

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: I01-2017

DATE: 2017-08-24

INQUEST INTO THE DEATH OF:

AHMED ESSOP TIMOL

BEFORE THE HONOURABLE MR JUSTICE MOTHLE

ON BEHALF OF THE NATIONAL PROSECUTION

AUTHORITY:

ADV PRETORIUS

ADV MALOTWA

ADV SINGH

ON BEHALF OF THE FAMILY:

ADV VARNEY

ADV MUSANDIWE

ADV FAKIR

ON BEHALF OF THE SAPS:

ADV LETHOLE

VOLUME 16
PAGES 1096 - 1201



**DIGITAL AUDIO
RECORDING TRANSCRIPTIONS**

Glen Manor Office Park
138 Frikkie de Beer Str
Block 5, Suite 1/G
Menlyn

Tel.: (012) 326 1881
Fax: (012) 348 3542
www.digitalaudio.co.za

PROCEEDINGS ON 2017-08-24

COURT: Ja?

CLERK: The reopening of an inquest, case number I01/2017.

MR PRETORIUS: May it please the court, M'Lord. I appear with advocate Chapman Singh, for the NPA.

COURT: Yes?

MR VARNEY: As the court pleases, I appear on behalf of the Timol family together with my learned colleague Musa Msindiba.

COURT: Yes?

10 MR COETZEE: As the court pleases, M'Lord. I appear on behalf of the implicated members of the police.

COURT: Yes, thank you. Yes, Mr Pretorius?

MR PRETORIUS ADDRESSES THE COURT: Thank you, M'Lord. I did hand my heads up to the court yesterday, M'Lord. I have substituted it, there was one or spelling mistakes and I have also added an index to it, M'Lord. So it is the same heads but just with a few small alterations, as the spelling mistakes, etc. M'Lord.

COURT: Yes.

20 MR PRETORIUS: M'Lord, after the finding in the first inquest there was major disquiet and I must start like I start with my opening address, M'Lord. I must refer ironically to the very quote from the decided case of *Timol v Magistrate of Johannesburg*. Nevertheless, the inquest must be so thorough that the public and the interested parties are satisfied that there has been a full and a fair investigation into the circumstances of the death.

M'Lord, now we can say *audi alteram partem* rule has been complied with. We have given the detainees a voice, M'Lord so both sides have been heard now. You have got the benefit now of more than a thousand extra pages, so while you rely on the old inquest you have got an extra new evidence that you can rely and that we can say that it was a full and a fair investigation, M'Lord. M'Lord, this is a reopened inquest in terms of Section 70(A). It is unique, in other words after the determination of the original inquest, it was deemed necessary and interest of justice that a judge of the Supreme Court
10 should reopen this inquest.

I want to emphasize, the word 'interest of justice'. This is what it is all about. It is to set the record straight, M'Lord. It is the interest of justice, it is not an appeal or it is not a review, it is in the interest of justice, M'Lord. Such a reopened inquest should as far as possible, M'Lord be continued and dispose of on the existing record of the proceedings. And Section 70(2) of the Act, also apply. As to this court's powers the prosecution will address you a little bit later on in regard to the findings that you will make, M'Lord, but in general we have taken further evidence as the Act prescribed.

20 But to a certain extent the original record is still very important, M'Lord. You have got to have the original record and for instance if you take the post-mortem, we have got very good evidence of the two forensic pathologists now. But they are relying on the original inquest, M'Lord and that is just as the Act prescribe. There can be no question, M'Lord that the voice of detainees were not heard

before in this close circuit and this close system that we had, M'Lord, like prof Dan Vorster described it. So it was in the interest of justice that everybody should be heard.

But you have also got the benefit now of the forensic pathologist, Dr Holland and Dr Naidoo that analysed the original inquest, M'Lord and they are of appreciable help and similarly we got the aeronautical engineer now, Mr Moodley that can help you a lot and that is important, M'Lord and I want to quote from the original inquest because it is so interesting. Brigadier Pattel testifying on the 7th day
10 of the original inquest. He answered some of the questions from the presiding magistrate, Mr J J L De Villiers. He said the following, M'Lord:

“Had sergeant Rodrigues pushed the deceased, dead or alive from the window, the body would have fallen perpendicular and landed in the cement much closer to the wall.”

He testified that he measured that Mr Timol had hit the ground, 3m away from the building.

20 *“The body being where it was, indicated to me that a certain amount of propulsion had propelled Mr Timol away from the building.”*

He told the court that from the 10th floor there was a sheer drop with no projections which the body would have struck on the way down, causing it to be propelled forward. Mr Issy Maisel's queen counsel, M'Lord CQ, M'Lord for the Timol family asked brigadier

Pattel, if he had done any experiments regarding falling objects. So brigadier Pattel answered:

“No sir, I have left that Izak Newton, I only knew what I have read.”

Now, M'Lord that is actually more tragic that it is comic. That is exactly the reason why we had to reopen this inquest, why we needed the expertise of a Mr Moodley, of an aeronautical engineer. It is very easy for the layman to misunderstand the trajectory of a body, and that is exactly why it was in the interest of justice and that is why I
10 took that quote, M'Lord. So on the one hand you have got to rely on the original inquest, but on the other hand, M'Lord you have got to analyse that inquest very meticulously to see if in the interest of justice you should not change some findings.

COURT: The difficulty, Mr Pretorius is that the... as you are aware 652 pages of the original inquest proceedings are missing, and those have to do with the examination of the police who testified and I found it strange that only the evidence relating to the police should disappear. Now, I am unable to make an assessment as to what their performance was in court because of the disappearance of those, how
20 do I deal with that situation?

MR PRETORIUS: That is quite a shortcoming that we do have, M'Lord but to a big extend we still have the affidavits, all the affidavits is available and I must say, the original inquest court did sum up all the police's evidence so we have got a complete summing up of the evidence in the original inquest, M'Lord. There is one or two things in

cross-examination obviously that is not there.

COURT: Yes.

MR PRETORIUS: But for the most important one we also had Mr Rodrigues there, so you could observe Mr Rodrigues while giving that, so the crucial witnesses, M'Lord is still very important and if you take brigadier Pattel for instance, even the inquest court find that Pattel, he did not collude with general Buys, etc. so we found him to be a very, very credible witness and to a big extend it is brigadier Pattel that brings out the biggest contradictions with Rodrigues' evidence. It is
10 him that has taken that photographs and insisted that Pieter van der Merwe, the photographer come back that very same night.

So, yes, M'Lord there are shortcomings but I still say we have got the affidavits and we have got a total summing up of the evidence in the judgment of the first magistrate.

COURT: Yes.

MR PRETORIUS: And I do not think it is too big a shortcoming, M'Lord.

COURT: Yes.

MR PRETORIUS: Thank you, M'Lord. If I can do a summary of the
20 submissions to the court, why I think it is in the interest of justice and why your your findings should differ from the original finding. In accordance with Section 17(a)(3)(b) of the Inquest Act it stated that you, M'Lord shall record any finding that differs from the finding referred to in Section 16(2) as well as in the respect in which it differ. Now, M'Lord there is a few themes, I know you have got to answer

just four questions and I think just two of them is in contention, the others... as to the identity and the date on which Mr Timol died, it would be common cause it is just the other two.

But there are certain themes that I think that you should need address. In the original inquest, M'Lord there was a main finding that there was no assault on Mr Ahmed Timol, and my respectful submission to you is that is wrong, that should be changed. It is said, *'Hy is nie aangerand nie, en geen rede om al die getuienis te verwerp nie, dat Timol op 'n beskaafde en menslike wyse behandel is.'* That,
10 M'Lord is wrong and in the interest of justice it must be rectified.

There was a finding that there was no torture, M'Lord and closely related to that was whether Ahmed Timol was involved in the brawl. Now firstly, M'Lord we have got the evidence of Dr Salim Essop here, that vividly described how he was brutalised and as being said quite often in this court, if that happened to him what would have happened to the bigger fish in this. We have got the evidence of Dr Dual Sajeetim and Dr Nike so pointing the saying about Van Tonder that was kind to him and he only remember that kindness, M'Lord.

Now, all this confirms assaults and torture on the detainees,
20 M'Lord. There can be no question that they were assaulted.

COURT: Significantly the police witnesses only dealt with assault. They denied that there was any assault or any assault that they witnesses. But they did not touch the broader subject of torture. In fact, Els who testified, conceded that by making a detainee stand the whole night, being under interrogation that is a technique that they

applied, which is a form of torture.

It may not be an assault that results in physical harm that we see, but it is a form of torture and one has to look at those, including electrocution, which obviously the doctors may not have been able to pick up from the body, but then one has to look at the concept of torture broadly and not confine it to assault only. And I want you to deal with that, to comment on that.

MR PRETORIUS: Yes.

COURT: But the evidence as it stands now, does it allow me to make
10 a finding that (1) all the detainees were tortured and (2) that some, if not all of them, were assaulted and (3) that the interrogators are the people who were responsible for that.

MR PRETORIUS: With respect, quite M'Lord, it is just like this court has put it. If we take the evidence of prof Dan Vorster, and he described it quite well that it is not just physical assault that should be taken into account, but it is psychological also, being arrested. He describes the background an the scientific approach to torture quite well, M'Lord if you take his evidence.

COURT: Yes.

20 MR PRETORIUS: And quite rightly, and I have put it in my heads that we got unexpected assistance in regard to this point of torture from Els. He said yes, it was acceptable. You try to break the man as quickly as possible with sleep deprivation, it is acceptable. And that in itself, M'Lord is torture. So this court can make that finding.

COURT: Yes.

MR PRETORIUS: In regard to that, M'Lord. Also very interesting, dr Joao Sajectim that said, well they immediately took away her watch, so as to disorientate her and very interesting here also is prof Nike, how they did the specific torture that would leave no marks if they use cloth to put that and hang you on the broomstick, M'Lord and it does not leave any specific marks, just your hands is the one. There can be no question that he was tortured in that fashion.

COURT: Yes.

MR PRETORIUS: I mean, we get it in his file, a physiotherapist came
10 to see him for 3 weeks, they had to... so there can be no question that he was tortured in that regard and also very interesting, M'Lord it is not just the question of torture for Dr Salim Essop, it is also how. Hanging him over the stairs, M'Lord and then how to cover it up. If we look at prof Nike's evidence specifically, all of them said yes, he stood like that, so the cover up was quite clear in that one, M'Lord how they covered it up to say well, everywhere whether he sit or stand he stood like this, so you could not see his hands, M'Lord.

So everybody in their statements covered up like that, so it is a number of matters that you have got to take into consideration
20 and yes, we also get the evidence of Els that helps us about torture, M'Lord. If we combine it, all the strands then is pulled together by Dan Vorster where he did his scientific research and said on a systematic basis and it is quite interesting, M'Lord he has done this research 35 years ago, and it related to the 70's and the 80's and he pull all that strands together of the similar facts, M'Lord.

COURT: Yes.

MR PRETORIUS: And then we add Paul Erasmus' evidence.

COURT: Yes.

MR PRETORIUS: So if we got the medical evidence, the evidence of the detainees themselves, Paul Erasmus, Dan Vorster, the totality of evidence my respectful submission to this court is that you can make a finding of torture, first thing, M'Lord and secondly, if you take the injuries on the body of Ahmed Timol, you can make a finding of assault on Ahmed Timol, M'Lord.

10 COURT: Yes.

MR PRETORIUS: So I say, that is the starting point. The first finding that differs from that court would be, he was assaulted, Ahmed Timol was assaulted, M'Lord on the totality of evidence.

COURT: So in other words from the missing documentation there would not be any evidence that shows that he was injured in a brawl somewhere, because that is what the magistrate found. He attributed the injuries as having been sustained in a brawl before his arrest.

MR PRETORIUS: Exactly, M'Lord and that is why the evidence of a person like Dr Salim Essop was so important to say this is the kind of
20 person that Ahmed Timol was. He was a kindly type of person that did not go around and got involved in brawls. M'Lord, on the probabilities you can find that he would not have become involved in a brawl and we have got direct evidence to that, M'Lord also on the affidavits. People that have seen Ahmed Timol on that Friday afternoon and even dr Salim Essop can say there was no injuries on

him.

And low and behold it is an double edged sword also, M'Lord all the witnesses from the police said well, we did not see that he was assaulted but at the same time, and I will quote it to you, it is in my heads also, they also had to say but we also did not see any injuries on him, so it is a double edged sword that one, and I quoted it to you. So, M'Lord the first point I want to make is and the first scene is, you can make a different finding in regard to assault and torture on Ahmed Timol.

10 The second big theme that I want to address to you is the question relating to suicide and closely related to that theme, M'Lord is a reason for suicide. Now, what I want to state there, firstly I want to say there can be no question that this court can find that the last part of Inkululeko 2 is a falsification and a crewd one at that, you can find that, M'Lord. Ronnie Kasrils' evidence proved that that last little part is a total falsification, M'Lord.

20 But you can combine that evidence of him with Essop Pahad's evidence, Stephanie Kemp, but also Paul Erasmus that talked about Stratcom and how they falsified things, M'Lord. If you take the totality of the evidence, you can find that that reason that they wanted to present to the court, about the policy of the Communist Party, you can find that that is a falsification, M'Lord. Secondly, in regard to the same theme of suicide, M'Lord I respectfully submit that this court can find that the shock on the face of Ahmed Timol when the name Quinton Jacobson, Henry and Martin was mentioned, and

that they were identified, you can also reject that version, M'Lord.

COURT: Before we get to that version, still on this publication of Inkululeko 2, towards the end it says 'Issued by the Communist Party of South Africa' and we know that at that time that organisation had been dissolved, it had been banned, in fact and fest in terms of Section 50 of the Suppression of Communist Act and thereafter it was dissolved and at the time of this particular publication, there was in existence the South African Communist Party and not Communist Party of South Africa.

10 Could the magistrate have seen that difference?

MR PRETORIUS: I am not sure whether the magistrate would have picked that up if there was no evidence to that effect, M'Lord. I am not sure whether everybody would have been *ofe* with the smaller details, the nuances that people that are well acquainted with it would know. I do not know whether he should see it, but now it is quite obvious that it is a big... it is like an Afrikaner like me trying to make the language mistakes that we find in that last part, M'Lord, it is [intervene]

COURT: But then the obvious, the other obvious glaring problem with that document is that it is dated February 1972, about 4, 5 months
20 after Timol had passed on. If it was produced in February 1972, how could the magistrate not have seen that this document is dated February 1972 and Mr Timol died in 1971 and therefore how that could be a reason for him to commit ... I just could not understand the reasoning there.

