

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

CASE NO.: 139/82

In the matter of:

REOPENED INQUEST: LATE NEIL HUDSON AGGETT

OPENING ADDRESS

ON BEHALF OF THE AGGETT FAMILY

INTRODUCTION

- 1 I appear on the behalf of the Aggett family together with my learned juniors, Mr Thai Scott and Ms Naseema Fakir. We are instructed by Moray Hathorn of the Pro Bono Department of Webber Wentzel Attorneys.

- 2 Some 38 years ago Dr Neil Aggett was found dead in his cell at John Vorster Square on 5 February 1982. He was the 51st detainee to die in detention in the custody of the Security Branch ("**SB**"). He was only 28 years old.

- 3 We are here today to search for the truth of what happened to Neil. The truth that was suppressed in the first inquest – and which was denied to his family, comrades, friends and the nation for some 38 years. It will be our submission that a massive and obvious fraud was perpetrated by the state in the 1982 inquest that demands the overturning of the original finding.

- 4 Neil Aggett was a dedicated medical doctor and trade union organiser. In his own words, he was an idealist. He only wanted the best for his country. He stood with the oppressed peoples of South Africa. He was deeply offended by the massive inequalities imposed by the system of apartheid.
- 5 In the words of his chief tormentor, he could have practised medicine in the affluent white suburbs of Johannesburg. If he had he would most likely be alive and prosperous today. Instead he chose to use his skills, his education and his energy to make a meaningful difference to those on the receiving end of the pernicious system of apartheid. His chosen areas of intervention were in health care and on the shop floor. In the eyes of the Nationalist regime and the hated Security Branch (SB) this was a deep betrayal of his own race group. This made him a traitor in their eyes. He was the enemy; and he was going to pay for the betrayal.
- 6 Neil was aware that his chosen path would place him at considerable risk and ultimately place him in harm's way. While he was by no means reckless, he would not have had it any other way. It was inevitable that at some point his idealism and unrelenting dedication to social justice would come head to head with the brutal machinery of the apartheid state.

THE FAMILY'S JOURNEY

- 7 The Aggett family have walked a long journey to today's hearing. Both Neil's parents, Aubrey and Joy Aggett, as well as Neil's brother, Michael went to their graves without learning the real story behind Neil's death in detention. They

had to live and die with a manifestly false official finding that nobody was to blame.

8 Neil's sister, Jill Burger, has championed the re-opening of this inquest on the Aggett family's behalf. It is Jill who Neil called when he was taken to JVS on 27 November 1981 and assured her that "*Its fine. I've got nothing to answer for*". It is Jill who vividly recalls visiting an emaciated Neil in JVS on 31 December 1981 and to whom Neil spoke of his hopes and desires post detention, including his aim to pursue a career in emergency surgery. It was Jill who received the earth-shattering news at 06h00 on 5 February 1982 that Neil had died in detention.

9 Jill, along with Neil's nephew, Stephen Aggett, have remained resolute in their belief that the first inquest into Neil's death was a fraud. It is through their persistent efforts and support that the re-opening of the Aggett inquest was made possible.

10 It is nothing less than disgraceful that the Aggett family had to wait some 26 years before a post-apartheid government reopened the inquest.

WHOLESCALE DECEPTION

11 The former Security Branch of the South African Police was a thoroughly corrupt organisation. Wholesale fabrication of evidence and deception were the order of the day. They were masters of the cover-up. Specialists like Rooi-Rus Swanepoel were quickly brought in to concoct versions and tie up loose

ends. It is our respectful view, the bulk of what was put by the Security Branch must be viewed with great circumspection. Indeed, we will submit that virtually all of it was transparently false. The challenge for this honourable Court will be to determine the snippets of truth amongst the morass of falsehoods and deception.

12 Following Neil's death, the machinery of the Apartheid State immediately swung into action to cover up the real circumstances of his death.

