁴ Timol's alleged jump through the window constituted an 'escape' from police custody.

³²² Closing arguments (Transcription), Vol 16, p 1189 – 1192.

³²³ Frank Dutton affidavit, exhibit H7, p32, para 89.

³²⁴ Exhibit H8: Relevant extracts of "Regulations for the South African Police under the Police Act 7 of 1958" (Regulation Gazette No 299 of 14 February 1964).

- 115.2. An administrative inquiry in terms of Police Regulations ought to have been held to determine whether a police member (or members) had contravened the regulations by allowing Mr Timol to exit the building while in police detention.

The investigation was a cover-up

116. An examination of the investigative steps taken by the police in the aftermath of the fall reveals a most substandard investigation.³²⁵ 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.³²⁶
117. Major General Christoppel Andries Buys, the investigating officer (Head of the SAP detective service) (Buys), was responsible for ensuring that the investigation produced a result consistent with the SB's fabricated version.
- 117.1. His investigation broke virtually every basic rule of police detective work. Barely days after Timol's death and before his investigation was concluded Buys claimed in the press that Timol had committed suicide.³²⁷
- 117.2. He personally commissioned most of the affidavits of the policeman who claimed that they did not assault Timol and those who put up the suicide version, including Van Wyk, Van Niekerk, Gloy, Rodrigues and Deysel.³²⁸

³²⁵ *Id.*

³²⁶ Transcribed reopened inquest record, pp360 – 362.

³²⁷ Rapport, 31 October 1971, 1971 Newspaper clips, Vol D, p95.

³²⁸ See entries 142, 148, 149, 156 and 160 of the Chronology.

- 117.3. When Buys first interviewed Rodrigues he took no notes; indeed nobody took any notes when interviewing Rodrigues after the alleged suicide.³²⁹ This can only be because the SB had already hatched a fabricated version and there was simply no need to take notes.
- 117.4. When the material inconsistencies came to light about what transpired in room 1026 that day, Buys downplayed the significance of the different versions, ascribing the discrepancies as a “*matter of interpretation*”.³³⁰ The Magistrate explained away these inconsistencies as mere “*misunderstandings*”.³³¹
- 117.5. Under cross-examination Buys collapsed in the witness box and had to leave court. He was never recalled after that.³³² Given his utterly disgraceful conduct we suspect that Buys feigned his illness in order to avoid the stress of holding the fabricated story together; alternatively he did succumb to the stress of maintaining the farce.
- 117.6. Rodrigues disclosed in his oral evidence that Buys (and Gloy and Van Niekerk) pressured him to fabricate a version that he had fought with Timol before he committed suicide, presumably in order to explain away the pre-fall injuries.³³³ Indeed when it became clear from the PM report³³⁴ that pre-fall injuries existed, and that a version of suicide on its own would not explain such injuries, he sought to persuade Rodrigues to put up an additional fabrication of a fight.

³²⁹ Rodrigues oral evidence, Vol 9, p 716, line 5;

³³⁰ Bizos SC affidavit, Vol C, p76, paras 63 - 69.

³³¹ Translated Inquest Finding, pp 29, 31, 43 and 49.

³³² *Id*, para 67

³³³ Rodrigues oral evidence, Vol 9, p 675 line 10 – p 677, line 10; p 683, line 12 – p 684, line 9; p 719, line 22 – p 720 line 10.

³³⁴ The PM Report was signed by Dr Schepers on 4 November 1971, Vol B, p 49.

Rodrigues refused to go this far, presumably since it would connect him too closely with Timol's demise and he may have been held responsible for the pre-fall injuries.

- 117.7. The picture that emerges of Major General Buys, the most senior detective in the SAP at the time, is one of a thoroughly corrupt police officer who was more than willing to play his role in the cover up. He was at the beck and call of the SB. He played the role of the "sweeper" in ensuring that the police would exonerated of all wrong doing.
118. Dutton sets out in great detail in his affidavit what should have happened in the investigation but did not. There was a litany of apparent errors, or perhaps more accurately described, as acts and omissions to suppress the truth. These include:
 - 118.1. Inadequate statements;
 - 118.2. No statements from eye witnesses or bystanders; black SB, other detainees;
 - 118.3. Removal of the body before photos taken and crime scene investigation;
 - 118.4. No crime scene investigation on ground or in room 1026.
 - 118.4.1. No marking of the positioning of the body;
 - 118.4.2. No photo of the body at the scene;
 - 118.4.3. No photo of the shoe lying separately from the body;
 - 118.4.4. No plan with measurements of the scene;
 - 118.4.5. No record of the depth and position of the indentation;
 - 118.4.6. No record of shape and extent of blood stain;
 - 118.4.7. No sample of blood stain removed for testing;
 - 118.4.8. No record of positions of window;
 - 118.4.9. No trajectory evidence compiled to test the landing position of the body against the version of Rodrigues;

- 118.4.10. No forensic examination of Room 1026;
- 118.4.11. No forensic examination of bathrooms and toilets;
- 118.4.12. No forensic examination of Timol's clothes;
- 118.4.13. No investigation of phone numbers dialled from Room 1026 on 27 October 1971.³³⁵

119. Some 45 years later the investigation launched by the family revealed witnesses to the fall, including Adv Ernie Mathis, Ali Thokan and Adam Ahmed.³³⁶

119.1. Some of these were found by simply conducting enquiries on the streets and in the buildings around JVS. Needless to say the police investigators, as well as prosecutor Kotze, saw no need to conduct such basic investigations. This glaring lapse can only be consistent with a desire on their part to cover up the truth.

119.2. If they had, they probably would have found a number of witnesses who could have testified to the timing of the fall. It is more than just remarkable that all the non-police witnesses, Adv Ernie Mathis,³³⁷ Ali Thokan³³⁸ and Adam Ahmed³³⁹ place the fall in the morning. None of these witnesses were connected to each other and they had no reason to fabricate a version as to the time of the fall.

³³⁵ Frank Dutton affidavit, exhibit H7, p32, paras 29 – 91.

³³⁶ *Id*, para 46.

³³⁷ Matthis Affidavit, Vol C, p 118; Matthis oral evidence, Vol 5, p 330.

³³⁸ Thokan Affidavit, Vol H, p 1; Thokan oral evidence, Vol 11, p 850.

³³⁹ Adam oral evidence, Vol 12, p 966.

119.3. We can only speculate that if the fall had taken place in the morning it would have permitted the SB several hours to fine-tune their cover story, call in Rodrigues from Pretoria and coach him, before going ‘live’ in the late afternoon.

Commissioning of statements by Buys

120. A magistrate whose interest was to see that justice was done, would have viewed with great suspicion that the majority of the police who interacted with Timol had their affidavits commissioned by Buys.

121. Section 7 of the Justices of the Peace and Commissioners of Oaths Act 16 of 1963 (“**the Commissioners of Oaths Act**”) states that:

“Any commissioner of oaths may, within the area for which he is a commissioner of oaths, administer an oath or affirmation to or take a solemn or attested declaration from any person: Provided that he shall not administer an oath or affirmation or take a solemn or attested declaration in respect of any matter in relation to which he is in terms of any regulation made under section ten prohibited from administering an oath or affirmation or taking a solemn or attested declaration, or if he has reason to believe that the person in question is unwilling to make an oath or affirmation or such a declaration.”

(Emphasis added)

122. The relevant regulation that is referred to in section 7 is regulation 7 (GNR.1258 of 21 July 1972: Regulations Governing the Administering of an Oath or Affirmation). Regulation 7 states that:

“(1) A commissioner of oaths shall not administer an oath or affirmation relating to matter in which he has an interest.

(Emphasis added)

123. Our courts have had an opportunity to deal with this very question on a few occasions. In ***Royal Hotel Dundee***³⁴⁰ it was held that:

³⁴⁰ *Royal Hotel, Dundee, and Others v Liquor Licensing Board, area no 26; Durnacol Recreation Club*

“An attorney acting for a party in a matter has an interest in that matter which precludes him from functioning as a commissioner of oaths to attest an affidavit”

124. While ***Royal Hotel Dundee*** deals with an attorney as a commissioner of oaths, we respectfully submit that the same could be said of an investigating officer. Since an investigating officer has an interest in the outcome of his investigation, he cannot administer an oath in his own investigation.

125. With regards to an investigating officer (as commissioner of oaths) being impartial and unbiased. The court in *Royal Hotel Dundee* went on to hold that:

“R v Brummer, 1952 (4) SA 437 (T), and R v du Pont, 1954 (3) SA 79 (T), importing in some degree the evidential rule, appear to require that the commissioner of oaths, in order to be without an interest in the matter, must be impartial or unbiased. These two decisions were overruled by R v Rajah, 1955 (3) SA 276 (AD) at pp. 282, 283, in so far as they

‘may be regarded as having decided that a police officer has an interest in the matter, within the meaning of reg. (i), because he attempts to extract evidence from an unwilling witness in relation to an alleged crime which he is investigating’.

*A police officer, overzealous in investigating an alleged crime has not, for this reason, an interest in the matter within the meaning of the regulation. I do not, however, understand the Appeal Court to have. disagreed with the view that a commissioner of oaths is required to be impartial and unbiased in relation to the subject matter of the affidavit and that, if he is otherwise, he has an interest in the matter.*³⁴¹

(Emphasis added)

126. Particularly in the light of the fact that Buys had already gone on public record to announce his conclusion on what happened to Timol some 3 days after the event³⁴² the Magistrate ought to have found that Buys was not impartial and unbiased in relation to

v Liquor Licensing Board, area no 26 1966 (2) SA 661 (N) at 661C.

³⁴¹ *Royal Hotel Dundee* at 668E – G.

³⁴² Rapport, 31 October 1971, 1971 Newspaper clips, Vol D, p95.

the subject matter of the affidavits he was attesting and should have dismissed the contents of these affidavits; or at the very least treated them with great caution and circumspect.

127. Not only did the Magistrate apply no such caution, he rubberstamped the police versions with considerable enthusiasm.

The unlawful detention of Timol in JVS offices

128. On 22 October 1971, the day of Timol's arrest, a detention order for Timol was issued by the then Commissioner of Police, General Gideon Jacobus Joubert. The detention order provided that Ahmed Timol be detained at John Vorster Square and be held in a prison as defined in section 1 of the **Prison Act 8 of 1959**.³⁴³

129. However when Timol was arrested and eventually detained at John Vorster Square, he was never kept in a cell as required by this law. From police witness accounts it would appear that Timol interrogated in various offices and rooms; but was mostly questioned and guarded in room 1026 in the south wing of JVS. None of the police officers who interacted with Timol at John Vorster square ever made mention of taking Timol to a cell.

³⁴³ Ahmed Timol detention file, exhibit G6, pp13 – 14.

In terms of section 1 (x) of the Prison Act 8 of 1959, a prison is defined:
“(x) "prison" means any place established or deemed to have been established under this Act as a place for the reception, detention, confinement, training or treatment of persons liable to detention in custody, and includes...; and for the purposes of any offence committed under this Act by or in respect of prisoners further includes every place used as a police cell or lock-up;”

130. There is no evidence from the original inquest record that makes mention of Timol being kept in a cell. As correctly pointed out by Bizos, this was a clear contravention of the detention order.³⁴⁴

130.1. The SB explanation that their reason for keeping Timol in their offices was because in the past communists had escaped from prison or cells³⁴⁵ was no reason to defy the detention order. The real reason was in order to deprive Timol of sleep and to be able to abuse and torture him round the clock.³⁴⁶

130.2. Had Timol been lodged in the police cells there were at least some procedures which could have provided limited safeguards for him. The date and time that Timol was taken from and returned to the cells for 'investigation' would have been recorded. Notes of his physical state would have been made, as well as a record kept of his meals and any complaints by him may also have been recorded.³⁴⁷

130.3. By keeping Timol in the Security Branch offices there was no record of occurrences. This allowed the Security Branch members to describe the last days of Timol without fear of being contradicted by official records.³⁴⁸ It greatly facilitated their cover-up.

131. The Magistrate's finding is unsurprisingly silent on this question. Magistrate De Villiers was hardly going to apply a law that would cast aspersions on the conduct of the police.

³⁴⁴ Bizos SC affidavit, Vol C, p77, paras 74 - 77.

³⁴⁵ Van Wyk affidavit, Vol B, p8, paras 5 – 7.

³⁴⁶ Bizos SC affidavit, Vol C, p77, para 75.

³⁴⁷ *Id*, para 76.

³⁴⁸ *Id*, para 77.

Suspicious letter of commendation

132. Dutton points to the suspicious timing of the Rodrigues letter of commendation. He bought his discharge on 5 June 1972. On 20 June 1972, he received a Letter of Commendation for 'Service to the State' from Commissioner of Police, General G.J. Joubert. This was just 2 days before the Magistrate issued his finding into the death of Timol on 22 June 1972, which exonerated the police from any wrongdoing.

133. In this letter the Commissioner expressed his "appreciation" for the "*dedicated service*" of Rodrigues to the State as well as his "*exemplary*" *behaviour which was demonstrated by his "unblemished record" which he served in a "faithful and competent manner"*.³⁴⁹ This letter is particularly curious in the light of the following, which emerges from the member file of Rodrigues:

133.1. He joined the SAP on 9 February 1956 and on 27 June 1956, he was convicted of Statutory Perjury for contravening Section 9 of Act 16 of 1914 and given a suspended sentence for five years provided he was not again convicted of an offence involving dishonesty.³⁵⁰ This conviction suggests that Rodrigues had a propensity to lie under oath.

133.2. He spent his entire career in clerical positions in the Finance Section at HQ. During 1969 he transferred to the Salary section of SB HQ, Pretoria.

133.3. According to his SAP 28 form he took 301 days sick leave between 9 February 1957 and 15 November 1971. This is an extraordinary high number of sick days.

³⁴⁹ Vol J1, Rodrigues personal file, p 77

³⁵⁰ *Id*, p 83

133.4. On his own version he failed to stop Mr Timol from escaping from room 1026, notwithstanding Timol's dire condition after nearly 5 days of torture, abuse and sleep deprivation. According to his member file he was 6ft high and weighed 142 lbs in 1956 and in 1975 he was 1m 89cm high and weighed 87 kg.³⁵¹ This contrasts sharply with Timol's size as recorded in the Post Mortem Report, who was 1m 60cm high and 60 kg in weight.³⁵² According to Rodrigues's file, he was or had been active in the following sports: rugby, karate, boxing, wrestling and athletics.³⁵³

133.5. He was issued with no letters of recommendation, medals for bravery or good service.

133.6. The legal team inspected more than 30 personal files of former SB members who were present at John Vorster Square in October 1971. None of these files contained such letters of commendation.³⁵⁴

133.7. In the circumstances it has to be asked whether Rodrigues was being commended for his role the concocting of the so-called suicide in the Timol matter.

SB practice of covering up

134. According to George Bizos SC, a conspiracy of silence promoted by security legislation and detention without trial enabled the SB to cover-up their crimes. The isolation of detainees allowed for their abuse, and for the cover-up by the police of such abuse

³⁵¹ Exhibit J1, Form SAP dated 29 Oct 1975.

³⁵² Vol B, exhibit X, p 48.

³⁵³ Exhibit J1, various injury statements.

³⁵⁴ Frank Dutton affidavit, exhibit H7, p32, paras 83 – 88.

since they were the only witnesses. Policemen routinely perjured themselves to conceal the truth of the abuse of detainees.³⁵⁵

135. In particular Bizos highlighted the unreliability of the apartheid-era inquests such as the 1972 Timol Inquest. He states that in his considered view, the majority of the magistrates who presided over these inquests “*had no real desire to reach the truth.*”³⁵⁶

136. It emerged in Truth and Reconciliation Commission’s (TRC) inquiries that police routinely employed deception at judicial proceedings.

136.1. Police acting under the instruction of their superiors presented false testimony at court hearings and inquests, such as the inquest dealing with the death in detention of Mr Stanza Bopape.³⁵⁷

136.2. Deception was also employed in criminal trials as well as commissions of inquiry. The TRC received evidence of deliberate falsification and/or destruction of evidence, and of widespread and deliberate cover-ups of investigations.³⁵⁸

136.3. Collusion had taken place between police and prosecutors, who collaborated with police to undermine the cases of victims and/or their families.³⁵⁹

137. According to Frank Dutton, evidence of the SB modus operandi of cover-ups abound and include:

³⁵⁵ Bizos SC affidavit, Vol C, paras 10, 13 and 22 – 24.

³⁵⁶ Bizos SC affidavit, Vol C, p62, para 15.

³⁵⁷ Vol 5, Ch. 6, Findings and Conclusions, p 221, para 100, sub para (p), Findings on the State and Unlawful Activities

³⁵⁸ Vol 5, Ch. 6, Findings and Conclusions, p 221, para 100 sub-para p

³⁵⁹ Vol 5, Ch. 6, Findings and Conclusions, p 253, para 158 sub-para b

137.1. SB members admitted before a TRC amnesty Committee that they had lied to and misled the Inquest Court into the death of Steve Biko.³⁶⁰

137.2. Eugene de Kock and other SB members have admitted that they deliberately misled the Harms Commission.³⁶¹

137.3. The numerous admissions by SB members before different TRC Amnesty Committees of deceptions and cover-ups they practised to prevent the truth from becoming known.³⁶²

What was the SB covering up?

138. What was the SB covering up? It could only have been the torture of Timol, as well as the fact that there was no suicide, but a murder.

139. The main objective was to cover up the murder as there were other ways of dealing with torture, primarily through holding a detainee until his wounds have healed and then to intimidate him from taking legal action (as per Naik); or holding a detainee and only going to trial once injuries have healed (Essop). Naik was held for some 4.5 months before he was released³⁶³ and Essop was held for a similar period before his first appearance in court.³⁶⁴ This was a commonly employed practice of the SB.³⁶⁵

³⁶⁰ TRC REF: AC/99/0020 Steve Biko: Applicants: Harold Snyman (AM 3918/96), Daniel Petrus Siebert (AM 3915/96), Jacobus Johannes Oosthuizen Beneke (AM 6367/97) and Rubin Marx (AM 3521/96).

³⁶¹ TRC Amnesty Hearings at Pretoria on 13 July 1999

³⁶² TRC Amnesty Case No.C2000/0059: Applicants: Johannes Velde Van Der Merwe (AM 4157/96) and others; C2001/0124: Applicants: Hendrick Johannes Petrus Botha (AM4117/96) and others

³⁶³ Exhibit G3, p 16.

³⁶⁴ Vol C, Essop affidavit, para 62 p 45.

³⁶⁵ 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. See also D. Webster "Repression and the State of Emergency" South

140. We contend that the 'Naik' or 'Essop' options were not available to the SB because of Timol's near death or dire physical state. It is likely that they wished to avoid the storm of censure that would follow if a second '*Essop*' case occurred within 24 hours after the last one.
141. 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 that he fell through shrubbery.

MOVING OF TIMOL & NO EMERGENCY SERVICES SUMMONED

142. Professor Kenneth Boffard (Boffard) is the Trauma Director and Academic Head at the Department of Trauma Surgery at Milpark Hospital. He provided expert evidence on the conduct of the police in moving the critically injured Timol and failing to call the emergency services.³⁶⁶ Professor Boffard testified that:

142.1. During the 1970s it was drummed into all emergency service personnel including members of the SAP that a patient should not be moved until help arrives. It did not matter what the extent of the injuries were.³⁶⁷

142.2. Moreover, there was a general reluctance amongst the police to move injured persons. In those days, police were even reluctant to move injured persons situated in the middle lane of a busy motorway, until an ambulance arrived.

African review 4 (1988), p.167; G. Bindman South Africa: human rights and the rule of law (London: Pinter, 1988), p.104

³⁶⁶ Professor Boffard is a professor at the University of Witwatersrand. He is a qualified surgeon with additional training and considerable experience in the field of trauma surgery. His CV appears at exhibit C2.

³⁶⁷ Boffard affidavit, exhibit C15, para 9.7; Boffard oral evidence transcript Vol 5 p 428

They would rather redirect traffic around the injured person. They did this to avoid any liability on their part in case the patient died and they got blamed for it.³⁶⁸

142.3. Given the type of injuries Mr Timol suffered he should not have been moved until Ambulance Services arrived. In particular, since there was no combat situation under way or other peril threatening the scene there was no justification for moving Timol.³⁶⁹

142.4. It is extremely surprising that Timol was moved so quickly from the impact site given that that he was moved by experienced members of the SAP with many years' service.³⁷⁰

142.5. Picking up Timol, placing him on a blanket instead of a stretcher, and carrying him unsupported to another location may have contributed to his death, as it may have prejudiced his spinal cord and worsened his internal bleeding.³⁷¹

142.6. Since Timol fell in central Johannesburg where there were Ambulance Services within close call that would have arrived within minutes if they were called, there was no reason to move Timol.³⁷²

142.7. Since, the impact site was in a garden that fronted onto the road there was no danger from traffic. It would have been an appropriate place to wait for

³⁶⁸ Boffard affidavit, exhibit C15, para 9.6; Boffard oral evidence transcript Vol 5 p 429

³⁶⁹ Boffard affidavit, exhibit C15, para 15

³⁷⁰ *Id*, para 17

³⁷¹ *Id*, para 18

³⁷² Boffard oral evidence transcript Vol 5 p 440

emergency staff who could have easily and quickly accessed Timol and stretchered him to an ambulance.³⁷³.

Conduct consistent with murder

143. On the basis of Professor Boffard's evidence it can be concluded that the acts and omissions of the SB causally contributed to Timol's death, or at the very least, to the shortening of his life.³⁷⁴

144. It cannot be assumed that simply because Timol fell 10 storeys that death would automatically follow, hence the urgent need to summon emergency services. This is because there are recorded cases of people surviving falls well in excess a height of 30m. Examples include:

144.1. In January 2007, Joshua Hanson, fell 16 stories from a window in the Minneapolis Hyatt Regency landing onto an asphalt-covered overhang one floor above the street. He survived suffering two collapsed lungs and torn trachea.³⁷⁵

144.2. Chris Sagers escaped with a broken elbow after falling 22 floors from the Salford Tower Block in England onto a car roof.³⁷⁶

³⁷³ *Id.*

³⁷⁴ See the analogous case of: *S v Van Aardt 2008 (1) SACR 336 (E)* at 345a - b

³⁷⁵ Fox News 'Man Thankful He Doesn't Remember 16- Story Plunge' *Fox News* 21 February 2007, available at <http://www.foxnews.com/story/2007/02/21/man-thankful-doesnt-remember-16-story-plunge.html>, accessed on 07 September 2017.

³⁷⁶ Ed Pilkington 'Miracle on 66th street: window cleaner survives 47-storey fall' *The Guardian* 5 January 2008, available at <https://www.theguardian.com/world/2008/jan/05/usa.topstories3>, accessed on 07 September 2017

- 144.3. On 9 December 2007, Alcides Moreno, a window cleaner, survived a fall from the 47th floor of a Manhattan skyscraper. He survived and avoided paralysis even though his legs, right arm and wrist were broken in several places, he had a collapsed lung and a shattered vertebra.³⁷⁷
- 144.4. In December 2006, parachutist Michael Holmes, survived a 14 000ft fall in New Zealand after landing in a blackberry bush. He suffered a collapsed lung and a broken ankle.³⁷⁸
- 144.5. Skydiver Michael Holmes fell 15,000ft when his main chute tangled and his reserve failed. He broke an ankle. RAF Flight Sergeant Nicholas Alkemade survived an 18,000 ft. jump from a blazing Lancaster bomber in 1944.³⁷⁹
145. Given that Timol allegedly fell through shrubbery, and landed in a garden with soil and grass, as opposed to concrete, it is our submission that he stood at least an outside chance of surviving.
146. We submit that the conduct in moving Timol – and failing to call an ambulance or the 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.
147. In this matter Rodrigues and his colleagues in the Security Branch were fully aware that Timol had fallen 10 storeys.

³⁷⁷ *Id*

³⁷⁸ John Springer 'Skydiving miracle: Man falls two miles' *Today* 13 February 2007, available at <https://www.today.com/news/skydiving-miracle-man-falls-two-miles-2D80556106>, accessed on 07 September 2017.

³⁷⁹ Ed Pilkington 'Miracle on 66th street: window cleaner survives 47-storey fall' *The Guardian* 5 January 2008, available at <https://www.theguardian.com/world/2008/jan/05/usa.topstories3>, accessed on 07 September 2017

147.1. It was obvious to them that he needed urgent medical assistance.³⁸⁰

147.2. Rodrigues, and all the police officers who were aware that Timol had just fallen, were under a legal duty³⁸¹ to arrange emergency medical attention for him. They deliberately chosen not to obtain medical assistance for him.³⁸²

147.3. They must have foreseen, and by implication did foresee, that there was a reasonable possibility that Timol would die if not medically treated.³⁸³ They therefore had the requisite intent in the form of *dolus eventualis* to kill the Timol.³⁸⁴

147.4. They all refrained from calling an ambulance as they all intended for Timol to die. They subjectively reconciled themselves with the foreseen consequences. They are all responsible for Timol's murder on the basis of *dolus eventualis*.³⁸⁵

148. Rodrigues was the police officer who allegedly was in the room with Timol. He allegedly saw Timol dive or jump out the window. He then claimed to see Timol lying on the ground ten storeys below. There was a legal duty on Rodrigues, more than anyone

³⁸⁰ See the analogous case of: *S v Van Aardt 2008 (1) SACR 336 (E)* at 346b and 346c.

³⁸¹ *Minister of Safety and Security and Others v Craig and Others NNO 2011 (1) SACR 469 (SCA)*: Officials who have prisoners in their charge should see to their well-being, and courts should be vigilant to ensure that officials, who have in their charge those whose freedom of movement have been restricted, comply with the obligation to ensure their well-being. Police standing orders place an obligation on members of the police, to whom it appears that detainees are in distress and are therefore injured or ill, to obtain the necessary medical assistance for them. (Paragraphs [60] and [61] at 480a–d.). See also: *Minister Van Veiligheid en Sekuriteit v Geldenhuys 2004 (1) SA 515 (SCA)*.

³⁸² *S v Van Aardt 2008 (1) SACR 336 (E)* at 345a – b

³⁸³ *Id* at 346f - g

³⁸⁴ *Id* at 346i - j

³⁸⁵ In *S v Sigwahla 1967 (4) SA 566 (A)* the following was stated at 570B - E: C: The expression 'intention to kill' does not, in law, necessarily require that the accused should have applied his will to compassing the death of the deceased. It is sufficient if the accused subjectively foresaw the possibility of his act causing death and was reckless of such result. This form of intention is known as *dolus eventualis*, as distinct from *dolus directus*. Subjective foresight, like any other factual issue, may be proved by inference. To constitute proof beyond reasonable doubt the inference must be the only one which can reasonably be drawn....

else in JVS, to pick up the phone and immediately call for an ambulance. This should have happened before he allegedly ran out the office and raced to the impact site after finding Colonel Greyling. In his oral evidence, when asked whether an ambulance should have been immediately summoned, Rodrigues answered:

*“What I would say is that it would have been the logical thing to have been done but I do not know why they did not do that.”*³⁸⁶

149. Rodrigues also conceded that in the position Timol lay before he was moved, he was ideally placed, only a few metres from the road, where an ambulance could have stopped and medical personnel could have gained quick access to him.³⁸⁷
150. Rodrigues clearly knew that an ambulance should have been called but apparently saw this as the responsibility of someone else, not himself. This is notwithstanding that in the seconds and minutes following the fall he knew better than anyone else what had happened. He knew more than anyone else that if Timol was still alive he would require urgent medical attention if he was to survive. His failure to act is consistent with the intent to ensure that Timol would die. Rodrigues accordingly had the requisite intention to kill in the form of *dolus eventualis*.
151. Much the same can be said of the failure of Rodrigues or anyone else to attempt to stop the moving of the critically injured Timol.

151.1. Rodrigues conceded in his oral testimony that Timol should not have been moved. When asked whether persons with potential spinal injuries should not be moved, he responded: *“That is general knowledge in actual fact.”*³⁸⁸

³⁸⁶ Rodrigues oral testimony transcript, Vol 19, p 793, lines 12 – 19

³⁸⁷ *Id.*

³⁸⁸ *Id.*, p 793, lines 8 – 11

151.2. It is simply not believable that such “*general knowledge*” was completely lacking in all the officers who attended the scene, some senior officers, with numerous years’ experience.