MR PRETORIUS: It is quite right, M'Lord. Once again this court hits

the nail on the head there, M'Lord that is quite right there. Maybe we can find a reason, if we have got to find a reason for that is because only a small part of that publication was quoted to the court. It was not necessarily handed in, that just part was quoted about suicide was quoted to him and that is possibly the reason and it was only in the new Aggot that it was used, M'Lord so I am not sure that the whole document was handed in, in ... [intervene]

COURT: Yes, yes Mr Bizoz said that, that to his recollection is was not handed in in the evidence, but he said 'I came to be in possession
10 of it.' In his judgment. The magistrate says 'I came to be in possession of it.' How, he does not explain. From whom, he does not explain and this are some of the problems that I have with his conclusion on that document, but I take note of what you are saying, so you may proceed with the other... [intervene]

MR PRETORIUS: Thank you, M'Lord so I say with big confidence, can find that that is a total falsification, M'Lord. The second one of this theme of suicide is that all of a sudden all three of the gentlemen in that room could see shock on the face of Ahmed Timol when Quinton Jacobson, Martin and Henry's name was mentioned. That
20 you can also reject, M'Lord as a cover up and as a scam. The evidence of advocate George Bizoz as well as Salim Essop and a number of witnesses, prove directly that there was no political link between Quinton Jacobson and Ahmed Timol.

M'Lord, so there was no reason that there should be a shock, I am not even talking about the improbability of seeing the

shock from the top there, but once again it is like the folding arms cover up, M'Lord where all three of them say the same thing, and say look shocked when that happened, and this is also where Paul Erasmus' evidence come in.

Obviously he would have been questioned about Quinton, Martin and Henry to see if they were politically involved, and like Stratcom they have got to base it on something realistic, so that is the reason why they would bring in that and I am submitting to this court that you can find that that is another cover up by the police, all three
10 mention it in their statements, M'Lord and it is a cover up. And the further one about suicide also, is once again all three of them mentioned according to their opinion the long term of imprisonment would have been another motive why he committed suicide.

Now, firstly that is inadmissible, opinion evidence of a policeman. If I have called Dan Vorster or Diane Chandler or a psychologist then they can venture opinion like that, but once again the long term imprisonment would not have been a motive, M'Lord. The bottom line is that you can reject the finding relating to suicide. That is the submission that I make to this court, M'Lord so ... and my
20 learned junior also said the evidence of Essop [indistinct] was very important here as to the cultural taboo of this type of thing, M'Lord so in regard to suicide this court can make a finding that the well prepared typed version of the security police, including the opinion about the long term imprisonment and the shock about Quinton Jacobson, you can reject that version, M'Lord and say that this was a

cover up and that it was not suicide.

M'Lord, I also show in my heads that there are a myriad of unsatisfactory aspects in the evidence of Rodrigues. There are serious contradictions in his version as well as major improbabilities. Some of the major contradictions were noted by the original inquest, *wesenlike verskille*, it was said there, a spelling mistake also in regard to that, but the original inquest court found that to just show that there was no collusion between Pattel and general Buys. M'Lord, with respect that is not the correct approach. We must still explain the
10 contradictions.

It is good to tell me, well the fact that Pattel knew that his evidence is going to be different from Buys show that there was no collusion, does not explain why Rodrigues is telling five different stories about what happened in that room, M'Lord. So, with respect the original inquest court did not address the material discrepancies and the major improbabilities in that version and in that regard your finding should also be different.

M'Lord, in a close system like prof Dan Vorster would have described it, by and large all the decisions in the original inquest was
20 in favour of the security police. The conversation for instance by Hava Timol where she talked about the *pak slae* and that they should not give Timol a *pak slae*, M'Lord that had a ring of truth to it, and she was corroborated by her husband. In the interest of justice those type of findings should be corrected by this court, M'Lord. So to summarise the main themes that I want to address to this court:

First and foremost the finding that there was no assaults and no torture, that is wrong, M'Lord. The combined effect of all the detainees' evidence with the medical evidence, with the evidence of prof Vorster and Paul Erasmus, Els' evidence as well as the file of Van Niekerk, M'Lord on the totality of the evidence you can find that there would have been assault and there was torture. Secondly, the finding about suicide is wrong, M'Lord. You can find that the last part of Inkululeko 2 is a falsification.

10 The evidence of Ronnie Kasrils, Paul Erasmus and all the other members like Dr Salim Essop, Essop Pahad and Stephanie Kemp that is prove of that, M'Lord. There was a cover up by the police to say there was a shocked expression on his face about Quinton, Martin and Henry, M'Lord you can also reject that and if we move from there, then we will get your findings in the end. M'Lord, if you look at my index to my heads you will see from page 7 there is an analysis of all the detainees' evidence.

COURT: Yes.

MR PRETORIUS: Dr Essop's evidence is discussed there from 17 to 30, prof Nike, I might just make an addition to Dr Essop's evidence
20 that he is also important in regard that there was no political link between Quinton Jacobson and Ahmed Timol, M'Lord that is just possibly the one, but all the evidence is discussed there, also the relevant case law is set out by my learned junior quite brilliantly, M'Lord.

Then we also find the analysis of the medical evidence in

the original inquest, but I am not going to read through all that and repeat what you have heard, M'Lord. Maybe if I could jump to the basic version by the security police and if I can concentrate possibly on the analysis of the Rodrigues version, and that is more or less on page 67 of my heads, M'Lord.

COURT: Yes?

MR PRETORIUS: 67, M'Lord.

COURT: Yes?

MR PRETORIUS: If the court could just bide with me. I am not going
10 to go into the version of the security police in general about the shock on the face... I have just addressed that matter to this court, M'Lord that that is a scam and a cover up, a falsification to get a reason why he allegedly committed suicide. Maybe before I just start with the Rodrigues version I can take the preconceived conclusion by the independent police investigation there on my page, M'Lord.

From the beginning I state there in my heads, M'Lord 'The preconceived conclusion was made that no foul play was suspected in this regard.' If you compare the tight investigation diary, M'Lord you will find it very early on that it stated there '*daar is geen rede om*
20 *enige gemeenspel te vermoed nie.*' Even in the Rapport we get that very early on that one newspaper clipping that said there is no *gemeenspel*, no foul play.

M'Lord, that approach, with respect is not the correct one that you can make so early during that. As to Rodrigues' version a major proportion of what happened in room 1026 is provided by Juil

Rodrigues and basically the version of the security police in this regard is that Ahmed Timol was being questioned again by captains Gloy and Van Niekerk on Wednesday, the 27th of October. At more or less 3:30 that afternoon Rodrigues arrived with salary cheques and an envelope with a document in it, M'Lord.

He also brought in three cups of coffee according to him. Now he just stood there at the end of the table and he did not take part in the interrogation. A mysterious person, Mr X entered and mentioned that the person Quinton Jacobson, Martin and Henry were
10 apparently identified or arrested, as according to his version and then this was according to all three policemen in the room that gave rise to shock on the face of the detainee.

Captains Gloy and Van Niekerk left the room to discuss the matter on the 9th floor, and Gloy asked Rodrigues to look after the detainee. The detainee asked to go to the toilet and when Rodrigues was sitting at chair A where captain Gloy was sitting previously, the detainee moved, bolted around the table, or rather stormed around the table and he left through the window. Exactly how is not stated. Now, M'Lord there are a number unsatisfactory aspects to this version, as
20 well as major improbabilities and contradictions. If I can just quickly run through them, M'Lord.

COURT: Yes?

MR PRETORIUS: Whereas his real name is Joao Anastasio Rodrigues, he gives evidence under the name of Jan and I quote there, your clerk asked him: *'U volle name en van asseblief'*.

Witness: *Jan Rodrigues*. He is confronted with this on page 685, 110 to 20. 'So your real name is Joao Anastasio?' 'So my actual name is Joao Anastasio.'

I put it to him: 'You did not try to get away from the past, did you?' He did not understand it, from my past. He said: 'Ja, I do not understand the question.' But then, M'Lord in the end, when you questioned him about the commendation by the commissioner of police that has written the letter for him and that he was not even interested about it, he once against said is is '*iets van die verlede*'
10 something of the past, M'Lord.

He also viewed the country as being in a war situation and he wanted to get trained from the very experienced persons who were at the border. '*Ek het eenkeer teruggegaan, dit was nou na die polisie toe* (I said) *want ons was in 'n oorlog situasie en ek wou die opleidingkursus wat die polisie aangebied het vir die manne wat grens toe gaan, wou ek deurgaen. Dit was net 'n tydelike storie vir my. Ek het toe die opleiding gekry en is terug na die werk toe waar ek was.*'

In cross-examination he was confronted with this, M'Lord obviously he has been less than honest when he wanted to re-enroll in
20 the police in this case. The approach of this witness that he only heard about torture in the security police but he has never seen it, the court also asked him about this approach, M'Lord. And then if you go through his file you will find a number of references that he is a *sub-redakteur*. I quote them, M'Lord and all the references in his file, relating to him being a *sub-redakteur* and I will just read the last

sentence. *‘Tot in hierdie hoedanigheid as sub-redakteur, is dit reg?’*

Yet, when I asked him *‘En u was inderdaad 'n redakteur, 'n sub-redakteur by Hoofstad...’* he said: *‘Nee, nee.’* He was asked specifically evidence in chief whether he had undergone specialised training, M'Lord and his emphatic answer was, no. I quote his evidence: *‘Did you do any other specialised police courses during your service? ‘Geen.’* He states later that *‘hy geen bykomende kursus geloop het in die polisie nie.’* It is later on it is quite shown that he did this *teen insurgensie*, this counter insurgency training and once again
10 if we look into his file, it is stated there under heading *‘Kursusse in 1967 – June 12 - Teen insurgensie.’*

Once again his evidence about this umbrella term for counter insurgency is not satisfactory, M'Lord. He was asked about this and an umbrella term for this could it not be perhaps be counter insurgency training? *‘I cannot say that.’* And then the court quite correctly asked him *‘But you cannot dispute that either?’*. His evidence now is that Quinton Jacobson was arrested, not identified and once again, M'Lord I quote that. Then I come to the improvisation where he was not introduced to Ahmed Timol, it was a big need to
20 know principle that was there at the security police.

He did not know what Hans Gloy, captain Gloy and Van Niekerk did. He was viewed as an outsider and he just stood at the table, yet after Timol got out of the window he knew to run out and to say, well Timol jumped. M'Lord, his evidence in this regard was also totally unsatisfactory. All of a sudden he was introduced to Timol now

when he came in and he made the addition that he was a valuable witness when he gave evidence about that.

On page 72 you will see, I quote his totally unsatisfactory evidence that he gave round about this whole thing being introduced to Timol, and the other thing is, M'Lord he also know quite well what is the difference between *spring en duik*. Why *res gestae* he would have say *Timol het gespring*, where his evidence is actually that he dived, is also not explained. Shortly put, M'Lord unsatisfactory evidence about Ahmed Timol there. The three cups of coffee I am not going to
10 go through all this, M'Lord.

On page 73 we will get to the massive improbability that him being a sporty, a big man sitting in front of the window and yet this detainee that has been in detention from Friday, in all probability for sure he did not sleep on the Friday night, there would have been sleep deprivation, there would have been assault, yet this smallish built detainee gets around him without him touching that... M'Lord that is a very big improbability. I am not going to go too long into that, but that is a very big improbability and as the court asked him there, he came on the eastern side... he came on the left side of the table, he
20 went to go and sit on chair A.

The court asked him, how would you have known that he would not move that way? Once again, he could not answer that, M'Lord, when you asked him in regard to that. So that is a massive improbability, M'Lord. And his evidence that the photographer asked him to go and stand there and shown that out, it is totally not the truth,

M'Lord. I state here on page 74 that it is totally improbable from where he was standing that he could see shock on the face of Ahmed Timol. He did not know Ahmed Timol from a bar of soap, he did not take part in the questioning, etc, how he would have known that Timol looked shocked at that stage, whereas later on he said '*uitdrukkingloos*', expressionless he looked there. M'Lord, there is a lot.

There is serious fundamental contradictions in his version, M'Lord. There are serious fundamental contradictions between his
10 evidence and Gloy's evidence, between his evidence and Van Niekerk's evidence, between his evidence and general Buys' evidence and then the big one, between his evidence and general Pattel. There is at least 4 big serious discrepancies there, M'Lord. On the one time he goes left around the table, on the other time the person is running towards the door and he comes back, M'Lord there is just no consistency in the version that he provides.

I quote all that serious contradictions, M'Lord in regard to Gloy and to regard to Van Niekerk, you will see that on page 76. The version of Buys and it is only him that could have given that version to
20 Buys, nobody else could have given that one and then the serious one with brigadier Pattel. There is no explanation for the one of Pattel, M'Lord because the photographer has taken pictures of him and we have seen that specific picture where he stands to the left side of that table, and he cannot explain why he is on that left side. That is the version that he has given to Pattel.

So, he wants to say that they did not make any notes, etc. They relied on their minds specifically to remember all this. M'Lord, really his version as to why there is this big, big discrepancies, with respect does not go up. On page 78 I get to his most recent version, the one that he provided here. He said: *'Ek het my balans verloor en ek het op die grond toe getuimel. Ek het met my bolyf op die grond beland, op die vloer beland en toe ek opstaan...'* when I jumped it I realised that Timol was not there anymore.

In cross-examination he once again said 'I fell off my chair
10 and fell on the ground.' 'So you were on all fours?' 'That is correct.' That, M'Lord now is the fifth version about what exactly what happens there. Once again he stretched out. M'Lord, regarding this new addition to his evidence that the senior officers intimidated him and wanted to make an addition to his evidence about the wrestling with Ahmed Timol in there, with respect that is also a new addition, and quite rightly the court asked him 'But you have 27 years, why did you not come forward with this earlier?'

So, M'Lord once again there is a lot of unsatisfactory
aspects to it and big, fundamental contradictions. I refer to the choice
20 of word that he himself described this as an accident, whereas his senior officers want him to add stuff to make additions. He said *'daarom het ek nie verwys nie.'* So he withhold evidence and I come to the point that something really terrible must have happened in that room and he does not want to play open cards with this court and he is fabricating, M'Lord. You can reject his version. The long and short

of it, M'Lord is you can reject his version as to what happened in that room.

COURT: On his own merits?

MR PRETORIUS: On his own merits, M'Lord.

COURT: But then if one has to go into the evidence of Mr Thokan, Mr Adam, those who testified that the incident that they witnessed occurred in the morning, and Rodrigues is adamant that it occurred in the afternoon. Now I have to deal with that. If I accept the evidence that what they saw was in the morning, then it casts a shadow over
10 what Rodrigues was saying, and if I have to reject the evidence of the two gentlemen, together with that of the retired advocate Mathis, who said he could not remember but if he would have to take a guess it must have been in the morning because he was preparing for a case.

Now, if I take ... if I reject that evidence what would be the grounds to do so? What will be the reason to do so? And decide that it was in the afternoon?