12.1 The State sent under-cover operatives to illegally enter the Aggett family's home to look for evidence of Neil's claimed, "*suicidal tendencies*".

12.2 The SB bugged the offices of the Aggett's lawyers and tapped their phones.

12.3 It concocted a favourable version of Neil's detention and death. It then coached its officials to stick to the fabricated version.

13 Why would the Security Branch go to such lengths if in fact what they alleged actually happened?

13.1 If it was simply a matter of a well-treated detainee, falling apart following apparent disclosures against comrades, there would be no need for such an elaborate and resource heavy cover-up.

13.2 It is the task of this Honourable Court to determine what was being covered up.

- 13.3 We will submit that the answer is plain to see. They were covering up their unlawful role in the death of Neil Aggett. Ultimately, they were covering up their role in his unrelenting torture and his killing.
- 14 In this grubby pursuit the Security Branch was ably assisted by a corrupt magistracy. The magistrate in the 1982 Inquest was one, Pieter Kotzé, who was the prosecutor in the inquest that exonerated the police in the inquest into the death of the late Ahmed Timol, ten years earlier. In that inquest Kotze distinguished himself by doing next to nothing to search for the truth. Rather than conducting himself as an independent officer of the court he aligned himself with the case of the Security Branch.
- 15 In Kotze, the apartheid state had a pliant judicial officer who could be trusted to do the right thing. In Kotze, the SB were in safe hands – and they knew it. They simply had to go through the motions. They simply had to play to the gallery.
- 16 Magistrate Kotze's court room was oppressive. Its benches were stacked with SB officers, whose presence intimidated and deterred witnesses from testifying freely. Magistrate Kotzé played the role expected of him. He intervened and curtailed cross-examination by the Aggett family's counsel and often ruled that detainees' statements were inadmissible. He ignored evidence and reached grossly improbable conclusions that were nothing less than breath-taking.
- 17 The State's efforts succeeded admirably. Magistrate Kotze's judgment in the first inquest exonerated the SB. He dismissed the detainees' evidence of torture and concluded that nobody was to blame for Neil's death in detention.

- 18 History has since revealed the reality of what Neil endured in his 70 days of detention under the section 6 of the Terrorism Act. In the *Re-Opened Timol Inquest*, the High Court found that detention under the Terrorism Act “[T]he became a tool in the hands of some members of the Security Branch, not only to torture but also to kill detainees with impunity.”¹
- 19 The High Court’s finding was by no means novel. Twenty years earlier, in its report, the Truth and Reconciliation Commission (“**TRC**”) identified that torture in security detention was routine practice and the killing of detainees by the SB was a “*strong possibility*”.²
- 20 The TRC found that the pervasive and systematic torture inflicted upon detainees paired with the inhumane conditions of their detention were sufficient to render suicides committed in detention as “*induced suicides*” for which the SB was accountable.³
- 21 The truth of Neil’s death, as a white detainee, would have been a public relations disaster for the State both locally and internationally. This was, particularly at a time when the State was becoming increasingly conscious of

¹ *Re-Opened Inquest into the Death of Ahmed Essop Timol* [2017] ZAGPPHC 652 para 43:

² TRC Report Vol 2 p 206 para 169:

“The Commission has taken into consideration the evidence of victims of torture which could well have led to death, especially those cases in which similar forms of torture did lead to death. A number of cases were recorded of detainees having their heads bashed against the wall and of detainees who were suspended by their feet outside windows of buildings of several storeys, raising the strong possibility that at least some of those detainees who allegedly committed suicide by jumping out of the window were either accidentally dropped or thrown.” (Our emphasis).

³ TRC Report Vol 2 p 207 para 176:

“The Commission is of the opinion that, given the extensive evidence of physical as well as psychological torture, suicides under conditions of detention should be regarded as induced suicide for which the security forces and the former government are accountable.”

the implications of its deteriorating international image, with the death of Steven Biko resulting in the French navy cutting key military contracts with South Africa. There was also the matter of Lieutenant Stephan Whitehead, an ambitious young security branch officer with powerful family ties in the force, for whom responsibility for Neil's death would have spelt the end of his career.