151.3. When probed on why he made no attempt to stop Timol from being moved his only answer was that he was a junior officer who could not interfere with his seniors.³⁸⁹

151.4. Given that Rodrigues knew that Timol should not have been moved, since it may cause or hasten his death, the conduct of Rodrigues in not attempting to stop such moving, was consistent with the intention to kill.

THE TIMING ISSUE: WHEN DID TIMOL FALL?

152. Three witnesses, Matthis, Thoken and Adam testified that they saw or heard Mr Timol’s body fall during the morning of Wednesday 27 October 1971. This evidence is in direct conflict with all the police witnesses who allege that the fall took place in the late afternoon, approximately 16h00.

153. Curiously Dr Kemp, who declared Timol dead, did not mark a time of death, merely stating that Timol was “recently dead”.³⁹⁰ Dr Scheepers, who conducted the post mortem, did not mark a time of death but inserted the following into his report: “*Deceased was found dead as informed on 27 October 1971 at XXX*”.³⁹¹ It is particularly strange that none of the official documentation offered, at the very minimum, an approximate time of death.

³⁸⁹ *Id*, p792, line 5 to p793, line 7.

³⁹⁰ Dr Kemp affidavit, Vol B, exhibit T, p44.

³⁹¹ Dr Schepers SAP 183 and post mortem report, Vol B, exhibit X, p 48 – 58.

154. Jetham testified that while being interrogated in an office on the 10th floor of the south wing of JVS she heard Timol screaming. However the last time she heard him scream was early (at about 04h00) on 27 October 1971.³⁹² Timol screams suddenly stopped.³⁹³ Although Jetham was unable to investigate his condition she believes that at the very least he was seriously incapacitated.³⁹⁴ This suggests that he may have been rendered unconscious or even comatose, which happened to Essop the morning before.³⁹⁵

155. The supplementary reports by Dr Holland³⁹⁶ and Dr Naidoo³⁹⁷ explain that it is not possible to point to the exact time of death.

155.1. In his testimony Dr Naidoo stated that from the Dr Schepers' report and Dr Kemp's statement it is not possible to determine when the exact time of death could have been. Time of death is determined by a number of factors that affect post mortem changes. Post mortem changes on the body can start being detected anywhere between 30 minutes to 24 hours.³⁹⁸

155.2. Because the medical evidence cannot make a distinction on which part of the day (morning or afternoon) Timol died, it is possible that he died in the morning just as it is possible that he died in the afternoon.³⁹⁹

³⁹² Transcribed reopened inquest record, Dr Jetham testimony, p292.

³⁹³ *Id*, pp287 – 291.

³⁹⁴ Vol C, Dr Jetham affidavit, p98, para 39.

³⁹⁵ Vol C, Essop affidavit, p44, para 58.

³⁹⁶ Exhibit C16.

³⁹⁷ Exhibit C17.

³⁹⁸ Transcribed reopened inquest record, Vol 13, pp990 – 991.

³⁹⁹ *Id*, p995.

156. The evidence of Matthis, Thoken and Adam is not easily dismissed. Indeed, it is our considered view that their evidence must be accepted on this question. We reach this conclusion for the following reasons:

156.1. No claim was made that they colluded to fabricate a version. Indeed the 3 witnesses are entirely unrelated to each other;

156.2. They have no cause or reason to fabricate a version on the timing;

156.3. It is improbable that all 3 would be mistaken on the timing as to whether it took place in the morning or afternoon;

156.4. Given the wholesale lying and deception perpetrated by the police witnesses the version of the civilian witnesses ought to be preferred over that of the police.

156.5. There is a probably explanation why the fall took place in the morning but was only announced in the late afternoon.

157. The probable explanation for conducting the fall in the morning and delaying the announcement until the afternoon would be to allow the police time to construct and fine tune the version of suicide. This would have involved bringing Rodrigues to JVS and coaching him.

157.1. It is most likely that the conspiracy to murder Timol and hatch the suicide version was confined to the SB officers on the Timol case and their superiors. Brigadier Pattle and others, such as the photographer, would not have been involved.

157.2. They would only have been informed, following the 'alarm' being raised by Rodrigues in the afternoon. As far as they and the rest of the police members

were concerned, the fall had taken place in the afternoon, and at that time there would have been no reason to second guess the SB on the timing.

158. When these probabilities are considered they help to explain why:

158.1. No ambulance was summoned.

158.2. Timol was immediately removed from the impact site;

158.3. Timol was on the 9th floor when he was declared dead;

158.4. No crime scene investigation took place.

159. The lack of clarity on the exact time of day Timol fell does not detract from the fact that the police version of suicide is highly improbable and indeed untenable, regardless of the time of the fall. The version of Rodrigues as to what happened in room 1026 remains unbelievable. However it does have immediate and grave consequences for him, since if this Court finds that the fall did take place in the morning, then there is no need to carefully test his version of what transpired in room 1026, since it automatically follows that it must be all false.

THE PROBABILITIES

160. 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.⁴⁰⁰ Ultimately, the aim is

⁴⁰⁰ *Freedom Under Law v National Director of Public Prosecutions and Others* 2014 (1) SA 254 (GNP) at 77.

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.

161. Inquest proceedings are inquisitorial in nature. This is why the standard of proof in inquests is not as stringent as in criminal proceedings. In ***Goniwe and Others***⁴⁰¹ the court held that the standard of proof required to make a finding in an inquest is not that as applied in a criminal trial. The test is less stringent in inquests. The court explained this rationale as follows:

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

162. In the light of the evidence before this Court, we conclude that, on the probabilities, the following is very likely to have happened:

- 162.1. Timol was brutally tortured, between the night of Friday 22 October 1971 and Wednesday 27 October 1971. By the morning of the Wednesday he was likely incapacitated, unable to move and talk, and close to death, most probably in a comatose state.⁴⁰²

⁴⁰¹ *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.”

⁴⁰² Vol C, Dr Jetham affidavit, p98, para 39 and Dr Essop affidavit, p44, para 58; ⁴⁰² Naidoo C17 p9; Naidoo oral evidence, Vol 7 p558; Holland oral evidence Vol 6 p 508-509.

162.2. To avoid another embarrassing situation and avert the storm of criticism that would follow if yet another detainee was rushed to hospital only a day after Essop was taken to hospital, the version of suicide was constructed.⁴⁰³

162.3. Sometime during 27 October 1971, either in the morning or the afternoon, but more likely in the morning, Timol was either placed in a:

162.3.1. sitting position on the window sill of room 1026 and pushed out;⁴⁰⁴ or

162.3.2. pushed out as per Moodley's 4th scenario (feet first body facing the building);⁴⁰⁵

162.3.3. thrown off the roof above room 1026;⁴⁰⁶ or

162.3.4. placed in lying position on the parapet of the roof above room 1026 and rolled off.⁴⁰⁷

According to the trajectory expert the first 2 scenarios mentioned above could place the impact site at about three meters in the position recorded by Pattle and the orientation alleged by Deysel. The last 2 scenarios would have a different impact site but is consistent with the evidence of Mr Matthis.⁴⁰⁸

162.4. In terms of the ultimate outcome, it does not matter whether this happened in the morning or afternoon (as per Dr Naidoo evidence). However, it it happened

⁴⁰³ Essop affidavit, Vol C, p45, para 60.

⁴⁰⁴ Trajectory Report, exhibit C10, pp10 – 12.

⁴⁰⁵ *Id.*

⁴⁰⁶ Trajectory Report, exhibit C10, pp13 – 14.

⁴⁰⁷ Trajectory Report, exhibit C10, pp14 – 15.

⁴⁰⁸ See discussion above under the heading '*Trajectory evidence*'.

in the morning it would have allowed the SB more time to orchestrate the cover-up, bring in and coach Rodrigues, and then stage in the afternoon for more general consumption.

162.5. Rodrigues was brought in to assist in fabricating a version that would be able to explain that Timol committed suicide and shield Captains Gloy and Van Niekerk (and possibly also Sergeants Bouwer and Louw) from scrutiny.

162.6. Once the fall had taken place, either in the morning or afternoon, the SB members present, including Rodrigues, ensured that Timol would die by not summoning emergency medical assistance and by moving him in a manner that would have caused or hastened his death.⁴⁰⁹

162.7. The after-the-fact cover-up unfolded with the police ensuring that no crime scene investigation took place and through orchestrating an investigation to ensure there was no disclosure of any evidence linking police conduct to Timol's condition and death.⁴¹⁰

RECOMMENDATIONS

163. In the light of the evidence presented during these proceedings we submit that a persuasive case has been made out for the reversal of the original inquest findings.

We accordingly make the following recommendations:

⁴⁰⁹ See discussion above under the heading '*Moving Timol & Failure to summon Medical Assistance*'.

⁴¹⁰ See the following affidavits in Vol B: Kleyn, exhibit A, p6; Bean, exhibit B, p13, para 7; Lieutenant Colonel Willem Petrus van Wyk, exhibit C, p10, para 13; Gloy, exhibit G, p20, para 6; Rodrigues, exhibit M, p30, para 18; Warrant Officer Jacob Johannes Schoon, exhibit N, p31; and Dirker, exhibit MM, p97, para 15.

163.1. **Rodrigues** played a role in Timol's death. He should be investigated on charges of murder;⁴¹¹ and/ or accessory after the fact to murder;⁴¹² and perjury.⁴¹³ In particular the following charges should be considered:

163.1.1. murder for his role in:

163.1.1.1. the orchestration of Timol's death by the SB under the guise of a suicide; and/ or

163.1.1.2. causing and/ or hastening Timol's death by not summoning emergency medical care and not stopping Timol from being moved until the arrival of medical assistance;

163.1.2. accessory after the fact for his role in the cover-up of the murder which persists to this day and which was pursued before this inquest; and/ or

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

163.2. 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.

⁴¹¹ The elements of murder are: (a) causing the death (b) of another person (c) unlawfully and (d) intentionally. See Snyman *Criminal Law* 4th Edition (Juta, Cape Town, 2002) at 421.

⁴¹² A person is an accessory after the fact to a crime, if after the completion of a crime, he unlawfully and intentionally engages in conduct intended to enable the perpetrator, or the accomplice, to evade liability for his crime. See Snyman *Criminal Law* 5th Edition (Juta, Cape Town, 2008) at 278.

⁴¹³ 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* 4th Edition (Juta, Cape Town, 2002) at 341.

163.3. In his testimony, Mr Imtiaz Cajee (“**Cajee**”), who is Timol’s nephew, asked this Court to consider making certain recommendations, which we submit the Court should make in its finding:⁴¹⁴ These include:

163.3.1. 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; and/ or

163.3.2. the erection of a memorial at the impact site in the garden outside the south wing; and/ or

163.3.3. the restoration of the south wing offices of the 10th floor to their 1971 appearance and the conversion of that wing into an educational centre and site of memory; and/ or

163.3.4. the erection of a wall of remembrance, with all the names of the political detainees who died in detention; and

163.3.5. 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.

164. 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 its formal findings for the consideration of the relevant authorities.

⁴¹⁴ Cajee affidavit, Vol H, pp30 – 31, paras 35 – 35.4.

CONCLUSION

165. In conclusion, we would like to pay gratitude to all those that have made this inquest possible.

165.1. Special mention must go to the National Prosecuting Authority (“**NPA**”) for agreeing to reopen the inquest; the NPA legal team, Mr Torie Pretorius SC, Ms Shubnum Singh and Captain Ben Nel, for their tireless dedication to this matter;

165.2. the SAPS, especially Eleanor Groenewald of Legal Services, for their support in assisting us get hold of the police files of the erstwhile SB members; and the security files of the detainees;

165.3. Our hard working and dedicated instructing attorneys, Moray Hathorn and his team at the Pro-Bono department of Webber Wentzel attorneys; and Ms Naseema Fakir and her team at the Legal Resources Centre (Johannesburg);

165.4. Frank Dutton our private investigator, whose inquiries opened the door to this inquest; and Yasmin Sooka and the Foundation for Human Rights for supporting these investigations and standing by the Timol family;

165.5. George Bizos SC for his wise counsel and encouragement, and

165.6. The witnesses who agreed to come forward and relive the horrors of their abuse in detention; and our expert witnesses who generously and voluntarily gave of their time to prepare reports and testify.

165.7. Last but not least, a special thanks to the Gauteng Division of the High Court of South Africa for setting aside valuable judicial resources for this inquest.

166. While we hope that the finding in this matter will bring justice and closure for the Timol family, it is very troubling that some 46 years after Timol's death the practice of torture and assault is still prevalent in police detention today. The recent statistics released by the Independent Police Investigative Directorate ("IPID") make for disturbing reading.⁴¹⁵ According to IPID's 2015/ 16 Annual Report⁴¹⁶:

166.1. There were 216 deaths in custody for the 2015/ 2016 financial year:⁴¹⁷ 66 of the deaths were suicides (by hanging), 56 through natural causes and 14 cases were attributed to injuries caused by SAPS members.⁴¹⁸

166.2. There were 3466 complaints of assault⁴¹⁹ and 144 complaints of torture.⁴²⁰

It must be stressed that these statistics cannot be compared to the figures of deaths in security detention in the Apartheid era, since the above figures relate to all deaths and complaints of assault and torture recorded in police custody, whereas the Apartheid figures⁴²¹ only deal with deaths in political detention under security laws, not deaths in general police custody.

167. 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.⁴²² Amongst the books that were provided was *Notes from the*

⁴¹⁵ See exhibits P and P1.

⁴¹⁶ The *Independent Police Investigative Directorate, Vote no. 20, Annual Report, 2015/2016 Financial Year*. Retrieved from:
<http://www.icd.gov.za/sites/default/files/documents/IPID%20AR%202015%2016%20WEB.pdf>

⁴¹⁷ *Id*, p 49

⁴¹⁸ *Id*, p 55

⁴¹⁹ *Id*, p 49

⁴²⁰ *Id*, p 49. Acts of torture are those acts prohibited by the *Prevention and Combating of Torture of Persons Act 13 of 2013*.

⁴²¹ Exhibit O.

⁴²² Kasrils affidavit, exhibit H10,, para 17

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.

168. 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*".⁴²³ 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.

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."

169. 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.

⁴²³ *Masses & Mainstream* July, 1948, p 75-76: <http://www.trussel.com/hf/heros.htm>

170. 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.
171. 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.
172. Ahmed would have wanted this, not for his own sake, but to ensure the eradication of torture and brutality in his beloved South Africa.

HOWARD VARNEY
MUSATONDWA MUSANDIWA
Counsel for the Timol Family

Chambers, Sandton
8 September 2017

ANNEX A: SUMMARY OF THE EVIDENCE

Version advanced by Security Branch in original inquest

1. During the course of 1971, Buys conducted an investigation into the death of Timol. Buys interviewed several members of the security police who were present at John Vorster Square during the period of Timol's detention. He also interviewed officers who were at Newlands when Timol and Essop were arrested.
2. From the statements that Buys obtained, the following version can be constructed:
 - 2.1. Timol and Essop were arrested at a roadblock in Coronationville on Friday, 22 October 1971 at about 23h10. They were travelling in a yellow Ford Anglia with licence plate TU.22315. Essop drove the Anglia while Timol sat on the passenger side. After being stopped at the roadblock, Kleyn asked Essop to open the boot of the car. In the boot of the car, Kleyn discovered several shoeboxes with pamphlets inside. The two men were then subsequently arrested and taken to Newlands.⁴²⁴
 - 2.2. Upon their arrival at Newlands, Timol was locked in a holding cell by himself, while Essop was left seated on a bench in the corridor. Kleyn called the security police informing them of the arrest. Soon thereafter, Warrant Officer Neville Els ("**Els**"), who was a member of the security police, came to Newlands to inspect the material found in the car.⁴²⁵ Els ascertained that the materials in the car were pamphlets that related to bombings that happened in different places in Johannesburg in 1970. He also found shoeboxes with sealed envelopes containing the pamphlets.⁴²⁶
 - 2.3. Later, Dirker and Greyling arrived at Newlands and took Timol and Essop away. They also took the Anglia and the documents in the boot. Kleyn and Dirker took Timol to an office in John Vorster Square. Upon arrival Timol was questioned

⁴²⁴ Vol B: Kleyn affidavit, exhibit A, pp5 – 6; and Thinnies affidavit, exhibit B, p7.

⁴²⁵ *Ibid.*

⁴²⁶ Vol B: Els affidavit, exhibit E, p14, para 3.

by van Wyk and Dirker. Following this, Kleyn guarded Timol until 05h40 on Saturday, 23 October 1971.⁴²⁷

2.4. During the course of his detention at John Vorster Square, Timol was interrogated daily from Saturday, 23 October 1971 to Wednesday, 27 October 1971. For three of those days, Timol was interrogated by both Gloy and van Niekerk. They interrogated Timol on the following days:

1.1.1 Saturday, 23 October 1971: 06h00 – 19h00;⁴²⁸

1.1.2 Sunday, 24 October 1971: 08h00 – 20h00;⁴²⁹ and

1.1.3 Wednesday, 27 October 1971: 08h00 – 15h30.⁴³⁰

2.5. Bean and van Wyk interrogated Timol on Monday, 25 October 1971 and Tuesday, 26 October 1971 from about 08h30 – 20h00.⁴³¹

2.6. In the evenings and early hours of the mornings of 23 October 1971 – 27 October 1971, Louw and Bouwer guarded Timol at the following times:⁴³²

1.1.4 Saturday, 23 October 1971 – Sunday, 24 October 1971: 19h00 – 08h00;

1.1.5 Sunday, 24 October 1971 – Monday, 25 October 1971: 20h00 – 08h30;

1.1.6 Monday, 25 October 1971 – Tuesday, 26 October 1971: 19h30 – 08h00; and

1.1.7 Tuesday, 26 October 1971 – Wednesday, 27 October 1971: 20h00 – 08h00.

⁴²⁷ Vol B: Kleyn affidavit, exhibit A, pp5 – 6.

⁴²⁸ Vol B: van Niekerk, exhibit F, p15, paras 2 – 3; and Gloy, exhibit G, p18, para 2.

⁴²⁹ Vol B: van Niekerk, exhibit F, p15, para 4; and Gloy, exhibit G, p18, para 3.

⁴³⁰ Vol B: van Niekerk, exhibit F, p15, para 5; and Gloy, exhibit G, p18, para 4.

⁴³¹ Vol B: van Wyk, exhibit C, p9, para 11; and Bean, exhibit D, p12, para 2.

⁴³² Vol B: Bouwer, exhibit Q, p36, paras 3 – 7; and Louw, exhibit R, p37, paras 2 – 4.

- 2.7. Throughout this time, Timol was detained in room/ office 1026, located on the tenth floor in the south wing of John Vorster Square.⁴³³ The SB explained that their reason for keeping Timol in their offices was because in the past communists had escaped from prison or cells.⁴³⁴
- 2.8. While Timol was detained, various members of the SB visited his parent's home to conduct searches and seize books, pamphlets and a typewriter.⁴³⁵ Most of these searches took place at various times throughout Saturday, 23 October 1971.⁴³⁶ On Tuesday, 26 October 1971, Detective Sergeant Carel Jansen van Rensburg (“**van Rensburg**”); Lieutenant Marthinus David Ras (“**Ras**”) and Liebenberg returned to the Timol home to do further searches. Upon their arrival Hawa Timol (“**Mrs Timol**”), Ahmed Timol's mother, asked van Rensburg when she would be able to see her son. Van Rensburg's response was that she would not see him. When Mrs Timol asked why, van Rensburg told her Timol needed a hiding and that had Mrs Timol given her son a hiding she would not be crying now.⁴³⁷
- 2.9. A common feature in the statements of some of the officers that were interviewed – particularly those that had contact with Timol at John Vorster Square from 23 October to 27 October 1971 – is that they all stated that they did not assault or threaten Timol, nor did they hear anything about Timol being assaulted.⁴³⁸ They further stated that Timol did not display any signs of injuries or marks on his body⁴³⁹ and that he was very friendly.⁴⁴⁰ Other officers stated

⁴³³ *Ibid.*

⁴³⁴ Bizos SC affidavit, Vol C, p77, para 75.

⁴³⁵ Vol B: Warrant Officer Johannes Jacobus Liebenberg (“**Liebenberg**”) affidavit, exhibit L, p25, para 2; Captain Jacobus Petrus Le Roux (“**Le Roux**”) affidavit, exhibit CC, p69.

⁴³⁶ Vol B: Liebenberg affidavit, exhibit L, p25, para 2; Le Roux affidavit, exhibit CC, p69; and Liebenberg affidavit, exhibit L, p25, para 4.

⁴³⁷ Van Rensburg affidavit, Vol B, exhibit O, p32, paras 2; 4 and 5. See also Ras affidavit, Vol B, exhibit P, p34, paras 2 – 5

⁴³⁸ 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.

⁴³⁹ See the following affidavits in Vol B: van Niekerk, exhibit F, p15, and para 5; Gloy, exhibit G, pp18 – 19, paras 2 and 4; van Wyk, exhibit C, p8, and para 4 and p10, para 13; Bean, exhibit D, p13, and para 6. See also Vol A, translated inquest judgment, p4 and pp26 – 27.

⁴⁴⁰ Vol B: van Niekerk, exhibit F, p15, para 5; and Gloy, exhibit G, p19, para 4.

that they did not interrogate or assist in interrogating Timol while he was in detention.⁴⁴¹

- 2.10. During the course of Timol's interrogation (particularly on Saturday, 23 October 1971), Gloy and van Niekerk interrogated Timol about a certain Martin, Henry and Quentin. Gloy and van Niekerk wanted to know who these three white men were and how Timol was associated with them. Timol informed Gloy and van Niekerk that Quentin was friend he associated with socially and that he in fact was not a white man but was a coloured man.⁴⁴²
- 2.11. On 27 October 1971, Gloy and van Niekerk again interrogated Timol about Martin, Henry and Quentin. Timol refused to provide the two officers with any information relating to these three men. Timol did however freely disclose information about the documents that were found in the Anglia. He told Gloy and van Niekerk that he was a member of the Communist Party of South Africa ("**the CP**SA") and that he liaised with known communists based in London. In this friendly atmosphere, Timol willingly made notes providing this information to Gloy and van Niekerk. On more than one occasion Timol expressed his fear of going to jail for 20 (twenty) or more years.⁴⁴³ Presumably because of the documents found in the Anglia, Timol was in such fear of going to prison for a long time that he freely disclosed his membership in the CP
- SA and his London communist connections.
- 2.12. At 15h30, Rodrigues came into room 1026. He had with him three (3) cups of coffee which were for Gloy, van Niekerk and Timol. When Rodrigues came into the room, Timol was seated at the table making notes about his operations within the Communist Party.⁴⁴⁴ Gloy, van Niekerk and Timol drank their coffee and thereafter the two security police officers continued with their interrogation of Timol.⁴⁴⁵

⁴⁴¹ Vol B: Kleyn, exhibit A, p6; Liebenberg, exhibit L, p26, para 7; Rodrigues, exhibit M, p30, para 18; and van Rensburg, exhibit O, p33, para 6.

⁴⁴² Vol B: van Niekerk, exhibit F, p15, para 3 and Gloy, exhibit G, p18, para 2.

⁴⁴³ Vol B: van Niekerk, exhibit F, p15, para 5; and Gloy, exhibit G, pp18 – 19, para 4.

⁴⁴⁴ Vol B: van Niekerk, exhibit F, p16, para 7; and Gloy, exhibit G, p19, para 5. See also Rodrigues affidavit, Vol B, exhibit M, p27, para 2. Rodrigues' states that he did not see Timol making any notes.

⁴⁴⁵ Vol B, Rodrigues affidavit, p27, para 3.

- 2.13. At about 15h45 – 15h50, an unidentified member of the SB came into the room and announced that he knew who Quentin, Martin and Henry were and where they could be located. When Timol heard the name Quentin Jacobsen he became visibly shocked and extremely agitated.⁴⁴⁶
- 2.14. At about 15h48, Gloy and van Niekerk left the room, but before leaving they instructed Rodrigues to stay in the room and guard Mr Timol. As they left the room, Rodrigues moved to the other side of the table and sat across the table from Timol.⁴⁴⁷ Rodrigues was seated with his back towards the window on chair A, while Timol sat facing the window on chair B.⁴⁴⁸
- 2.15. A little while after Gloy and van Niekerk left, Timol asked Rodrigues if he could go to the toilet. They both stood up from their chairs and as Rodrigues was manoeuvring his way around the table, moving to the left side of the table, chair C was in his way and he pushed it under the table. While pushing chair C under the table, with his eye on C,⁴⁴⁹ he noticed Timol, who was standing on his right, rushing towards the window. Rodrigues initially wanted to continue going to the left, but he realised that the chair that Mr Timol had just vacated (chair B) was in his way. He decided to go back to his right but he had trouble with the chair he had just vacated (chair A), because it was in his way.⁴⁵⁰
- 2.16. It was at this moment that Rodrigues noticed that Timol was already at the window, the window was already open and he was busy diving through the window. In an attempt to grab Timol, Rodrigues stumbled over chair A. As a result of this, he could not even touch Timol. When he went to the window, he looked out and saw Timol lying on the ground next to the building.⁴⁵¹
- 2.17. Rodrigues immediately ran out of the office, shouting that Timol had jumped out of the window. He went to Greyling's office to report the matter to him.

⁴⁴⁶ Vol B: van Niekerk, exhibit F, p16, para 8; and Gloy, exhibit G, p19, para 5; and Rodrigues, exhibit M, pp27 – 28 paras 4 – 5. Rodrigues' says Timol had a wild look in his eyes at this time.

⁴⁴⁷ Vol B: van Niekerk, exhibit F, p16, para 8; and Gloy, exhibit G, p19, para 5; and Rodrigues, exhibit M, p28 paras 6 – 7.

⁴⁴⁸ Vol B, Rodrigues affidavit, exhibit M, p28, para 7; and exhibit C8.

⁴⁴⁹ Vol B, Rodrigues affidavit, exhibit M, p28, paras 8 – 10; and exhibit C8.

⁴⁵⁰ Vol A, translated inquest judgment, p28; and exhibit C8.

⁴⁵¹ *Ibid.*

Rodrigues, Greyling and other members of the SB rushed outside and Timol's body was carried inside.⁴⁵²

- 2.18. When Van Niekerk received the report that Timol has committed suicide, he immediately ran back to room 1026. He looked out the window and saw Timol's body lying between the shrubs. He immediately ran outside to ascertain if Timol was still alive. Timol's body was carried inside and soon thereafter Dr Kemp came and confirmed that Timol had died.⁴⁵³
- 2.19. After Gloy left room 1026 he received a report that Timol had jumped out of the window of room 1026 and had committed suicide. He never saw Timol after that.⁴⁵⁴
- 2.20. Both Gloy and van Niekerk stated that in their opinion, Timol committed suicide because he feared a long prison sentence.⁴⁵⁵
- 2.21. At about 16h00, while walking in the corridor of the tenth floor, Deysel heard someone shout that Timol jumped out of the window on the Commissioner Street side of John Vorster Square (south wing side). He immediately grabbed two blankets and ran to the lifts where he encountered Greyling. He and Greyling took the lift down to the impact site.⁴⁵⁶
- 2.22. Schoon, also a member of the SB who was also on the tenth floor of the south wing of John Vorster Square gave a version similar to Deysel's about hearing Rodrigues shouting down the corridor. Schoon stated that while he was working in his office (room 1024) he heard Rodrigues shout down the corridor that Timol had fallen. Prior to Timol falling, Schoon knew that Rodrigues was in room 1026 with Timol and during that time he did not hear any talking or interrogation coming from room 1026. He further went on to state that from 25 October 1971 up to 27 October 1971, he would occasionally walk past room 1026 and

⁴⁵² Vol B, Rodrigues affidavit, exhibit M, p30, paras 17 – 18.

⁴⁵³ Vol B, van Niekerk affidavit, exhibit F, pp16 – 17, paras 9 – 10.

⁴⁵⁴ Vol B, Gloy affidavit, exhibit G, pp19 – 20, para 6.

⁴⁵⁵ Vol B: van Niekerk affidavit, exhibit F, p17, para 11; and Gloy affidavit, exhibit G, pp19 – 20, para 6.