MR PRETORIUS: Yes, M'Lord if three witnesses, independent witnesses come with that kind of thing and to a big extent it can show to what lengths the security police can go to cover up their tracks.
20 The difficult one for me in that regard is the evidence of the ordinary police like brigadier Pattel and the photographer would also come into the fore, but if that happened in the morning and they only disclose it to the other police in the afternoon, that would described it, but then it was just a bigger cover up and Rodrigues was part of that cover up.

COURT: Yes.

MR PRETORIUS: It is like the saying where there was shock on the face about Quinton Jacobson. It just make the cover up so much bigger.

COURT: Yes, well the other witnesses that came in in the afternoon would probably... they did not indicated that they were there throughout the day. If it happened in the morning, brigadier Pattel came late in the afternoon to take photographs and Dr Kemp was called in around 4 o'clock. But now in declaring Timol dead he did not put in the time of death. He just declared him dead at that time. He
10 could have died earlier and which is one issue that I am grappling with.

MR PRETORIUS: *Ja*, it is quite difficult to think that the photographer would also be part of such a big conspiracy, M'Lord but I mean they need not be part of the bigger conspiracy if they were only told in the afternoon what happened, M'Lord.

COURT: Yes.

MR PRETORIUS: Yes, Dr Kemp just also said '*Hy is pas dood.*' It was always interesting to me when it was not an issue that he has put at the back of it, he recently died '*hy is pas dood.*' It was also
20 interesting to me why that was added, the [intervene]

COURT: Yes, I saw his report, the report in the post-mortem, it does not really have any detail to work from.

MR PRETORIUS: Yes.

COURT: In terms of fixing the time of that, M'Lord.

MR PRETORIUS: Yes, M'Lord.

COURT: And that is the difficulty and *pas dood* does not mean anything. *Pas* could have been the same day, as one of the witnesses testified.

MR PRETORIUS: Dr Naidoo said that, M'Lord.

COURT: Yes.

MR PRETORIUS: Dr Naidoo gave expert evidence on that specifically, M'Lord. So, yes M'Lord but in the end whether it happened in the morning or in the afternoon, still the last people that was with Ahmed Timol was Rodrigues, that is the last people, M'Lord.

10 COURT: If I take his version, if I reject his version in terms of the schedule of interrogation, when Timol died he was in the hands of Gloy and Van Niekerk. I do not think there is a dispute on that one, and for some reason they conveniently disappeared when at the time they fixed that he fell out of the window. Now, he was in their care, at the very least he was in their care and whether they were responsible to push him out, as Mr Moodley said in terms of the trajectory, or not and as to who did that, we do not have that evidence.

20 But the very least is that he was in custody, he was in their care and I think they owed the court an explanation as to what measures did they take to ensure that no harm is brought to him. He was in their care, he was in the care of the police and at the very least, if a detainee is in care of the police, the police should be held responsible for what happens to that detainee. Just as basic as that and I am surprised that the magistrate did not interrogate that.

MR PRETORIUS: Quite, M'Lord. And it is in my heads, just like you

have put it now, they were responsible for the well going of Ahmed Timol, M'Lord.

COURT: Yes.

MR PRETORIUS: And those people, so yes that is the narrow scope of what you have got to decide and I quote to you, M'Lord specifically there Section 16 of the Inquest Act, Section 16(2) of the Inquest Act, that you must find as to the identity, the cause or likely cause of death, the date of death and as whether the death was brought about by any Act. Now, obviously in terms of sub-section (a) there can be
10 no question. It is common cause the original filing was Ahmed Essop Timol, *asiatiese manlike persoon, 29 jaar oud, gebore Suid Afrikaner onderwyser van beroep.*'

M'Lord, this court can just merely find that the identity of the deceased is Ahmed Essop Timol, a South African. As to the cause or likely cause of death, it was found originally, M'Lord that '*die oorledene is dood as gevolg van erge breinbeskadiging en bloed verlies, opgedoen toe hy by die venster uitgespring het van kamer 1026 te John Vorster plein en geval het tot op die grond aan die suidekant van die gebou, hy het selfmoord gepleeg.*'

20 With respect, M'Lord this finding, your finding must differ from this finding and you must note in which respects you differ.

COURT: Yes.

MR PRETORIUS: Initially Dr Scheepers gave the cause of death as multiple injuries *veelvuldige beserings*. Under close questioning he said the immediate cause of death was serious brain damage and loss

of blood. My respectful submission to you would be, M'Lord is that you follow Dr Naidoo's recommendation where in paragraph 41 of his affidavit he state there 'The death was caused by massive head (brain and chest) injury, vital centre damage and compromised resperation.

In his opinion the loss of blood within and outside the body was not significant to any [indistinct], obviously the finding regarding to suicide you should reject that and scrap that, M'Lord. As to sub-paragraph (c) the date, it is the 27th of October, M'Lord. We can debate as to the exact time, whether it was in the morning or in the
10 afternoon. In the end, the police were responsible for him and as to sub-paragraph (d) as to whether the death was brought about by any act or initial *prima facie* involving or amounting to an offence on the part of any person, the respectful submission is, yes.

I state here in my heads, he was in police custody and the police was responsible for his well-being, M'Lord. He died at the hands of the security police and their act or omission, *prima facie* constitute murder, be it *dolus eventualis* or otherwise. Joao Rodrigues perpetuated the cover up for instance that Timol looked shocked when he heard that Quinton Jacobson and two others were
20 identified. There is no way that Joao Rodrigues, that this person could not have seen the injuries, M'Lord.

He did not want to play open cards with this court and his act and omission *prima facie* amount to an offence on the part of Joao Rodrigues, being it accessory after the fact or as a co-conspirator, but amounting to an offence, M'Lord. Thus, the security police is

responsible for Ahmed Timol's death, M'Lord. He was meant to be held at the cells at John Vorster square, at least there would have been checks and balances.

They chose to hold him in the offices to cover up their assaults and torture, M'Lord and with respect this finding of you must be referred to the National Prosecuting Authority. I thank you, M'Lord.

COURT: Thank you, very much. Mr Varney, we have a few minutes before we adjourn.

MR VARNEY: M'Lord, would you like to take the tea adjournment or?

10 COURT: No, no I am prepared to ... but it is just a few minutes left.

MR VARNEY: Ten minutes.

COURT: Yes. Prepare to give us the outline of your presentation.

MR VARNEY ADDRESSES THE COURT: Yes, and M'Lord before I commence, for the record we have passed on certain Exhibits over the last few days.

COURT: Yes.

MR VARNEY: M'Lord, they are already in your possession so I am not going to hand them up, but perhaps for the record I can just take you through those particular Exhibits.

20 COURT: Yes?

MR VARNEY: M'Lord, starting with Exhibit C10(a) that is a 2 page supplementary trajectory report, put together by Mr T Moodley. M'Lord it deals with two scenarios, one scenario raised in the book of Gordon Winter 'Inside Boss'. There is a passage in that book dealing with Timol allegedly being held out the window by his ankles and then

dropped. So Mr Moodley looks at that particular scenario.

Then Mr Moodley also looks at certain of the allegations made by Mr Rodrigues in his oral evidence in relation to the alleged dive. M'Lord, the next Exhibit H21, that is the affidavit of Alwyn Nissan, M'Lord in this affidavit Mr Nissan contradicts the claims made by Seth Sons. He said that he never assaulted anybody and in fact, M'Lord in all these affidavits that we have filed, there are allegations and assertions that they were abused and/or assaulted and/or tortured by Mr Seth Sons well in police custody in John Vorster square,

10 M'Lord.

So the next one is H22, that is the affidavit of Mr Hanif Walley, the next one is H23 that is the affidavit of mr Prem Naidoo. There is H24, the affidavit of Mr Ismaed Mamonyot. H25, the affidavit of Kevin Martin and the last affidavit H26 which is affidavit of Rashied Valley Moosa. M'Lord, the final Exhibit is T and that is the chronology that we circulated among them.

COURT: Yes. So the last affidavits you referred to, all of them deal with the evidence of Mr Sons?

MR VARNEY: That is correct, M'Lord.

20 COURT: And it contradict Sons about his ignorance of assault.

MR VARNEY: His ignorance of assault, the claim that he himself never assaulted anybody and the further claim that he was never present during assault or torture, all those claims are contradicted.

COURT: That was his initial response, but when you questioned him, he suddenly lost memory that he could not remember. He did not

totally say he did not assault anybody, he said 'I cannot remember' when you mentioned the names of the people who's evidence you are going to lead. That is what my notes tell me.

MR VARNEY: Yes, my recollection is that that is the case, that he suddenly could not remember names of individuals that we put to him, my recollection is, but we will have to double check the record, is that he persisted with his denial of being present during assault or him personally assaulting anybody.

COURT: Well, all three of them are saying they read about it in the
10 papers, about the assaults of detainees in the papers. Rodrigues, Els
as well as Sons.

MR VARNEY: That is correct. They only read about it in the press. They will have us believe that they did not even discuss it amongst themselves. That is my recollection of the evidence, M'Lord.

COURT: Yes.

MR VARNEY: Your Lordship we have styled our heads as short heads of argument.

COURT: Yes?

MR VARNEY: We did provide you with a skeletal outline and these
20 short heads of approximately 40 pages add some meat and flesh to the skeletal outline.

COURT: Yes?

MR VARNEY: M'Lord, we will be providing you with what we are styling as main heads of argument, and I will indicate to the court what is in those main heads, but to be clear, M'Lord we are not presenting

those main heads today, because there simply is not time for that. M'Lord, the story of Ahmed Timol's brutal death at the hands of members of the notorious security branch, did not begin with an impromptu road block, in Field Street, Coronationville on the night of 22nd October 1971.

It roots really can be traced to the apartheid systems itself and its pathological obsession with race. M'Lord, that system did not tolerate any serious dissent, in fact it crushed those who stood up to it and there were many who stood up to this [indistinct] system and they
10 did [indistinct] considerable risk to themselves, and one of them was Mr Ahmed Timol. He stood up to this formidable machinery and to many at the time that machinery must have come across as all powerful and invincible.

M'Lord, the storm troopers of the apartheid state was the hated security branch. This organisation acted on the instruction and blessing of their political overlords at the time, and they targeted individuals like Timol, who questioned the legitimacy of the entire system. The security branch did not hesitate to brutalise and where necessary to murder in an attempt to stem the tide of freedom.
20 M'Lord, some 21 detainees died in security detention before Timol died and by the time of the demise of apartheid, that figure would climb to some 89 individuals.

Eight of them perished in John Vorster square, 33 were alleged suicides, and 6 involved falls from buildings or down stairs. Ahmed Timol would pay the ultimate price for standing up to

apartheid. In so doing he joined the lustrous ranks of Steve Biko, Griffiths and Victoria Kenge, Neil Aggot, Babah Solugee, Fabian and Florence Robero and many others.

M'Lord, these names will be forever remembered and cherished by South Africans but the names of their tormentors will live on but only in [indistinct]. The story is also a story of great injustice, it is a story of how dark forces were able to cover up crimes of torture and murder for some 46 years. It is a story of unbridled brutality meted out to young men and women held on the 10th floor of John
10 Vorster square. It is the story of ugly collusion between police officers who were meant to uphold law and order, instead it covered up crimes of torture and murder.

It is the story of a magistrate that magistrate, J J L De Villiers, his assessor, prof I W Simpson and a senior public prosecutor one P A J Kotze. M'Lord, Mr Kotze appeared on a regular basis in political trials, and 10 years later after the Timol case, he was chosen as magistrate to preside over the Neil Aggot inquest. These individuals engaged in a charade of justice, happily playing their part in suppressing the truth and providing the imprimatur of legitimacy to
20 the murderous conduct of the police.

M'Lord, Mr Enthias Kadjee has spoken of the neglect and I am not going to take that matter forward, he has placed that on record. Nonetheless it is lamentable that action could not have been taken while key suspects like Gloy, Van Niekerk and general Buys was still alive. We would submit though, that the reopening of this

inquest provides the National Prosecuting Authority with an amazing opportunity to respond to the longstanding suffering of families of apartheid era victims in their search for answers and justice.

It is also the story of great inspiration and perseverance. The Timol family, M'Lord in particular Timol's nephew and brother, Enthias Kadjee and Mohammed Timol, they refused to let go of their quest for truth and justice. Their resolve and determination has been rewarded with this inquest, before this particular court. For the first time, M'Lord in 46 years there has been a serious investigation of Mr
10 Timol's demise. Every possible aspect has been investigated by this court.

M'Lord, this court has permitted family of the latitude to explore the full truth and for that they are deeply grateful. M'Lord, the family extended an open hand to the surviving police witnesses. I went on record to say that they are only interested in the truth. They sought no vengeance or retribution. If the truth was disclosed they would not seek a prosecution on any particular charge. M'Lord, regrettably this particular plea was spurned by the police witnesses. They doggedly stuck to the hem sheets concocted by their masters
20 decades ago. The police version largely adopted by the inquest court really ask us to suspend our belief in reality.

They will have us believe that security branch did not carry out torture. They will have us believe that they only heard about torture through claims made in the media. They would have us believe that Timol was treated with care and compassion by the

security branch and unbelievably just like of their own children. M'Lord, that claim was made by none other than colonel Piet Greyling who was the officer commanding of the security branch in John Vorster square at the time of the Timol incident.

It immersed in the Essop case, the interdict to have a restraining order finalised against the police. They will have us believe that Timol's interrogators were honest and fair men. They will have us believe that Timol would have preferred death to a long prison sentence. They will have us believe that they did what they
10 could for the critically injured Timol. They will have us believe that the police carried out a rigorous and methodical investigation in which in the conclusion that nobody was to blame.

M'Lord 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 continued to perpetrate the cover up of the crimes committed against Timol.

COURT: We can take an adjournment at this stage.

MR VARNEY: As the court pleases.

COURT ADJOURNS

COURT RESUMES

20 COURT: Yes, Mr Varney?

MR VARNEY ADDRESSES THE COURT (continue): As the court pleases. M'Lord the next section of our heads deals with the contents of the main heads that we intend to hand up to you. I do not intend to take the court through its contents, but it will essentially comprise of summaries of the evidence and various legal considerations. M'Lord,

I am going to move to page 8 and M'Lord I wish to commend the chronology which is in Exhibit T and it also annex A to this particular heads of argument.

We do so, M'Lord because it gives a birds eye view of the entire case and much of the evidence before this court. M'Lord it allows one to connect the dots, it allows one to make connections between events and between individuals over time and it really does place the fateful days of the last week of October 1971 into proper context. If time may permit it, I would have taken the court through
10 certain entries in order to begin the process of connecting the dots, and perhaps if time permits I will still do so, but in order to finish in my allotted time, I am going to skip that particular exercise.

M'Lord, I am now going to turn to the police version as to how Mr Timol met his demise, and M'Lord the police version is effectively the finding of the first inquest court, because that court by large accepted the version of the security branch, and essentially the finding of magistrate De Villiers was that the late Ahmed Timol was not mistreated by the security branch, and the cause of his death was attributable to him taking his own life and it rests essentially on a few
20 factors.