OUTLINE OF THE FAMILY'S CASE

- 22 It is the Aggett family's firm belief that Neil was killed at the hands of the SB officers, either directly or through unrelenting systematic torture, abuse and neglect which pushed him to take his own life, for which the relevant Security Branch officers must be held responsible for.
- 23 The Aggett family's central theory of the case is that Neil was killed at the hands of the SB officers, either directly or through systematic torture and neglect which pushed Neil to take his own life, for which the relevant security branch officers must be held responsible for.
- 24 This theory of the case says that the police went to great lengths to cover up one of two possible causes of death; namely that:
- 24.1 Neil's suicide was induced by the conduct and circumstances brought about by the SB; or
- 24.2 Neil was murdered by the SB by staging his hanging while in an unconscious state.

Conditions of Detention

- 25 History has shown that the conditions of Neil's detention bore no resemblance to the version that the SB placed before the original inquest court. The family legal representatives have conducted a number of witness consultations with former detainees that were held at JVS around the same time as Neil's detention.
- 26 We will be placing similar fact evidence before this Court to demonstrate that that torture and ill-treatment at the hands of SB at JVS at that time was routine and commonplace. This torture ranged from abusive treatment such as sleep deprivation, humiliation and forced exercise to physical assault and electric shock treatment.
- 27 I pause to pay tribute to those young men and women who stood up to the Apartheid state and as a result were terribly abused in detention. People such as Barbara Hogan, Firoz Cachalia, Frank Chikane, Prema Naidoo, Jabu Ngwenya, Ismail Momoniat, Sisa Njikelana, Auret van Heerden, Sydney Mufamadi, Ebrahim Ismail Ebrahim, Maurice Smithers, Gavin Andersson, Keith Coleman and many others. We salute their courage.
- 28 We will corroborate the evidence of the detainees with the evidence of officials formerly in the employ of the Security Branch and police at JVS. They will confirm that the abuse of detainees was a day to day reality.

- 29 We are grateful that there are some former police officers who are willing to speak the truth of what really took place in JVS during those years. We appreciate that in the early 1980s they found themselves in a terrible predicament. They were required to lie under oath, failing which, not only would their livelihoods and careers be at risk but they themselves might be physically abused or worse. They had every reason to fear the repercussions.
- 30 While they did the commit the crime of perjury in lying under oath in the 1982 Inquest that crime has long prescribed and they face no legal consequences for now disclosing the truth. We encourage more police officers to come forward and unburden themselves and to help the Aggett family heal and reach closure.
- 31 To those former police officers, some of whom will appear under subpoena before this court, we say now is the time for honesty and truth. Those who testify honestly are likely to earn the gratitude of the family. Those who persist with the charade and cover-up must be held to account. We remind these officers that those who lie under oath before these proceedings will commit the crime of perjury and the family will vigorously pursue such cases.

The State Cover-Up

- 32 I have already alluded to the elaborate cover up concocted by the state. We will demonstrate that the investigation of Neil's death was little more than a cover up from start to end. The crime scene investigation was conducted in such a sloppy, inept and ham-fisted manner, by supposedly experienced police

officers, that one must conclude they were simply taking steps to deflect attention from the truth of what happened.