⁴⁵⁶ Vol B, Deysel affidavit, exhibit S1, p41, para 4.

whenever he did, the door would be slightly open and at no time did he ever see Timol being assaulted. Whenever he saw Timol, he was always normal.⁴⁵⁷

- 2.23. Deysel saw Timol lying on the ground with his head towards the direction of the building.⁴⁵⁸ Timol lay on his stomach with his right arm under his body. His left arm was away from his body with his wrist facing up. Timol's right leg was bent and his left leg was straight, his right foot did not have a shoe on. He checked Timol's pulse on his left wrist and was able to ascertain that Timol still had a pulse.⁴⁵⁹
- 2.24. Deysel put the two blankets on the left side of Timol's body and proceeded to roll Timol onto the blankets. When he turned Timol over blood started streaming from his face. It was at this point that he realised that Timol needs medical attention and with the help of his colleagues they carried Timol inside using the blankets (with Timol lying on his back on the blanket).⁴⁶⁰
- 2.25. Deysel and his colleagues took Timol to reception and while there, Deysel felt Timol's pulse. When he could not feel a pulse he realised that Timol was dead. He reported this Greyling and who also agreed with Deysel that Timol had died. They then took Timol's body to the nearest office on the ninth floor.⁴⁶¹
- 2.26. Soon thereafter, Deysel returned to the impact site. When he got there he found Timol's right shoe as well as a leather strap wristwatch. The leather strap was broken.⁴⁶²
- 2.27. During this time, Dr Kemp received a report at about 15h55 to come to John Vorster Square. Upon his arrival at 16h05 on the ninth floor of JVS he was able to ascertain that Mr Timol had recently died.⁴⁶³

⁴⁵⁷ Schoon affidavit, Vol B, exhibit N, p 31.

⁴⁵⁸ Vol B, Deysel affidavit, exhibit S1, p43, para 11.

⁴⁵⁹ Vol B, Deysel affidavit, exhibit S1, p42, para 6.

⁴⁶⁰ Vol B, Deysel affidavit, exhibit S1, p41, paras 7 – 8.

⁴⁶¹ Vol B, Deysel affidavit, exhibit S1, p43, para 10.

⁴⁶² Vol B, Deysel affidavit, exhibit S1, p43, para 12.

⁴⁶³ Vol B, Dr Kemp affidavit, exhibit T, p44.

- 2.28. Van Niekerk would later take Timol's body from John Vorster Square to the mortuary.⁴⁶⁴
- 2.29. At about 16h10, Pattle received a report that a body had been seen falling from the tenth floor. He immediately rushed down from his office which was on the seventh floor. When he got out of the lift he saw members of the SB, led by Greyling, carrying Timol's body on a blanket. They came from the Commissioner Street side of John Vorster Square.⁴⁶⁵
- 2.30. Pattle later interviewed Greyling about what happened. Greyling took Rodrigues to room 1026 where Pattle interviewed him about what happened. This was the first time Pattle met Rodrigues. He made an examination of room 1026 and was able to ascertain that there were no signs of a struggle and there were no signs of blood anywhere in the room.⁴⁶⁶
- 2.31. When Pattle concluded his investigation he called the official police photographer, Detective Warrant Officer Peter van der Merwe ("**van der Merwe**") to come take photographs of the scene. Van der Merwe arrived at 17h40, he took pictures of room 1026. He was unable to take pictures of the impact site as it was already dark at that stage.⁴⁶⁷
- 2.32. On the morning of 28 October 1971, van der Merwe took pictures of the impact site. Based on an indentation that was on the ground, it was determined that the point of impact was about 10 feet (3 meters) away from the building line.⁴⁶⁸
- 2.33. On 29 October 1971, Dr Schepers conducted a post mortem on the body of Ahmed Timol and he concluded that Timol died of multiple injuries.⁴⁶⁹

⁴⁶⁴ Vol B, van Niekerk affidavit, exhibit F, p17, para 12.

⁴⁶⁵ Vol B, Pattle affidavit, exhibit S, p38, paras 2 – 3.

⁴⁶⁶ Vol B, Pattle affidavit, exhibit S, pp38 – 39, paras 4 – 7.

⁴⁶⁷ Vol B, Pattle affidavit, exhibit S, p38, paras 8 – 9. However note Exhibit H14 which puts the sunset time on 27 October 1971 at 18h21.

⁴⁶⁸ Vol B, Pattle affidavit, exhibit S, pp39 – 40, para 10.

⁴⁶⁹ Vol B, Dr Schepers SAP 183 and post mortem report, Vol B, exhibit X pp48 – 58. Post mortem is only signed on 4 November 1971 (see p49).

- 2.34. On 31 October 1971, before the internal investigation was concluded and before any of the officers deposed to their affidavits regarding their role in relation to Timol, Buys is quoted in the media as saying that it will be shown that Timol was never assaulted or threatened with assault. In fact, Timol had committed suicide.⁴⁷⁰

Evidence of Joao Rodrigues

3. At the original inquest proceedings, Rodrigues provided a version of events that appeared to be consistent with his affidavit. Rodrigues stated he was stationed in the clerical division of the SB head office in Pretoria and he came to John Vorster Square to deliver certain documents and hand over two cheques to Gloy and van Niekerk.⁴⁷¹ He did not know most of the people well at John Vorster Square because he was a stranger there.⁴⁷²
4. When he came into room 1026 with the coffee, the window was closed and the room was relatively quiet. The catch on the window was apparently broken and Timol opened the window. Timol opened the window and dived out of the window in one movement. Everything happened very quickly. What happened that day was a big shock to him, he had been with the police for 16 years and he had been in clerical positions for 15 years. He spent his whole career in a clerical position and had never arrested anybody in his life.⁴⁷³
5. Just as he had testified in the original inquest, at these proceedings, Rodrigues advanced the same version he did 46 years ago. He did however provide some details about his duties in the SB, why he went to John Vorster Square that day, and what happened in room 1026.
6. In his evidence in chief Mr Rodrigues testified that:⁴⁷⁴

⁴⁷⁰ Rapport article dated 31 October 1971, Vol D (1971 Newspaper clips), p95.

⁴⁷¹ Translated inquest judgment, p27.

⁴⁷² Translated inquest judgment, p28

⁴⁷³ Translated inquest judgment, pp30 – 31.

⁴⁷⁴ Transcription, Vol 9B, from line AAAAA (673).

- 6.1. He is currently 78 years old. He joined the SB in 1969 and was an administrative clerk stationed at the SB head office in Pretoria. He held the rank of sergeant in 1971. His day to day duties involved keeping vehicle log books intact, seeing that SB vehicles were serviced at all times and assisting in any administration work that related to officers. Whenever SB officers were out of town he would assist their wives by supporting their families. He would ensure that they had groceries and that children were taken to the doctor if their mothers were not available to take them.
- 6.2. He knew Gloy and van Niekerk very well as they were both stationed in Pretoria with him. On Wednesday 27 October 1971, Gloy (who was at John Vorster Square) called him and asked him to bring his salary cheque, van Niekerk's salary cheque and a sealed envelope. The envelope had Gloy's name on it and it was also marked "*confidential/secret*".
- 6.3. He left Pretoria in the afternoon – he could not remember the exact time – for John Vorster Square. As this was his first time at John Vorster Square, he had to ask for directions to where Gloy and van Niekerk were. When he got to the tenth floor he was asked to wait for a while, as they had to check if the two officers could see him because they were busy interrogating at detainee. He was then accompanied to room 1026 where Gloy and van Niekerk were.
- 6.4. Before he could enter room 1026, he was given a tray with three cups of coffee and he was asked to take the tray into the room. When he got into the room he saw Gloy on the other side of the table with back towards the window. Van Niekerk was on the left of Gloy on the other side of the table. Across the table from Gloy he saw a man of Indian descent sitting there. The man was facing towards the window. He would later learn that the man's name was Ahmed Timol.
- 6.5. When he walked into the room the atmosphere was calm and Timol was not being interrogated. Timol was never interrogated in his presence. He placed the tray with the cups of coffee on the table and then gave Gloy his cheque as well as the sealed envelope. He also gave van Niekerk his cheque.
- 6.6. Gloy, van Niekerk and Timol took their coffees and started drinking them. While this was happening he was standing on Timol's right hand side. While Timol

was still drinking his coffee, Gloy opened the envelope and read it. As Rodrigues was about to leave the room, Gloy instructed him to stay.

- 6.7. It was at this point that an unidentified member of the SB (“**Mr X**”), came into the room and mentioned that they had arrested Quentin, Martin and Henry. Mr X then left the room immediately after this. Gloy and van Niekerk then looked at each and Rodrigues noticed that Timol was extremely shocked when he heard this. Timol had a shocked look on his face and his eyes were big. He shook his head from side to side while looking at Gloy and van Niekerk.
- 6.8. At this point Gloy signalled to van Niekerk that they must go outside to talk. Gloy then instructed Rodrigues to guard Timol while they go outside. As the two officers were leaving the room Rodrigues went to the other side of the table and took a seat where Gloy had been seated. He was seated directly across the table from Timol. Timol kept on staring at one side of the room and the two men never spoke.
- 6.9. A few minutes after this, Timol asked to go to the toilet. This was a reasonable request to Rodrigues.
- 6.10. When Timol got up, Rodrigues also got up and walked to his left hand side where van Niekerk was seated. The chair that van Niekerk was sitting was slightly away from the table, blocking his way. For him to be able to get past, he first had to push the chair under the table.
- 6.11. While he was pushing van Niekerk’s chair under the table – with eyes on the chair – he noticed movement from the corner of his eye. He suddenly looked up and noticed that Timol had moved to the other side of the table, towards the window. This happened in split second. He had to decide which side of the table to go to, left or right. He elected to go back to the left to where he was seated.
- 6.12. As Timol was moving towards the window, Rodrigues also moved towards the window hoping to stop Timol. The chair he was sitting on was on his way, which resulted in him stumbling over that chair, losing his balance and falling to the floor. While on the floor, he saw Timol dive out of the window.

- 6.13. When he got up and looked properly he realised that Timol was no longer in the room. He then looked out of the window and saw Timol's body lying on the ground outside of the building.
- 6.14. When shown exhibit C8 (the picture of room 1026 taken on that afternoon in 1971), Rodrigues testified that Gloy was sitting on chair A, Timol was sitting on chair B and van Niekerk was sitting on chair C. After the two officers left he sat on chair A while Timol remained seated on chair B. It was chair C that he was pushing in when he saw Timol suddenly move. It was chair A that he stumbled over, losing his balance and falling to the floor. Exhibit C8 is exactly the same as he remembers it from that day. He did provide some clarity by stating that the room looks a bit smaller in the picture, he attributed this to the fact that the table on the left against the wall makes the room look smaller than what it really was. In reality the room was much bigger even though the other table was there.
- 6.15. Rodrigues testified that he tried his best to stop Timol, moving as fast as he possibly could but he could not reach Timol on time.
- 6.16. After Timol jumped, he ran out of room 1026 and shouted down the corridor that Timol had jumped. Several people ran out of their offices and he took them to the window in room 1026. He then went out of room 1026 and went to the impact site.
- 6.17. When he got to the impact site he found several officers by the body. He saw two officers check for Timol's pulse and heard them saying that they could feel a faint heartbeat. Someone brought a blanket and they rolled Timol's body onto the blanket and carried it to a room on the ground floor. He did not help in moving the body and he thinks the body was moved away quickly to keep it out of the public eye.
- 6.18. The only officers he recognised at the impact site were Gloy and van Niekerk.
- 6.19. Immediately after all of this he was questioned about what transpired in room 1026. He was questioned by several officers, two at a time, and this questioning was done in room 1026. During this time none of the officers took notes. He only made his official statement sometime after the incident.

- 6.20. He testified in the inquest and no disciplinary action was ever taken against him relating to Timol's death. He was also not criminally charged with anything in that regard.
- 6.21. He always held administrative positions and as a result of this he never had any contact with detainees nor did he do any investigative work. He did not assault any detainees and the only time he ever heard of assault allegations was when he read about them in the newspapers.
- 6.22. He testified that as far as he can recall, Timol had no marks (or signs of assault) on him and he was fully clothed. He had a very good look at Timol and he did not see any injuries on any part of his body.
- 6.23. Rodrigues further testified that before he made his official statement, Buys, van Niekerk and Gloy put pressure on him to make false statements.
- 6.24. He could not recall exactly what Gloy and van Niekerk wanted him to say but he does recall that Buys wanted him to state that before Timol jumped, there was some sort of fight or scuffle between the two of them. He refused to put this in his statement, as he knew that it would lead to other more serious questions being asked. His refusal to put in a false statement led to a serious confrontation between him, Buys, Gloy and van Niekerk. To his mind, the senior officers wanted him to lie because they wanted to maintain their reputations within the SAP.
- 6.25. The senior officers who wanted had coerced him to change his statement were present in court when he gave his testimony at the original inquest. Their presence intimidated him throughout the proceedings. At the time he did not tell the magistrate about being coerced into providing false testimony. He was afraid that if he said anything, serious harm could have come to him.
- 6.26. He resigned from the SAP shortly after the inquest as he realised that he no longer had a future with the police and that he would not be promoted. He did however go back to the SAP for a brief period because he wanted to get border patrol training that SAP members underwent at the time. This training was done because of the perceived war like situation in the country as a result of the political climate at the time.

- 6.27. Although he could not remember how long he went back to the SAP for he does remember that soon after his border patrol training he went back to doing clerical work until he finally left the SAP for good.
7. Under cross examination by counsel for the NPA, Rodrigues testified as follows:⁴⁷⁵
- 7.1. In 1971 he had been employed in the SAP for about 16 years. He was recruited into the SB in about 1969 after having worked for the SAP uniform branch for about 12 years. He was recruited into the SB by Brigadier Theunis "Rooi Rus" Swanepoel ("**Swanepoel**") to fill the vacancy of an SB member who had gone on pension. He was in an administrative position.
- 7.2. He does not recall what time exactly he got to John Vorster Square on Wednesday, 27 October 1971. He recalls that when he got into 1026, there was silence in the room and no interrogation was taking place. When he got into the room he stood on the right hand side of Timol (right hand side of chair B). He placed the tray with the three cups of coffee on the table. He then handed Gloy and van Niekerk their salary cheques and also handed Gloy the sealed envelope. He is certain that these were salary cheques and he is certain that the three men drank their coffee.
- 7.3. This was the first time he met Timol. After Gloy and van Niekerk left, he and Timol did not speak. Until that day he did not even know anything about the investigation relating to Timol because all investigations that were conducted by the investigation unit of the SB were confidential or a secret. As Rodrigues was not part of the investigation unit he was considered an outsider and nothing would be divulged to him.
- 7.4. Prior to Gloy and van Niekerk leaving, an unidentified man wearing civilian clothing came into the room and said Quentin Jacobsen, Henry and Martin had been identified and had been arrested. When Timol heard this he became shocked, his eyes were big and his head moved from side to side.
- 7.5. Although this was the first time he met Timol he could see that he was shocked. He looked at his face and did not notice any injuries on his face. At this time he

⁴⁷⁵ Transcript, from Vol 9, p 678, line 4.

was still standing on the right hand side of Timol facing Gloy, but from the side/corner of his eye he could managed to see Timol's face and expression on his face. However after Gloy and van Niekerk left the room and Rodrigues sat down right across from Timol, he could not say that Timol was still shocked at this time. Timol's face was expressionless and his head was slightly turned to the left and he was not looking directly at Rodrigues.

- 7.6. When he was left with Timol in the room, the atmosphere was very relaxed because he did not speak to Timol and he did not ask him any questions. Rodrigues testified that there was this relaxed atmosphere despite him being very cautious after learning that Timol was a valuable witness.
- 7.7. When Timol rushed to the window, Rodrigues tried to stop him but he fell over the chair he was sitting on. He was on the floor on "all fours" and while on the floor he tried to reach for Timol but missed him. He could not even touch him. He recalls that this incident happened shortly before 16h00.
- 7.8. When probed about the incident, Rodrigues stated that it all happened very fast. When he saw Timol moving towards the window, he tried to instinctively dive to get hold of Timol but chair A blocked him and he lost his balance. When he stood up Timol was already gone.
- 7.9. When probed about the version that Pattle gave at the original inquest, Rodrigues disputed it and said Pattle was wrong. This is despite him having provided a statement to Pattle about an hour after the incident occurred. Rodrigues' contention in this regard was that none of the people who questioned him about that day took down notes.
- 7.10. With regards to exhibit C8, the picture of room 1026. He confirmed that the person in the picture was him and that he stood in that position because the photographer (van der Merwe) told him to stand there. He disputed Pattle's version that he stood there to indicate that that is where he was standing when Timol jumped.
- 7.11. After Timol jumped, he went out of room 1026 and screamed that Timol had jumped through the window. People came out of their offices and came to room

1026. They all looked through the window, thereafter everyone went to the ground floor where Timol's body lay.

- 7.12. It was at this point, during the course of the confusion that Rodrigues met Greyling. Greyling came to Rodrigues and introduced himself while they were still on the tenth floor. Greyling was in an office on the tenth floor at the time.
- 7.13. When asked how he knew the name Timol seeing as this was the first time he met him and him and Timol did not speak to each other while left alone, Rodrigues testified that before Gloy and van Niekerk left, Gloy told him that the detainees name is Timol, a valuable witness, and he must watch him. He became more cautious of Timol after learning from Gloy that Timol was a valuable witness.
- 7.14. After Timol jumped he was shocked. He was also disappointed because he failed to do as he was instructed.
- 7.15. He could not recall what Gloy and van Niekerk wanted him to say but they did put pressure on him. Two other officers also put pressure on him. Buys wanted him to say that there was a scuffle between him and Timol. He cannot recall if Pattle put any pressure on him as well. There was a verbal confrontation between him and the officers about this issue.
- 7.16. Buys took down his statement some two weeks after the incident. Prior to this Buys did not take any notes when he interviewed Rodrigues. Buys is the one who wrote out Rodrigues' statement for him.
- 7.17. During the original inquest, Gloy and van Niekerk were in court when he was giving testimony. Their presence intimidated him, as they were a very strong unit that could bring about physical harm to him. However even on the face of this he did not comply with their request.
- 7.18. He wanted to resign before the original inquest was concluded but he was asked to stay until the inquest had been finalised. After the original inquest, he left the SAP for a few months and worked as a journalist for a Pretoria newspaper called "Die Hoofstad". He then went back to the SAP for training on defence and attack. He cannot recall if it was referred to as counter insurgency training.

When he completed his training he went back to his old work at the SAP head office. He did not return to the SB.

- 7.19. While employed at the SAP he did not witness any torture and he personally did not torture anyone.
- 7.20. After Timol's death there was a significant amount of media attention on the matter, both locally and internationally. United Nations ("UN") officials followed the issue as did, the then Prime Minister of South Africa, Mr B J Vorster ("**Vorster**"). Vorster made a statement after the matter the following day in parliament. He received death threats both locally and internationally and he was accused of being responsible for Timol's death. He was even assigned protection in this regard.
- 7.21. Rodrigues disputed the accuracy of the new scientific evidence (reports by Dr Holland, Dr Naidoo and Mr Moodley) before this Court. He stated that it was all speculative. He was the only other person in that room that day, he saw everything as it happened and he is testifying to what he saw, not on speculation. Anyone who comments about what could have transpired in room 1026 that day is merely speculating because they did not witness anything. He is the only person who witnessed what happened that day.
8. Under cross examination by counsel for the Timol family, Rodrigues testified as follows:⁴⁷⁶
- 8.1. On 8 February 1956, he was convicted of perjury for contravening section 9 of the then Justice of the Peace and Oaths Act 16 of 1914. He was 16 years old at the time. The conviction came about after he applied for a job at the SAP and he failed to disclose that he was once employed at the post office for about 9 (nine) months. This conviction had nothing to do with his duties as a policeman. He has not been convicted of any other offence since then.
- 8.2. Prior to being recruited to the SB he did not know Gloy and van Niekerk. He came to know them well after he joined the SB. He had friendly relations with Gloy, van Niekerk and their families. He acted as their families' caretaker

⁴⁷⁶ Transcript, from Vol 9, p 737, line 5.

whenever they were out of town. He had respect for them because they were his superiors.

- 8.3. On 27 October 1971, Gloy called him to bring his and van Niekerk's salary cheques to John Vorster Square. In those days SAP officers received salary by cheque while the rest of the SAP members were paid by cash. Officers would receive their cheques two days before the normal payday (which was on the last working day of the month). This was to allow their cheques to clear by the last working day of the month.
- 8.4. Although he did clerical work, he did not work in the finance department. He received the cheques from head office and he drove to Johannesburg to hand over the cheques (and the sealed envelope) to Gloy and van Niekerk.
- 8.5. When he got to John Vorster Square he could not leave the cheques and sealed envelope at reception he had to take them personally to Gloy and van Niekerk. However before going to room 1026 he had to wait at another office and he was later escorted to room 1026. He did not go to any other office except 1026 and the other office where he had to wait to be escorted.
- 8.6. When he got into room 1026 Timol was just sitting there. He was not making any notes and he had no visible injuries. He was completely injury free.
- 8.7. When Mr X came in and mentioned the three names, Timol was shocked. Rodrigues testified that he only came to know of the name Quentin Jacobsen when Buys was preparing his statement for him. He testified that Mr X did indeed exist and he was not a fabrication.
- 8.8. It came as no surprise to him being asked to guard a valuable terrorist detainee like Timol. He was instructed by a senior officer to guard Timol and he did as instructed. He did not see the need to ask questions at that point, he just did as he was instructed.
- 8.9. When Timol asked to go to the toilet he agreed because to him it was a reasonable request in spite of the fact that he was not given specific instructions to allow Timol to go to the bathroom. He saw this as a reasonable request and did not have any reason to refuse. Although this was his first time at John

Vorster Square he recalls that as he was walking down the corridor he saw a sign for a toilet.

- 8.10. Timol dived out of the window, he did not jump out. Prior to this, the window was closed. It is possible that this was done to reduce the noise of the traffic from the highway. He was informed that this was the practice at the time.
- 8.11. After Timol's fall Rodrigues ran out of room 1026 screaming that Timol had jumped. Before going to the impact site he did not go to any other floor, he remained on the tenth floor. When he went to the ground floor he did not use the lift because it was too slow. Because of his adrenaline rush, he ran all the way to the ground floor using the stairs.
- 8.12. When he got to the impact site he saw several people moving the body. Even though he had first aid training and it was common sense that you do not move a body until medical services arrive, he did not say anything to the others because they were senior to him. He was a junior officer at the time and he was not allowed to tell senior officers what to do.
- 8.13. After all of this he did not check where the body was taken. He went back to room 1026 and he was questioned about what transpired. During this time none of the officers took notes and he found it strange that no notes were being taken, however he did not say anything about this because he was a junior officer at the time.
- 8.14. Buys, Gloy, van Niekerk and other officers put pressure on him to change his statement but he refused because he did not want to lie about what happened. At the original inquest he told the truth about what happened that day and he was never charged with anything after that. He further testified that he did not fabricate anything but what they wanted him to say about the scuffle would have been taking the matter too far.
- 8.15. Everything in his statement is the truth as is the testimony he gave at the original inquest.
- 8.16. During the Truth and Reconciliation Commission ("**the TRC**") he did not participate because he did not see a need to as he was not found guilty of

anything in the original inquest and he was never charged with anything relating to Timol. He did not even see the need to give any information about this matter, even after the deaths of Gloy and van Niekerk, as there was no information to give especially since he had not been charged with anything.

9. When asked several clarification questions by the Court, Rodrigues responded as follows:
 - 9.1. While employed at the SAP he never witnessed or participated in any assaults of detainees. He did not hear about any assaults from other members of the SAP. The only time he ever heard of any assaults was through the media.
 - 9.2. He maintained his version from the original inquest, insisting that he is telling the truth now as he did in 1972. He said this despite this honourable Court informing him that his version thus far was either false or improbable, more so since he stuck to his original version throughout these proceedings.
 - 9.3. Rodrigues testified that he was aware that if a detainee escaped or attempted to escape while under guard by a police officer then that police officer would be subjected to a disciplinary inquiry. For all intents and purposes, Timol escaped from custody while under Rodrigues' watch, however Rodrigues was never disciplined for this. Rodrigues attributed this to him being lucky.
 - 9.4. When Rodrigues deposed to his affidavit, Buys inserted the averment that he (Rodrigues) did not assault Timol. He is not certain if Buys did the same with the other affidavits because most of the affidavits had that common averment that Timol was never assaulted.
 - 9.5. Although Buys was the investigating officer in this regard, he also commissioned most of the affidavits made by the SB members. Rodrigues testified that he had no knowledge of whether this was proper procedure or not (that is for an investigating officer to also commission affidavits in the same investigation that he is in charge over).
 - 9.6. Rodrigues insisted to this Court that despite there being medical evidence from the original inquest (in the form of Dr Schepers' post mortem report and testimony by Dr Gluckman) and medical evidence from these proceedings (in

the form of Dr Holland's and Dr Naidoo's medico legal reports), that demonstrate that Timol had visible injuries prior to the fall, he did not see any visible injuries on Timol. Timol was completely free of all injuries when he saw him.

- 9.7. Even if Timol was injured, maybe this could have happened while he was detained, however as Rodrigues was not there at the time, he cannot comment on this issue because he did not know anything about it.
- 9.8. Until these reopened inquest proceedings he was not aware that he had been issued with a commendation letter. The first time he saw the letter was when this honourable Court showed it to him. He agreed that commendation letters are reserved for officers who excelled in their duties, officers who had went above and beyond in their work. He did not know he received the letter and it was never given to him. There was no ceremony where this letter was presented to him.
- 9.9. He does not know if perhaps the commendation was given to him because he did not reveal – to the magistrate – that he had been pressured to give false testimony about a scuffle with Timol or any other lies his seniors wanted to him to tell. Perhaps this is the reason why he got the letter but he has no way of knowing because the letter was never presented to him until these proceedings.
- 9.10. When he heard about the letter while being cross examined by counsel for the NPA he was uninterested in asking about it because it was not important to him. By the time the inquest came he was already fed up with the SAP and he just wanted to leave. He was not concerned about anything that may have happened after he resigned from the SAP.
- 9.11. Despite this Court telling Rodrigues that all the [new] evidence that is before this Court contradicts his version, Rodrigues maintained that he was telling the truth. Changing his version would be asking him to lie and he cannot lie.

The findings of the magistrate in the first inquest

10. On 22 June 1972, Magistrate de Villiers handed down his judgment in the first inquest.⁴⁷⁷ The analysis of the facts and the evidence in the judgment is, in the main, based on the evidence of police that gave testimony at the inquest.
11. The sequence of events is based on the testimony of the members of the SAP uniform branch that arrested Timol and the members of the SB that were in any contact with Timol or those who worked on the Timol investigation. With the exception of some additional evidence that the officers gave during testimony at the inquest, the version of what transpired to Timol is similar to the version advanced by the police.
12. The magistrate accepted Rodrigues' version of what happened that day in room 1026. He found that Rodrigues had nothing to do with Timol's death. Rodrigues was a clerk at the SB headquarters in Pretoria. He spent his whole police career in clerical positions. There was no reason why he would have assaulted Timol.⁴⁷⁸
13. The magistrate accepted the evidence of the police that Timol was not assaulted, despite there being evidence of bruises on this body. The findings of the magistrate were that the bruises found on Timol's body were between four and eight days old and that others were between one and seven days old. He found that it is improbable that the injuries were caused by purposeful assault, because the medical evidence presented found it difficult to give an opinion on how Timol sustained these injuries. In reaching a probable explanation with regards to the injuries, the magistrate found that Timol probably sustained these injuries during a brawl where he was possibly pushed around and possibly also fell.⁴⁷⁹
14. On the question of assault by the police, the magistrate found that the police had absolutely no reason to assault Timol. Timol was a source of value for the SB. He was accommodating and he had already started providing them with information. Despite being questioned for long hours, the SB treated Timol in a civilised and humane way.⁴⁸⁰

⁴⁷⁷ Vol A, pp 1 079 – 1 157. See also translated inquest judgment pp1 – 51.

⁴⁷⁸ Vol A, translated inquest judgment, pp43 - 44.

⁴⁷⁹ Vol A, pp1 152 – 1 153. Translated inquest judgment, p48.

⁴⁸⁰ Vol A, p1 154. Translated inquest judgment, p49.