On the question of them not being any torture or abuse, the police version is that they never tortured or abused Mr Timol in any way. And we have also heard from police witnesses before this court that the security branch did not torture or assault detainees. As we discussed a bit earlier they merely read about these in the press.

Indeed, according to the first inquest court, Timol was treated in a civilised and humane manner.

The police suggested that they would not have harmed Timol because he was regarded as a big fish and he was of an estimable value to the security branch and this much was clear because apparently they knew that Timol and his followers were busy with a campaign of sabotage and even mass murder and the then finally, any pre-fall injuries reflected in the post-mortem report, probably explain by a brawl and to quote the magistrate 'where Timol was possibly pushed
10 around and possibly also fell'.

M'Lord on this score I would like to draw your attention to the evidence of three witnesses, Mr Essop who was with Mr Timol on the night of the 22nd, Trotia who was ... he visited... or rather Mr Timol visited Trotia on the day of the 21st and then Farouk Dimda who visited the Timol home on the evening of the 22nd. Their evidence, M'Lord all set out in the chronology together with references, their evidence is that Timol was in good form, cheerful and no injuries were observed by them and that he moved about easily.

M'Lord when you get to look at the chronology that is on
20 pages 6 and 7. M'Lord, the other leg upon which the inquest court rested its conclusion that nobody was to blame, was because Mr Timol committed suicide on the strength of the following evidence: (1) The evidence of a pay clerk, one sergeant Joao Rodrigues who claimed to have witnessed Timol diving through the window of room 1026. Then there were very speculative claims of the police, one of them was that

he feared serving a long prison sentence, and we have quite a few references in the police affidavits to that apparent fear.

Then of course we have heard already it was Communist party policy or doctrine, to commit suicide rather than to betray your comrades or your organisation. Now, M'Lord our next head is short and sweet. It says the police version is [indistinct], and we would submit to you that there is little or nothing in the police version that can be accepted. We would submit that the finding of magistrate De Villiers, that Timol was not assaulted or mistreated, has to be rejected. It does
10 not bear the slightest resemblance to the similar fact evidence or the hard forensic medical evidence which we will turn to shortly.

Indeed, it is our submission that the evidence of Rodrigues must be regarded as wholly unreliable, as evidence before the first inquest court as well as this inquest court is manifestly false. M'Lord, turning to the similar fact evidence, the finding of magistrate De Villiers was that Timol was treated in a civilised and humane manner and that rest entirely on the say so of the police witnesses. M'Lord, we would like to submit that this honourable court will have little difficulty in reaching a diametrically opposite conclusion.

20 The Timol family have placed substantial similar facts of the most brutal torture and abused sustained by detainees at the hands of the security branch throughout the 1960's, 1970's and 1980's and in particular by detainees held on the 9th and 10th floor of John Vorster square between the 23rd and 27th October 1971. M'Lord, we are not going to go through this evidence, we have supplied a summary of the

witness testimony in certain Exhibits and indeed we have attached as annex B, excerpts of experiences of assault and torture of these witnesses and we do not intend to take you through that in our arguments.

But, M'Lord for the record let us just say who these witnesses are. In relation to individuals who were detained in the same period as Timol, there is Dr Salim Essop, there is Dr Dulsu Jefftham and there is prof Cantelon Nike. Mohammed Timol was detained in the same period but much of that detention happened down in Durban. Then in relation
10 to individuals who sustained torture at the hands of the security branch through the 60's, 70's and a few into the 80's there is Stephanie Kemp, Chanty Tweedy, formally Chanty Naidoo, Snoekie Sikalala, Lalu Chiba, Abdolai Jusset, Peter Madlebane, the renowned photographer, Monica Dube.

Turning to the last list we have, and these are individuals who contradict the claims made by Seth Sons, that he was never involved in assault and never witnessed assault is Alwyn Nissan, Hanif Valley, Prema Naidoo, Ishmael Momenat, Kevin Martin and Rashid Valley Moosa. M'Lord, perhaps the starkest example we have of similar fact
20 evidence comes from Dr Salim Essop's [indistinct] accounts of torture. At the time he was arrested he was a mere 22 years old. He was a medical student, he opposed apartheid. He did what he could to stand up to that system and that included helping Duran, a bursary scheme for disadvantaged black students.

But on the illegal side of things he was assisting Ahmed Timol

in reproducing and distributing SACP literature. He was not a member of the SACP, he was not in communication with the organisation. He said he did not know who Timol was communicating with in London, and notwithstanding his subordinate and support role, he was subject to some of the most barbaric torture ever accounted in the South African court. It was vicious, sadistic and unrelenting, but Tuesday morning Essop was in a comatosed 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. Now, M'Lord the police
10 will have us believe that Timol was never assaulted. Indeed he was treated with care and compassion. M'Lord it is a version that would be laughable if it was not so tragic. It begs the obvious question, why would the security branch torture Essop to near death, but treat the big fish with kit gloves? It makes no sense whatsoever and we submit this honourable court will have little difficulty in concluding that the big fish in the form of Timol was tortured with equal if not greater ferocity than endured by Essop.

M'Lord, it is absolutely no coincidence that Essop was kept locked up *incommunicado* when the first inquest was on the way. That
20 was part and parcel of the cover up.

COURT: Right on this one, Mr Varney, Essop yes was held in terms of Section 6 of the Terrorism Act, and he appeared in court in March 1972, and if I remember the provisions of the Act clearly is that once you appear in court, the Section falls away, you are now an awaiting trial prisoner. You may not be on bail, but you are in custody awaiting trial,

and the Act himself, in fact specifically mentions that the detention in terms of Section 6 ends when the Minister brings it to an end, or the Minister does not extend periodically as he was empowered to do, or when a person is charged in a court of law.

Now, from March to April when they started with the inquest, he was still in custody but could we say that he was under Section 6 of the Terrorism Act?

MR VARNEY: M'Lord, that is an intriguing observation. One have to confess we have not consider, but since you have brought it to our
10 attention, I think the point is a good one.

COURT: Yes, well Mr Bizoz did testify that the police were ... had build a wall basically around him and they prohibited access to him in many respects. But then during the inquest, when it started in April, he and Amina Dessay and other people had already appeared in court and I did not canvas this with him as to what was the conditions like after his appearance in court, because that was after the whole thing.

But then it occurred to me that the magistrate could have had access to him, giving the fact that even though the Terrorism Act excluded the jurisdictions of the court, but then especially in regard to
20 enquiring under Section 6 of the Terrorism Act, but then he was already outside Terrorism Act, Section 6 and therefore he was an awaiting trial prisoner and he could have subpoenaed him, giving the fact that there was this finding by the High Court then used to call Transvaal Provincial Division, that he had been assaulted and his case is linked to Timol in the sense that he was arrested with Timol.

I have been grappling with that part of the evidence, because I have to say something about whether if the magistrate really used the powers vested to him in terms of the Inquests Act to subpoena witnesses that may assist in determining the truth, and it looks like he was very shy in doing so, and this is one of the instances, and he cannot hid behind Section 6 of Terrorism Act because Essop had already appeared and it had lapsed.

He was held now on order of the court, because once you appear first time in court and bail is not granted, it is the court that
10 orders your detention and therefore he was under detention as ordered by the court, common sense tells me that and you said you have not looked at... but just look at it and I will be willing to accept additional submissions from your side on that aspect in particular, and Dr Pretorius that goes for you too.

MR PRETORIUS: As the court pleases.

COURT: If you could just look at that aspect, perhaps I am wrong, but my reading of the Terrorism Act, Section 6 is that it terminates when the Minister says so, or when he does not give the extension because it was extended periodically at the request of the police, or when a
20 person appears in court.

MR PRETORIUS: We will do research, M'Lord.

COURT: Yes, if I could get your submission on that. Yes, you may proceed, Mr Varney.

MR VARNEY: Thank you, M'Lord. M'Lord, we certainly will explore that point in our main heads which we will supply to you next week.

COURT: Yes.

MR VARNEY: M'Lord, if one looks at the dates that you have referred to, if I can just find that... yes Salim and his co-accused appeared before the Magistrates Court in Marshalltown.

COURT: Was it in March?

MR VARNEY: No, no sorry Marshalltown, Johannesburg at the Magistrates Court.

COURT: Yes?

MR VARNEY: So it was 8th of March 1972.

10 COURT: Yes, so by then after that appearance, Section 6 had lapsed.

MR VARNEY: Yes.

COURT: So he could have been available to come and testify even though he was in custody.

MR VARNEY: Yes, indeed.

COURT: Yes, proceed.

MR VARNEY: And several months of the inquest still had to run.

COURT: Yes.

20 MR VARNEY: M'Lord, on that point, it occurs to me that the Magistrates Court at the very least, could have issued a subpoena and the police could have come and said, well we object to the subpoena on the following grounds.

COURT: Yes.

MR VARNEY: State security, whatever.

COURT: Yes.

MR VARNEY: M'Lord, while we are dealing with the question of

dates, we also note that the judgment of the full court in the Essop interdict matter, that was handed down, M'Lord on the 25th of February 1971.

COURT: Yes.

MR VARNEY: Sorry, 1972. Then some 4 months elapsed to the inquest court finding on the 22nd of June 1972 and M'Lord there is not a whisper of that judgment in the inquest court finding and, M'Lord we would submit that the inquest court must have known about that judgment and they should have known through the evidence that was
10 led that Mr Essop was detained with Mr Timol in John Vorster square at the very same time.

COURT: Yes.

MR VARNEY: M'Lord, the evidence of Essop and the other detainees demonstrates that tortured was routine and systematic practice of the security branch at that time. M'Lord, my learned colleague Mr Pretorius has already referred to the research of prof Dan Vorster and I will not go there either. I would also wish to refer to the experiences related to this court by George Bizoz S C who represented numerous detainees over decades.

20 M'Lord, we would also wish to refer you to Mr Bizoz' book 'No-one to blame, pursuit of justice in South Africa' because that book is repleat with many, many cases dealing with torture and assault of detainees in South Africa. M'Lord, we heard from a former security branch officer, Paul Erasmus and he confirmed that quite vicious torture was meted out to detainees on the 10th floor of John Vorster

square.

I am now going to turn to the forensic medical evidence dealing with the question of torture, assault and abuse. Before I do so, we have only had a fleeting glimpse of the heads of argument compiled by my learned friend for the police, Mr Coetzee and we have noticed that he relies on the Price Waterhouse Coopers case PWC case for an assertion that because the forensic experts have appeared this court, that is Dr Holland and Dr Naidoo, because they were not present during the post-mortem and essentially their
10 evidence comprises speculation, that is how I understand it just with a very quick reading of my learned friend's heads of argument.

M'Lord, the PWC case and in due course, I hope I have it here... the PWC case and its... I am struggling to read this footnote, we are just finding the citation for you. M'Lord, we will get the citation for you, but we wish to draw your attention to a holding. It reads as follows: *"An expert's opinion represents his reason conclusion, based on certain facts or data, which are either common cause or established by his own evidence that of some other competent witness."*

20 M'Lord, we would say that the expert opinion that this court has heard is in fact based on certain facts and data and that is the post-mortem report compiled by Dr Scheepers as well as the official photographs taken of the deceased, Mr Timol, so we would then submit, M'Lord that their opinion is indeed based on certain facts and data. M'Lord, turning to the actual forensic medical evidence, we

would submit that that evidence puts it beyond question that Timol was brutally tortured before he died.

This is because the post-mortem report, compiled by Dr Scheepers, the senior government pathologist sets out considerable anti-mortem or pre-fall injuries.

COURT: There are similarities in terms of the opinion ventured by the experts, except that when it comes to the extend of the seriousness of those injuries, dr Scheepers seem to say these were minor injuries, whereas dr Holland and Naidoo was saying this were very serious
10 injuries, especially those relating to on his foot and toes that were, which were not consistent with the fall and one has to draw inference from that, that he was somewhat incapacitated to can take the kind of movements that Rodrigues described.

Now, that difference Scheepers says minor injuries and Holland and Naidoo say they were very serious. How do I cross that?

MR VARNEY: M'Lord, we do not have a ready made explanation for why dr Scheepers described those injuries as minor and sadly dr Scheepers is not with us today to offer an explanation. We can only
20 turn to the best available forensic expertise at our disposal and ask them to study the post-mortem report and give us an opinion. M'Lord we would submit that the opinion of the two experts should be favoured on that particular question, minor injuries versus serious injuries.

M'Lord, although it does not appear in my heads, and we will highlight these in the main heads, there were several shortcomings in

the post-mortem report. I think both dr Holland and dr Naidoo testified that it was not a model of perfection, but nonetheless it was still useful in assisting them to reach certain conclusions. M'Lord, beyond that I am unable to offer a way out of that difference in opinion.

COURT: Yes?

MR VARNEY: M'Lord, the two forensic experts, dr Shakira Holland, dr Steve Naidoo, they studied the post-mortem report, they studied the photographs, they both concluded that Timol must have endured, sustained physical assault while in police custody prior to his death.

10 They noted a number of injuries, not consistent with a fall from height and I am not going to take His Lordship through all of them, but I will just highlight some of them.

There were several abrasions, showing scab formation which medical meant that they had to have happened some time back. There were bruises that were diffusely distributed all over Timol's body and according to dr Holland bruises in falls from height tend to be irregular and poorly defined, whereas the bruises that can be clearly seen on the photographs are well defined pattern bruises. Also according to dr Holland the depressed scull fracture of the left
20 parietal bone, M'Lord might recall that was on the top of the head on the left side.

COURT: Yes.

MR VARNEY: Is not consistent with the fall because these kinds of injuries are not commonly seen in falls from height. Dr Naidoo agreed with this conclusion and he provided quite a good analogy even if it is

rather grim. He said that impacts at diametrically opposite sides of the head cannot occur from one fall, because the body and head does not bounce upon impact such as the foot will, but impacts more like a sack of potatoes, which remains in the position and profile of its impact.

M'Lord, in oral testimony dr Holland said she believe that this injury could have been caused by Timol being struck on the head with a blunt instrument, such as a iron rod or a hammer. According to dr Naidoo the impact from such a blow, probably rendered him
10 unconscious and in his expert view this could have happened at any time within 12 hours before the fall took place. Both experts agreed that this kind of depressed fracture probably rendered him unconscious and moreover it would have caused swelling and bleeding on the brain and if that was left untreated it would have resulted in death.

In oral evidence dr Holland said at the very least a concussion would have occurred with possible revival, but at the very worst it could have caused a stroke and in some cases paralyses. She mentioned that a person with type of injury can slip in and out of
20 consciousness. Turning to other injuries, M'Lord will recall that there was serious fractures to the jaw. Dr Naidoo felt that the left sided jaw fracture was not readily explained by the fall because of the resess and buttress principle, because it was tucked in he believe it would have been unlike to be caused by a fall and rather by a blunt force impact to that area.