- 33 One of the very first tasks carried out by the investigating officer was to retrieve a SACP document from SB files that had been doctored by the SB to read that detainees should rather commit suicide than betray their comrades. Indeed, this very same fabricated document was relied upon by the Magistrate in the first Timol Inquest to justify the finding that Ahmed Timol had committed suicide by jumping out the 10th floor window of JVS. This speaks volumes as to the mindset and aim of the police investigation.
- 34 Evidence will be led as to the strenuous and illegal attempts were made to find evidence of any suicidal tendencies on the part of Neil. As mentioned, an operation that was authorised at the highest levels, involving Whitehead himself, involved the illegal entry into the Aggett family home.
- 35 It is hardly surprising that the cover-up programme included the bugging of the Aggett family lawyers, including the chambers of George Bizos SC. The gleaned information was then used to hold mock trials and to coach police officers on how to stick to the fabricated version.

The Medical Evidence

- 36 We have considered the medical evidence before the first inquest court. While the medical evidence points to death by hanging, it does not exclude the

possibility that Dr Aggett was murdered by hanging in an unconscious, semi-conscious or low-conscious state.

- 37 We will call an experienced expert forensic pathologist to testify who will confirm that a staged hanging cannot be excluded on a scrupulous examination of the available medical evidence. He will also point out several shortcomings and mistakes in the post mortem process that may have resulted in the missing or overlooking of important additional evidence of torture.

The kikoi and other evidence

- 38 The instrument of Neil's death was a cloth or kikoi that was found encircling Neil's neck and double knotted just below his right ear. The first inquest court found that the kikoi was given to Neil while he was in his cell and he was allowed to keep the cloth.
- 39 The possession of such material in a security police cell would have amounted to a serious breach of the prevailing police standing orders. Detainee witnesses will testify that they were not permitted to wear belts for fear of a detainee using a belt to cause themselves harm. Jill Burger recalls from her visit of Neil having seen Neil without a belt or shoelaces, both of which could have been used by Neil to take his own life.
- 40 Evidence will be led that detainees were not even allowed to keep their towels following showers and that police officials regularly searched detainee's cells to

ensure that nothing illegal was in the cells. They will say that if a kikoi was found it would have been confiscated.

41 No investigation was conducted by the SB or the first inquest court as to why Neil was permitted to keep the kikoi in his cell, or who was to blame for this.

42 We will lead evidence on several other matters that tend to undermine the findings of the first inquest court. These include evidence that,

42.1 contrary to the claims of the SB, they had unfettered access to detainees on the second-floor cells; and

42.2 Cell visits were skipped during the very hours that Aggett was alleged to have committed suicide;

42.3 the remarkable fact only one solitary fingerprint was lifted from the grille from which Aggett had climbed and allegedly hanged himself. A fingerprint expert will testify that this is unusual, to say the least.

43 We will highlight how the Security Branch deliberately prevented Neil from meeting with officials who might have intervened on his behalf. We will consider the complaints of assault and abuse made by Neil himself; the last one made on the very morning of the alleged suicide. We will submit that this is not the conduct of someone who had given up on life but rather the conduct of someone who was seeking redress and a reckoning with those who abused him.

DELAY

- 44 The Aggett inquest, as with all the apartheid-era cases, have been plagued with ongoing delays. We now know that this was not just a question of indifference or neglect on the part of the SAPS and the NPA. We now know that post the winding up of the TRC, decisions were taken at the highest political level to close down the investigations into the cases referred by the TRC to the NPA (the TRC cases), including the Aggett case.
- 45 In the application brought by Joao Rodrigues to permanently stay the prosecution against him for his role in the murder of Ahmed Timol, the NPA, in papers filed on 4 February 2019, finally admitted that political interference stopped the investigations into the TRC cases.⁴
- 46 Such interference amounted to state capture of the criminal justice system in relation this class of cases. It allowed powerful forces in society to impose their will on institutions meant to uphold the rule of law. In doing so they guaranteed total impunity for some of the most serious crimes ever committed in South Africa.
- 47 It is remarkable that to date there has been no inquiry into this monumental travesty of justice, notwithstanding repeated calls for an inquiry by former TRC commissioners and a recommendation by the full bench of this Honourable Court in the Rodrigues matter that it be addressed.