15. It was accepted that the reason for his suicide was because of instructions from the SACP that members must commit suicide than betray the organisation. To this end the magistrate relied on a document titled “*Inkululeko – Freedom, February 1972, no 2*”. The magistrate *a quo* found that the evidence showed that Timol was involved in distributing this document.⁴⁸¹
16. The magistrate accepted that based on the evidence before him, Timol was less than candid about his relationship with Quentin, Martin and Henry. This especially after letters were found that warned Timol to stay far away from Quentin. According to the court, if Timol’s relationship with Quentin, Martin and Henry was so innocent then there would be no need for such a warning. When Timol heard that Quentin, Martin and Henry had been identified and could be located, he became worried. He took his own life to avoid a prison sentence of about twenty years because the revelation of these names could have caused many people to be detained as well. In the light of this, coupled with his political activities and ideals, Timol took his own life.⁴⁸²
17. It was on this basis that the magistrate found that Timol did indeed committed suicide by jumping from the window of room 1026 at John Vorster Square. The cause of death was serious brain damage and loss of blood as a result of the fall. No living person could be blamed for his death.⁴⁸³

Oral testimony, arrest and alleged torture at John Vorster Square⁴⁸⁴

Dr Salim Essop

18. Essop testified that:⁴⁸⁵
- 18.1. On Friday 22 October 1971 at about 23h00, he and Timol were arrested at a roadblock close to the then Coronationville Hospital, Johannesburg while

⁴⁸¹ Vol A, p1 155. Translated inquest judgment, p49.

⁴⁸² Vol A, pp1 155 – 1 156. Translated inquest judgment, p50.

⁴⁸³ Volume A, p1157, paras (c) – (d). Translated inquest judgment, p51, paras (c) – (d).

⁴⁸⁴ For a detailed list and references of the type of the torture experienced by Essop, Dr Jetham and Prof Naik, this honourable Court is referred to exhibit C14 (Torture Alleged at John Vorster Square 23 October 1971 – 27 October 1971).

⁴⁸⁵ Transcript, from Vol 1, p 36.

travelling in the Anglia. The roadblock that they were stopped in was manned by several police officers including Kleyn and Thinnies.⁴⁸⁶

- 18.2. Kleyn searched the Anglia and found several political pamphlets and letters that belonged to Timol.⁴⁸⁷ Timol and Essop were immediately arrested and they were taken to Newlands.⁴⁸⁸
- 18.3. About an hour after their arrival in Newlands Essop and Timol were separated. Timol was taken away by two officers, while Essop was taken to the back of the police station by Fourie and van Niekerk.⁴⁸⁹ At the back of the police station, Essop was taken into a room where he was questioned about the material that was found in the boot of the Anglia. Before he could respond he was assaulted. This assault would continue for some time and he would also be bombarded with endless questions.⁴⁹⁰
- 18.4. Soon thereafter, Fourie and van Niekerk took Essop back to the police station's reception area where he was handed over to Greyling. Greyling congratulated Kleyn and Thinnies for arresting Timol and he referred to him as a "big fish". Kleyn and Greyling subsequently left Newlands with Essop and took him to John Vorster Square.⁴⁹¹
- 18.5. On arrival at John Vorster Square, Essop was taken to Greyling's office, which was located in the north wing on the ninth floor.⁴⁹² Greyling made a few telephone calls and after he was done he left the office leaving Essop with Kleyn. After Greyling left Kleyn began to furiously assault Essop, punching him, kicking him, lifting him with his hair and dragging him on the floor with his hair until the tufts of his hair were pulled out.⁴⁹³ This similar type of assault would happen again – in Greyling's office – on the morning of Saturday 23 October 1971, when

⁴⁸⁶ Essop affidavit, Vol C, p29, paras 19 – 20.

⁴⁸⁷ Essop affidavit, Vol C, p29, para 20 (read with pp27 – 28, para 16).

⁴⁸⁸ Essop affidavit, Vol C, p29, para 20.

⁴⁸⁹ Essop affidavit, Vol C, pp30 – 31, para 24.

⁴⁹⁰ Essop affidavit, Vol C, p30, paras 25 – 26.

⁴⁹¹ Essop affidavit, Vol C, pp31 – 32, paras 26 – 27.

⁴⁹² Essop affidavit, Vol C, p32, para 29 and inspection *in loco* 27 June 2017.

⁴⁹³ Essop affidavit, Vol C, p33, para 29.

two unidentified SB members assaulted Essop. The assault was so severe that Essop was rendered temporarily blind on his right eye. He could not move his right eyeball. This severe torture continued for about four to five hours⁴⁹⁴

18.6. After inflicting this torture on Essop, the two SB members then escorted him out of Greyling's office and took him up to an office with a vault on the tenth floor. Before they took him to the vault, while they were ascending the flight of stairs to the tenth floor, the officers threatened him with death by telling him that he could "fall dead from ten floors".⁴⁹⁵

18.7. While in the vault they would continually torture him for the next few days. On one occasion the officers led him out of the vault to a bathroom near the stairwell where they told him to wash himself of all the blood. After he done so, one of the officers took him to look out the window of the bathroom and asked Essop if knew Babla Saloojee.⁴⁹⁶ Once again Essop was threatened with death and was told that he would fall to his death from ten floors.⁴⁹⁷

18.8. For the remainder of his detention (23 October 1971 – 26 October 1971) at John Vorster Square, Essop would be subjected to various forms of degrading and terrible torture such as –

18.8.1. Physical assault (punching, kicking, slapping etc.);⁴⁹⁸

18.8.2. Dragging by his hair and in some cases pulling out tufts of his hair;⁴⁹⁹

18.8.3. Placing a hessian bag or plastic bag over his head and suffocating him;⁵⁰⁰

18.8.4. Electrocutation;⁵⁰¹

⁴⁹⁴ Essop affidavit, Vol C, pp33 – 34, para 31.

⁴⁹⁵ Essop affidavit, Vol C, p34, para 32.

⁴⁹⁶ See exhibit O, p1, table 1, item 4; and p10, table 4, item 1.

⁴⁹⁷ Essop affidavit, Vol C, p34, para 33.

⁴⁹⁸ Essop affidavit, Vol C, p36 - 37, para 38; and p40, para 48.

⁴⁹⁹ Essop affidavit, Vol C, p40, para 48.

⁵⁰⁰ Essop affidavit, Vol C, p35, paras 34a & 35.

⁵⁰¹ Essop affidavit, Vol C, p35, para 34b; p43, para 55.

- 18.8.5. Mule kicks (repeated kicks by the heels of one's shoes to the detainees thighs while the detainee is sitting on an imaginary chair);⁵⁰²
- 18.8.6. Dangling by ankles from a stairwell and being told that they will drop him;⁵⁰³
- 18.8.7. Being rendered unconscious or comatose;⁵⁰⁴
- 18.8.8. Being urinated on;⁵⁰⁵
- 18.8.9. Sleep deprivation;⁵⁰⁶
- 18.8.10. Standing on one leg (for prolonged periods) with hands raised high;⁵⁰⁷
- 18.8.11. Performing half squats with his hands raised high;⁵⁰⁸
- 18.8.12. Maintaining a sitting position on an imaginary chair;⁵⁰⁹ and
- 18.8.13. Standing on an A4 sheet of paper for a prolonged period without moving.⁵¹⁰
- 18.9. For most of his detention, Essop was deprived of food and water except for one brief moment when he managed to grab a sugar cube from a bowl while being moved from the office on the tenth floor to the vault that is located in the same office⁵¹¹ and when he was eventually given badly cooked food and water.⁵¹²
- 18.10. In between inflicting all this torture on him, his torturers also forced Essop to write out false statements about his political activities. The SB would

⁵⁰² Essop affidavit; Vol C, p35, para 34c & 35; p36 -37, para 38.

⁵⁰³ Essop affidavit; Vol C, p35, para 34d; pp41 – 42, para 51.

⁵⁰⁴ Essop affidavit; Vol C, p35, para 34e; p40, para 48; p44, para 57; p44, paras 58 – 59.

⁵⁰⁵ Essop affidavit, Vol C, p35, para 34e; p43, para 55.

⁵⁰⁶ Essop affidavit, Vol C, p35, para 34f; pp43 – 44; para 56.

⁵⁰⁷ Essop affidavit, Vol C, p36; para 36.

⁵⁰⁸ Essop affidavit, Vol C, p36, para 37.

⁵⁰⁹ Essop affidavit, Vol C, p36, para 38.

⁵¹⁰ Essop affidavit; Vol C, p37, paras 41 – 42.

⁵¹¹ Essop affidavit, Vol C, p38, para 42.

⁵¹² Essop affidavit, Vol C, p39, para 46

occasionally read his statements, dissatisfied with what he wrote, they would threaten him with death, more torture and would eventually continue torturing him.⁵¹³

- 18.11. On Monday, 25 October 1971, while he still in the vault on the tenth floor, Essop caught a fleeting site of a man he believes to have been Timol. Essop had not seen Timol since their arrest and brief detention at Newlands on Friday, 22 October 1971. The man he saw had a black hood over his head and was being dragged along by two police officers. He was struggling to walk. Essop knew immediately that this was Timol as he was familiar with his physique and height.⁵¹⁴ Timol presumably underwent the same type of horrific torture that Essop experienced, if not worse.
- 18.12. The intense torture that Essop experienced eventually took a toll on his body. During his torture – in particular while he was being electrocuted – Essop slipped in and out of consciousness. In an effort to revive him the SB members would throw water on him or urinate on him.⁵¹⁵ On or about Tuesday, 26 October 1971, Essop eventually collapsed and he became unconscious. While still conscious he recalled being examined by Dr Kemp.⁵¹⁶ He was later transported to the then Johannesburg General Hospital. Later he was transferred to the then H.F. Verwoerd Hospital in Pretoria.⁵¹⁷
- 18.13. Essop would later learn from his father and sister and from court records that he was kept under police guard in a ward at H.F Verwoerd Hospital. He had serious injuries.⁵¹⁸ His father would eventually succeed in bringing an application for an interim restraining order against the police from assaulting him.⁵¹⁹ He only learned of Timol's death on 8 March 1972.⁵²⁰

⁵¹³ Essop affidavit, Vol C, pp38 – 40, paras 42 – 48.

⁵¹⁴ Essop affidavit, Vol C, pp42 – 43, paras 52 – 54.

⁵¹⁵ Essop affidavit, Vol C, p43, para 55.

⁵¹⁶ Essop affidavit, Vol C, p44, para 58.

⁵¹⁷ Essop affidavit, Vol C, p45, para 60.

⁵¹⁸ Essop affidavit, Vol C, p45, para 62.

⁵¹⁹ Essop affidavit, Vol C, p46, para 63; and p47, para 66.

⁵²⁰ Essop affidavit, Vol C, p46 para 63.

- 18.14. Essop also testified that he was drugged for purposes of torturing him pharmacologically.⁵²¹ He endured hallucinations and suspected that the drugs were administered to him to encourage him to make false confessions.⁵²²
- 18.15. On the question of suicide, Essop testified that he was not aware of any SACP or ANC policy that advocated for members to commit suicide if they get caught. Timol was not responsible for publishing or even distributing “*Inkululeko – Freedom no.2*” because it was only published after his death. Timol was not somebody who wanted to die, he loved life.⁵²³ The magistrate *a quo*’s finding that Timol committed suicide is not realistic. The magistrate *a quo* deliberately or negligently overlooked material facts at the original inquest.⁵²⁴
- 18.16. The torture applied to Timol must have been so severe that the police miscalculated on what the limit was in his case. Timol probably collapsed a number of times after which they revived him. But after days of the most brutal torture he probably collapsed again and they were unable to revive him. Following his death they are likely to have concocted the claimed suicide to cover up their crimes. Timol’s body had marks consistent with torture. His body was bruised with lesions and other injuries recorded by a private pathologist hired by the Timol family.⁵²⁵
- 18.17. On whether Timol may have been involved in a brawl the day of their arrest or even the day before that, Essop testified that he was with Timol from about 18h00 on Friday, 22 October 1971 until their arrest at 23h00. During that time, Timol was not involved in a single brawl. They had gone to various places that day and at no point did they get involved in a brawl. He does not recall ever hearing anything about Timol being in a brawl earlier that day or even the day before that.⁵²⁶

⁵²¹ Essop affidavit, Vol C, p49, para 71.

⁵²² *Id.*

⁵²³ Transcribed reopened inquest record, Vol 1 pp118 – 119.

⁵²⁴ Essop affidavit, Vol C, p54, para 86.

⁵²⁵ Essop affidavit, Vol C, p55, para 90.

⁵²⁶ Transcribed reopened inquest record, pp 129 – 130.

18.18. With regards to his and Timol's association with Quentin Jacobsen, Martin Cohen and Henry Jacobsen, Essop testified that he knew the Jacobsen twin brothers through a friend of theirs (and also a relative of Essop's) called Ebrahim Laher, referred to as "international" because he had travelled the world a lot. Essop testified that he and Timol only met Quentin Jacobsen on a single occasion when they visited Quentin Jacobsen photography studio on Pritchard Street, Johannesburg. As far as they were aware, the Jacobsen twin brothers (more so Quentin) were not involved in any political activity. Quentin was just a professional photographer whom Essop wanted to meet to learn a trick or two about photography seeing as he had a keen interest in photography at the time. This was the first and only time they (Essop and Timol) ever met Quentin.⁵²⁷

Dr Dilshad Jetham

19. Jetham testified that.⁵²⁸

19.1. She was arrested in the late afternoon of Saturday, 23 October 1971 at her parent's home in Roodepoort. She was arrested by two SB members who informed her that they wanted to know about her political activity. She was then taken to John Vorster Square and when she got there she was escorted to the ninth floor to Greyling's office.⁵²⁹

19.2. When she got to Greyling's office he told her that he had arrested her "boyfriends", Essop and Timol, for being communists. He then told her to remove her watch. He gave a pen and paper telling her to write her life story, particularly her political activity. She would do this on several occasions and every time she finished writing, Greyling would take the papers and throw them into the bin and ask her to do it again. This continued for some time. Throughout this time (and indeed throughout her detention) there were always two police officers in the room during her interrogation.⁵³⁰

⁵²⁷ Transcribed reopened inquest record, Vol 1, pp130 – 133.

⁵²⁸ Transcript, Vol 4, p 264.

⁵²⁹ Jetham affidavit, Vol C, p92, paras 8 – 10.

⁵³⁰ Jetham affidavit, Vol C, pp92 - 93, paras 10 – 13.

- 19.3. As Jetham did not have her watch on her, she was unable to tell the time. In spite of this she was however able to keep herself oriented, because every morning and at sunset, she could hear the Islamic call to prayer emanating from the nearby Newtown Mosque.⁵³¹
- 19.4. Her physical torture began later that day when she was asked to stand in corner while SB members interrogated her about her involvement with Timol and his political work. Whenever she failed to provide them with answers they would slap her across the face.⁵³²
- 19.5. During this period she was not allowed to go the toilet and was forced to relieve herself while fully clothed. Initially the SB members insulted her for this, however they soon used this as means of humiliating her. They would force her to drink copious amounts of water so that she would relieve herself over and over while standing in the room fully clothed. This humiliating form of torture continued for several hours as did the interrogation. She was later instructed to take off her shoes, stand in a bucket and relieve herself while standing in the bucket. The questions would continue and whenever she failed to answer she was slapped across the face. This continued all night and she was not allowed to sleep.⁵³³
- 19.6. Her interrogation continued into Sunday, 24 October 1971. Later that day she was allowed to step out of the bucket. After doing so Swanepoel then came into the room and forced her to stand in the corner while she was questioned. This continued for several hours and throughout this time she was never left alone, there was always an officer (if not two) in the room with her.⁵³⁴
- 19.7. That evening her interrogators attached a device to her finger and they began to electrocute her. The same device was then attached to her back and once again she was electrocuted over and over. Each time they did this they would increase the voltage of the electricity. The electrocution continued to a point when she passed out.⁵³⁵

⁵³¹ Jetham affidavit, Vol C, p93, paras 15 – 16.

⁵³² Jetham affidavit, Vol C, pp93 – 94, para 17.

⁵³³ Jetham affidavit, Vol C, p94, paras 18 – 20.

⁵³⁴ Jetham affidavit, Vol C, p95, paras 23 – 24.

⁵³⁵ Jetham affidavit, Vol C, p95, para 25.

- 19.8. It was at this time that she heard Timol's screams emanating from a nearby room. Although she did not see him, she recognised and heard his voice coming from a room that was not too far away from the room she was being held in.⁵³⁶
- 19.9. On Monday, 25 October 1971, for the first time since her detention, Jetham was allowed to rest on a chair. Apart from occasionally collapsing from the torture meted out on her, she was never allowed to sit down.⁵³⁷
- 19.10. That evening she once again heard Timol screaming. She also heard the voices of other people she knew from her community who had also been detained.⁵³⁸
- 19.11. Jetham had her first shower on Tuesday, 26 October 1971. It was a cold shower but she was given a change of clothes that her family had brought for her.⁵³⁹
- 19.12. Her interrogation commenced upon being returned to the office. Later that evening she heard screams from other rooms on the same floor. The assault on her resumed again when the officers slapped her across the face. Numerous statements allegedly obtained from other detainees were placed before her and every time she did not provide information about them she was assaulted. At some point she eventually passed out because of the assault and exhaustion. She was woken up for more interrogation which continued into the early hours of the next morning.⁵⁴⁰
- 19.13. Later that evening she heard Timol's screams growing louder and they became more desperate as the night wore. Timol was crying and begging his interrogators to stop. At about dawn of Wednesday, 27 October 1971, Timol's screams stopped. Thereafter there was frantic activity on the 10th floor.⁵⁴¹
- 19.14. The manner in which she was treated changed from about 06h00 that day. She was moved to prison cell, given food three times a day and the physical torture

⁵³⁶ Jetham affidavit, Vol C, p95, paras 26 – 27.

⁵³⁷ Jetham affidavit, Vol C, p96, para 28.

⁵³⁸ Jetham affidavit, Vol C, p96, paras 30

⁵³⁹ Jetham affidavit, Vol C, p96, para 32.

⁵⁴⁰ Jetham affidavit, Vol C, p97, para 34.

⁵⁴¹ Jetham affidavit, Vol C, p98 paras 38 – 40.

also stopped. However a few days after this she was drugged and started having bad hallucinations. She was admitted into hospital because of the self-inflicted scratches resulting from being drugged.⁵⁴² Upon her return to John Vorster Square, a man by the name of Pitout gave her a statement which looked like it was in her handwriting. The statement incriminated and everyone else she knew had been detained.⁵⁴³

19.15. Prior to this and whilst being interrogated on the tenth floor, Pitout informed her that Timol was no longer with them. He quickly retracted his statement and said Timol had been transferred from John Vorster Square. She only learned the next morning, from a wardress, that Timol had actually died.⁵⁴⁴

19.16. During one of her interrogations on the tenth floor, Pitout took her to room 1026 to show her the window from which Timol had allegedly jumped to his death. Having regard to her own condition at the time, she found it hard to believe that Timol would have been in any state to jump through that window by himself. She had been subjected to torture for several days, deprived of food and deprived of sleep. If she had to jump under that condition, she would not have been able to do it alone.⁵⁴⁵

19.17. Jetham also asserted that she was the victim of pharmacological torture was.⁵⁴⁶ She testified of hallucinations and suspected that the drugs were administered to put her in a relaxed state in order to make false confessions. She was given a statement that was in her handwriting, which incriminated her and her friends. She does not recall writing such a statement.⁵⁴⁷

Professor Kantilal Naik

20. Naik testified as follows:⁵⁴⁸

⁵⁴² Jetham affidavit, Vol C, pp99 – 100, paras 47 – 48.

⁵⁴³ Jetham affidavit, Vol C, p100, para 51.

⁵⁴⁴ Jetham affidavit, Vol C, p100, paras 49 – 50.

⁵⁴⁵ Jetham affidavit, Vol C, p100, para 51.

⁵⁴⁶ Jetham affidavit, Vol C, p100, para 48.

⁵⁴⁷ Jetham affidavit, Vol C, p100, para 49.

⁵⁴⁸ Transcript, Vol 3, p 197.

- 20.1. At about 09h00 on Saturday 23 October 1971, members of the SB came to his home demanding that he provide them with keys to RIS where he worked as a teacher. The SB wanted to go to RIS to seize a typewriter, which they duly seized. At about 11h00 while working at a pharmacy where he had a weekend job, SB members came and arrested him.⁵⁴⁹
- 20.2. He was later taken to the tenth floor of John Vorster Square where he was interrogated about his alleged involvement in political activities that Timol was involved in. Despite stating to the SB that he was not involved in any political activities the police began torturing him for information.⁵⁵⁰
- 20.3. His torture began when they made him stand in the office for about three to five hours. He was not allowed to take a seat. He was on his feet until about midnight when the SB members started to interrogate him again. Each time he gave responses that were unacceptable to them they would continually assault him.⁵⁵¹
- 20.4. The police accused him of lying and they started administering a different form of torture on him. They tied his hands with a rope, slipped the tied hands in front of his knees, and then slipped a broomstick between his elbow and his knees. They suspended him on the broomstick between two tables or chairs. He was kept in this position for about an hour to an hour and a half. He was then rotated on the broomstick and between the two tables or chairs.⁵⁵² He later came to learn that this method of torture was called the helicopter treatment.⁵⁵³
- 20.5. When they released him from this position his hands and wrists were utterly numb and he lost all mobility on his hands. They continued to interrogate him about Timol and they would not allow him to sleep. On the morning of about

⁵⁴⁹ Naik affidavit, Vol C, p107, paras 9 – 10.

⁵⁵⁰ Naik affidavit, Vol C, p108, paras 14 – 16 and 18.

⁵⁵¹ Naik affidavit, Vol C, pp108 – 109, paras 18 – 19.

⁵⁵² Naik affidavit, Vol C, p109, paras 20 and 22.

⁵⁵³ Transcribed reopened inquest record, pp202 – 203.

Sunday, 24 October 1971, they took him to a cell. He was kept in solitary confinement.⁵⁵⁴

- 20.6. The torture administered on him was so severe that he was unable to use his hands to do simple tasks such as washing himself.⁵⁵⁵
- 20.7. On Monday, 25 October 1971, he was seen by Dr Kemp who suggested that he get physiotherapy and electrical treatment to repair the damage done to his muscles. He underwent this treatment for almost four months. The treatment was done on the tenth floor of John Vorster Square. Throughout this time the SB continued to interrogate him.⁵⁵⁶
- 20.8. During his detention, Naik and other detainees had fortnightly visits from a magistrate. At one of these visits he complained about his injuries and showed the magistrate his right hand which was badly damaged and was in a sling.⁵⁵⁷ This complaint resulted in an internal investigation relating to his torture. During the investigation several members of the SB were implicated including Els.⁵⁵⁸
- 20.9. He was released from John Vorster Square after four and half months.⁵⁵⁹

George Bizos SC

21. In his testimony, Mr Bizos testified as follows.⁵⁶⁰

- 21.1. He was junior counsel in the original Timol inquest and in Essop's restraint case. During the apartheid era he acted as counsel in many criminal trials for activists and appeared in a number of inquests into the deaths of people on detention.⁵⁶¹

⁵⁵⁴ Naik affidavit, Vol C, pp109 – 110, paras 22 – 23.

⁵⁵⁵ Naik affidavit, Vol C, p110, para 23.

⁵⁵⁶ Naik affidavit, Vol C, p110, paras 24 – 25.

⁵⁵⁷ Naik affidavit, Vol C, p110, paras 26.

⁵⁵⁸ Naik detention file, exhibit G3, pp4 – 15, reference to Els is on p10, para A.16.

⁵⁵⁹ Naik affidavit, Vol C, p113, para 37.

⁵⁶⁰ Transcript, Vol 2, p 142.

⁵⁶¹ Bizos SC affidavit, Vol C, p60, para 5.

During this period the Terrorism Act 83 of 1967 (“**the Terrorism Act**”) was introduced and section 6 of the Terrorism Act authorised detention for a 60-day period (which was renewable) without trial on the authority of a senior police officer. A substantial number of people died in detention under the Terrorism Act.⁵⁶²

- 21.2. The isolation of detainees allowed for abuse, and for the cover-up by the police of such abuse since they were the only witnesses. During inquest proceedings, policeman routinely perjured themselves to conceal the truth of the detainees. During the TRC hearings, many policemen and SB officers confirmed that they perjured themselves during that period.⁵⁶³
- 21.3. There was a steady stream of deaths during the 1960’s which peaked in 1969 with seven deaths. No deaths were reported in 1970. Timol and Mtayeni Cuthsela died in 1971.⁵⁶⁴ A conspiracy of silence, promoted by security legislation and detention without trial, enabled the cover-up of these crimes.⁵⁶⁵
- 21.4. Apartheid-era inquests into deaths of detainees were usually head before a white senior magistrate who invariably accepted police explanations, most of which lacked credibility. The majority of these magistrates had no real desire to reach the truth. Magistrates tended not to interrogate police versions that vigorously.⁵⁶⁶
- 21.5. Counsel in an inquest faced several difficulties such as the manufacture of false evidence by the police including the provision of false testimony. This also included the blanket secrecy imposed under security laws which was invoked during inquests to prevent critical evidence from being disclosed. For instance, in the original Timol inquest, Essop was kept in detention under security laws, throughout the Timol inquest. This was effective in silencing him and preventing his highly relevant evidence from being heard by the magistrate.⁵⁶⁷

⁵⁶² Bizos SC affidavit, Vol C, p61, para 9.

⁵⁶³ Bizos SC affidavit, Vol C, p61, para 10.

⁵⁶⁴ Bizos SC affidavit, Vol C, p61, para 11.1. See also exhibit O, pp1 – 2, table 1, items 1 – 21. Timol was the 21st detainee to die in detention.

⁵⁶⁵ Bizos SC affidavit, Vol C, p61, para 13.

⁵⁶⁶ Bizos SC affidavit, Vol C, p62, paras 14 – 15.

⁵⁶⁷ Bizos SC affidavit, Vol C, p63, paras 17 – 17.1.

- 21.6. Improbable testimony of police witnesses were invariably accepted by inquest magistrates. Police versions that deceased detainees were treated with care and consideration were readily accepted by the courts notwithstanding expert forensic evidence of pre-death injuries on their bodies.⁵⁶⁸ Throughout the apartheid-era detainees routinely complained of torture.⁵⁶⁹ It emerged in TRC inquiries that police routinely employed deception at judicial proceedings.⁵⁷⁰
- 21.7. After Timol died in police custody, a post mortem examination of his body discovered several pre-death injuries. Notwithstanding these indisputable facts, the magistrate found that no was to blame for Timol's death.⁵⁷¹
- 21.8. Mr and Mrs Timol disputed the fact that their son had committed suicide and believed that he his death was caused by SB policeman who had viciously tortured him.⁵⁷²
- 21.9. While Essop was admitted in hospital at HF Verwoerd news of Timol's death became public. A nurse informed Essop's father, Ismail Essop ("**Mr Essop**"), that his son had been admitted at HF Verwoerd. He had severe injuries and was in critical condition. She said that his presence there was being kept a secret.⁵⁷³
- 21.10. After being denied access to see his son, Mr Essop instructed his attorney to bring an urgent application for access to his son and for protection against further ill-treatment of his son. The urgent application was brought before Margo J of this Court on 29 October 1971.⁵⁷⁴
- 21.11. Margo J made an order restraining the police from further ill-treating Essop, but felt that he could not interfere with the decision depriving Mr Essop of acces to

⁵⁶⁸ Bizos SC affidavit, Vol C, p63, para 19.

⁵⁶⁹ Bizos SC affidavit, Vol C, p64, para 20.

⁵⁷⁰ Bizos SC affidavit, Vol C, p64, para 22.

⁵⁷¹ Bizos SC affidavit, Vol C, p66, para 29.

⁵⁷² Bizos SC affidavit, Vol C, p66, para 31.

⁵⁷³ Bizos SC affidavit, Vol C, p68, para 38.