Dr Holland differs somewhat and she felt that the right upper jaw was also not consistent with the fall, but both concluded that it would have been difficult if not impossible, for Timol to talk, eat or drink any beverage. There is several non-fall injuries and again I am only going to highlight some of the more important ones. Dr Holland pointed to bruising on the thigh and groin area and she believe this was probably caused by multiple blows to that area, such as the mule kicks that we have heard from from dr Essop.

10 And she felt that this would have impacted on his ability to move and even stand. Naidoo highlighted a few injuries that were not related to the fall that were on his lower limbs and he concluded 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. So looking at the injuries that he highlighted, extensive bruising on the right calf and in oral evidence he said this was probably caused by a blunt impact, possibly an iron rod.

20 He pointed to a dislocated left ankle, he said this type of injury usually harbours a fracture and brings into focus Salim Essop's testimony of seeing someone of Timol's stature and size being dragged along by security branch officials on the 10th floor of John Vorster square. Naidoo also looked at injuries on the toes, contusions to the toes. He believe that this was probably caused by stamping on his bare feet. So, M'Lord the medical evidence directly contradicts the police version that Timol was never assaulted or that he was treated in a civilised and humane way.

Our submission is that on the basis of this evidence alone, the police version that Timol was never assaulted and that he committed suicide has to be rejected out of hand. What I want to turn to some of the treatment of the evidence by magistrate De Villiers. Now magistrate De Villiers had to concede that there was some anti-mortem injuries because this was disclosed in the post-mortem report. Nonetheless he concluded that these injuries were not caused through assault or torture during police custody.

10 And as this court has noted, he resorted to search and conjecture to explain away the pre-fall injuries. He speculated that there might have been this brawl and Timol was pushed around and perhaps fell. However, the magistrate also accepted the evidence of the security branch that Timol was not assaulted in any way and he indeed was free of visible injuries. We will turn to this point shortly but it is something of a glaring contradiction that was never resolved in this finding.

20 As I mentioned he relied exclusively on the say so of the police witnesses and I would like to bring to the attention of the court what he had to say of a few of those police witnesses. Indeed he spoke in glowing terms about these individuals. As far as colonel Van Wyk was concerned, he was one of Timol's interrogators, magistrate De Villiers wrote: *"My impression is that he is honest and trustworthy and he is corroborated by captain Bean..."* another interrogator and Bean is also honest and reliable.

As far as captain Gloy and captain Van Niekerk are

concerned the magistrate writes: *“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 three witnesses as reliable and trustworthy.”* The magistrate really reserved special praise for these two individuals and as it turns out these were the two individuals who spent considerable time with Mr Timol and who were interrogating Mr Timol on the day of the 27th of October.

10 So the magistrate really says ‘I accept the version of the police because they corroborate each other and because of their apparent calm demeanour’. Now there is evidence before this court that one of those who corroborated the evidence of another, a sergeant Klein. According to Salim Essop Klein was responsible for a furious assault, not long before he started to assist captain Dirker in the interrogation of Timol.

20 In relation to the views of the magistrate on Van Niekerk it is save to assume that neither magistrate De Villiers nor senior public prosecutor Kotze conducted any background checks into Van Niekerk and his colleagues. If they had they would have discovered a veritable trove of brutality, including a conviction of two counts of assault in relation to Van Niekerk in which the victim died. Originally, M'Lord the charge was murder. It was then reduced to culpable homicide and eventually Van Niekerk got away with two counts of common assault.

The police file of Van Niekerk discloses more, as recently as

1970 and 1971 there were multiple complaints of serious assault and torture made against both Van Niekerk and Hans Gloy and these complaints included assaulting detainees with iron rods, applying electric shocks and all the other forms of torture in their repertoire. M'Lord, the magistrate was also very quick to accept the evidence of detective sergeants Bouwer and Louw.

10 M'Lord will recall that these were the two individuals, security branch officers who guarded Timol each night and claimed to have seen no injuries or marks on Timol, even though they saw him in his underpants at times.

COURT: This part of the evidence is in the judgment of the magistrate?

MR VARNEY: Yes, it is M'Lord.

COURT: Okay.

20 MR VARNEY: M'Lord, I am turning to that judgment because somehow the magistrate had to come up with a way of resolving the fact that Bouwer and Louw spent multiple hours with Timol seeing him at times in close to a naked state and yet they did not see any of the injuries that might have arisen from a so-called brawl and the breathtaking view of the magistrate is that it is difficult for lay persons to see such marks and bruising on a dark skin.

M'Lord, not only did the magistrate accepts such a non-sensicle excuse, he found that while the deceased were in the custody of Bouwer and Louw they treated him well and in a civilised manner. M'Lord, the picture immerges of a magistrate who would find for the police come what may. No matter what, no matter how ridiculous or

glaringly false the claims of the police were.

M'Lord, if we consider the evidence of the torture survivors, those in John Vorster square at the same time, deprived of sleep and brutalised, if we accept that evidence then M'Lord, Bouwer and Louw must have been responsible for particularly vicious crimes against Timol. As mentioned, they guarded him at night and, M'Lord this in all probability meant keeping him awake through the entire night and subjecting him to long hours of terrible abuse.

We have provided evidence of the sleep deprivation and the
10 abuse during interrogation and we submit Timol would have been no exception. Indeed it stands to reason, M'Lord that the police would have unleashed the worst of their ferocity onto him. He would have borne the brunt of their vindictiveness. So, M'Lord in all probability on the night of Tuesday, 26 October 1971 through to the morning of Wednesday, 27 October the abuse meted out by Bouwer and Louw probably rendered Timol seriously incapacitated.

He probably could no longer speak and may have very well slipped into a comatosed state, just as Essop had done the previous morning. M'Lord this submission would be entirely consistent with the
20 evidence of Gill Sadjeffen who testified that Timol's screaming and crying stopped abruptly during Wednesday morning, followed around by scurrying of security branch members and then her relocation to the cells.

M'Lord, turning to the question of suicide, we would argue that the forensic medical evidence as well as the trajectory evidence

completely excludes the possibility of suicide as propagated by Rodrigues. We have already taken you through the forensic medical evidence of Timol's pre-fall injuries, that probably rendered him unconscious.

We have already spoken about the disabilities he would have had in relation to standing and moving as well as his inability to speak, eat or drink. All these evidence is directly in conflict with that of Rodrigues and the police. If I can just turn to the expert evidence of dr Naidoo on this particular question. Naidoo doubts that Timol would
10 be able to clamber up a window ledge. It would firstly have required a time interval and if he was an injured person, considerable time. He would probably had to use the chair or the heater panel to get up onto the window ledge.

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. I quote: 'Ambulation ability of the deceased before the fall – with bilateral below injuries not explained by the fall being present on or in the body, the deceased would not have been able to walk normally to get himself off the chair and to the window, without
20 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 proper ledge or chair to elevate himself up to the window sill, nor launch himself off the sill easily'.

Now, M'Lord we have also pointed to dr Holland's

conclusion in relation to injuries to his thigh and groin which she believe would have made moving and standing difficult for Timol.

COURT: Mr Varney, can I just stop you for one minute.

MR VARNEY: Yes, M'Lord.

COURT: People who have come in to listen, please close your cell phones. You are disturbing the proceedings. If you want to use your cell phone please leave the court room. You are disturbing the proceedings. You may proceed.

MR VARNEY: Thank you, M'Lord. M'Lord, the forensic evidence is at
10 odds with the version that Rodrigues advanced on what happened in
room 1026. Indeed it rubbishes his claim that Timol moved around
room 1026 with lightening speed and in a split second jumped or dived
through the window. The suicide as claimed by Rodrigues simply did
not happen. M'Lord, I am not going to deal with the evidence of
Rodrigues in room 1026, we will deal with it in detail in our main
heads.

My learned friend, Mr Pretorius has already addressed this
court on what happened there and we will not repeat what he has had
to say. M'Lord, I want to turn to the trajectory evidence. The
20 trajectory evidence is of considerable importance. Our expert in this
regard was Mr Tivesh Moodley. He is an aeronautical engineer. He
provided two reports that gave evidence on Mr Timol's trajectory as he
fell. In his first report he pointed to six possible scenarios and these
scenarios are based on the witness statements.

In a supplementary report he considered two further

scenarios. Now from the outset Mr Moodley excluded the possibility of a dive through the window because it simply would not be possible to run, open the window and dive, at least not simultaneously. He went further in his supplementary report saying that the specifications of the office, the arrangement of the furniture and even assuming that the deceased had the athletic ability, he doubt very much whether such a manoeuvre could have been executed.

Nonetheless, in his supplementary report he says let us consider that Timol had the physical prowess to firstly avoid
10 Rodrigues and then engage in some form of dive out the window, and the first possibility is that he lifts himself onto the window sill and in a standing position dives like a swimmer into the void and then he would have been using his legs as thrust. M'Lord, Mr Moodley says that as with a jump using your legs as thrust off that window sill, you will travel a considerable distance and on the calculations of Mr Moodley that could have been as far away as 13m which will put Mr Timol onto the road and as we know Mr Timol did not land on the road.

The second dive scenario is if Mr Timol somehow clambers
20 up onto the window sill, leans over in a head first fashion so that gravity would ultimately take him and then falls head first to the ground. According to Mr Moodley such a scenario would not have generated much forward impulse force and in his view he would probably have then hit the concrete light well adjoining the bottom of the building or at least part thereof. Now, if that had happened then his injuries would have been considerably different and I believe that

question was put to both our expert medical doctors.

Now of the 6 scenarios set out in Mr Moodley's first report, scenarios 1, which is a jump and scenario 2 which is a step and both off from something of a standing position on the edge of the window, the sill of the window, it would have been a feet first exit and with a jump Timol landing at the 13m that we said, and with a step at 4.5m. Now what is important, Your Lordship is the orientation that Mr Moodley says Timol would have landed in these two scenarios. His head would have been in the direction of Commissioner Street.

10 M'Lord, none of the witnesses support the scenarios of 1 and 2. So the scenarios that are consistent with the statements given by the two security branch members, I am now going to deal with and the two security branch members are brigadier Cyclic Williams St John Pattel as well as warrant officer Gabriel Johannes Deysel. M'Lord, Pattel stated the point of impact of the body, he put it at 10 feet, that is about 3m from the edge of the building and in his affidavit Deysel described how he found Timol's body laying in the garden.

20 M'Lord, I will not take you through that affidavit but you will recall that he was pointing, I do not want to make a mistake here, but he certainly was not pointing onto the road, he was pointing away from the road. What is important about this evidence, M'Lord is the position and orientation of the point of impact and according to Mr Moodley the only way Timol could have fallen from the 10th floor and land about 3m away from the edge of the building and land in the Deysel orientation is if he was pushed from the 10th floor.

There are two scenarios namely scenarios 3 and 4, set out in his first report. Scenario 3 is a push from the window in a sitting position and scenario 4 is a push out the window with legs first and body facing the building. According to Mr Deysel those two scenarios have the potential to put Mr Timol at 3m from the edge of the building and in the Deysel orientation. There are two other scenarios and these are the scenarios that are consistent with the evidence of advocate Ernest Mathis.

10 M'Lord will recall that Mr Mathis saw a body pass his window, he was on a lower floor, the body was parallel to the building when it fell past his window, it was facing the double-decker highway. Now, the one scenario that could explain that is scenario 5 of the first report. In this scenario Timol is thrown from the roof of the building in a horizontal motion with his torso parallel to the face of the building. Then there is scenario 6 and that is Mr Timol being rolled off the roof parapet.

20 M'Lord will recall that the parapet was a low laying wall on the roof. His torso would have been parallel to the face of the building. Now on considering the available witness evidence, M'Lord tested against the findings of Mr Moodley, it becomes clear and these are our submissions, that the only possible scenario for Timol's fall can be that he was pushed from room 1026 on the 10th floor in one of two positions and those two positions are scenarios 3 and 4, I will not take you through them again... [intervene]

COURT: So if you accept the evidence of retired advocate Ernest

Mathis, is that when he saw the body falling, he went to the window and he looked up... he looked down and he saw the body having landed on the scrubs, then he looked up and all the windows were closed. So, what would that mean? Could it be that after he was thrown in as we submit, the window was closed or could it mean that now window was fairly open, he was thrown from the roof down?

MR VARNEY: Exactly, M'Lord and those are our submissions.

COURT: Okay.

MR VARNEY: M'Lord none of these scenarios describe the possible
10 scenarios involves suicide and certainly attempt to directly contradict
the version of Rodrigues and indeed we would suggest that his
version is simply impossible to execute. M'Lord, I am now going to
turn to the evidence of colleagues, family and friends of Mr Timol.
People who knew him best. Timol's mother never accepted the official
finding that her son committed suicide and certainly if one views the
footage of her pain and anguish at the Truth and Reconciliation
hearing on 30th April 1996, it was evident that she had never come to
terms with the so-called suicide.

M'Lord, we have heard from Essop Pahad as well as Timol's
20 brother, Mohammed Timol. They both gave testimony on Timol's
Islamic beliefs, which would have prevented him from committing
suicide because Islam does not permit an adherent to take his own life
or of Mohammed Timol as well as Salem Essop testified that Ahmed
Timol loved life. He would not have committed suicide. Pahad
asserted that Timol was in love with his girlfriend, Ruth Langoni, and

he was sad to leave London and he had every intention of returning to her.

M'Lord, these deeply personal testimonies suggest that Timol had no reason to commit suicide, in fact he had every reason to life. M'Lord, the evidence in respect of the South African Communist Party supposedly on suicide, the evidence we have placed before this court, destroys the police's version that it was party doctrine to commit suicide. I am going to return shortly to the documents upon which the police relied. The evidence of Mr Kasrils as well as the other SACP
10 members was that it was never policy of the SACP to instruct or direct or suggest to their members that they should commit suicide.

Ronnie Kasrils in particular dismissed the notion that Timol would have committed suicide to avoid a long prison sentence and Kasrils in his evidence said that the Communist Party recruits actually saw lengthy prison sentences as a badge of honour. Some of the most respected and loved members of the ANC as well as the SACP were serving long sentences at the time. M'Lord, turning to the question of Mr X. Mr X, the arrival of Mr X and his pronouncement was apparently the cause of the prompt and sudden suicide of Mr
20 Timol.

As we well know, Mr X marched in and pronounced that it had been positively established where Quinton, Martin and Henry could be found, Quinton and Henry Jacobson and Martin Cohen. Now, M'Lord even on the police's own evidence on their own version, this is rather curious but suddenly they had discovered where these

individuals were. M'Lord, lieutenant colonel Willem Van Wyk, only the day before proudly boasted that notwithstanding Timol's reluctance to talk about these individuals and disclose their whereabouts, by then and this is now Tuesday, they had already obtained their addresses, references is given.