⁴ *Joao Rodrigues v NDPP & Ors* Case No. 76755/18 Gauteng Division. See supplementary affidavit of Adv TP Pretorius SC (annex **LC7**) and Adv CR Macadam (annex **LC8**). Full bench judgment available at: <http://www.saflii.org/za/cases/ZAGPJHC/2019/159.html>

- 48 The family's representatives met with the then NDPP and members of his staff four years ago almost to the day, on 19 January 2016. The Aggett family's representatives provided the NDPP with evidence warranting the reopening of the inquest. Amongst the evidence that was presented included conclusive evidence that SB members had perjured themselves in the first inquest on the question of torture. This was enough to warrant the reopening. Yet it has taken 4 years to get today.
- 49 Several threats of legal action had to be made against the NPA and Minister of Justice. The extensive delay has caused the Aggett family to suffer great prejudice. The key suspect in Neil's death was his chief interrogator, Lieutenant Stephan Whitehead. Whitehead reportedly died in the very week that the Minister eventually announced the re-opening of the Aggett inquest in April 2019. Had the NDPP and the Minister acted diligently and without delay following the meeting of January 2016, the Aggett inquest could have been held before Whitehead's death – and he could have been held to account for the role he played in Neil's death.
- 50 Even after the Minister's announcement in April last year there was more inaction and the family again had to threaten legal action to have the Minister's decision communicated to the Judge President in terms of section 17A of the Inquests Act, 58 of 1979, which was only done in August 2019.

GRATITUDE

51 The Aggett family wishes to extend its gratitude to a number of individuals and institutions that have made the re-opening of this inquest possible.

52 Firstly, the Judge President of this division, who upon receiving the Minister's decision, acted expeditiously to procure the hearing of this matter. He called us into a meeting within 24 hours of receiving the Minister's directive. The family is grateful for and recognises his efforts.

53 Yasmin Sooka, former truth commissioner, and former head of the Foundation for Human Rights (FHR) has stood by the Aggett family and many other families through thick and thin. We are enormously grateful to the FHR for their support which made our investigations possible.

54 Needless to say, this matter could not have happened without the sterling services of the Pro Bono Department of Webber Wentzel attorneys.

55 Private investigator, Frank Dutton, painstakingly investigated this case. His track record speaks for itself. Without his backbreaking investigations this inquest would never have happened.

56 We must also pay tribute to the legal team led by George Bizos that carried out back breaking work to find the truth in the most adverse of consequences. These are counsel George Bizos and Dennis Kuny, also assisted by Mahomed Navsa; and Bell, Dewar and Hall attorneys, including William Lane, David

Dison, and James Sutherland. They were up against a system that was stacked against them. Today we simply build on their remarkable labour. We are indebted to them.

57 Lastly, we must thank the Neil Aggett Support Group (NASG) and the Food and Allied Workers Union (FAWU) for keeping the memory of Neil Aggett alive over all these years; and pushing for justice, including the laying of criminal charges against Whitehead and others in 2014. In particular we must pay tribute to the late Brian Sandberg former NASG co-ordinator and Aggett's *long-time* friend who he had known in school.

CONCLUSION

58 While there has been an inordinate delay in reopening this inquest it nonetheless is a historic day. It marks the beginning of the road to closure for the Aggett family. While they would have preferred to be able to hold the central role players to account, most of whom have died, they are grateful that this inquest has been reopened.

59 In conclusion it is our intention to demonstrate that there are in fact people and institutions to blame for Neil's death in detention; and that first inquest finding of nobody to blame must be overturned. We will show that a massive fraud was perpetrated before the first inquest; and that the preponderance of probabilities points overwhelmingly to the fact that Neil died at the hands of SB officers, either directly or through systematic torture and neglect which led him to take his own life. In either scenario, the relevant SB officers must be held

responsible for Neil's death and an appropriate finding should be made in terms of section 16(2)(d) of the Inquest Act.

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20 January 2020