⁵⁷⁴ Bizos SC affidavit, Vol C, p68, paras 39 – 40.

his son. Mr Essop's legal representative sought leave to supplement their papers.⁵⁷⁵

21.12. The matter would be heard at a later stage before Marais and Theron JJ. The judgment of Marais and Theron JJ confirmed Margo J's order with costs in favour of the Essop family.⁵⁷⁶

21.13. The evidence relied on in Essop's matter was highly relevant to the original inquest.⁵⁷⁷ However none of this evidence was allowed in the original inquest. It was excluded by the Court on the basis that section 6 of the Terrorism Act prevented mention of Essop or his circumstances in the interest of state security.⁵⁷⁸

21.14. When Timol died, the police advanced three different reasons about what happened in room 1026 after Rodrigues was left alone with Timol.⁵⁷⁹ Van Niekerk and Gloy advanced a version that they claimed Rodrigues gave them immediately after the event. Apparently Rodrigues told them that Timol first ran towards the door, turned, ran and jumped out of the window.⁵⁸⁰ Pattle advanced a version that he said Rodrigues gave him about 30 minutes after the event. Rodrigues told Pattle that in an attempt to intercept Timol, he ran clockwise around the table and in the process stumbled over a chair.⁵⁸¹ Pattle was supported by van der Merwe who testified that when he took pictures of room 1026 Rodrigues stood at different points he claimed he was present at during Timol's dash and jump through the window.⁵⁸² Buys downplayed the significance of the different versions, ascribing discrepancies to a matter of interpretation.⁵⁸³

⁵⁷⁵ Bizos SC affidavit, Vol C, p69, para 45.

⁵⁷⁶ Bizos SC affidavit, Vol C, p71, para 56. See also exhibit G1, judgment of Theron and Marais JJ.

⁵⁷⁷ Bizos SC affidavit, Vol C, p72, para 57.

⁵⁷⁸ Bizos SC affidavit, Vol C, pp73 – 74, para 59.

⁵⁷⁹ Bizos SC affidavit, Vol C, p75, para 66.

⁵⁸⁰ Bizos SC affidavit, Vol C, p75, para 63.

⁵⁸¹ Bizos SC affidavit, Vol C, p75, para 64.

⁵⁸² Bizos SC affidavit, Vol C, p75, para 65.

⁵⁸³ Bizos SC affidavit, Vol C, p76, para 67.

- 21.15. The magistrate *a quo* found that these discrepancies were nothing more than a misunderstanding between the officers. However, he declined or failed to consider the probability that the difficulty in explaining what happened was because the version of Timol jumping through the window was fabricated.⁵⁸⁴
- 21.16. The reliance by the magistrate on “*Inkululeko Freedom no.2*” to support the proposition that Timol committed suicide because of an SACP policy is also a cause of great concern. This is especially since this document was never handed up as an exhibit in the original inquest. The document was fabricated by the police for the consumption of the court.⁵⁸⁵
- 21.17. When Timol was arrested, a detention order was issued that he should be kept in a cell at John Vorster Square. However throughout his detention Timol was kept in an office on the tenth floor. The explanation by the police for this was that in the past communist had escaped from their prison cells. This was no reason to defy the detention order. The magistrate *a quo* was silent on this important point.⁵⁸⁶
- 21.18. The investigation into Timol’s death by Buys had many flaws, least amongst them was the fact that Buys only took a statement from Timol some two weeks after Timol’s death instead of taking immediately after the event when the occurrence was still fresh on Rodrigues’ mind. Contemporaneous notes made by the various officers had been destroyed. Despite these many flaws concerning the impartiality of the investigation the magistrate ruled that the investigation had been impartial.⁵⁸⁷
- 21.19. In the end the magistrate found that Timol had committed suicide and no one was to blame for his death. He concluded that a combination of reasons led Timol to this: fear of a long jail sentence; fear of giving names and addresses to the police, and according to the Magistrate, the revelation of Quinten, Martin and Henry’s identity, combined together with the SACP ideology of suicide.⁵⁸⁸

⁵⁸⁴ Bizos SC affidavit, Vol C, p76, para 69.

⁵⁸⁵ Bizos SC affidavit, Vol C, p77, para 72. See also Vol C, Captain Nel affidavit, pp15 – 21.

⁵⁸⁶ Bizos SC affidavit, Vol C, p77, paras 74 – 75. See also Ahmed Timol detention file, exhibit G6, pp13 – 14.

⁵⁸⁷ Bizos SC affidavit, Vol C, p80, paras 87 – 89.

⁵⁸⁸ Bizos SC affidavit, Vol C, p83, paras 101 – 102.

- 21.20. There was no basis for the magistrate to exonerate the police involved in the interrogation of Timol. There was sufficient indication that Timol had been brutally tortured during his detention. The magistrate uncritically accepted the police version, even though it flew in the face of forensically established facts and probabilities.⁵⁸⁹
- 21.21. The interests of justice and truth demand that this deeply flawed finding be overturned.⁵⁹⁰

Paul Erasmus

22. Paul Erasmus ("**Erasmus**") testified that:⁵⁹¹

- 22.1. He joined the SAP's uniform branch in January 1975. On 11 January 1977 he was transferred to the SB where he remained until 1993 when he was discharged on medical grounds (post-traumatic stress disorder). He was mostly based at John Vorster Square during his police career. He was involved in extensive covert operations for what was then the "white affairs section" of the SB. The SB was split along racial lines. There were sections that specialised in "white affairs", "coloured affairs", and "Indian affairs" and a very large section that specialised in "black affairs".
- 22.2. He was a field operative, and his role was to accumulate information and if the information that he got was viewed by the state as important and that a case could arise from it that information would be handed over to the investigation branch. The investigation branch was infamous and they were based on the 9th and tenth floors of John Vorster Square. He was based on the ninth floor of John Vorster Square. In those days the security on the ninth floor and tenth floor was extremely tight.
- 22.3. He investigated about 11 000 cases as a member of the SB and he kept a record of all his cases even when he moved around from the various areas within the SB. Members of the SB were basically given licence to break the law willy-nilly.

⁵⁸⁹ Bizos SC affidavit, Vol C, p83, para 103.

⁵⁹⁰ Bizos SC affidavit, Vol C, p83, para 104.

⁵⁹¹ Transcribed reopened inquest record, Vol 5, pp338 – 392.

- 22.4. He was also part of the SB's Strategic Communications Unit ("**Stratcom**"). Stratcom's major role was to spread propaganda and to mislead the public about what was happening in the country. The common term for this was disinformation (fake news). He was good at forging documents and the SB used him to forge a number of documents aimed at discrediting the ANC, other political parties and prominent political activists at the time. Spreading rumours that prominent activists were police or SB informants was common.
- 22.5. As there was no official Stratcom unit at John Vorster Square much of his work was Stratcom related. As far he could recall the practice by the SB of forging documents, fabricating evidence and concealing evidence had always existed even before he joined the SB. People like Gloy and a Brigadier Grobler (known as the resident sweeper) did this type of work.
- 22.6. The torture of detainees was standard procedure at John Vorster Square. Most detainees were tortured and interrogated on the tenth floor, on some occasions people would be interrogated and tortured on the ninth floor. Assaulting detainees, sleep deprivation and electric shocks on detainees were the most common forms of torture used by the SB and by the uniform branch.
- 22.7. He witnessed several tortures of detainees during interrogations where physical violence was used. Detainees would also be taken into a room called "*Die waarheids kamer*" (room 1037) located on the tenth floor close to room 1026. The expectation was that if a detainee was taken into that room they would talk. Detainees were brutally tortured in that room.
- 22.8. SB training included courses in the use of methods of interrogation. Sleep deprivation was used to "break" a person. Total fear was used to "break" a detainee. The SB would concentrate on a person's fear and use that to make sure that a detainee talked. Sleep deprivation, coupled with total fear was used all the time. An exhausted person who is in a state of terror is generally far easier to manipulate. To ensure that detainees did not sleep and were interrogated continuously, a shift system was introduced. A roster would be drawn up and teams of normally two or three people worked around the clock

to keep the detainee awake until they “broke” and a confession was obtained.⁵⁹² This was a standard practice at all interrogations.

- 22.9. It was also standard practice that a detainee should not be left alone. There should always be two people left with a detainee. In most cases these two people would be senior officers. When detainees were moved around the two floors they would have hoods put over their heads to disorientate them so that they would not know where they were.
- 22.10. Whenever a case had to go to court, the relevant SB members who had to give testimony would be coached on what to say. Mock trials/inquests would be held in preparation for the court appearance. People would be coached on what evidence to give and what evidence not to give. This was done to frustrate people like George Bizos SC. In some instances magistrates in inquests would include sentences in their judgments as instructed by Stratcom.

Neville Els

23. Neville Els (“**Els**”) testified that:⁵⁹³

- 23.1. He joined the SAP in 1952 and between 1966 or 1967 he was recruited into the SB. When he joined the SB he was initially stationed at the Gray’s building but later relocated to John Vorster Square after it opened. His office at John Vorster Square was on the ninth floor, close to the entrance. While at the SB he did a specialised course in identification and destruction of explosives, VIP protection and decoding of coded messages.
- 23.2. In 1971 he held the rank of Warrant Officer and by the time he left the SAP in 1979 he had ascended to the rank of Captain.
- 23.3. After Essop and Timol were arrested Els was asked to identify the documents found in the boot of the car. He was the SB officer on duty at Newlands that day. Although he could not recall the nature of the documents he recalled that

⁵⁹² Erasmus affidavit, exhibit H1, p6, para 6.

⁵⁹³ Transcript, Vol 9B, p II (673).

these documents were similar to the ones distributed by small explosive device at the time.

- 23.4. After he identified the documents he then called a senior SB member to inform him what he found. The SB member who came and took over from him was Dirker. When Dirker came he also took Timol. His role in the Timol investigation ended there and he was never involved in the assault or interrogation of any witnesses.
- 23.5. While still with the SB he never witnessed any assaults on detainees and he never took part in any assaults. He does not recall ever seeing any injured or distressed detainees in custody. As far he could recall detainees were never tortured and he only heard of torture allegations through the media.
- 23.6. He never interacted with Timol and as far as he knows Timol committed suicide by jumping out a window on the tenth floor. When he was still at the Gray's building there was a detainee who also committed suicide. He could not recall this detainee's name.
- 23.7. He is not aware of any cover-ups at John Vorster Square. He did not witness these and he did not hear about any cover-ups.
- 23.8. All police officers did basic first aid training at the time and it was common sense that one does not move a seriously injured person. He would have been surprised (back then) to learn that police moved a fall victim without first waiting for help.
- 23.9. It was surprising to him to hear that Timol was left alone with an officer who only did administration work. This did not make sense to him.
- 23.10. He conceded that sleep deprivation was used to ensure that detainees provided information. Although he would not consider sleep deprivation as torture his view is that depriving a detainee of sleep for four to five days would be too long. He is not aware if detainees were kept up for that long though. The longest he ever kept a detainee up was for 8 hours.

- 23.11. Of the various methods of torture that were put to him as per exhibit C14 he only conceded to being aware of sleep deprivation, solitary confinement and keeping detainees standing for a prolonged periods (in his view 1 – 1.5 hour). He did however say that he would not classify any of these three methods as torture.
- 23.12. Forcing detainees to stand for prolonged periods was not uncommon. He is not sure how others did it but he kept detainees standing for about an hour or an hour and a half.
- 23.13. Detainees would be interrogated for information but he is not aware of any roster system that was used when detainees were interrogated.
- 23.14. He was part of the people who interrogated Naik but he could not recall seeing anyone torture Naik in anyway. After he interrogated Naik he withdrew from the case.

Seth Sons

24. Seth Sons ("**Sons**") testified as follows:⁵⁹⁴

- 24.1. He was a member of the non-white unit of the SB based on the ninth floor in the north wing of John Vorster Square. His office was close to the lifts on the ninth floor. He was recruited into the SB by Rooirus Swanepoel. In 1971 he was a Constable but later became a Lieutenant. He was the second most senior officer in the non-whites unit and he was later appointed his own team to lead. He reported to Dirker.
- 24.2. His day-to-day responsibilities were that of a general investigator which means he went to the field to gather information and effect arrests if needs be. He was mostly on duty during the week, Monday – Friday from about 07h30 – 16h00, he only worked weekends if he was on duty for that weekend.
- 24.3. He was not on duty during the weekend of Timol's arrest. While is not certain when learned of Timol's arrest he said that he could have learned of the arrest

⁵⁹⁴ Transcript, Vol 15, p 1030.

on Monday 25 October 1971 when he got work. Prior to this he had never heard of Timol and the only time he saw Timol was in the newspapers after his death.

- 24.4. Except for driving with Dirker to the Timol home on 27 October 1971, he never worked on the Timol investigation. When he went to Timol's home that day he stayed in the car while Dirker went into the house. He recalls that there were women sitting on the stoep talking but he could not hear what they were talking about as he was parked a bit far from the house.
- 24.5. He worked with Dirker from time to time. He knows Dirker played a role in the investigation of bucket bombs. However he does not recall when and where the bucket bombs were detonated.
- 24.6. He only found out about Timol's death when he got back to John Vorster Square from the Timol home. He was walking into the police station when he was told that someone committed suicide by jumping from the tenth floor of the police station. He did not go investigate because he did not have the stomach to see a body that had fallen ten floors. No one told him what time the incident happened.
- 24.7. During his police career he never assaulted or tortured any detainees. He read about complaints of torture in the media but he never saw any torture or took part in any torture. He heard people talk about sleep deprivation but he never saw it and he did not do it. He did not participate in any of the listed torture methods in exhibit C14. He only heard of some of those things in the media. The only method that he was aware of that was used was sleep deprivation. He attended courses on how to get information out of a detainee without assaulting them or harming them.
- 24.8. During the period that Timol was in detention he does not remember seeing more people (officers and detainees) than usual. He is not aware if there was ever an interrogation roster at the time.
- 24.9. While at John Vorster Square he did not hear anything about officers engaging in cover-ups. He never participated in any cover-ups.

The medical and scientific evidence

Post mortem report and original inquest findings

25. Dr Schepers, a senior government pathologist in Johannesburg examined Ahmed Timol's body (body number 3991/71) at the government mortuary and conducted the post mortem on the morning of 29 October 1971.⁵⁹⁵
26. Dr Jonathon Gluckman ("**Dr Gluckman**"), a pathologist for the Timol family observed the post mortem performed by Dr Schepers as well as the histological specimens being prepared.⁵⁹⁶
27. No mention is made of Dr Gluckman being afforded the opportunity to peruse Dr Schepers' report before it was submitted.
28. At approximately 15h00 on 29 October 1971 Dr Schepers went to room 1026 as well as the impact site with Buys and other members of SB.⁵⁹⁷ There is no mention in the original inquest record of Dr Gluckman attending these visits or having access to the photographs taken by van der Merwe.⁵⁹⁸
29. Dr Schepers signed off on the post mortem report on 4 November 1971,⁵⁹⁹ stating the cause of death to be multiple injuries.⁶⁰⁰
30. In oral testimony at the original inquest,⁶⁰¹ Dr Schepers said that the immediate cause of death was serious brain damage and loss of blood.⁶⁰² These findings were not questioned and were accepted by the original inquest court.

⁵⁹⁵Investigative Diary Vol A p 2-3

⁵⁹⁶ Investigative Diary Vol A p 2-3

⁵⁹⁷ Investigative diary Vol A p 2-3

⁵⁹⁸ Investigative diary Vol A pg. 2-3l

⁵⁹⁹ Post mortem report Vol B exhibit EE pg. 1

⁶⁰⁰ Post mortem report Vol B exhibit EE pg. 1

⁶⁰¹ Judgement de Villiers translated Vol A page44

⁶⁰² Judgement de Villiers translated Vol A page 44 Naidoo does not have an explanation as to why the loss of blood was a cause of death, Naidoo report Vol C3

31. Furthermore, Dr Schepers indicated that the fractures on the right side of the body were attributable to the fall because Timol landed on the right side of the body.⁶⁰³ The original inquest court agreed with this finding, despite the fact that the legal representatives for the Timol family having argued that serious injuries sustained shortly from the fall could not be distinguished from the fall injuries.⁶⁰⁴
32. Both Dr Schepers and Dr Gluckman agreed that the nature of the injuries fitted the way in which Timol died.⁶⁰⁵
33. Dr Schepers described the stomach contents of Timol in the post mortem report as “*the stomach contains food – potatoes can be recognized*”.⁶⁰⁶ However, the magistrate in the original inquest made the following remark regarding Timol’s stomach contents: “*Dr Schepers described the stomach contents of the deceased and he could identify potato chips, among other things. This corroborates the testimony of Captain Van Niekerk.*”⁶⁰⁷
34. The original inquest court did however find that Timol had sustained injuries ante mortem but interpreted those injuries to be only bruising of the left shoulder blade, large abrasion on the left forearm, bruises on the right upper arm, and the lateral side of the right thigh and a bruise on the left side of the chest.⁶⁰⁸
35. The rib fractures and fracture of the jaw and face, it found, fitted with a fall from a great height.⁶⁰⁹
36. Dr Schepers admitted in cross examination that except for the abrasion on the right shoulder blade, all the other abrasions were between 4 (four) to 8 (eight) days old and the bruises between 1 (one) and 7 (seven) days old. Dr Gluckman and Doctor Dr Koch, for the SAP, placed the abrasions in the same range of time. Dr Schepers later changed his version to 5 (five) to 8 (eight) days.⁶¹⁰

⁶⁰³ Judgement de Villiers translated Vol A page 45

⁶⁰⁴ Judgement de Villiers translated Vol A page 45

⁶⁰⁵ Judgement de Villiers translated Vol A page 45

⁶⁰⁶ Post mortem report translated and annexed to Dr Naidoo’s report Vol C3 pg. 23 Annexure III

⁶⁰⁷ Judgement de Villiers translated Vol A pg. 45

⁶⁰⁸ Judgement de Villiers translated Vol A page 45-46

⁶⁰⁹ Judgement de Villiers translated Vol A page 46

⁶¹⁰ Judgement de Villiers translated Vol A page 46

37. The original inquest court concluded that the above evidence proved without any reasonable doubt that Timol took his own life.⁶¹¹
38. The original inquest court also found that most of the ante mortem injuries were small and it was improbable that they were caused by purposeful assault on Timol. The closest explanation the original inquest court could find for these injuries was that they were sustained by Timol during a brawl where he was pushed around and possibly fell.⁶¹²
39. Even though the medical evidence illustrated that Timol's abrasion injuries were sustained during his detention at John Vorster Square, the original inquest court did not accept this and preferred the versions of Kleyn, Dirker, van Wyk, Gloy and van Niekerk in whose custody Timol was placed during his detention. All these SB members claimed that Timol was unharmed and uninjured during his time at John Vorster Square which version the court accepted.⁶¹³
40. The original inquest court could find no reason for Timol to have been assaulted by these officers because Timol was an asset to them and his death was a great loss. The original inquest court found that Timol had been treated in a "*civilized and humane way*".⁶¹⁴

Dr Schepers Oral Testimony

41. Most of Schepers' oral testimony looked at the age and size of abrasions and bruises on Ahmed Timol's body.
42. He states that most of the injuries, like bruises, could have been caused by Ahmed Timol himself if he were to bump into furniture. "*In heirdie geval al daardie beserings deur die person self-veroorsaak gewees het, deur homself te stamp*". Although, on the

⁶¹¹Judgement de Villiers translated Vol A page 47

⁶¹² Judgement de Villiers translated Vol A page 48

⁶¹³ Judgement de Villiers translated Vol A page 48

⁶¹⁴ Judgement de Villiers translated Vol A page 42 and 49

previous page he does concede that injuries like a cracked jawbone and ribs are often results of assault.⁶¹⁵

43. *"In die geval waar so 'n aanranding werklik ernstig is vind 'n mense dikwels dat die kakebeen gekraak is of die ribbes gekraak is of ander bene beseer is, ortopediese beseriends? ~~~ja, 'n mens vind dit dikwels"*, however this is shortly after acknowledging that certain injuries were determined to have been 12 days or older, adding to the idea that these injuries might have occurred prior to being detained.⁶¹⁶
44. He identifies two kinds of injuries on the body of Ahmed Timol, one being injuries of a serious nature and another being not serious and caused by everyday accidents. Schepers does not indicate which injuries are what but does state that all serious injuries came from the fall, and the minor injuries could have been caused by an assault or sporting activity.

*"Ek kan dit opsom deur te se dat die oorledene het beserings aan hom gehad wat ernstig van aard is en wat sonder twyfel veroorsaak is deur die val uit die venster uit. Dan het hy ou beseringkies op sy liggaam gehad wat myns insiens nie ernstig van aard was nie, wat veroorsaak kon gewees het duer 'n aanranding op hom en wat ook moontlik deur homself ook kon veroorsaak gewees het"*⁶¹⁷

*"wat bedoel u by beserings opdoen in alledaagse lewe, wil u daarop uitbrei?~~~ Hy is 'n jongman, hy is 'n jong onderwyser wat moontlik deelneem aan sport aktiwiteite by die skool. Hy is 'n jongman wat nie, self nies nie by die skool nie maar selfs in sy private lewe miskien aan sekere aktiwiteite deelneem waar hy moontlik kneusings self kon opgedoen het "*⁶¹⁸

Dr Gluckman's Oral Testimony

45. Gluckman made changes to the version in his affidavit. He made all these as he was reading his affidavit.

⁶¹⁵ Schepers transcript of oral testimony, Vol A page 776

⁶¹⁶ Schepers transcript of oral testimony, Vol A page 775

⁶¹⁷ Schepers transcript of oral testimony Vol A page 779-780

⁶¹⁸ Schepers transcript of oral testimony Vol A page 779-780

46. During his oral testimony, Dr Gluckman outlined the contents of his affidavit. He assessed Sections A; D; F; G; H; K; N and O. He thereafter made conclusions on each section.

Amendments to Affidavit Made During Oral Testimony

47. When reading his affidavit, Gluckman amended what was written in his affidavit in the following ways:

- 47.1. On **page 2** of his affidavit, Gluckman states that he concludes that “*the injuries were inflicted immediately before the fall and there has not been time (because of the death of the deceased) for a cellular inflammatory reaction to occur.*”⁶¹⁹
- 47.2. During oral testimony, Gluckman amended the above sentence to “*the injuries may have been inflicted immediately before the fatal fall and there has not been time (because of the death of the deceased) for a cellular inflammatory reaction to occur.*”⁶²⁰
- 47.3. When dealing with **Section A**, Gluckman’s affidavit states that the age of the lesion is consistent with a period of the order of plus minus 5-6 days.⁶²¹
- 47.4. During oral testimony, he amends the above by stating that the lesion could be younger because of the smallness of the lesion but in view of the discussions which have taken place previously, he would adhere to a period of 4-8 days.⁶²²
- 47.5. With regard to **Section D**, Gluckman concludes in his affidavit that the small round abrasions were plus minus 5-6 days old. Dr Schepers conclude that they were 5-6 days old.⁶²³

⁶¹⁹ Gluckman affidavit, page 2

⁶²⁰ Gluckman transcript of oral testimony, Vol A page 784

⁶²¹ Gluckman affidavit, page 3

⁶²² Gluckman transcript of oral testimony, Vol A page 787

⁶²³ Gluckman affidavit page 4

- 47.6. During oral testimony, he amends the age to 4-8 days.⁶²⁴
- 47.7. He adds that *“the additional observations were some necrotic epithelium and melanin in the scab, fibroblasts in the capillary area layer and the scab was attenuated laterally for a considerable distance...”*⁶²⁵
- 47.8. When dealing with **Section F**, Gluckman adds in oral testimony that “a necrotic epidermis extended beyond the immediate region of the scab and there was variation in thickness.”⁶²⁶
- 47.9. On page 6 of the affidavit, Dr Gluckman deals with the age of the lesion in **Section G**. He states that the lesion is likely to be 5-7 days old. He mentions that Dr Schepers concluded that he was dealing with a fresh bruise.
- 47.10. Dr Gluckman further amends his affidavit in oral testimony and added, *“that because no scab was present, it is more difficult to assess the age of the lesion.”*⁶²⁷
- 47.11. When dealing with **Section G**, Gluckman amends his affidavit and makes an additional observation. He states, *“there is a large area of regenerated and regenerating epithelium under the scab. The underlying collages presents a curious basophilia and the suggestion was that it was crushed and there are fibroblasts and the occasional microphages in the sub-cutis”*.⁶²⁸
- 47.12. When assessing **Section O**, Gluckman added in his oral testimony that on joint discussion, fatty cists with fatty neurosis were agreed upon and there were numerous fibroblasts and capillaries. On the assumption that the fibroblasts and the capillaries were new then it can be 4-8 days, 4-5 days but if they are not new, which is Gluckman’s opinion then the lesion is younger. ⁶²⁹

⁶²⁴ Gluckman transcript of oral testimony, Vol A page 787

⁶²⁵ Gluckman transcript of oral testimony, Vol A page 787

⁶²⁶ Gluckman transcript of oral testimony, Vol A page 788

⁶²⁷ Gluckman transcript of oral testimony, Vol A page 789

⁶²⁸ Gluckman transcript of oral testimony, Vol A page 792

⁶²⁹ Gluckman transcript of oral testimony, Vol A page 793

- 47.13. During his discussion of **Section Q** during oral testimony, Gluckman adds that an imprint abrasion as it were on the surface, I would have preferred to describe this as a local absence of epidermis. Some deeper haemorrhage with no reaction at all and there appear to be some underlying regenerated epithelium.⁶³⁰ Prof Simon questioned Gluckman on the following paragraph on page 9 of Gluckman's affidavit:
- 47.14. "I think that there is one thing that we must correct about Q in Dr Gluckman's original affidavit, this was the one that he made several days old because of the appearance of the scab...Dr Gluckman, you said – *"neither of the two microscopic sections therefore includes a scab, which must make the lesion at several days old"*. Would it be true to say that epidermal neurosis which was agreed to a combined meeting was not recognised as a neurosis by you originally, would that represent the described naked-eyed? Gluckman retracted his original statement.⁶³¹
- 47.15. Gluckman further added **Section O.1**, a section that he did not address in his affidavit. He agreed that there was widespread recent haemorrhage without leukocyte reaction and consistent with peri-mortal injuries.⁶³²

Cross-Examination (Cilliers & Simon)

48. Dr Gluckman was mainly cross-examined on the bruises found on the body as they were discussed in his affidavit.
- 48.1. He was first cross-examined on allegations made by Reverend Morton in the London Observer. Reverend Morton claimed that Timol's fingernails had been envulsed; that one of his eyes had been gouged out and that one of his testicles had been crushed. Dr Gluckman confirmed that he had not observed any of these injuries.⁶³³

⁶³⁰ Gluckman transcript of oral testimony, Vol A page 793

⁶³¹ Gluckman transcript of oral testimony, page Vol A 949-950

⁶³² Gluckman transcript of oral testimony, Vol A page 794

⁶³³ Gluckman transcript of oral testimony, Vol A page 795

- 48.2. He Gluckman was questioned as to whether his instruction was to find that that the police assaulted Mr Timol. Gluckman denied this but mentioned that when looking at the age of the injuries, it was possible that he has been assaulted either before or after he was in custody.⁶³⁴
49. Thereafter there was a discussion on how the post-mortem was conducted. Dr Gluckman contended that he was at the post mortem as an observer and did not carry out the examination. He requested one or two cuts but did not interfere. He further contended that Schepers was co-operative.⁶³⁵
- 49.1. **Section O.1**, which was requested by Gluckman were bruises on the left forearm. According to Dr Gluckman, these bruises were not caused by the fall.⁶³⁶ Gluckman was of the opinion that O.1 and G were caused ante-mortem and that they looked like finger-marks. He could not however, say when they were caused.⁶³⁷ Agreed that it could have been between 24 hours and 7 days but he would be speculating⁶³⁸
- 49.2. Dr Gluckman further states that he cannot tell the age of a bruise by looking at its colouring, colouring only gives wide limits.⁶³⁹
- 49.3. Dr Gluckman was also questioned as to whether he thought that Dr Schepers did a good job or not. Dr Gluckman was of the opinion that the time he went along with Schepers selected areas but in hindsight he thinks that there were things that should have been done that were not done.⁶⁴⁰
50. Dr Gluckman noted that he and Schepers used the same scientific article by Robertson and Hodge when determining the age of the injuries.⁶⁴¹ He also relied on Gillman and Penn.⁶⁴²