So, M'Lord the whereabouts of the Jacobson brothers and Mr Cohen were no mystery. The Jacobson brothers operated a photographic studio in down town Johannesburg, in Pritchard street and they did so openly. As the evidence of Essop that he and Timol
10 met them only once, and they ended up in the studio because Essop shared an interest in photography. According to Essop the Jacobsons were not members of any political groups and they were not involved in any organised political activity.

So Timol only had a passing association with the Jacobsons. Now, M'Lord we have to submit that the police put up the Jacobson story as a pretence to explain the so-called sudden suicide and that is a crude fabrication, M'Lord. Indeed, if there was any political link between Jacobson and Timol, even a tenuous one that would have been established at Jacobson's trial in April of 1972.
20 M'Lord, there is not a single mention, not a whisper of Timol in Jacobson's detention file and not a whisper of Timol in the judgment that led to Jacobson's acquittal.

M'Lord, Mr X could not testify at the original inquest, apparently because of state security. We submit that the reason Mr X could not testify was because he simply did not exist. If Mr X had

existed he could have been used as a secret witness in that inquest. It was fairly common practice through the 70's and 80's for courts in terrorism matters, to hear the evidence of secret witnesses. M'Lord, we provide perhaps of the better known examples coming from the Rivonia trial.

The state's star witness, one Bruno Ntolo during the course of that trial was only known as Mr X, he testified in secret, because certainly he have invoked the provisions of Section 156(4) of the then Criminal Procedure Act 56 of 1955 and that particular section, M'Lord
10 is in footnote 125 and it allows courts to hear evidence on a secret basis. M'Lord, turning to the SACP publications, M'Lord my learned friend Mr Pretorius has already addressed you on these publications, so I am not going to repeat what he has said.

COURT: Yes.

MR VARNEY: We must certainly endorse Mr Pretorius' view of getting the names mixed up and on that score, M'Lord I can tell you that the name was changed, not behind closed doors but it was done with some fanfare back in 1953, as long back as 1953 and certainly those people in those circles and not just those in the party, would have
20 known that it was no longer the CSPA but the SACP and it is a glaring mistake that the authors of SACP documents certainly would not have made.

M'Lord, there is also evidence that [indistinct] were seized from Timol and others involved in the underground. There is also evidence that the reference to suicide in the two documents,

Inkululeko Freedom 2 and the Falima memorandum happen to be at the very end of the documents at the bottom of the pages and the evidence of witnesses such as Ronnie Kasrils, Stephanie Kemp, Essop Pahad, that would have made it considerably easier to adjust.

M'Lord, I think it is safe to conclude that the references to suicide in those two documents was a fabrication put up by the police in order to bolster the explanation of suicide. M'Lord, perhaps while I am on that point, I should point out where we discovered Inkululeko Freedom 2. It was not part of the record. You have already raised
10 concern as to how it came before magistrate De Villiers if it was not put up as an Exhibit and of course if it was not put up as an Exhibit, that meant the legal team were not in a position to interrogate its authenticity.

M'Lord, we discovered Inkululeko 2 by doing searches and we found it in the Aggot, the Neil Aggot inquest record and M'Lord will know that that is another famous inquest involving an alleged suicide and we discovered that it was attached to the investigation officer's affidavit, one captain Victor and he put that up after doing a search of his files in the security branch and M'Lord our submission is, this
20 document was the go to document for suicides, in both the Timol matter as well as the Aggot matter.

On that score, M'Lord there is reference to colonel Van Rensburg who dug up the Frolima document and M'Lord that is in the chronology on page 28 at entry 168, at the time he was a major, so major Gert Jansen Van Rensburg. He made out an affidavit in

December of 1971 saying that as far back as March of 1966 he rented a flat in Yeoville and there he seized a number of books and documents and lo and behold there was the Frolima memorandum and lo and behold it also encouraged suicide, and lo and behold it happened to be sitting at the bottom of the last page.

M'Lord, I wish to turn to the cover up and as I only have about 16 or 17 minutes left, I am going to have to be brief.

COURT: Yes.

MR VARNEY: M'Lord, in our view it can be safely concluded that the
10 investigation into Timol's death constitute or can only be a brazen
cover up. M'Lord in this regard we would commend the evidence of
both Mr Frank Dutton, the family's investigator as well as the evidence
of George Bizoz. They both set out in considerable detail why the
investigation into this particular case was carried out not just in a
sloppy manner, but in a manner designed not to reach the truth, in a
manner designed to conceal that truth and protect the security branch
officers concerned.

M'Lord, we have heard the evidence of former branch officer
Paul Erasmus. He says that the security branch routinely engaged in
20 cover ups to conceal the truth. He even spoke of a residence
sweeper who they could call upon. He was their local expert who
could come and sweep away the evidence and I am sure the police
would never have to face justice. Mr Dutton in his statement, set out
over several pages, time does not permit me to take you through
them, ...

COURT: Yes.

MR VARNEY: Of what should have happened and M'Lord none of it happened and the question is why did it not happen? These are crude things such as inadequate statements being taken, no statements from eye witnesses or bystanders. M'Lord, one really has to ask, was it that difficult for the magistrate or the prosecutor, the investigation officer to walk across the road from John Vorster square to knock on a few doors, what did you see, what did you hear on the 27th of October.

10 M'Lord, we did that some 45 odd years later and we found some witnesses. One can only imagine what they would have unearthed if they had done such basic enquiry at the time. Clearly they did not do it because they were not interested in coming up with the full truth. If that had been done, M'Lord I think the issue of timing would have been resolved by now. M'Lord, much has been said about moving of the body and the total lack of a crime scene investigation and Mr Dutton deals with that in detail in his affidavit.

20 M'Lord, what was the security branch covering up? It could only have been two things – the torture and the fact that there was no suicide. Now if there was not a suicide, then it must have been murder. Now, M'Lord the main objective was to cover up the murder, because there are other ways of dealing with torture and we have seen that from time to time, in fact even in this particular case where detainees are held and not released until their wounds have healed and then they are leaned upon not to take legal action and the case of

prof Nike is a case in point.

He was only released some 4½ months later, even though his questioning had stopped quite earlier on and indeed the case of Dr Essop himself, that trial was also delayed for a similar period of time before he appeared in court publically. M'Lord we suggest that the Nike or Essop options were not available to the security branch because of the condition, the state of Timol at the time before the fall and M'Lord we would suggest that the forensic medical evidence as well as the circumstantial evidence from the other torture victims,
10 suggest that Mr Timol was likely at near death.

He was in a dire physical state and probably they wish to avoid the storm of censure of criticism that would follow if another Essop, another Salim Essop took place within 24 hours, having to rush another comatosed detainee to hospital. So, M'Lord they were covering up more than just the vicious torture of Timol. They were covering up his disposal, that is his murder. M'Lord, I am going to deal briefly with the fact that no emergency services were summoned and in this regard we point out the compelling evidence of prof Kenneth Boffard.

20 At the time, M'Lord prof Boffard said that even in those days there was a fear amongst police officials that they should not move critically injured persons, even those on highways, even when there was traffic rushing by because they feared what might follow, the implications perhaps the civil liability of what could follow if they moved critically injured person. Prof Boffard pointed out what ought

to have happened and certainly what should have happened is that an ambulance should have been called immediately, that never happened.

The moment they knew that somebody had gone out the window, and ambulance should have been called. Instead what happened, Mr Timol was moved from the garden into the entrance hall, then up to the 9th floor. Prof Boffard had certain criticism of that conduct, M'Lord. The point of impact was ideally situated, it fronted onto the road. The wall in those days, that we saw from the
10 architectural evidence was really low, one could simply step over. It was ideally placed for an ambulance to stop and for Mr Timol to be taken away for emergency medical attention.

Now, M'Lord there is evidence of course that Mr Timol probably would have died anyway. On that score, M'Lord and we have not put it before this court, there are examples of individuals falling from higher than 10 floors and then nonetheless survived, there are these reported cases, as rare as they might be and we would conclude, M'Lord that failing to call the ambulance, the emergency services can only be consistent with the desire on the part of the
20 police to ensure his death and prevent a proper enquiry into the cause of his death.

M'Lord, I am going to briefly deal with the probabilities. Mr Pretorius has dealt with your responsibilities under the Inquest Act, we will not repeat these submissions. M'Lord, in the light of the evidence before this court, we would submit that on the probabilities Timol was

murdered by the security police. He was brutally tortured by the morning of Wednesday 27 October 1971, he was close to death, probably in a comatosed state.

To avoid another situation where a detainee such as Salim Essop is rushed to hospital from John Vorster square, within 24 hours to avoid that situation, M'Lord we submit the suicide was constructed. Now, M'Lord some time during 27 October 1971, and there is a dispute on the question of timing, all the non police witnesses put the fall in the morning, and all the police witnesses put the fall in the
10 afternoon. M'Lord, we have heard from Dr Naidoo in his evidence that it could have taken place either in the morning or in the afternoon.

M'Lord, we will conclude that for purposes of these submissions, it did not matter whether the fall took place in the morning or the afternoon, our submissions still stand. We can only speculate as to what might have been the reason if it had taken place in the morning, M'Lord and that speculation would be that it would have given the security branch some breathing space, some time to put the fabrication, the fabricated version together so that by late afternoon everybody was on the same page, and they were ready to
20 roll.

M'Lord, back to the probabilities, on the probabilities, M'Lord we suggest that Mr Timol was either placed in a sitting position on the window sill of room 1026 and pushed out, as per Mr Moodley's scenario, alternatively he was pushed through that window, feet first facing the building, as Mr Moodley has testified, that would have

placed him at 3m .. of those scenarios would have placed him at 3m in the Deysel orientation.

Alternatively, M'Lord he was thrown off the roof above room 1026, or he was pushed over from the low laying parapet. M'Lord, I should say that that could have been an attractive option for the security branch, because they would clearly have been out of sight if it was simply a roll over, whereas the other options would have involved at least some seconds in which they would have been visible to passers by down below.

10 M'Lord, as part of the cover up Rodrigues was brought in to fabricate a version and to explain away the conduct of the police and this really was done, M'Lord to protect the security branch members from having to face withering cross-examination from the likes of George Bizoz and Issy Masels. M'Lord, we have heard about the conduct of general Buys, there is no need for me to rehash that. On the question of timing, M'Lord I would like to point out the point in time when Mr Rodrigues was asked to change his version, when he was asked by general Buys as well as captains Gloy and Van Niekerk to change the version, to include to add on something and that was that
20 he and Mr Timol had a fight before the suicide took place.

M'Lord, one can really understand the reluctance of Mr Rodrigues to take the further step, because it would have been an easy step for somebody to accuse Mr Rodrigues, given that he had been fighting, apparently fighting with Mr Timol, that in a fit of rage Mr Rodrigues assisted Mr Timol out the building. So, M'Lord the

reluctance of Mr Rodrigues is quite understandable in our submission.

But the timing is intriguing because, M'Lord we know that the post-mortem report was signed by Dr Scheepers, I believe that was on the 4th of November 1971. M'Lord, that is on page 26 of the chronology at entry 151. M'Lord there is a possibility that the police got wind of what was in that report. They knew what was coming namely that the post-mortem report disclosed pre-fall injuries that somehow had to be explained and M'Lord it is our submission that that is why Mr Rodrigues was then approached at some point,
10 according to his evidence, before he made his statement on the 11th of November 1971.

M'Lord, I now turn to our recommendations. M'Lord in the light of evidence presented during these proceedings, we submit that a case has been made out for the reversal of the original inquest finding. M'Lord, in respect of the police witnesses, we submit that Rodrigues played a role in Timol's death. M'Lord, he should be investigated on charges of murder, accessory after the fact and perjury. We say murder because of his role in the orchestration of Timol's death.

20 We suggest an accessory after the fact because of his role in the cover up which persist, M'Lord to this very day and as well as perjury for providing false evidence under oath before this inquest. We further recommend that Els and Sons be investigated on charges of perjury for providing false evidence under oath during these proceedings in relation to their denials of assault and abuse and even

witnessing such assaults and abuse.

COURT: Apart from the murder charge, all other charges, if they have to stand, will they not be met with the prescription clause?

MR VARNEY: M'Lord, in relation to what took place within the 20 year prescription limit, that is correct, but M'Lord we would suggest that Mr Rodrigues has persisted with the concoction, persisted with the cover up to this day, M'Lord in our view that makes him an accessory after the fact and the same would apply, M'Lord to the [intervene]

COURT: Well, if he is charged with murder, accessory after the fact
10 could be a competent verdict, if murder is not proven.

MR VARNEY: That is correct, M'Lord.

COURT: That might be the way to go around the limitation clause, the prescription clause, but the others Els and Sons, if nothing links them to the murder of Timol as you submit, on its own, that might be a defence raised?

MR VARNEY: Yes, M'Lord we are not suggesting that Els and Sons are connected to the murder of Timol. What we are suggesting is that they have perjured themselves before this inquest court.

COURT: Yes, yes before this court, yes.

20 MR VARNEY: Yes, M'Lord.

COURT: Okay, proceed. We have a few minutes left.

MR VARNEY: Thanks, M'Lord I am only a few minutes away, M'Lord approaching the conclusion. M'Lord we endorse the recommendations made by Mr Enthias Kadjee. We accept, M'Lord that strictly speaking the recommendations in relation to a

memorialisation and heritage and memory are strictly speaking not part of your legal mandate. Nonetheless M'Lord, we encourage you to make those recommendations in the hope that they will be picked up by responsible parties and authorities.

M'Lord, in conclusion firstly we would like to express our gratitude to those who assisted the Timol family in making this inquest happen. Special mention must go to our colleagues in the National Prosecuting Authority for their decision to reopen this inquest, as well as to Mr T Pretorius and Miss S Singh for their tireless dedication to
10 this matter. We would also like to thank the South African Police Service and in particular brigadier Elenore Groenewald. M'Lord we regret that we have drowned you in paperwork, much of it comes from... [intervene]

COURT: I certainly [indistinct] there is no question.

MR VARNEY: Much of it comes from general Elenore Groenewald and M'Lord you should hold her responsible, but we are certainly grateful that she went out of her way to assist us. M'Lord, actually I would like to single out Ms Singh, because it was really her behind the scenes work that helped the mechanics of this inquest, for example
20 she ensured that we had easy and great access to John Vorster square.

M'Lord I would like to thank Jasmyn Sukha in the Foundation for Human Rights' standing by the Timol family through all these decades, when truth and justice seemed out of sight. M'Lord as counsel we must pay tribute to our attorneys, Webber Wentzel

Attorneys and the Legal Resources Centre, Murray Hawthorn and Nasim [indistinct] and their respective teams. M'Lord my learned junior and I were mere conduits for their back breaking work.