⁶³⁴ Gluckman transcript of oral testimony, Vol A page 798

⁶³⁵ Gluckman transcript of oral testimony, Vol A page 807-809

⁶³⁶ Gluckman transcript of oral testimony, Vol A page 894

⁶³⁷ Gluckman transcript of oral testimony, Vol A page 895

⁶³⁸ Gluckman transcript of oral testimony, Vol A page 900

⁶³⁹ Gluckman transcript of oral testimony, Vol A page 901

⁶⁴⁰ Gluckman transcript of oral testimony, Vol A page 908

⁶⁴¹ Gluckman transcript of oral testimony, Vol A page 799

⁶⁴² Gluckman transcript of oral testimony, Vol A page 819

- 50.1. Roberson contends that small abrasions covering the complete epithelial covering of the abrasion occur by day 4 or 5. Gluckman was questioned at length as to the meaning of “small” according to Robertson. He was further questioned as to why Section N was measured but the other sections were not. Dr Gluckman contended that it was Schepers who decided to measure N.⁶⁴³
- 50.2. Cilliers was of the opinion that Robertson’s calculation or landmark of 4 or 5 days meant that is the earliest time and does not rule out that it could be 6, 7 or 8 days. Dr Gluckman argues that he did not only use Robertson as an authority but he also used Gillman and Penn and that Robertson, Gillman and Penn must be read together and that is how he came to his conclusions.⁶⁴⁴ In other words, if Robertson is read alone then it could be argued that an injury (e.g. section N) could possibly be older than 4-5 days.⁶⁴⁵
- 50.3. Cilliers argued that the significance of the basal membrane is also to determine the age of the lesion. Dr Gluckman stated that he was not aware of any literature that will enable him to age the lesion of the basement. Cilliers further argued that Robertson mentions a stage in the recovery of the epithelium where a stainable basement membrane is present is at about 12 days. Gluckman disagreed.⁶⁴⁶
51. Dr Gluckman was also questioned on whether he and Schepers found any fractures or broken bones to which he answered that they did. He further stated that the presumption was that the fractures and broken bones were the result of the fall but they did not analyse whether they injuries could have occurred other than the fall.⁶⁴⁷ He further mentioned that he thought that there was a fractured femur on the leg.⁶⁴⁸ But he later states that he thinks that the serious injuries and fractures are consistent with having being caused by the fall.⁶⁴⁹

⁶⁴³ Gluckman transcript of oral testimony, Vol A page 802-804

⁶⁴⁴ Gluckman transcript of oral testimony, Vol A page 820-821

⁶⁴⁵ Gluckman transcript of oral testimony, Vol A page 822

⁶⁴⁶ Gluckman transcript of oral testimony, Vol A page 826

⁶⁴⁷ Gluckman transcript of oral testimony, Vol A page 962

⁶⁴⁸ Gluckman transcript of oral testimony, Vol A page 963

⁶⁴⁹ Gluckman transcript of oral testimony, Vol A page 964

Re-examination (Maisels)

52. Maisels questioned Gluckman on Schepers' claim that some of the injuries (section O; N; K) were self-inflicted. Gluckman was of the opinion that it was not possible.⁶⁵⁰
53. The Court questioned Gluckman as to whether the injuries could have been accidental and Gluckman stated that all he could say was that the wounds were caused by blunt force but that it is not impossible to assume that they could have been caused by bumping into something.⁶⁵¹

Dr Koch Oral Testimony

54. He maintained what he had stated in his affidavit, and still stated the age of some of the injuries at 9-12 days. In cross-examination he maintains this period because of the fact that the scab had fallen off, or shed from most of the abrasion that he had examined. He does make a slight change on the abrasion "H" changing it from 8-10 days, in his affidavit, to 4-12 days.⁶⁵²
55. Koch also makes reference to the fact that if a deep bruise were to occur on the ribs it could have been caused by an object or instrument used, and links it to acts of "direct violence".⁶⁵³

Affidavit of Jonathan Gluckman

56. While inspecting the Gluckman file at the Wits Historical Papers on 30 August 2017 Attorney Marcia Schrueder came across additional documents which did not form part of the original inquest record. This included an unsigned affidavit by **Jonathan Gluckman**.⁶⁵⁴

⁶⁵⁰ Gluckman transcript of oral testimony, Vol A page 969-970

⁶⁵¹ Gluckman transcript of oral testimony, Vol A page 697-698

⁶⁵² Koch transcript of oral testimony, Vol A page 1007

⁶⁵³ Koch transcript of oral testimony, Vol A page 1067

⁶⁵⁴ Annexed as "MS1" to her affidavit: Exhibit C7.8

57. This affidavit is unsigned and is dated May 1972 (no day) and has a number of handwritten observations recorded on most pages. On the front page it is marked "Statement F.F." under what appears to be Gluckman's signature.
58. In this document Dr Gluckman sets out the histological examination of certain segments of tissue on the slides taken from Ahmed Timol's body. It further sets out that although Dr Gluckman initially examined the segments alone, he later repeated the examination together with Dr Scheepers. They discussed the damage to the various layers of the skin, the age of each injury as well as whether the injury was sustained before or after death. . Dr Gluckman's age findings are set out below.

- (a) Section A (photo 1):
 - (i) age of lesion: 12 to 24 hours;
 - (ii) age of scab: +5 – 6 days (in handwriting: "*maybe younger as lesion very small*");
- (b) Section D (photo 2: multiple small round abrasions): age of lesion: +5 – 6 days
- (c) Section F (photo 2: large bruise and abrasion on right elbow and forearm):
 - (i) Lesion: 12 – 24 hours.
 - (ii) Scab: 4 – 8 days "*but more towards earlier period because of small size of scab*".
- (d) Section G (photos 1 & 2: bruises right upper arm):
 - (i) age of lesion: at least 24 hours old
 - (ii) likely less than 5 – 7 days
- (e) Section H (photos 3 & 7: abrasion right shoulder blade): age of lesion in the order of 24 hours;
- (f) Section K (photo 3: two large bruises on right thigh): age of bruise: 12 to 24 hours;
- (g) Section N (photos 4 & 6: abrasion left forearm): 4 days or less.
- (h) Section O (photos 5 & 6: multiple bruises left side of chest): at least of the order of 4 days.
- (i) Section Q (not marked in photos: small abrasion left side of neck below ear): several days old.

59. Gluckman puts virtually all the ante-mortem injuries well within the approximate 5 day period of Timol's detention. In Gluckman's view five (5) of the injuries occurred in the 24 hours before Timol's death.

Affidavit of H van Praag Koch and critiques of Dr Koch

60. Attorney Schrueder also discovered an unsigned and undated copy of an affidavit of **Hieronymus van Praag Koch**.⁶⁵⁵ This affidavit is marked "Exhibit GG". In this document Dr Koch explains his examination of the slides that were given to him by Dr Scheepers and Dr Gluckman. He studied their reports of their findings and made comments. Dr Koch commented on the scab formation as well as the age of each injury. Dr Koch puts virtually all the injuries before Timol's detention period:

- (a) Abrasions: A, D, F, H and N.- older than 8 days
- (b) Epidermis: 9 – 12 days or older than 12 days.
- (c) Dermis: 5 – 8 days at least
- (d) Bruises: G, K and O: older than 5 days

61. Also discovered at the Wits Archives was an **Undated and unsigned Memorandum on Dr Koch's Report**.⁶⁵⁶ This document critiques Dr Koch's report on several grounds.

- 61.1. It questions Dr Koch's basis for his conclusion of "*new capillaries*" noting that he offered no criteria for such a conclusion.
- 61.2. It points out that Dr Koch relied on an authority that confused between dermis and epidermis.
- 61.3. Dr Koch appears to confuse pale cells with clear cells.

⁶⁵⁵ Annexed as "MS2" to Schrueder's affidavit: Exhibit C7.8

⁶⁵⁶ Annexed as "MS3" to Schrueder's affidavit: Exhibit C7.8

- 61.4. Dr Koch relied upon an inappropriate diagram dealing with the healing of incisions, surgical stiches and skin graft rather than that of an abrasion extending to the dermis.
62. A further document unearthed at the Wits Archives was an **Undated and unsigned Additional Report on Microscopy Sections**.⁶⁵⁷ The reference to “we” in the document suggests that the authors may have been Gluckman, Schepers and/ or others. Since the document is critical of Dr Koch it could not have been authored by him. This document serves as a further in-depth medical analysis of the microscopy slides taken from Ahmed Timol's body. Some highlights are set out below.
- 62.1. Section A: injury caused by an object striking the skin more-or-less at right angles; age of an order of 12 – 24 hours or more; even on Dr Koch's dilated capillaries theory it would be 72 hours.
- 62.2. Section D: all the authors disagree with Dr Koch's observations. Age: As the scab has not yet been shed it must be very young between 4 - 8 days; it could well be at the 4 day limit.
- 62.3. Section H: It is doubtful whether the trifling reaction described by Dr Schepers permits the conclusion (drawn by Dr Koch) that this establishes an age of the lesion amounting to 8 to 12 days.
63. The final document discovered is the **Unsigned and undated Summary of Joint Examination of Slides by Dr Koch, Scheepers, Gluckman and Shapiro** conducted in the presence of Professor Simpson.⁶⁵⁸ This document disclosed disagreement between Dr Koch and the other 3 doctors.
- 63.1. Section A: A2: Epidermis: All the doctors disagree with Dr Koch that there is hardly any melanin in this central area.
- 63.2. Section A: A3: All the doctors disagree with Dr Koch on the extent of hyperplastic.

⁶⁵⁷ Annexed as “MS4” to Schrueder's affidavit: Exhibit C7.8

⁶⁵⁸ Annexed as “MS5” to Schrueder's affidavit: Exhibit C7.8

- 63.3. Section D: Epithelium: There is disagreement between Dr Koch and all the other doctors.

Independent expert medical opinions by Dr Naidoo and Dr Holland

64. At the request of the Timol Family, Dr Naidoo⁶⁵⁹ and Dr Holland⁶⁶⁰ were given the affidavits of Deysel,⁶⁶¹ Dr Kemp,⁶⁶² Dr Schepers,⁶⁶³ the post mortem report⁶⁶⁴ and Rodrigues' affidavit⁶⁶⁵ and asked to study the medical evidence of the original inquest and provide an independent opinion on the nature, circumstances, manner and mechanisms of death of Timol and on any other pertinent and related aspect thereto. They provided this Court with reports in July 2017⁶⁶⁶ as well as supplementary reports in August 2017.⁶⁶⁷ Both doctors also provided oral testimony before this Court.

Shortcomings of post mortem report

65. Dr Holland is of the view that the post mortem report ("**PM report**") does not detail the colour of the bruises on Timol's body which would provide have additional indications as to their age.⁶⁶⁸
66. Dr Naidoo avers that the PM report falls short of expected completeness and inclusiveness in that:

⁶⁵⁹ Dr S.R Naidoo is an independent forensic pathologist whose curriculum vitae appears in Vol C6

⁶⁶⁰ Dr S Holland is a senior specialist at the University of Witwatersrand in the Department of Forensic Medicine and Pathology. Her curriculum vitae appears in Vol C5

⁶⁶¹ Deysel Affidavit Vol B Exhibit S1 Page 41

⁶⁶² Dr Kemp affidavit Vol B Exhibit T p 44

⁶⁶³ Dr Schepers affidavit Vol B exhibit X p 48

⁶⁶⁴ Post mortem report Vol B exhibit EE p 49

⁶⁶⁵ Rodrigues affidavit Vol B exhibit M pg. 27

⁶⁶⁶ Report by Dr S Holland undated Vol C and report by Dr S.R Naidoo dated 24 July 2017 Vol C3

⁶⁶⁷ Supplementary report by Dr S Holland 7 August 2017 VolC16 and supplementary report by Dr S.R Naidoo Vol C17

⁶⁶⁸ Holland Vol C p 149

- 66.1. No x-rays were taken, to detect and characterize types and patterns of fractures; alternatively the fractures were not dissected and degree of haemorrhage vital reaction described.⁶⁶⁹
- 66.2. Skull fractures were not drawn onto diagrams to assist in legal process as correct visual depictions of fracture patterns.⁶⁷⁰
- 66.3. There were no wound measurements except for one surface lesion, the macroscopic descriptions of surface wounds and internal injuries and accompanying tissue reactions, were minimal or absent in any details.⁶⁷¹
- 66.4. No toxicological analysis was conducted.⁶⁷²
- 66.5. The autopsy was conducted and reported on without the anticipation of an expected line of medico legal inquiries which would include whether the deceased was alive at the time of the fall and whether the deceased was under the influence of any drugs at the time of death.⁶⁷³
- 66.6. There is no bleeding of the liver recorded.⁶⁷⁴
- 66.7. There are no injuries recorded on the pelvis or pelvic region.⁶⁷⁵
- 66.8. There is a lack of adequate photography of the injuries and body of Timol.⁶⁷⁶

Shortcomings of medical evidence provided at the original inquest

67. According to Dr Naidoo there was a misdirected emphasis on the histological age of

⁶⁶⁹ Naidoo Vol C3 pg. 3

⁶⁷⁰ Naidoo Vol C3 pg. 4

⁶⁷¹ Naidoo Vol C3 pg. 4

⁶⁷² Naidoo Vol C3 pg. 4

⁶⁷³ Naidoo Vol C3 p 4

⁶⁷⁴ Naidoo Vol C17 p 4

⁶⁷⁵ Naidoo transcript of oral evidence Vol 7 p 544

⁶⁷⁶ Naidoo transcript of oral evidence Vol 6 p 479-480

bruises and abrasions at the original inquest.⁶⁷⁷ Dr Naidoo's view is that age estimation is never as accurate as might be desired for any particular case. Where known ranges are used to differentiate between two or more wounds whose ages are close to each other in time of origin, the exercise may become hazardous. Where the vital signs in any two wounds are so diverse, this science may be confidently used to make a finding that one wound is older than the other. Where the difference is small, in the order of hours or a few days, confidence is greatly reduced as the accumulated error of estimations becomes exceedingly raised.⁶⁷⁸

68. Histological examination, according to Dr Naidoo is helpful in this case to establish that wounds 8 – 35 of the translated autopsy report were ante mortem and could not have been caused by the fall from the building. They however cannot be usefully employed in this context to attempt to make a distinction between wounds of a few days.⁶⁷⁹

Injuries consistent with a fall from a height

69. Dr Holland says that the following injuries were consistent with a fall from a height:
- 69.1. Extensive scalp hematoma of the frontal areas bilaterally extending to the lower forehead.⁶⁸⁰
 - 69.2. Scalp hematoma of the left occipital area.⁶⁸¹
 - 69.3. Crack fracture of the right anterior cranial fossa extending to the lesser wing of the sphenoid bone and the right parietal bone and ends in the midline⁶⁸².
 - 69.4. The tears and haemorrhages of the strap muscle of the neck.⁶⁸³

⁶⁷⁷ Naidoo Vol C3 p 4

⁶⁷⁸ Naidoo Vol C3 p 5

⁶⁷⁹ Naidoo Vol C3 p 6

⁶⁸⁰ Holland Vol C p 149

⁶⁸¹ Holland Vol C p 149

⁶⁸² Holland Vol C p 149

⁶⁸³ Holland Vol C p 149

- 69.5. Extensive injuries to the brain⁶⁸⁴ as agreed to by Dr Naidoo.⁶⁸⁵
70. Dr Naidoo and Dr Holland concur on the following injuries being consistent with a fall from a height:
- 70.1. Contusions of the diaphragm⁶⁸⁶. Naidoo also agrees that this injury is consistent with a fall from a height.⁶⁸⁷
- 70.2. Extensive lung injuries.⁶⁸⁸ Naidoo also agrees that this injury is consistent with a fall from a height.⁶⁸⁹
- 70.3. Avulsion of renal vessels⁶⁹⁰ Naidoo also agrees that this injury is consistent with a fall from a height.⁶⁹¹
- 70.4. Injuries to the liver.⁶⁹² Naidoo also agrees that this injury is consistent with a fall from a height.⁶⁹³
- 70.5. Limb fractures on the right elbow and right femur⁶⁹⁴. Naidoo also agrees that these injuries are consistent with a fall from a height.⁶⁹⁵
- 70.6. Base of skull fracture which extends through the left orbital plate of the frontal bone of the cranial fossa through the ethmoid bone and the sella tucica and extends to the right anterior middle cranial fossa just anterior to the petrous

⁶⁸⁴ Holland Vol C p 149

⁶⁸⁵ Naidoo Vol C3 pg 6

⁶⁸⁶ Holland Vol C p 150

⁶⁸⁷ Naidoo Vol C3 pg 6

⁶⁸⁸ Holland Vol C pg 150

⁶⁸⁹ Naidoo Vol C3 pg 6

⁶⁹⁰ Holland Vol C pg 150

⁶⁹¹ Naidoo Vol C3 pg 6

⁶⁹² Holland Vol C pg 150

⁶⁹³ Naidoo Vol C3 pg 6

⁶⁹⁴ Holland Vol C pg 149

⁶⁹⁵ Naidoo Vol C3 pg 6

bone⁶⁹⁶ Naidoo also agrees that this injury is consistent with a fall from a height.⁶⁹⁷

- 70.7. Fracture of the body of the 7th cervical vertebra.⁶⁹⁸ Naidoo also agrees that this injury is consistent with a fall from a height.⁶⁹⁹
- 70.8. The fractures of ribs 3-6 paravertebrally on the left.⁷⁰⁰ Naidoo also agrees that this injury is consistent with a fall from a height.⁷⁰¹
- 70.9. Fractures of ribs 2-7 laterally and posteriorly on the right.⁷⁰² Naidoo also agrees that this injury is consistent with a fall from a height.⁷⁰³
- 70.10. Fractures of ribs 8-11 paravertebrally on the right.⁷⁰⁴ Naidoo also agrees that this injury is consistent with a fall from a height.⁷⁰⁵
- 70.11. Surface injuries 1 – 7 of autopsy report.⁷⁰⁶

Injuries not related to a fall from a height

71. According to Dr Holland the following wounds were not related to the fall because they showed scab formation indicating that they were present before the fall:

- 71.1. A small abrasion with scab formation over the middle third of the collar bone area.⁷⁰⁷

⁶⁹⁶ Holland Vol C p 149

⁶⁹⁷ Naidoo Vol C3 pg 6

⁶⁹⁸ Holland Vol C pg 150

⁶⁹⁹ Naidoo Vol c3 pg 6

⁷⁰⁰Holland Vol C pg 149

⁷⁰¹ Naidoo Vol C3 pg 6

⁷⁰²Holland Vol C pg 149

⁷⁰³Naidoo Vol C3 pg 6

⁷⁰⁴ Holland Vol C pg 150

⁷⁰⁵ Naidoo Vol C3 pg 6

⁷⁰⁶ Naidoo Vol C3 pg 6

⁷⁰⁷ Holland Vol C p 145

- 71.2. An abrasion with scab formation of the right shoulder blade.⁷⁰⁸
- 71.3. A small abrasion with scab formation on the left lateral neck 3cm below the earlobe.⁷⁰⁹
- 71.4. A 2.5cm x 4mm abrasion with scab formation across the left arm⁷¹⁰.
72. Timol sustained bruises that were diffusely distributed all over his body. Bruises in falls from height tend to be more irregular and poorly defined, whereas most of the bruises that can be seen from the photographs are well defined patterned bruises.⁷¹¹ Dr Naidoo also agrees that these injuries are not consistent with the fall.⁷¹²
73. The depressed skull fracture of the left parietal bone with loose bone fragments was also not consistent with the fall because isolated depressed skull fractures are not commonly seen in falls from a height.⁷¹³
74. Dr Naidoo also agrees that the above injury is not consistent with a fall from a height and offers the explanation detailed below.⁷¹⁴
75. The left parietal fracture of the skull without an open scalp wound is clearly unexplained by the mechanics of the fall and ground impact. If the opened window pane had been at a high floor level below the floor from which he fell, Dr Naidoo would have expected that the fracture would have caved in with a large open laceration and the body would have been set into a rotation towards the ground.⁷¹⁵
76. If the open window pane had been at a lower floor level Dr Naidoo would have expected that the head at this position and impact force would have been deeply impaled by the

⁷⁰⁸ Holland Vol C pg 145

⁷⁰⁹ Holland Vol C pg 146

⁷¹⁰ Holland Vol C pg 146

⁷¹¹ Holland Vol C pg 146

⁷¹² Naidoo Vol C3 pg 7

⁷¹³ Holland Vol C pg 146

⁷¹⁴ Naidoo Vol C3 pg 8

⁷¹⁵ Naidoo Vol C17 pg 7

narrow metal frame such that it would more likely “cleaved” into the cranium with a severely deep, gaping and destructive wound.⁷¹⁶

77. 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 drop more like sack of potatoes remain in the position and profile of its impact.
78. Dr Naidoo was unable to explain why the depressed skull fracture was not described as being accompanied by a contusion (bruise) of the brain at the fracture position. Some explanations for this could include a failure of documentation by the original pathologist or an obfuscation of clouding of observation of such bruising, if present, by the greater bleeding around the brain.⁷¹⁷
79. If the injury occurred immediately before the fall there may have been too short a time for a full reactionary haemorrhage or bruising to evolve.⁷¹⁸
80. Impact that struck the head while the head was moving must have been from a blow to that position or from an unimpeded fall from a standing height /upright position to the floor and could have been severe enough to have caused Timol to fall immediately to the floor from a standing or even sitting position. This would explain the bruise at the occipital scalp and gliding contusions. Unconsciousness would ensue but not immediate death. This could have taken place any time within 12 hours before the fall, and not necessarily within minutes.⁷¹⁹
81. In oral evidence Dr Holland said that she believed this injury could have been caused by Timol being struck on the head with perhaps an iron rod or hammer.⁷²⁰
82. The degree of the described front basal brain haemorrhage read together with the dearth of the same around the liver and lung injuries strongly supports the possibility that the impact to the left parietal left occipital area of the head was sustained before

⁷¹⁶ Naidoo Vol C17 pg 7

⁷¹⁷ Naidoo Vol C17 pg 7

⁷¹⁸ Naidoo Vol C17 pg 7-9

⁷¹⁹ Naidoo Vol C17 pg 9

⁷²⁰ Holland transcript oral evidence Vol 6, p 501.

the fall from the building with enough time to present as a vital reactionary haemorrhage.⁷²¹

83. Dr Naidoo and Dr Holland concur that the depressed fracture is a very serious injury which have rendered Timol unconscious as it would have caused swelling and bleeding on the brain⁷²² and if left untreated would have resulted in death.⁷²³
84. In oral evidence Dr Holland stated that at the very least the injury would have resulted in a concussion and revival would have been possible and at the 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.⁷²⁴
85. Dr Holland is also of the view that the fracture of the right upper jaw⁷²⁵, the upper left jaw⁷²⁶ and the lower left jaw⁷²⁷ were not consistent with the fall because they do appear with the pattern of injuries associated with the fall and are considered to be isolated injuries. Dr Naidoo also agrees that this injury is not consistent with a fall from a height⁷²⁸ and stated in oral evidence that the injury could have been caused by a blunt force impact to the area.⁷²⁹
86. This type of injury would have made it very difficult for Timol to talk, eat or drink any beverage like coffee.⁷³⁰
87. Dr Holland further stated in oral evidence that there was a contusion in Timol's mouth, which she believed could have been caused by being slapped or kicked on the face in the region on the mouth.⁷³¹

⁷²¹ Naidoo Vol C17 pg 9

⁷²² Naidoo and Holland transcript of oral evidence Vol 7 pg558 Vol 6 pg 508

⁷²³ Naidoo and Holland Vol 7 pg558 Vol 6pg 508

⁷²⁴ Holland transcript oral evidence Vol 6 pg 508-509

⁷²⁵ Holland Vol C pg146

⁷²⁶ Holland Vol C pg 146

⁷²⁷ Holland Vol C pg 146

⁷²⁸ Naidoo Vol C3 pg 8

⁷²⁹ Naidoo transcript of oral evidence Vol 7 pg 560

⁷³⁰ Holland transcript oral evidence Vol6 pg 503

⁷³¹ Holland transcript oral evidence Vol 6 pg 481

88. The fracture of the lateral aspect of the first rib on the left is also not consistent with the fall, according to Dr Holland because it is a relatively protected structure and a blunt force to this area would have caused this injury Dr Naidoo also agrees that this injury is not consistent with the fall.⁷³²
89. Dr Naidoo highlighted the following injuries not related to the fall:
- 89.1. Extensive bruising on the right calf.⁷³³ Dr Naidoo explained in oral evidence that the injury could have been caused by force of a blunt impact such as an iron rod.⁷³⁴
- 89.2. Dislocated left ankle. This type of injury usually harbours a fracture and brings into focus Essop's testimony of seeing someone of Timol's stature being dragged along by SB members on the tenth floor.⁷³⁵
- 89.3. 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 tramping of a bare foot.⁷³⁶
90. These injuries are inconsistent with the fall because the patterns of injuries suggest Timol landed on the right side of his body from the fall and not on his feet.⁷³⁷
91. According to Dr Holland in oral evidence, Timol had bruising on the thigh and groin area which was likely caused by multiple blows to the area, such as mule kicks.⁷³⁸ And would have had an impact on Timol's ability to move and he would also having difficulty in standing.⁷³⁹

⁷³² Naidoo Vol C3 pg. 7

⁷³³ Naidoo Vol C3 pg. 7

⁷³⁴ Naidoo transcript of oral evidence Vol7 pg 555-6

⁷³⁵ Naidoo Vol C3 pg 7

⁷³⁶ Naidoo Vol C3 pg

⁷³⁷ Naidoo oral evidence transcript Vol

⁷³⁸ Holland transcript oral evidence Vol 6 pg 504-5

⁷³⁹ Holland transcript oral evidence Vol6 pg 504-5

Timol's physical state before the fall

92. As a doctor and not a pathologist, Dr Naidoo finds it immensely difficult to see how with the left ankle injury and right calf bruising, Timol would be able to clamber up a window ledge as it would have required a time interval for the 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.⁷⁴⁰
93. According to Dr Naidoo given the small stature of Timol, it would be difficult for him to dive out the window without snagging his clothing or sustaining abrasions and/or lacerations on his body.⁷⁴¹
94. Dr Naidoo also mentions that Timol's bladder was enlarged leading to the conclusion that it was not emptied for approximately 6/8 hours.⁷⁴² In oral testimony Naidoo suggested that there were 2 possibilities to consider for this: either that Timol was not permitted to relieve himself in detention or that he had been unconscious prior to the fall.
95. Furthermore Holland is of the view that the bruising manifest on Timol's body indicates that he in all likelihood was assaulted in custody.⁷⁴³
96. Dr Naidoo also suggested in oral testimony that with the injuries sustained to Timol's jaw prior to the fall, he would not be in a position to speak, eat or drink.⁷⁴⁴
97. The depressed fracture to the skull, in the expert opinion of Naidoo and Holland, would likely have rendered Timol unconscious as mentioned above.
98. If this is so, the police version that Timol was able to contemplate suicide is untenable as is the notion that he was physically capable of executing a dive or a jump through the window of room 1026.

⁷⁴⁰ Naidoo Vol C3 p 12

⁷⁴¹ Naidoo Vol C3 p 12

⁷⁴² Naidoo Vol C3 p 13

⁷⁴³ Holland Vol C p 152

⁷⁴⁴ Naidoo oral evidence transcript Vol 7 p 572-573

Primary points of impact when the body hit the ground

99. Naidoo says that Timol struck the ground with the forehead and the area of the right shoulder, elbow and chest. The cranial vault impact likely caused the vault fracture that transmitted the force of impact through the base of skull and to the upper facial bones⁷⁴⁵

Cause of Death

100. According to Holland, Timol was likely clinically alive at the time of the fall and died as a result of multiple injuries sustained from the fall⁷⁴⁶. Naidoo is of the view that while Timol sustained multiple injuries, his death was caused by massive brain and chest injury sustained as a result of the fall.⁷⁴⁷
101. Both Naidoo and Holland aver that given the severity and nature of the other injuries sustained prior to the fall, especially the depressed skull fracture, it is probable that Timol was unconscious prior to the fall and this calls into question the original inquest finding that the cause of death was suicide.⁷⁴⁸

Differences of opinion between Dr Naidoo and Dr Holland

102. Dr Naidoo is of the view that the bruise on the left forehead associated with fracture line of the forehead, and gross skull vault fractures that extended to the base of skull and midline facial nasal bones⁷⁴⁹ was caused by the fall whereas Dr Holland believes these were not caused by the fall.⁷⁵⁰

⁷⁴⁵ Naidoo Vol C3 p 9

⁷⁴⁶ Holland Vol C p152

⁷⁴⁷Naidoo Vol C3 p 13

⁷⁴⁸Naidoo oral evidence transcript Vol 6 p 507

⁷⁴⁹ Naidoo Vol C3 p 6

⁷⁵⁰ Holland Vol C p 149-150

103. Fracture of the nasal bone and fracture of the left and right inferior orbital ramus in paranasal area: Dr Holland suggests this injury was not sustained as a result of the fall whereas Dr Naidoo is of the view these were fall related.⁷⁵¹
104. A tear of the lateral ligament and capsule between the left horn of the hyoid bone and the body of the hyoid bone situated at the back of the throat:⁷⁵² Dr Naidoo suggests this too is a fall related injury but Dr Holland disagrees saying it could have been caused by blunt force.⁷⁵³

Estimated Time of Death

105. This inquest court heard from three unrelated witnesses not employed by the South African police, namely Thokan,⁷⁵⁴ Adam,⁷⁵⁵ and Mathis⁷⁵⁶ that Timol's fall occurred during the morning. This inquest court has also heard in oral testimony from Rodrigues and Sons as well as the police version before the original inquest court that the fall occurred at around 15h50.⁷⁵⁷
106. Dr Holland says determining time of death requires an estimation of the time since death (Post mortem interval estimation – PMI) and is based on the observation and assessment of the post mortem changes a body undergoes from the time death occurs.⁷⁵⁸ Dr Naidoo describes PMI as follows: *“the point at which the body is discovered and the time the individual was reliably known to be alive. The death occurred between these two points and the aim is to estimate when it most probably took place”*.⁷⁵⁹

⁷⁵¹ Naidoo Vol C3 p 6

⁷⁵² Naidoo Vol C3 p 11

⁷⁵³ Naidoo Vol C3 p 11 and Holland Vol C p 17

⁷⁵⁴ Thokan affidavit Vol H

⁷⁵⁵ Adam affidavit Vol H20

⁷⁵⁶ Mathis affidavit Vol C p 118-120

⁷⁵⁷ Rodrigues affidavit Vol M p 27

⁷⁵⁸ Holland Supplementary report C16 p 1

⁷⁵⁹ Naidoo supplementary report Vol C 17 p 1

107. The early post mortem period is up to 48 hours after death and the following is observed according to Dr Holland⁷⁶⁰ and summarized as well in Dr Naidoo's supplementary report:⁷⁶¹
- 107.1. Dehydration of tissues: from the onset of death, skin loses moisture and elasticity and thinner areas of the skin become brown and parchment like. This is especially noticeable on the lips and skin of the scrotum. The eyes desiccate, leading to clouding of the cornea and loss of turgor in the internal pressure of the eye.
 - 107.2. Trucking of retinal blood vessels: this refers to appearance of stagnant blood in the retinal blood vessels which occurs from a loss of blood pressure. This can only be observed from conducting an ophthalmoscopic examination of the retina and may be present between 15min and 2 hours of death.
 - 107.3. Rigor mortis or stiffening of muscles: this is usually preceded by an initial period of flaccidity referred to as primary flaccidity. This becomes evident in small muscle groups of the face hands and feet approximately 3 hours after death. Rigor mortis may remain present up to 24 hours after death where after rigor mortis begins to dissipate and muscles become increasingly flaccid. Complete flaccidity is usually apparent 36 hours after death. Variation in onset and duration of rigor mortis is based on environmental temperature as well as degree of muscle activity before death, whether the body was moved after death from its original position.
 - 107.4. Hypostatis: purplish blue discoloration of the body. This occurs in the skin and internal organs. Hypostatis may become visible from within 30 minutes to 2 hours after death. It is important to differentiate between post mortem hypostatis, as a result of gravitation, and ante mortem bruising, as a result of trauma.
 - 107.5. Algor mortis: Refers to temperature changes that occur in the body after death where heat is lost. Factors that influence the rate of cooling of the body include: initial body temperature, body dimensions (adult versus child), amount of subcutaneous fat on the deceased, oedema and dehydration, posture, clothing

⁷⁶⁰ Holland supplementary report Vol C17 pg2-5

⁷⁶¹ Naidoo supplementary report Vol C17 4-5

and covering, the ambient temperature, air movement and humidity, the medium around the body and pathology. The assessment of the change in body temperature in a deceased body must be done with knowledge that heat loss is not a linear function and can be affected by many variables.

108. According to Dr Holland post mortem interval (PMI) estimation⁷⁶² is not an exact science and must ideally be carried out by examination of the dead body at the scene of death. To ensure optimum conditions for PMI estimation the body should not be moved or interfered with in any way prior to the examination of the body, as this would greatly influence the onset and/or duration of post mortem changes manifestations.⁷⁶³
109. Dr Holland states that the examination must be done by a forensic medical practitioner who is familiar with the various post mortem changes that can occur in a dead body and the many variables that can affect post mortem changes.⁷⁶⁴
110. Dr Holland does caution however that even if done in ideal circumstances, PMI offers a range of time estimate since death and not exact time. In the early post mortem period, the range is over hours. The longer the body has been dead the less precise the PMI estimation could be.⁷⁶⁵
111. The statement of Dr Kemp⁷⁶⁶ indicates that he saw the body at 16h05 and described the body as being “recently dead.” According to Dr Holland these statements do not offer any value in determining PMI estimation.⁷⁶⁷
112. Dr Naidoo states that neither the medical findings in the autopsy report of Dr Schepers nor the observations of Rodrigues and Matthis provide the kind of detail for any scientific methodology to be employed for determining the precise time of death or be able to differentiate between death at mid-morning or later afternoon of the same day. The

⁷⁶² Holland supplementary report Vol C17 p 5

⁷⁶³ Holland supplementary report Vol C16 p 5

⁷⁶⁴ Holland supplementary report Vol C16 p 5

⁷⁶⁵ Holland supplementary report Vol C16 p 5

⁷⁶⁶ Dr Kemp affidavit Vol B exhibit T p 44

⁷⁶⁷ Holland supplementary report Vol C16 p 5

Schepers' report does not describe any post mortem changes in the schedule of observations.⁷⁶⁸

113. Furthermore, Dr Naidoo stated that in the light of the minimal information provided in the autopsy report and witnesses above, it is difficult to clearly establish with any degree of precision the time of death. It is equally possible that deceased could have fallen and died at mid-morning as much as it is possible that he could have fallen and died at mid-afternoon.⁷⁶⁹
114. From the information available it appears that no forensic examination was done at the scene when the body was discovered after the fall. A detailed scene report ought to have been generated, but there is no evidence of this being done.⁷⁷⁰
115. Dr Naidoo went on to explain that certain inferences can be drawn from Dr Kemp's statement where he states that he was requested at 15h55 to attend the scene of death and arrived at John Vorster Square at 16h05. He examined the body which was pointed out to him on the 9th floor of John Vorster Square. Dr Kemp says "*hy was pas dood*". He just died.⁷⁷¹
116. Dr Naidoo avers that the implications of Dr Kemp's statement are that the body was already dead prior to his arrival and that the body was recently dead. His statement could well have been a declaration/certification of death as done by doctor or paramedic.⁷⁷²
117. Furthermore, Dr Naidoo explains that the onset of putrefactive decomposition by bacterial activity of a body can begin as early as 18-24 hours or more and at about 36 hours onwards for more obvious features to show.⁷⁷³

⁷⁶⁸ Naidoo supplementary report Vol C17 pg-5

⁷⁶⁹ Naidoo supplementary report Vol C17 pg-5

⁷⁷⁰ Naidoo Vol C17 pg6

⁷⁷¹ Naidoo supplementary report Vol C17 pg-5

⁷⁷² Naidoo supplementary report Vol C17 pg-5

⁷⁷³ Naidoo supplementary report Vol C17 pg-5

118. Since Dr Kemp does not describe any post mortem changes, Dr Naidoo deduces that it is thus impossible to state what specific post mortem stage Timol's body was at when Dr Kemp examined it.⁷⁷⁴
119. Therefore Dr Naidoo is of the opinion that Dr Kemp's affidavit is the only record of full scene examination attention, and it is unsatisfactory and ineffectively conducted.⁷⁷⁵

Better quality autopsy photographs

120. Attorney Schrueder attended at the archives of the Wits Historical Papers on 30 August 2017 in order to retrieve copies of the original photographs in slide format from the Dr Jonathan Gluckman File. These photographs are of a better quality than those contained in exhibit C7. . Enlarged copies of these slides are supplied in exhibits **C7.1 to C7.7**.
121. When enlarged these slides give a much clearer depiction of the marks and bruising in several places on Timol's body. In this regard an enlargement of slide '0861' reflects in particular the severe injuries on his body.
122. We are advised by Dr Holland that she had these slides when she prepared her report as she attended at the Wits archives and retrieved her own copies of the slides. However Dr Naidoo only had access to the photos in exhibit C7. The fresh photos were supplied to him and he provided a further supplementary report 2 September 2017 contained in exhibit **C7.9**. In this report he stated:

"The clearer new images help banish any uncertainty a neutral observer might have about whether these were truly gross wounds, or deliberately inflicted, and the observer will conclude that these injuries were not in any way healed enough to be just "scars". From looking at the images, there must have been marked internal injuries associated with the surface wounds. The age of the surface injuries, in my opinion, on their appearances on the images, would range between a few hours to a few days old. A more precise estimation would be misleading to the Court.

My opinions in my initial reports related solely to the forensic pathology evaluation of the case and I wish to add an overall clinical perspective. In my

⁷⁷⁴ Naidoo supplementary report Vol C17 pg-5

⁷⁷⁵ Naidoo supplementary report Vol C17 pg5

opinion, the injuries would clearly have had a significant and profound systemic effect on the patient's state of health and well-being. With severe physical injuries such as these, the intense muscle and tissue damage underneath the skin surface injuries triggers off muscle and tissue breakdown product (such as myoglobin) damage to the kidneys, lung and other organs. This leads to systemic complications, and may lead to early organ failure (known as the "crush injury syndrome"), even if not readily apparent in the autopsy histology examinations. The patient would have been desperately ill. Timol's condition would have had substantial impact on his abilities to conduct normal activities, including eating, drinking and even normal conversation. He would not have been able to maintain an upright posture, such as sitting or walking."

No emergency services provided to Timol: Professor Kenneth Boffard

123. From the affidavits of Deysel and Greyling presented at the original inquest, it seems that Deysel was first or one of the first to arrive at the scene. Deysel stated that he found that Timol had a pulse and tried to roll him to a blanket and thereafter carried him with the assistance of colleagues into John Vorster Square building.
124. The Timol family requested Professor Kenneth Boffard ("**Prof Boffard**")⁷⁷⁶ to shed light on what emergency services might have been available to Timol in 1971 and what level of training SAP members would have had in terms of first aid or other training, in order to adequately assist someone with Timol's injuries at the time.
125. In the 1960s and 1970s ambulance services personnel were primarily ambulance drivers and were trained in advanced level first aid, (although compared to modern day it would be characterized as limited).⁷⁷⁷ In his view, SAP members were trained in very basic first aid but this training would have recognized the severity of neck injuries.⁷⁷⁸
126. Ambulances at the time were poorly equipped but the recommendation at the time was that if a patient was badly injured he/she must not be moved until ambulance services arrive. The fact that the patient should not be moved until help arrives was drummed into all emergency services personnel (including SAP) and the extent of the injuries did

⁷⁷⁶ Professor Prof 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.

⁷⁷⁷ Prof Boffard oral evidence transcript Vol 5 pg428

⁷⁷⁸ Prof Boffard oral evidence transcript Vol 5 pg427-428

not matter because there was a general fear of civil liability, even patients injured in car accidents on busy highways. This thinking still applies in present times.⁷⁷⁹

127. 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 Prof Boffard's view, there was a general reluctance amongst police to move injured persons ⁷⁸⁰
128. Injuries sustained by Timol, suggest blood accumulation in the back of the nose and if he was lying on his back he would not be able to breathe. Timol should have been rolled to his side so as to allow emergency services personnel to make an open space for breathing.⁷⁸¹
129. With patients who have fallen from heights, it is critically important that they are not picked up by their hands or legs. They must be rolled onto a board or stretcher to support their spine or bones.⁷⁸²
130. 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. ⁷⁸³
131. 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.⁷⁸⁴

⁷⁷⁹ Prof Boffard oral evidence transcript Vol 5 pg429

⁷⁸⁰ Prof Boffard oral evidence transcript Vol 5 pg428

⁷⁸¹ Prof Boffard oral evidence transcript Vol 5 pg436

⁷⁸² Prof Boffard oral evidence transcript Vol 5 pg433

⁷⁸³ Prof Boffard oral evidence transcript Vol 5 pg440

⁷⁸⁴ Prof Boffard oral evidence transcript Vol 5 pg440.

132. Picking up Timol, placing him in a blanket and carrying him unsupported to another location may have contributed to his death as it may have prejudiced his spinal cord and caused internal bleeding.⁷⁸⁵
133. In **Geldenhuis**⁷⁸⁶ the Supreme Court of Appeal (“**the SCA**”) held that there is a general duty to provide specific treatment at a specific time to a specific prisoner. In the present case, the police would have undoubtedly have been under an obligation to summon medical assistance if they had been aware that it was indeed required.⁷⁸⁷
134. Furthermore, in **Craig and Others**⁷⁸⁸ the SCA held that police officials who have prisoners in their charge should see to their wellbeing. The court should be vigilant to ensure that officials comply with the obligation to ensure their well-being. Police standing orders place an obligation on members to obtain the necessary medical attention, where detainees are in distress or are injured or ill.
135. 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.
136. In Rodrigues’ oral testimony he conceded that a person with injuries such as the left ankle dislocation cannot run let alone dive or jump out of a window in the split seconds. He conceded further that individuals with potential spine injuries should not be moved, stressing that this “*is general knowledge in fact.*”⁷⁸⁹
137. Els testified that he could not recall if they were taught in training not to move a person suspected of having a neck or spine injury, but conceded that it was obvious that such a person should not be moved.⁷⁹⁰

⁷⁸⁵ Prof Boffard oral evidence transcript Vol 5 pg431

⁷⁸⁶ *Minister of Veiligheid en Sekuriteit v Geldenhuis* 2004 (1) SA 515 (SCA)

⁷⁸⁷ *Ibid* at para 26.

⁷⁸⁸ *Minister of Safety and Security and Others v Craig and Other NNO* 2011 (1) SACR 469 (SCA) paras 60 – 61.

⁷⁸⁹ Rodrigues oral evidence transcript Vol 10 p 773, 779-83

⁷⁹⁰ Els oral evidence transcript Vol 9B p 673

138. Dutton testified that they were taught in basic police training to not move people who had very serious injuries.⁷⁹¹

Trajectory expert evidence: Thivash Moodley

139. The Timol family engaged the services of an aeronautical engineer (Mr Moodley) in order to assist with understanding the trajectory of Timol's fall in relation to its position and orientation on the garden outside the south wing of John Vorster Square.⁷⁹²
140. Mr Moodley was provided with the affidavits of Deysel, Rodrigues, and Matthis in order to prepare his testimony and he conducted an on-site inspection.
141. Mr Moodley based his calculations on Mr Timol being 1.6m tall, 61 kg and slender in built and the fact that the fall distance from room 1026 to the site of impact was approximately 35 metres. Mr Moodley also based his calculation on the assumption that at the time of the fall Timol was in good health and spirits.⁷⁹³
142. The window in room 1026 was a steel window opened at a 90 degree angle to the frame and a hinge point of about 27cm from the upright edge of the window frame. The window pane had a rotating lever fitted to it that latched the window pane to the window frame that resulted in the window opening clockwise from left to right. In the open position the window pane was kept open using an expanding lever that braced the pane against the frame so that the wind could not blow the window closed when it was opened.⁷⁹⁴
143. Mr Moodley testified that Timol could not have dived through the window because it would not be possible to run, open the window and dive simultaneously. The dimensions of the window frame are 155cm x 71cm (width).⁷⁹⁵

⁷⁹¹ Dutton oral evidence transcript Vol 8 p 635

⁷⁹² Mr T Moodley is an aeronautical engineer His curriculum vitae appears at Vol C9 and his report at Vol C10

⁷⁹³ Moodley VolC10 pg1

⁷⁹⁴ Moodley Vol C10 pg1

⁷⁹⁵ Moodley Vol C10 pg1

144. Mr Moodley observed that Deysel and Matthis differed on the orientation of Timol's body after the fall. Matthis stated that the body landed parallel to the building, with the head in the direction of the motorway whereas Deysel said the body landed perpendicular to the building, with head closest to the building and the legs pointing towards the road.⁷⁹⁶
145. Mr Moodley utilized the Langarian system in order ascertain trajectory of Timol's body and considered the following 6 scenarios
- 145.1. Scenario 1: Timol jumped through the window using two legs to generate force, feet first perpendicular to the building⁷⁹⁷ Mr Moodley stated that had this been the case Timol would have landed 13 meters from the building.⁷⁹⁸
- 145.2. Scenario 2: Timol stepped through the window feet first perpendicular to the face of the building⁷⁹⁹ and it is projected that he would have landed 4 metres from the building, but his head would have faced away from the building.⁸⁰⁰
- 145.3. Scenario 3: Timol is placed on the window sill in a sitting position and pushed out the window at the shoulders. This would result in Timol somersaulting through the air and landing as Deysel describes⁸⁰¹ and would have landed 3m from the building.⁸⁰²
- 145.4. Scenario 4: Timol is carried to the window, body facing the building legs carried out and the rest of his body pushed legs first out the window falling with his head pointing in a northerly direction and landing as described by Deysel⁸⁰³. He would have landed 3.1m from the building.⁸⁰⁴
- 145.5. Scenario 5: Timol is thrown from the roof with a horizontal motion, torso parallel to the face of the building, typical of holding the body by the hands and feet and

⁷⁹⁶ Moodley Vol C10 p 4

⁷⁹⁷ Moodley Vol C10 p 5

⁷⁹⁸ Moodley Vol C10 p 15

⁷⁹⁹ Moodley Vol C10 p 5

⁸⁰⁰ Moodley Vol C10 p 15

⁸⁰¹ Moodley Vol C10 p 5

⁸⁰² Moodley Vol C10 p 11

⁸⁰³ Moodley Vol C10 p 5

⁸⁰⁴ Moodley Vol C10 p 12

swinging it to launch it off the building.⁸⁰⁵ He would have landed 4m from the building⁸⁰⁶.

- 145.6. Scenario 6: Timol is rolled off the roof with torso parallel to the face of the building and the body flying horizontally down past the building⁸⁰⁷ and would have landed 1.25m from the building.⁸⁰⁸
146. Should Timol have jumped or dived as in scenario 1 and 2, he would have landed between 4 and 13 metres from building, with his head in the direction of Commissioner Street. From the witness statements provided it is unlikely that Timol would have jumped or stepped out the window.⁸⁰⁹
147. If Timol was placed as described in scenarios 3 and 4 he would have landed in the vicinity and orientation described by Deysel.⁸¹⁰
148. Taking into account that the window opens left to right, Timol could not have exited the building in the orientation Matthis claims he saw. He could only have exited this way had he been lowered below the window and dropped parallel to the building horizontally. Alternatively he was rolled or pushed from the roof. Mr Matthis testified he did not see an open window when he looked up.⁸¹¹
149. Mr Moodley stated in oral evidence that without any propulsion, Timol would have landed closer to the building because his impulse force would have been much lower.⁸¹²
150. From Mr Moodley's evidence, it is argued that the only likely scenarios for how Timol met his death are either that he was pushed or dropped from the window of room 1026 or rolled or swung from the roof. In either scenario, the possibility of Timol committing suicide does not exist.

⁸⁰⁵ Moodley Vol C10 p 5-6

⁸⁰⁶ Moodley Vol C10 p 14

⁸⁰⁷ Moodley Vol C10 p 6

⁸⁰⁸ Moodley Vol C10 p 15

⁸⁰⁹ Moodley Vol C10 p 15

⁸¹⁰ Moodley Vol C10 p 16

⁸¹¹ Moodley Vol C10 p 16

⁸¹² Moodley oral evidence transcript Vol 9A p S (673).

151. According to Mr Moodley's supplementary report,⁸¹³ if Timol dived out of the window as per Rodrigues' testimony, it is important to know the launch angle and how Mr Timol would have generated an impulse force to thrust his body forward. Rodrigues would have to describe whether Timol first climbed out of the window sill and then dived using a similar action to a swimmer or if he raised his body through the window using his hands and legs and once his centre of mass was out the window gravity took over and accelerated him towards the ground.
- 151.1. In the latter situation, he would have not been able to generate a forward/horizontal impulse force that would have thrust him 3.0 metres away from the building. He would have landed much closer to the building and would have impacted the ground with his head.⁸¹⁴
- 151.2. There is a high probability that he would have struck the concrete light well adjoining the bottom of the building or part thereof. However, if he dived like a swimmer from the window ledge, he would have travelled further away from the building. Similar to him jumping.⁸¹⁵
- 151.3. Strictly speaking, neither situation involves a clean dive from the window floor of the office. Both scenarios involve initial lifts to get onto the window sill. Mr Moodley finds it unclear how Mr Timol would have been able to execute a clean dive from standing on the floor through the window. Given the specifications of the window height above the floor, the office dimensions and the arrangement of furniture, it is highly unlikely this happened, even assuming that Timol had the athletic ability to execute such a manoeuvre.⁸¹⁶
- 151.4. Mr Moodley further assesses what would happen if Timol was dropped out the window. In other words, if Mr Timol was held by his legs and clothing, vertically outside the window and dropped by the security offices, he would have not been able to generate a forward/horizontal impact force to thrust him 3.0 meters from the building. He would have landed next to the building and would have probably

⁸¹³ Moodley Vol C10a p 1 and 2

⁸¹⁴ Moodley Vol C10a p 1 and 2

⁸¹⁵ Moodley Vol C10a p 1 and 2

⁸¹⁶ Moodley Vol C10a p 1 and 2

impacted the ground with his head. There is a high probability that he would have hit the concrete light well adjoining the bottom of the building or part thereof.⁸¹⁷

- 151.5. Mr Moodley also adds that due to the space constrictions, it would have been exceedingly difficult for two adults to hold Mr Timol out of the window, and torment him as described in Gordon Winters book. This is due to the fact that the window is fully opened, it provides very limited space. The left side aperture is only 43.5cm and the right side aperture is 27.5cm. Analysing the window opening, there is a concrete pillar on the left side and the window extended 27.5cm into the room on the right side because the window hinge point is 27.5cm from the right window. The two men would have been confined by the concrete pillar on the left of the window protruding inside on the right resulting in both of their upper bodies (and possibly part of the Timol's legs) being squeezed into a 44cm space to hold Timol outside of the window.⁸¹⁸
152. Therefore, the most likely scenario is that Timol was pushed as per scenarios 3 and 4 which would have placed him approximately 3 meters from the building, and potentially in the orientation alleged by Deysel.⁸¹⁹
153. One can also not rule out that Timol was thrown or rolled off the roof parapet, as per scenarios 5 and 6, as this is consistent with Mr Matthis' evidence; and the landing site would have just cleared the light well.⁸²⁰

Other expert evidence

Don Foster

154. Don Foster ("**Mr Foster**") gave testimony on the psychological effects of torture on detainees who had been tortured since the 1960s when detention without trial laws were passed in South Africa.⁸²¹ The research he conducted on this topic was to ensure that the voice of the detainees – who had been tortured – was heard because they were

⁸¹⁷ Moodley Vol C10a p 1 and 2

⁸¹⁸ Moodley Vol C10a p 1 and 2

⁸¹⁹ Moodley Vol C10a p 1 and 2

⁸²⁰ Moodley Vol C10a p 1 and 2

⁸²¹ See Transcribed reopened inquest record, pp591 – 614.

never afforded the opportunity to be heard in courts of law. Several detainees living in urban arrears were interviewed and relayed their experiences.

155. In 1986, his research was published in a book titled “*Detention & Torture in South Africa: Psychological, legal and historical studies.*”⁸²² His book details some of the forms of torture that the detainees went through.⁸²³ Most of the methods in the book are methods that former detainees who testified in these proceedings provided to the court. Interrogators used a roster system, this would allow them to interrogate detainees for long periods of times thus depriving detainees of sleep.
156. Detention and torture while detained, has a mental and physical effect on the health of the detainees. It is a continuous process and is not just a single event. The effects of detention (and torture, where applicable) start when the police arrest a person, detain the person and they continue until the person has been released.

Frank Dutton

157. Frank Dutton (“**Mr Dutton**”), the Timol Family investigator, testified as follows:⁸²⁴

- 157.1. In his experience, the death of Timol ought to have triggered 2 investigations. The first being the inquest investigation to establish the cause of Timol’s death and whether any person was responsible for his death. The second being an internal administrative inquiry into the escape of Mr Timol.⁸²⁵
- 157.2. The investigation into Timol’s death was not impartial and thorough. Several basic processes were not met during that investigation. Investigators in such matters must be independent and as impartial as reasonably possible. All valuable evidence must be collected, preserved and presented to the inquest court, this includes, *inter alia*, obtaining statements from all witnesses and conducting a thorough scene of the crime or incident investigation.⁸²⁶

⁸²² Exhibit K.

⁸²³ Exhibit K, p102 and p105.

⁸²⁴ Frank Dutton affidavit, exhibit H7; Transcript, Vol 8, pp 614 – 671.

⁸²⁵ Frank Dutton affidavit, exhibit H7, p14, paras 23 – 23.2.

⁸²⁶ Frank Dutton affidavit, exhibit H7, p6, para 29 – 29.2.4.

- 157.3. Regulation 58(25) under the Police Act 7 of 1958, prohibited a police officer from allowing a prisoner or detainee to escape. This was a disciplinary offense. Timol's alleged jump through the window constituted an 'escape' from police custody. A disciplinary inquiry should have been conducted in this regard. Gloy, van Niekerk as well as Rodrigues should have been the subjects of such an inquiry as they were apparently the persons in control over Timol shortly before his death.⁸²⁷ None of these things were done following the death of Timol.
- 157.4. When he received police training in 1967 he was trained in basic first aid. He was trained not to move persons who had suffered serious injuries. Moving a seriously injured person by a 'first aider' was strictly forbidden as this could be life threatening to the injured person.⁸²⁸ In view of the police training at the time, it is questionable why Timol, if he was still alive after the fall, was moved and carried into John Vorster Square. Moving Timol into the building without first waiting for an ambulance to arrive and attend to him is consistent with a cover up. The SB wished to remove Timol's body as quickly as possible from the public eye to avoid as much scrutiny as possible.⁸²⁹
- 157.5. The SB version that Timol committed suicide after hearing Quentin Jacobson's name is most likely a crude fabrication. If there were any link between Quentin Jacobsen and Timol this would have been established at Quentin Jacobsen's trial in April 1972. There is not a single mention of Timol in Quentin Jacobsen's detention file nor any mention in the judgment that led to his acquittal.⁸³⁰
- 157.6. After Timol was detained, the SB searched his home and seized a typewriter. The typewriter was later forensically matched to "*Inkululeko – Freedom no.1*", a newsletter that Timol helped publish and distribute. It is possible that the SB used this this typewriter to reproduce other documents or add insertions to already published documents and to attribute these to Timol.⁸³¹

⁸²⁷ Frank Dutton affidavit, exhibit H7, pp14 – 15, paras 24 – 26. See also exhibit H8.

⁸²⁸ Frank Dutton affidavit, exhibit H7, p25, paras 66 – 67.

⁸²⁹ Frank Dutton affidavit, exhibit H7, pp26 – 27, paras 69 – 72.

⁸³⁰ 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).

⁸³¹ Frank Dutton affidavit, exhibit H7, pp28 – 29, paras 79 – 80.

157.7. The fact that Rodrigues received a letter of commendation, from the then Commissioner of Police, soon after the Timol incident is questionable. This is more so because of *inter alia* ⁸³² –

157.7.1. Rodrigues was convicted of statutory perjury in 1956; ⁸³³

157.7.2. He took 301 days sick leave between 9 February 1957 and 15 November 1971; ⁸³⁴

157.7.3. He failed to stop Timol from escaping from room 1026;

157.7.4. He was issued with no letters of recommendation, had no recorded achievements and had no medals for bravery or good service, and

157.7.5. None of the other police files that were inspected in preparation of these proceedings and none of the other police files that have been handed to this Court as exhibits, have such letters of commendation.