M'Lord, we must thank the judiciary for setting aside valuable judicial resources so that inquest could proceed in the manner that it did. Regrettably, M'Lord the issues that brought this inquest to this court, have not disappeared. The practices of torture and assault was prevalent in police custody and M'Lord we have put up the IPED statistics and we let those speak for themselves. M'Lord,
10 while undergoing training in London by the South African Communist Party, Timol and the other recruits were given various books to read and how to deal with long prison sentences and how to cope with harsh interrogation.

This was the evidence of Ronny Kasrils, amongst the books that were provided was one titled 'Notes from the Gallows' by Julius Fockeck. He wrote about his experiences at the hands of the GASTAPO. He managed to smuggle out his story before he was executed. M'Lord Timol would have drawn great sustenance from this inspirational book and we commend this honourable court to the 1948
20 review of the Fockeck book by Howard Fast titled 'Here is his diary.' M'Lord we have taken some license, we adapted an extract from that review since we believe that it applies with equal force to Mr Timol as well as others who had died in security detention.

I read: '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 had endured his or her last battle. Ahmed and his comrades lived for happiness, for that they went to battle, for that they died. Let grieve never be connected with their names.'

M'Lord while Ahmed's body was battered his human spirit would have fought on all the way to the end. As the blows rained
10 down on him, as he was repeated suffocated, as electrical currents raised through his body, as his life force slipped away, he would have looked to the future of his country. A future he had fought for and he would die for. M'Lord, 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.

He would have known that his approaching death would ultimately pave the way for a new South Africa with it enshrined freedoms, a South Africa in which an independent judiciary would wash away the lies and deception and expose the truth of his final
20 days and hours. Ahmed would have wanted this, M'Lord not for his own sake, but to ensure the eradication of torture and brutality in his beloved South Africa. Those are our submissions, M'Lord.

COURT: I thank you. We will take an adjournment and to come back at 2 o'clock for you.

COURT ADJOURNS

COURT RESUMES

COURT: Yes, Mr Coetzee?

MR COETZEE ADDRESSES THE COURT: Thank you, M'Lord.

M'Lord throughout this inquest evidence had been heard of shocking nature and which clearly does not paint a very good picture in relation to the security police and John Vorster square at the time of this incident. I am not trying to defend that, by presenting these arguments and by stating that one cannot forget the time of our history when this happened, the politically and otherwise and what springs to mind is the rhetoric that was used of the *Rooi Gevaar*, the Red
10 Danger.

M'Lord but there can never be any justification for abuse of power or the disregard of people's integrity, the right to life and there can be no justification to defend an apartheid's era through police brutality. But having said that, M'Lord we must apply the law and the legal principles to these facts and to ensure that through this proceedings, due process is followed and that due consideration is given to the evidence and the probative value of this evidence. I do not intend reading my heads as I believe it is quite thorough and I have dealt with all aspects, but there are certain issues which I need
20 to raise and which I need to highlight.

M'Lord, one of these issues I deal with under the heading of 'Medical evidence' and M'Lord that is in relation to expert witnesses and expert testimony that the court heard here from Dr Naidoo and Dr Holland. M'Lord I have referred Your Lordship to the prevailing legal principles and I am quite sure that I do not need to repeat that, but in

this regard I must refer Your Lordship to the fact that Dr Scheepers is the person who saw the body of Mr Timol after the fall.

Present at that stage during the inquest, was Dr Gladman. Now Dr Gladman is just not... not just an ordinary witness, he was the top private pathologist at that stage, appointed by the family of Mr Timol and M'Lord he testified specifically of what the intention was with his presence during the inquest... ag during the post-mortem proceedings and I referred thereto in paragraph 29.7 where he said his intention was to determine whether or not this man, Timol,
10 sustained injuries prior to death.

In other words, that was the reason why he was there. M'Lord and if one then continues on his testimony, and one see that he says that none of the fractures or serious injuries on the body of Timol was not consistent with being caused by the fall. That was his evidence. With that being said, M'Lord I believe that the evidence of Dr Scheepers, with Dr Gladman indicates definitely and I will not hesitate to confirm that is my reading of the evidence, that Mr Timol did endure a physical abuse prior to his death, that evidence is clear, I cannot even start to try and refute that.

20 And correctly noted earlier in this arguments of today, that the argument goes in relation to the seriousness of those injuries and that is where I do have a problem with the evidence of Dr Naidoo and Dr Holland and that is where my submission is that they venture onto the realm of speculation and conjecture, where they impute evidence which is not based in fact, and used that as a basis for their expert

opinion.

M'Lord there is no other description of these injuries than within Dr Scheepers and Dr Gladman, apart from the photographs and the photographs at best can be described as faded, fuzzy photographs and which even does not display all the injuries on the body of Mr Timol. And for that reason, M'Lord it is extremely difficult and risky to try and interpret based on these issues, and now we look at the issues where the witness who describes these wounds and these injuries states that these injuries are consistent with a fall and
10 let me want to use that description of the injuries to say but it is not.

For example, fractures, if one deals merely just with fractures and we know that the evidence basically from the witnesses that testified here, is that Timol must have had a jaw fracture, the depressed skull fracture as well as the left ankle fracture, prior to the fall.

COURT: How did Scheepers [indistinct] on those injuries? What was Scheepers' view on those injuries?

MR COETZEE: Scheepers testified that he said, and that is contained in paragraph 29.5 of my heads, he says he held the opinion that he
20 observed no old injuries on Timol's body that were not consistent with a fall and of a serious nature. That is what he referred to, if I can refer... or that would be ... [intervene]

COURT: Yes, but on the report the post-mortem report, this is what he said in evidence. The post-mortem report did he not outline the injuries he had observed as not being consistent with a fall.

MR COETZEE: Yes, M'Lord he did.

COURT: Yes.

MR COETZEE: But these were not serious, but he describes that injuries as being not serious. He does not say it is not... that it was not inflicted or that it... but it was not serious, it was not life threatening... certainly if Mr Timol have sustained a depressed fracture prior to the fall, which was of such serious nature that he would have been unconscious, that is something that one would have expected that either Dr Scheepers or Dr Gladman would have picked
10 up when they saw the body and when they actually inspected the body, specifically Dr Gladman when he says that was my duty there, that is the reason for me being present at the post-mortem is to assess whether or not there were injuries that were pre-fall.

M'Lord, basic principles in regard to reliability of evidence will dominate and dictate that one looks at the witnesses' evidence and description who actually observed these wounds as the more reliable evidence in this regard.

COURT: Well, the difficulty with their evidence is when they were placed under cross-examination, they were asked as whether they
20 departed from their original view as to what happened, from evidence in chief to that, particularly when the court was debating the question of the age, if I may say so, of the wounds. How old were the wounds? There was a change in Scheepers.. originally he said something and then thereafter he said another.

MR COETZEE: Yes, M'Lord it went from 5 to 8 days to 4 to 6 days.

COURT: Yes.

MR COETZEE: That is the difference in the evidence and ...
[intervene]

COURT: Now, how can I rely on that? How reliable is that? If I were to take a witness who shifts position from the evidence in chief under cross-examination, can I really say that that evidence of such a person is more reliable than one who just gave an opinion based on the reading of the post-mortem?

MR COETZEE: Yes, M'Lord but certainly in these instances, and we
10 have heard also from the recent witnesses that aging a wound is very speculative issue at best.

COURT: Yes.

MR COETZEE: That the histology that was presented to prof Koch for determination of the age of the wounds, and one will notice that that prof Koch is even more resilient in the initial finding of the age of the wound than Dr Shceepers. Dr Scheepers more readily conceded that it might be one day this side and one day that side.

COURT: Yes?

MR COETZEE: And for me it is not... that is not an issue of his ... for
20 him being a good witness or not, it is he actually conceded when one expected him to concede and that is what one expect from a witness who is truthful and honest when he is confronted with possible scenarios or alternatives, that he will be big enough to say, yes, I have listened to what you say and it might be this or it might be that, and that concession by Dr Scheepers most definitely I will argue, and it is

my contention is not an indication that he is a lying witness or that he is prepared to change his evidence.

He is prepared to concede when it is necessary for him to concede.

COURT: But nevertheless the histology you are pointing out, who give an impression that it was an area of speculation for everyone. Conjecture because you have pointed out that there is no exact signs that will assist to measure the age of the wounds, and if that is the case then all of them were involved in speculation.

10 MR COETZEE: Yes, M'Lord but... [intervene]

COURT: Because I am going to find it difficult to accept the submission that Dr Holland and Naidoo are speculating and the other two were not speculating. I do not understand your submission on that.

MR COETZEE: No, M'Lord with great respect, what I am trying to convey to Your Lordship is that one cannot have no respect or no ... you cannot ignore the fact that these two pathologists actually inspected the body. They saw the injuries first hand. They have described the injuries first hand. They made a conclusion on the
20 injuries first hand and one should remember one thing when one consider expert evidence, it is not for the witness to make a finding. He gives an opinion...

COURT: Yes.

MR COETZEE: And it is for the court to make the finding, and for that reason, M'Lord what I am saying is that the best evidence available

here in this instance, 46 years after the event, the best evidence available is the evidence of Dr Gladman and Dr Scheepers, because they have the best perception and they have the best experience with the facts as they were 46 years ago.

I am not trying to say that Dr Naidoo and Dr Holland's evidence is of no value and that the court should disregard it, and Your Lordship will see there is one issue, one of the matters that I refer to Your Lordship is specifically whether evidence is reliable, not reliable, whether it is false whether it is not false. In the end of the
10 day the court has to look at all the evidence, the conspectus of evidence when it makes its finding. One of the important issues that in an inquest, M'Lord is that this is not neither criminal nor civil matter.

The court just have to be *prima facie* satisfied...

COURT: Yes.

MR COETZEE: And that is a very... I want to say a very light onus, it is not an onus but it is not an insurmountable onus if I ... if Your Lordship will follow me in this regard.

COURT: Yes.

MR COETZEE: And from this perspective the court must look at what
20 is the veracity of the evidence but also the likeliness or the probabilities on these evidence.

COURT: Okay.

MR COETZEE: And certainly I do not for one moment say that the evidence of Dr Gladman and Dr Scheepers were perfect, it is not. Neither is their report, but what is, M'Lord?

COURT: Yes.

MR COETZEE: I am just saying the court cannot ignore the fact that Dr Gladman, especially Dr Gladman, was appointed to look at these issues, and one must also remember when the evidence was cross-examined and tested and the veracity also of Dr Scheepers' evidence was tested, we had the family represented by the top legal minds of the time and their approach in the case, 45 years ago in that inquest, 1972, were within the moment, within the moment, they were living it, they were there.

10 The witnesses were available and unfortunately, and for reasons we will not know, if the record was fully available one would have been able to see what the cross-examination for example was, in relation to the other witnesses and that would have been of great assistance to the court. But, it is not to be and that leaves a lot of questions which the court now have to fill in gaps, unfortunately because that is the reality of this time lapse, is that there are questions and there are more questions than answers.

 And when one fill in that gaps, M'Lord it is my respectful submission one must be very careful not to fill in the gaps in order to
20 attain a certain end result. But that one should look at the probabilities of the evidence but in a fashion where one say that, well this is possible and that is possible and eventually when I get to the end of my argument, Your Lordship will see that what I say is that I think it will be inconclusive, because of the fact that one ... that in order to answer all these questions that are there, one unfortunately

have to speculate on some issues, and speculation is very dangerous.

COURT: Well, you can rest assure the court is not going to speculate.

MR COETZEE: M'Lord, no, M'Lord I am pointing out the dangers thereof. I have got no doubt in Your Lordship's ability to assess this matter and with great respect, M'Lord that is not what I am implying, M'Lord, the... [intervene]

COURT: For example on the question of assault, there is no way I am going to speculate.

MR COETZEE: No, M'Lord but you do not have to.

10 COURT: The evidence is quite clear.

MR COETZEE: M'Lord, you do not have to.

COURT: Even the court itself of the first instance recognised that there were injuries that were on the body.

MR COETZEE: M'Lord, you will see I refer to two instances of Dr Kemp. Dr Kemp with regard to prof Nike and with regard to Dr Essop, indicated that there were injuries. With regard to prof Nike he said that this man is in need of assistance due to the paralysation of his arms and he arranged that there should be medical assistance. Dr Kemp in regard to Dr Essop listed 11 injuries on Dr Essop's body
20 which he listed for purposes... there might have been more. I ...
[intervene]

COURT: Yes, but you recall with the evidence of Dr Kemp, that the judges were not happy with the way in which they had to extract that evidence from him.

MR COETZEE: Yes.

COURT: He was not really forthcoming, and we cannot really say that he was playing open cards with the two judges that presided then.

MR COETZEE: Except, M'Lord and that is for the purposes of today, he confirms that there were assaults and that is why I as representing the implicated police officers will not be doing my duty as an officer of the court, if I were to argue in relation that there were no assaults.

COURT: Yes, yes.

MR COETZEE: I think that is a standard evidence which I cannot argue away.

10 COURT: When he declared Mr Timol dead, did he make any note of the fact that he has seen this injuries that were... because he was the first doctor on the scene, according to the evidence of the police.

MR COETZEE: M'Lord, ... [intervene]

COURT: First he did not note the time of death, which put Dr Scheepers in a bit of a difficult situation and it puts this court in particular in a very, very difficult position in light of the evidence that came in, we do not know the time of death, he did not assist us on that. Secondly the injuries that were on the body, you know, I do not know whether he really examined the body or he just went there,
20 declare dead and then moved on. I do not know what role he played but ... [intervene]

MR COETZEE: I cannot help the court there, all I can say is I would have also expected that in a report, specifically if there were at that stage funny or strange injuries.

COURT: Yes.

MR COETZEE: Or any indication which might have confirmed the time.

COURT: Yes. Yes, proceed.

MR COETZEE: M'Lord, I have dealt with basically in regard to the expert evidence, I have dealt with that and I have raised the issues more fully than what I have addressed now and also then if I can go to my next heading which deals with the allegation of assault and torture... [intervene]

COURT: Yes, but before you leave the medical evidence, you will
10 recall that your witness, Mr Rodrigues was asked the question whether he saw any injuries on Timol then he said no, there were no injuries and when I questioned him on that score he changed and said, well my memory is failing me, I cannot remember.

MR COETZEE: Yes, Your Lordship will remember what he said as well is that Timol was fully clothed, so ... [intervene]

COURT: Well there is an injury that they have recorded on the eye.

MR COETZEE: Yes.

COURT: He could not have been fully clothed there.

MR COETZEE: Yes, M'Lord but once again... [intervene]

20 COURT: He could have seen it, and if we accept that there were those injuries then it raises very serious questions about his version.

MR COETZEE: Yes, M'Lord when we... I ... Mr Rodrigues' version is something that I will get to, but it is difficult... [intervene]

COURT: Yes, I would like to hear you on that.

MR COETZEE: It is ... M'Lord and one have difficulty, M'Lord in

reconstructing a situation 46 years later, M'Lord and it is ... and I know the simple truth is that if it is the truth it stays the truth regardless of the time. M'Lord, but that is his evidence.