158. The probability of a cover-up is real and the police version in Timol must be viewed with great suspicion and caution. In his experience he has been part of investigations that exposed cover-ups by members of the SB. Former members of the SB, such as Eugene de Kock, admitted to being part of cover-ups when they gave testimony at the TRC. ⁸³⁵

Evidence by the architects in relation to the inspection *in loco*

159. Collin Woodall Savage (“**Mr Savage**”) is an architect based in Linden, Johannesburg. ⁸³⁶
His testimony centred around the structure and layout of John Vorster Square in the

⁸³² Frank Dutton affidavit, exhibit H7, pp30 - 32, paras 83 – 88.

⁸³³ Rodrigues police file, exhibit J1, p83 and p85.

⁸³⁴ Rodrigues police file, exhibit J1, p92.

⁸³⁵ Frank Dutton affidavit, exhibit H7, pp32 – 34, paras 89 – 92.

⁸³⁶ Vol M, exhibit M1.

light of the various building plans of John Vorster Square that were obtained from the Department of Public Works.⁸³⁷

160. Mr Savage testified that from the plans, the structure of John Vorster Square has remained the same since its construction in the 1960s.⁸³⁸ The only structural changes identified from the plans is that the garden located outside the south wing of the building was made smaller in about 1979 when the current palisade fence was added. Prior to that the garden stretched to just before the pavement where there was a retaining wall of about 75cm.⁸³⁹ The other structural change identified was the addition of the guard house in or after 1979.
161. Other than these changes to the exterior of the building, the interior structure is still the same (especially floors nine, ten and the roof). This is seen if one compares the building plans with the photographs in exhibit volume F.

Evidence by civilian eye witnesses

Ernest Matthis

162. Ernest Matthis gave the following testimony:⁸⁴⁰
- 162.1. He was admitted as an advocate in January 1962. After three years of working as a state advocate he joined the Johannesburg Bar in January 1965.
- 162.2. On Wednesday, 27 October 1971, he was either on the fourth floor or sixth floor at John Vorster Square preparing for the prosecution of Auto Protection and AM Kramer, an insurance case, with his leader. They had been briefed by the then Attorney General of Transvaal to investigate the affairs of Auto Protection. They had been assigned an office, in John Vorster Square, that was full of books and records of an insurance company.

⁸³⁷ Vol M, exhibits M5 – M11.

⁸³⁸ See Transcribed reopened inquest record, Vol 11, pp907 – 933.

⁸³⁹ Compare exhibit M5 and M6. Also look at Vol F and compare pictures 146 – 150 with pictures/exhibits M2 – M4 in Vol M.

⁸⁴⁰ Vol C, pp 118 – 120. See also Transcribed reopened inquest record, Vol 5, pp330 – 338.

- 162.3. While he was busy preparing he saw a body fall past the office window. When he went to the window to look, he saw a body lying in the garden that was located on the south wing of John Vorster Square.
- 162.4. When he saw the body in the garden, it lay approximately a meter and a half from the building with the head facing towards the double decker motorway. The body lay next to the shrubbery. When he looked up to see which floor the body could have come from he did not notice any open windows.
- 162.5. He recalls that when he saw the body fall past his window he did not hear any screams or shouts. The body was parallel to the building when it fell past his window. He did not hear or see an ambulance at the scene and he does not know what happened to the body.
- 162.6. He does not recall the exact time of day but he believes it happened in the morning. He only found out the identity of the person who fell when he read about it in the newspapers.
- 162.7. He was not interviewed during the investigation and he was also not approached to give testimony in the original inquest.

Ali Thokan

163. Ali Thokan (“**Mr Thokan**”) gave the following eye witness account:⁸⁴¹

- 163.1. On Wednesday, 27 October 1971, he was at the petrol station, Dollars Garage, across the road (Commissioner Street) from John Vorster Square. He was busy filling petrol in his car when he heard a loud thud. Soon thereafter, he heard a pedestrian say someone had fallen from John Vorster Square.
- 163.2. When he tried to go across Commissioner Street to see what had happened he was stopped by three plain clothed white men, whom he assumed were policemen because of the authority they commanded. The police responded very quickly because they had already cordoned off the scene by the time he

⁸⁴¹ Vol H, pp1 – 4. See also Transcribed reopened inquest record, Vol 11, pp850 – 867.

tried to go look. He could not see the body as it was behind a small wall that was about knee high at the time.

- 163.3. After being told to go away by the police, he left and carried on with his day. However before he left he did not see or hear any ambulances.
- 163.4. The incident happened in the mid-morning. He remembers the time because he was on his way to a government department in Pretoria to go apply for a trader's licence for his business. He always left in the morning if he had to go to any government department in Pretoria.
- 163.5. He always filled up his car at that Dollars Garage and in all his time (before and after that day) he never heard or saw of a body falling from John Vorster Square.
- 163.6. He only learned of the person's identity in the newspapers the following day. Prior to that day he did not know who Ahmed Timol was.

Abdulla Adam

164. Abdulla Adam ("**Mr Adam**") gave the following eye witness account:⁸⁴²

- 164.1. In 1971 he was employed at the petrol station, Dollars Garage, across the road from John Vorster Square. He was the assistant accountant at the time. He is still employed at the same place in the same position, the only difference now is that it is no longer called Dollars Garage, it is called Kudeko Auto Body and it is no longer a petrol station. He started working there in 1970, he has been working there for 47 years now.
- 164.2. On Wednesday, 27 October 1971, he was sitting inside the garage doing his work. His then manager called him and asked him to go see what the commotion across the road was about. When he went across Commissioner Street he noticed a body lying in the garden, in the shrubs, next to John Vorster Square.
- 164.3. When he tried to get a closer look he was chased away by white men he assumed were security policemen. He was about ten meters away from the body and he

⁸⁴² Exhibit H20. See also Transcribed reopened inquest record, Vol 13, pp966 – 985.

saw that the body was lying on its back with shoes pointing up. The head was pointing east, with the feet pointing towards the double decker motorway. The body lay about two meters away from the building.

- 164.4. After being chased away he went back to the garage and carried on with his work. He recalls that the incident happened in the morning at about 10h00 or 10h15 because it was during his teatime. Teatime was always at that time and he looked forward to it because it would be his first meal of the day, as he would not have eaten breakfast in the morning because he had to wake up early to catch a bus to work.
- 164.5. He did not see or hear any ambulances at the scene. He found out later that the person who fell was a Muslim schoolteacher from Roodepoort. People in his community were talking about it. He only learned of the name after reading about it in the paper.
- 164.6. Prior to that day he did not know who Ahmed Timol was. In all the years that he has been working at the garage he does not recall ever hearing or seeing of a body falling from John Vorster Square at that time in particular.

Testimony on suicide as a policy of the South African Communist Party

165. Ever since news of Timol's death broke and it was alleged that he committed suicide, his family, friends and comrades did not believe it. The notion that he committed suicide because of an SACP policy and that he was petrified of a long jail sentence was even more unbelievable.
166. Mohammed Timol testified that it came as a complete surprise to his family when the police told her that Timol had committed suicide. No one believed that Timol would commit suicide.⁸⁴³ Timol loved life, he was not mentally unstable and he had an extremely strong personality. He could not have committed suicide. As a Muslim he would not have taken his own life because Islam does not advocate for the taking of one's own life.⁸⁴⁴

⁸⁴³ Mohammed Timol affidavit, Vol C, p131, para 46.

⁸⁴⁴ Transcribed reopened inquest record, Vol 3, p254.

167. Mohammed Timol also disputes the notion that Timol committed suicide because he was afraid of serving a long prison sentence. He stated that when Timol volunteered to participate in the struggle against apartheid he was aware that if he were to get arrested he might serve time in jail. Timol knew he would suffer and he was prepared for it.⁸⁴⁵
168. This notion that Timol committed suicide because of an SACP policy has also been dismissed as untenable by his friends and former comrades in the SACP.
169. Essop Pahad (“**Mr Pahad**”), testified that he was recruited into the SACP in 1966.⁸⁴⁶ Timol was one of his best friends.⁸⁴⁷ When Timol arrived in London he shared a flat with Mr Pahad and his brother, Aziz Pahad.⁸⁴⁸ When Timol was asked to go back to South Africa to continue his work there, various discussions were held on how he should respond in case he were to get arrested by the security police. The SACP did not have a protocol on suicide and it never issued any instructions on committing suicide.⁸⁴⁹
170. Mr Pahad testified that two other reasons why Timol would never commit suicide were that when Timol was in England was romantically involved with a lady called Ruth Longoni (“**Ruth**”). It saddened Timol to have to leave Ruth behind when he came back to South Africa. Timol’s intention was always to come back to Ruth.⁸⁵⁰
171. The other reason Mr Pahad advanced was that Timol was Muslim. Islam prohibits suicide by its adherents. If a Muslim person were to commit suicide, they would not be buried in a Muslim burial ground.⁸⁵¹
172. Mr Pahad further testified that the instruction on “*Inkululeko – Freedom No. 2*” that members of the SACP should commit suicide rather than betray the organisation is a fabrication done by the SB. Furthermore, the SACP would never refer to any of its

⁸⁴⁵ Mohammed Timol affidavit, Vol C, p131, para 47.

⁸⁴⁶ Pahad affidavit, Vol H, p7, para 7; Transcript, Vol 5, p 448 – 447.

⁸⁴⁷ Pahad affidavit, Vol H, p8, para 12.

⁸⁴⁸ Pahad affidavit, Vol H, p8, para 13.

⁸⁴⁹ Pahad affidavit, Vol H, pp8 – 10, para 15 – 17.

⁸⁵⁰ Pahad affidavit, Vol H, p10, para 17.

⁸⁵¹ Pahad affidavit, Vol H, p10, para 18.

members by name except for those that were serving prison sentences on Robben Island. Names of active members would never be published.⁸⁵²

173. Another witness who testified, disputing the notion that the SACP issued instructions to commit suicide was Stephanie Kemp (“**Ms Kemp**”). Ms Kemp testified she became integrated with the SACP in London after having left South Africa in 1966.⁸⁵³ Although she never met Timol she sent him secret messages from London after his return to South Africa. They sent each other friendly letters that had coded messages. Once she received a letter from Timol, she would develop the coded message, type it out and give it Dr Dadoo and Joe Slovo.⁸⁵⁴
174. Ms Kemp testified that SACP recruits underwent training on what to do under interrogation should they get arrested. They were trained on various methods of delay during interrogations to allow their comrades (who had not been detained) to escape. Suicide was not one of these methods. Suicide was not part of the SACP policy.⁸⁵⁵ It was not acceptable for a communist to take his life because communism was a celebration of life. Communism was about making a good life for everybody on earth. Accordingly, the SACP was not about to encourage people to commit suicide.⁸⁵⁶
175. Ms Kemp also testified that the instruction on “*Inkululeko - Freedom no. 2*” to commit suicide was a fabrication by the SB. It was done to cover up their brutal crimes committed against detainees. Although the bulk of the document looks authentic in terms of its production and language, the paragraphs under the heading “Stand Firm” looked inauthentic and forged. The language used was not used by the SACP. In 1953 it was decided that the name SACP would replace the old Communist Party of South Africa (CPSA).⁸⁵⁷
176. To emphasize the point that the “*Stand Firm*” paragraph was a clear forgery, Ms Kemp testified that the CPSA was disbanded in 1950 to try avoid its members being arrested. When it was reconstituted in 1953 as the SACP it was a major event amongst

⁸⁵² Pahad affidavit, Vol H, pp10 – 11, para 19.

⁸⁵³ Kemp affidavit, Vol H, p16, paras 19 – 20.

⁸⁵⁴ Kemp affidavit, Vol H, p14, paras 7 – 8.

⁸⁵⁵ Kemp affidavit, Vol H, p16, para 22.

⁸⁵⁶ Transcribed reopened inquest record, Vol 5, p417.

⁸⁵⁷ Kemp affidavit, Vol H, p17, paras 22 – 25.

communist. Reference to the SACP as the CPSA would not have been a simple mistake to a communist. It is a fundamental mistake in terms of a communist's image. It is also inconceivable that an illegal party such as the SACP will make a list of names with the knowledge that those people would get arrested. This is just not possible.⁸⁵⁸

177. Ronald Kasrils ("**Mr Kasrils**") also gave testimony disputing this notion of the SACP issuing its members with instructions on suicide. Mr Kasrils testified that he joined the SACP in 1961.⁸⁵⁹ While living in London he helped reorganise the SACP and ANC underground in South Africa. From London, he would send literature to South Africa for distribution by those recruits that he had trained. He sent many young foreigners (known as "**the London Recruits**") on holiday trips to South Africa in order to secretly distribute propaganda for the liberation movements. This proved to be highly successful and tens of thousands of leaflets were distributed by way of bucket bombs and postings.⁸⁶⁰
178. Mr Kasrils testified that, although he never met Timol, he knows Timol was trained by Jack Hodgson.⁸⁶¹ Recruits were trained on how to deal with interrogation. Part of this was that they were instructed that in the event of arrest they should hold out on giving any information for 24 – 48 hours to allow their comrades time to escape or hide.⁸⁶² There was never any instruction to commit suicide. This was not part of the SACP's doctrine and philosophy.⁸⁶³
179. He further testified that he thinks Timol's interrogation and torture would have been far more severe compared to that of Essop's because the SB considered him an important catch. The SB knew that Timol had been to London, unlike Essop, and he had probably received training.⁸⁶⁴ It seems the SB suspected Timol of being behind the multiple leaflet bombing and banner unfurling in 5 cities throughout South Africa in 1970 and

⁸⁵⁸ Transcribed reopened inquest record, Vol 5, pp414 – 415.

⁸⁵⁹ Kasrils affidavit, exhibit H10, p2, para 4.

⁸⁶⁰ Kasrils affidavit, exhibit H10, p4, para 11.

⁸⁶¹ Kasrils affidavit, exhibit H10, pp4 – 5, paras 12 – 13.

⁸⁶² Kasrils affidavit, exhibit H10, p5, para 15.

⁸⁶³ Kasrils affidavit, exhibit H10, p5, para 17. See also affidavit by Snuki Zikalala, Vol H, p57, para 40.

⁸⁶⁴ Transcribed reopened inquest record, Vol 11, p 884.

1971. In fact these campaigns were carried out by the London Recruits. Timol was not involved.⁸⁶⁵
180. Mr Kasrils dismissed the other notion that Timol committed suicide because he was afraid of a long prison sentence. He stated that SACP recruits saw lengthy prison sentences as a badge of honour.⁸⁶⁶
181. Mr Kasrils also testified that although he had never seen the “*Frelimo Memorandum*” which was an exhibit in the original inquest, presumably handed up to support the notion of suicide, the reference to suicide is jarring. This statement does not flow with the rest of the document, especially since it has not been elaborated on. It was never the SACP’s practice to sign off a document with a name, as is the case with the “*Frelimo Memorandum*”. The SB surreptitiously inserted this statement, as they often seized typewriters used by comrades. The SB could have easily made insertions to suit their needs.⁸⁶⁷
182. With regards to “*Inkululeko – Freedom no. 2*”, Mr Kasrils testified that he assisted in writing parts of the document, he in fact wrote most of it. With the exception of the last 5 (five) paragraphs – the ‘*Stand Firm*’ portions – the document is authentic. He highlights the fact that the SACP would not have used certain reference and that it is clear from the document that whoever inserted those portions was translating what he wanted to say from Afrikaans to English. The use of the English language, in that section, is poor.⁸⁶⁸ The added insertion has several examples of poor English that would not be in any other document published by the SACP. Authors of SACP publications were concerned with the flow of English and their publications needed to be simple for their people to read, and had to be in good English.⁸⁶⁹
183. Mr Kasrils further testified that reference to the SACP as the CPSA is a mistake that members of the SACP would never make some 18 years after the CPSA had been disbanded and replaced by the SACP.⁸⁷⁰ The SACP would never mention names in

⁸⁶⁵ Kasrils affidavit, exhibit H10, p6, paras 18 – 19.

⁸⁶⁶ Transcribed reopened inquest record, Vol 11, p883.

⁸⁶⁷ Kasrils affidavit, exhibit H10, p7, paras 20 – 22.

⁸⁶⁸ Kasrils affidavit, exhibit H10, p8, paras 25 – 26.3.

⁸⁶⁹ Transcribed reopened inquest record, Vol 11, pp 893 – 894.

⁸⁷⁰ Kasrils affidavit, exhibit H10, p9, para 26.5.

its documents (especially if the document were a secret document) for fear that it would surely fall into the hands of the authorities.⁸⁷¹ Having written most of the document, Mr Kasrils could say with absolute confidence that the last paragraphs of “*Inkululeko – Freedom no 2*” are obvious forgeries manufactured by the SB.⁸⁷²

⁸⁷¹ Transcribed reopened inquest record, Vol 11, p895.

⁸⁷² Kasrils affidavit, exhibit H10, p9, para 28.

ANNEX B: EVIDENTIAL CONSIDERATIONS

The incomplete record from the 1972 inquest proceedings

1. The original record from the original inquest is incomplete. In coming to a conclusion in this reopened inquest, the record of the original inquest needs to be taken into account and properly considered by this Court. In the light of the fact that the record from the original inquest is incomplete, how would these proceedings be impacted?
2. From the documents downloaded from the University of Witwatersrand's Historical Papers Research Archive Website ("**Wits Archives**"),⁸⁷³ it would appear that, the transcripts of the court proceedings from the original inquest record constitute about 1157 pages. However, the transcript – from the original inquest – that is currently before this Court only commences from page 653 and concludes with page 1157.⁸⁷⁴ The other documents that were downloaded from the Wits Archives website are the various exhibits that were handed up and relied on during the original inquest. These exhibits consist of exhibits A to YY.⁸⁷⁵
3. The first 652 pages of the transcript are not available on the Wits Archives website. In an effort to obtain these missing pages of the transcript, along with the original photographs of the late Ahmed Timol's body, Captain Benjamin Nel ("**Captain Nel**") of the South African Police Service ("**the SAPS**") took every reasonable effort at attempting to locate these documents. He was however informed, by the Assistant Director of the Johannesburg Magistrate's Court, that the original inquest records were destroyed after a period of 10 (ten) years. This was done in accordance the departmental codified instructions on archives.⁸⁷⁶
4. In a further effort of ensuring that the complete record is before this Court, attorneys for the Timol family requested the assistance of the family members of the original counsel and attorneys who represented the Timol family in the 1972 inquest. Unfortunately they were unsuccessful as none of these parties had these documents. The prosecution

⁸⁷³ <http://www.historicalpapers.wits.ac.za/?inventory/U/collections&c=AK3388/R/9141> accessed on 25 June 2017 at 05h50.

⁸⁷⁴ See Vol A.

⁸⁷⁵ See Vol B.

⁸⁷⁶ Captain Nel affidavit, Vol C, para 4, p1. See also annexure A thereto, p14.

team approached the then counsel for the police, also without success. We are not aware of any steps taken by the SAPS to consult their own records and archives.

5. With the exception of Rodrigues, all of the SAP members that gave testimony in the original inquest are deceased.⁸⁷⁷
6. Section 17A(2) of the Act requires for the existing record of the proceedings, “as far as possible”, to be placed before a court for inquest proceedings to be reopened and disposed of. The Act does not prevent an inquest judge from making a finding in the absence of a complete record. The Act only requires that the existing record of the proceedings be supplied to the extent that it can be supplied.
7. The existing record in these proceedings, to the extent that it can be supplied, is already before this Court. In addition to that, the existing record has been supplemented by new evidence that has been of immense assistance to this Court during these proceedings. It is accepted that the record is incomplete, however we submit that the available portions of the record are adequate enough for a proper consideration of this inquest. In **S v Chabedi**,⁸⁷⁸ the SCA held as follows regarding the adequacy of records:

“[5] On appeal, the record of the proceedings in the trial court is of cardinal importance. After all, that record forms the whole basis of the rehearing by the court of appeal. If the record is inadequate for a proper consideration of the appeal, it will, as a rule, lead to the conviction and sentence being set aside. However, the requirement is that the record must be adequate for proper consideration of the appeal; not that it must be a perfect recordal of everything that was said at the trial. As has been pointed out in previous cases, records of proceedings are often still kept by hand, in which event a verbatim record is impossible

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

⁸⁷⁷ Captain Nel affidavit, Vol C, para 5, p1.

⁸⁷⁸ S v Chabedi 2005 (1) SACR 415 (SCA).

(Emphasis added)

8. The above principle applies in respect of criminal appeals. An inquest is not a criminal trial and a reopened inquest is not a criminal appeal. However, to the extent that this principle can be applied to inquests or reopened inquests, we submit that the current record from the original inquest, as well as the new evidence presented in this inquest is more than adequate to enable this Court to set aside the finding made in the original inquest.⁸⁷⁹

Principles of evidence and the new evidence that is available

9. It is trite that a party to any litigation proceedings must produce the original documents in court. The reason for this is that errors may be made in subsequent copies or documents may be falsified.⁸⁸⁰ However, a party need only produce the original document when the contents of the document, and not the actual existence of the document, are in dispute.⁸⁸¹ Copies of the originals may be admissible if it can be shown that the original has been destroyed or that, despite a diligent search, the original cannot be located.⁸⁸²
10. The issue in this reopened inquest is not whether the current documents that are available are in dispute or not. None of the parties have raised a dispute regarding the contents of the documents from the original inquest. The concern is that the available documents, from the original inquest are incomplete.
11. We submit that, despite the fact that there are missing documents in this regard, this Court can still come to a different finding to the one that made by the magistrate in the original inquest.

⁸⁷⁹ See in the main heads under the heading "OUTLINE OF NEW EVIDENCE".

⁸⁸⁰ Bellengère *et al*, *The Law of Evidence in South Africa – Basic Principles*, First Edition 2013 (Oxford University Press Southern Africa, Cape Town) at p60. ("**Bellengère et al**").

⁸⁸¹ Bellengère *et al*, p61. See also *Welz and Another v Hall and Others* 1996 (4) SA 1073 (C) at 1079C – E where Conradie J held: "As far as the best evidence rule is concerned, it is a rule that applies nowadays only in the context of documents and then only when the content of a document is directly in issue".

⁸⁸² *Ibid*.

12. Although some of the documents that are missing (mainly the transcript of the original court proceedings) would have been of great assistance to this Court, a considerable body of new evidence was led during the course of these proceedings that, we submit, will assist this Court in reaching a just finding.⁸⁸³ The original judgment from the first inquest is available and it is this finding that the family seeks to set aside.

⁸⁸³ See in the main heads under the heading "OUTLINE OF NEW EVIDENCE".

ANNEX C: PURPOSE OF REOPENED INQUEST & STANDARD OF PROOF

The purpose of inquests

1. Inquest proceedings are regulated by the Inquests Act 58 of 1959 (“**the Act**”). In terms of the long title of the Act, the purpose of the Act is to provide for the holding of inquests in cases of deaths or alleged deaths apparently occurring from other than natural causes and for matters incidental thereto. Accordingly, inquest proceedings are inquisitorial in nature and the main purpose of the proceedings is to uncover the truth about what happened to the deceased.
2. Section 6 of the Act makes provision for the relevant judicial officer who should preside over certain types of inquests. Depending on where an alleged incident occurred, an inquest is either presided over by a district magistrate, a regional magistrate or by a judge. However in the case of reopened inquests, the Act makes clear that such proceedings are presided over by a judge.
3. An inquest is reopened on the recommendation of the National Director of Public Prosecutions (“**the NDPP**”) after new evidence has come to the fore that has the potential of changing the finding of the initial inquest. The inquest is thus reopened if the NDPP deems it in the interests of justice to do so and if there exist reasonable prospects that the reopened inquest may be successful in setting aside the finding of the initial inquest.
4. Section 17A of the Act makes provision for the reopening of inquests. It states that –

“(1) The Minister may, on the recommendation of the attorney-general concerned, at any time after the determination of an inquest and if he deems it necessary in the interest of justice, request a judge president of a provincial division of the Supreme Court to designate any judge of the Supreme Court of South Africa to re-open that inquest, whereupon the judge thus designated shall re-open such inquest.

(2) An inquest referred to in subsection (1) shall, subject to the provisions of this Act, as far as possible be continued and disposed of by the judge so designated on the existing record of the proceedings, and the provisions of section 17 (2) shall, in so far as they are not contrary to the provisions of this section, apply mutatis mutandis to such an inquest.

(3) A judge holding an inquest that has been re-opened in terms of this section

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(a) may cause any person who has already given evidence at the inquest to be subpoenaed to give further evidence;
 (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; and
 (c) shall cause the record of the proceedings to be submitted to the attorney-general concerned.”

5. Read properly, it follows that the main purpose of reopened inquest proceedings is to ascertain if the evidence that has been presented and led at the proceedings is enough to persuade the presiding officer to set aside the original finding. In doing so, the ultimate aim is to uncover the truth and make a finding that is in the interests of justice.
6. In **FUL v NDPP**,⁸⁸⁴ Murphy J held as follows regarding the purpose of an inquest and what should ideally follow after a finding in an inquest has been made:

“[72]. An inquest is an investigatory process held in terms of the Inquests Act which is directed primarily at establishing a cause of death where the person is suspected to have died of other than natural causes. Section 16(2) of the Inquests Act requires a magistrate conducting an inquest to investigate and record his findings as to the identity of the deceased person, the date and cause (or likely cause) of his death and whether the death was brought about by any act or omission that prima facie amounts to an offence on the part of any person. The presiding officer is not called on to make any determinative finding as to culpability.

...

[77] ...The only question for the magistrate, in terms of section 16(2) of the Inquest Act, was whether the death was brought about by conduct prima facie amounting to an offence on the part of any person. A prima facie case will exist if the allegations, as supported by statements and real documentary evidence available, are of such a nature that if proved in a court of law by the prosecution on the basis of admissible evidence, the court should convict. ...”

The standard of proof

7. In **Goniwe and Others**⁸⁸⁵ the court held that the standard of proof required to make a finding in an inquest is not that as applied in a criminal trial. The test is less stringent in inquests. The court explained this rationale as follows:

“Bearing in mind the object of an inquest it is my opinion that the test to be applied is not the 'beyond reasonable doubt' test but something less stringent. In my opinion the test envisaged by the Inquest Act is whether the judicial officer

⁸⁸⁴ *Freedom Under Law v National Director of Public Prosecutions and Others* 2014 (1) SA 254 (GNP).

⁸⁸⁵ *In Re Goniwe and Others* (2) 1994 (2) SACR 425 (SE)

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.”⁸⁸⁶

8. Similarly, in ***Padi v Botha***⁸⁸⁷ 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.”

⁸⁸⁶ *Ibid* at 428D – E.

⁸⁸⁷ *Padi en 'n Ander v Botha No en Andere* 1995 (2) SACR 663 (W) at 665G.

LIST OF AUTHORITIES

Case Law

- 1 *Freedom Under Law v National Director of Public Prosecutions and Others* 2014 (1) SA 254 (GNP).
- 2 *In Re Goniwe and Others* (2) 1994 (2) SACR 425 (SE).
- 3 *Minister of Safety and Security and Others v Craig and Other NNO* 2011 (1) SACR 469 (SCA).
- 4 *Minister of Veiligheid en Sekuriteit v Geldenhuys* 2004 (1) SA 515 (SCA)
- 5 *Padi en 'n Ander v Botha No en Andere* 1995 (2) SACR 663 (W).
- 6 *Royal Hotel, Dundee, and Others v Liquor Licensing Board, area no 26; Durnacol Recreation Club v Liquor Licensing Board, area no 26* 1966 (2) SA 661 (N).
- 7 *S v Chabedi* 2005 (1) SACR 415 (SCA).
- 8 *Welz and Another v Hall and Others* 1996 (4) SA 1073 (C).

Text Books

- 1 Bellengère *et al*, *The Law of Evidence in South Africa – Basic Principles*, First Edition 2013 (Oxford University Press Southern Africa, Cape Town)
- 2 Schwikkard and Van der Merwe *Principles of Evidence* 4th Edition (Juta & Company, Cape Town, 2016)
- 3 Snyman *Criminal Law* 4th Edition (Juta, Cape Town, 2002)

- 4 Snyman *Criminal Law* 5th Edition (Juta, Cape Town, 2008)

Online resources

- 1 <http://www.historicalpapers.wits.ac.za/?inventory/U/collections&c=AK3388/R/9141>
accessed on 25 June 2017 at 05h50.
- 2 <https://mg.co.za/article/2017-08-17-timol-inquest-jessie-duarte-helps-apartheid-cop-remember-torture-he-couldnt-recall> accessed on 20 August 2017 at 11h00