COURT: Yes, I hear you.

MR COETZEE: That is his evidence.

COURT: I hear you.

MR COETZEE: M'Lord, if one then bear in mind under the heading of 'Torture and assault' I dealt with the various allegations by the witnesses before the court as well as Paul Erasmus and Dan Vorster
10 and it seems that there is a pattern of assault and there is a pattern of torture, which is replicated there and that makes it difficult for me and the problem that I do sit with as a legal representative of behalf of police officers, is that I am hamstrung because these witnesses that would have been able to give me instructions in this regard, are not longer alive.

COURT: Yes.

MR COETZEE: I can only follow the instructions of my witnesses that are here and are alive and that places basically my camp, if I can call it my camp without associating myself with the camp, in a big
20 disadvantage is that if captain Gloy and Van Niekerk was available here, and they could have stood in that witness stand, M'Lord we could have extracted the real truth perhaps, I do not know.

COURT: Yes.

MR COETZEE: But it would have been a different situation whereby now for me to deny assaults by a dead person which allegation of

assault reoccurs over and over in various documentation, I cannot do that, M'Lord.

COURT: Yes, I had a difficulty with the three of them, saying that they do not know about assaults, except what they read in the media, all three said that and I have just received about 5 affidavits which point out that Mr Sons was not candid with this court, that he was involved in detention of some people whom he assaulted. So, I do not know whether their evidence was rehearsed, somewhere else or whether it was a standard response that they were taught to give, but is it a
10 coincidence really that all three of them would stake the media as their source of assaults?

MR COETZEE: M'Lord, ... [intervene]

COURT: What do I do with that evidence? I mean... [intervene]

MR COETZEE: With a little bit of background in criminal law and criminal prosecutions and defending people, M'Lord I do not find it so strange. People do defend themselves by whatever means if the screws are put on them... [intervene]

COURT: Including... yes including misleading the court. Including misleading the court and it is not good. I mean, for example
20 Rodrigues was not even accused of assaulting Mr Timol. He was just asked a simple question: Do you know that there are assaults that are taking place on detainees.

MR COETZEE: Yes, M'Lord but [intervene]

COURT: Flat out he refused.

MR COETZEE: But it all have implications for him, M'Lord.

COURT: Yes.

MR COETZEE: It is also being caught between the devil and the deep blue sea, if you know about the assault you were complicit with the assault and you were perpetuating an assault on detainees. If you deny the assault then you are lying and therefore you are guilty of assault on the detainees. It is a very peculiar situation that he is in and ... [intervene]

COURT: And he chose to lie?

MR COETZEE: But he made his choice.

10 COURT: Oh, yes.

MR COETZEE: He had the opportunity and he said, M'Lord he said here with great respect, that this is the only truth. I will be lying if I say anything else. If that is his conviction, M'Lord that is his conviction. I cannot change that and I think... [intervene]

COURT: No, no, no I do not expect you to change that... [intervene]

MR COETZEE: From that perspective if it is a credibility finding that the court will make, it will make that credibility finding.

COURT: Yes.

20 MR COETZEE: But at this stage when it comes once again and I want to come back to the level of how certain you have to be to make a finding, and that is just *prima facie* M'Lord and that is why an inquest is a very difficult situation to really ventilate the criminal case already in an inquest because of this low threshold that there is.

COURT: Yes, but then do you I accept your submission that there were assaults on detainees?

MR COETZEE: M'Lord, I cannot argue differently. As you will see, I make that concession in my heads, I made that concession.

COURT: Okay.

MR COETZEE: Because that is what the evidence from the ... from all quarters say.

COURT: Yes. Then on page 22 after that assault and torture you mention time of dead.

MR COETZEE: Yes, M'Lord

COURT: Which is something that I am very much interested in.

10 MR COETZEE: Yes. These are two complete opposite versions, either somebody is lying here.

COURT: Yes.

MR COETZEE: And at the way that the witnesses Token and Adams testified, they were not prepared to concede that they make a mistake. M'Lord, I have difficulty in understanding why time would have been an issue. If ... certainly if the police can sweep something under the table at 4, they can do it at 10, M'Lord it is just of such a nature that ... and this... the problem that I sit with which the court is confronted here with and which I have difficulty in arguing to Your Lordship, is that we
20 do not know what evidence might have been available in 1972 during that inquest in relation to the time.

Because, the issue of the time was never relevant, it was never raised and I do not blame, but it was just never an issue.

COURT: Well, the difficulty with that, you have heard Mr Varney point out that 46 years after the event they were able, as a family to do their

own investigation and they came out with this witnesses. Something that the investigators at the time, did not do and that is the reason why such a thing may have escaped the attention of the court proceedings then, they did not do. You see the relevance of time, you have raised that theme that if there is a cover up it could have happened even around 4 o'clock, it is not only that.

It is because Mr Rodrigues stands by the 3 o'clock, half past 3, 4 o'clock version and if his found to have lied on that, my difficulty is which part of his evidence should I accept and if I reject his entire
10 evidence, the entire case of the police is built around that evidence, it falls flat. That is the difficulty I have, that is why I say the time is significant in that instance.

MR COETZEE: Yes, M'Lord the problem goes further than that, if the court rejects Rodrigues' evidence and find that on probabilities this incident happened at mid-morning...

COURT: Yes?

MR COETZEE: What evidence is left M'Lord with regard to what happened to... then M'Lord, the whole issue with regard to what happened to Mr Timol in room 1026 or on the roof for that matter is
20 based on inferences and that inferences then can only be made on evidence that is found to be reliable evidence.

COURT: Yes.

MR COETZEE: And for the court to make that inferences and Your Lordship will see that I have referred to the well known case of *Blom* where M'Lord it states how inferences are to be arrived at.

COURT: Yes, I am familiar with the test in *Blom*.

MR COETZEE: Yes. So, M'Lord as it stands in the inquest in 1972 there is a version as to what happened to Mr Timol. If that version is rejected there is no version as to what happened to Mr Timol. I hear what Your Lordship say and Your Lordship will see I deal with the issue of general.. a finding of general liability on police members, unidentified police members, because Your Lordship will also have noted that on the interrogation time sheets that were handed in here, from 8 o'clock the morning on the 27th of October captain Gloy and
10 captain Van Niekerk took over from Boucher and I cannot remember who the other officer was, but they took over the shift and they took over the care over Mr Timol.

So, the one thing that is abundantly clear from the records and which the court can most clearly find, is that from 8 o'clock until his death, Mr Timol was in the care of captain Gloy and captain Van Niekerk.

COURT: Yes. That is the evidence that we can safely assert.

MR COETZEE: That is the evidence... [intervene]

COURT: Because even in their own version they say so in their
20 affidavits.

MR COETZEE: Yes, yes.

COURT: Yes?

MR COETZEE: So that is the evidence one can accept.

COURT: Yes. What we do not have is what happened in that room at that time, that evidence we do not have.

MR COETZEE: If the version, as a possible version is that whatever happened to Mr Timol happened on the roof, that makes it more difficult because well there is no real averance in this regard and that evidence... or that scenario is in fact only really substantiated by advocate Mathis who said that he looked up and he saw no window open, but M'Lord with great respect, one must look at these... this evidence and I will put that in the same bracket as the evidence of Adams and the evidence of Tokan, is that one should not bear or forget the fact that there are witnesses that basically remember and
10 relive accounts that they have experienced 46 years ago without real connection with them, without real reason for them to remember the finer details and that... [intervene]

COURT: Well, I would not say so, Mr Coetzee. You will recall that the witness, Adams related the incident to the time at which he had to go and fetch his tea. He was very emphatic on that one, you asked him even a question whether he went back to drink his tea and he told you that it was cold. He was very clear on that one and I cannot say that his memory failed him, something that I cannot say about the other three witnesses.

20 MR COETZEE: Yes, M'Lord the one thing that one just must look at is it reasonable to remember that?

COURT: Oh yes, it can be reasonable to remember things that happened, even 50 years ago. If it is an incident that has not occurred several times in your life, it has impacted on you, how would you forget it? Well, Rodrigues was telling us about a story that general Buys

wanted to influence him to do that and he did not say it 46 years ago, but he was able to remember it and tell us here.

MR COETZEE: But it impacted on him directly, M'Lord. It was directly something that had to do with him, it had involved him personally. The fact that Mr Adams' tea was cold, M'Lord... [intervene]

COURT: Yes?

MR COETZEE: With great respect, that is a memory that I would not have expected somebody to remember 46 years later.

10 COURT: Well the evidence is not about the cold tea, the evidence is whether he witnesses a body.

MR COETZEE: But he linked that, M'Lord.

COURT: Yes.

MR COETZEE: He linked those to estimate the time.

COURT: Yes, he does not estimate the time. He says to you that it was my tea time.

MR COETZEE: Once again, as I refer to, Your Lordship just have to be *prima facie* convinced about that and then you can make a finding.

20 COURT: Yes, I cannot just dismiss the evidence because he is 46 years old. What would be the basis of that?

MR COETZEE: Yes, but one have to look at reliability and probative value of evidence, M'Lord and in that regard the court makes an observation but the court can also not just simply ignore facts, for example the long duration of time but... [intervene]

COURT: No, but that line of reasoning, Mr Coetzee is problematic.

Many witnesses came here to testify about what happened 46 years back, starting with Dr Essop, Dr Jattim, then you go on up until Mr Kasrils, they were all testifying about events preceding the death of Mr Timol or thereabout at that time.

Now, your submission basically would be, if I use that as a criteria to accept or reject evidence, then all those witnesses could not have remembered, if I understand your submission.

MR COETZEE: M'Lord, with great respect, then you misunderstand me, that is not what I said. M'Lord, I would expect Dr Essop, I would
10 expect Dr Jattim to remember exactly what happened to them.

COURT: And Mr Kasrils?

MR COETZEE: And Mr Kasrils... [intervene]

COURT: He has never met Mr Timol, he said that.

MR COETZEE: Yes, M'Lord but ... [intervene]

COURT: So it did not effect him directly, but he remembered clearly what they were trained and what the position was.

MR COETZEE: Yes, M'Lord that was something that they were physically involved in. They were involved in a struggle, they were involved in an ideology that they remoted through the struggle and for
20 that was their life at that stage, that was their total commitment at that stage and for them ... I cannot equate the knowledge of Dr Jetham about her assault to Mr Adam on that day, because what happened to her sticks in her mind.

What happened to him, to remember 46 years later that my tea was cold when I got back and I wanted new tea, M'Lord you

cannot equate these two issues, neither can you equate that to the evidence of Mr Pahad or Kasrils, because that was part of their life and what they remember is their struggle, not their cold tea.

COURT: No, no Mr Pahad said that he was from the last people to see Mr Timol at the airport, when he came to South Africa.

MR COETZEE: Yes, M'Lord and as part and parcel of that he knew him, for him there is the reality of one of the people that he knew in the struggle and that he knew in exile and that he trained and that was involved with, get killed I would have expected him to remember that.

10 COURT: Well, Mr Coetzee I think you will have to do much better than just say that because it is 46 years I must just believe these witnesses.

MR COETZEE: M'Lord, I cannot... [intervene]

COURT: Yes, I do not think your submission is on point, move on.

MR COETZEE: M'Lord if I can then turn to, and I am not rejecting the rest of my submissions, it is their for Your Lordship to read.

COURT: *Ja?*

20 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?

10 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
20 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
10 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...

20 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?

MR COETZEE: With regard to Mr Els and Mr Sons there might be criticism. Mr Els confirmed one thing for the court and that is also why I cannot argue that people were not tortured. He does not consider sleep deprivation as torture, but I think with hindsight and with the knowledge that we have today and also taking into account Dan Vorster's evidence, most definitely sleep deprivation is a form of torture and .. [intervene]

COURT: Yes, it is.

10 MR COETZEE: And in that sense it is confirmed.

COURT: Well, he did not consider it, you are quite right. He was just denying the question of assault.

MR COETZEE: Yes.

COURT: First he said he read it in the media, in the newspapers and when pressed for answers he changed and said, well I might have heard some colleagues talk about it. That is what Els said, because in this particular instance the focus is more on the torture, because that is the one that could have brought about those visible injuries on the body of Timol, but it does not exclude the fact that there may be other
20 forms of torture which do not necessarily result in physical injuries to
[intervene]

MR COETZEE: Manifestation, no indeed so, M'Lord and in that sense that is why I say I cannot argue differently.

COURT: Yes, I hear you.

MR COETZEE: M'Lord, if one accept Sons... M'Lord this is similar

evidence against him, but he is not implicated directly so for purposes of the discussion and for what we have today here, M'Lord and for what your decision has to be, apart from the fact that he might not be telling the truth on issues that has been raised, this is not for the court to decide currently whether or not Mr Sons assaulted somebody else or not, and that issues was never put to him and he did not have an opportunity to answer to that, although he was emphatic that he was not involved, but it does not take your consideration closer to a decision, with respect.

10 COURT: Well, it only conveys to this court that he was not candid. He was not honest with this court. I mean he may not have had the opportunity to look at the evidence in the affidavits that were handed to me about the detainees he had assaulted, but he was confronted with the name of one particular detainee and then that is when he raised the defence that they raised, all of them, my memory is rusted, you know I cannot remember. That is what I was hit with all the time, here.

MR COETZEE: M'Lord, under the other heading that I have here on paragraph 97 and that is the deceased members of the security
20 branch for whom I do not speak... [intervene]

COURT: Which paragraph now?

MR COETZEE: Paragraph 97 of ... [intervene]

COURT: Have you skipped the others? I wanted to hear you on this cause of death.

MR COETZEE: On the cause of death? M'Lord, yes I will...

[intervene]

COURT: I think page 24, paragraph 69, 70, what your view is here? Especially in relation to the evidence of Moodley, trajectory, are you of the view that I should accept or reject that evidence?

MR COETZEE: M'Lord, I understood the evidence, the oral evidence of Mr Moodley here in court and you will see I refer to it in paragraph 72 of my heads, and I refer to the place in the record.

COURT: Yes.

MR COETZEE: And I understood his evidence to say that Mr
10 Rodrigues' version was possible. Now, M'Lord maybe I read it wrong, but that is how I read.

COURT: That what? Sorry? You understood it in what way?

MR COETZEE: That he said that the version by Mr Rodrigues was possible.

COURT: No, no, no... [intervene]

MR COETZEE: That that falls under the scenario, the scenario as set out in the 3rd and 4th scenario that he mentioned. M'Lord, it is not clear, I do not for one moment say that it is clear what he said there, because he gave a very difficult answer to a question. M'Lord, if Your
20 Lordship will just bear with me... technology will always fail me... M'Lord I have referred Your Lordship to the reference and for reasons unbeknown to me my... [intervene]

COURT: Well, you will look at it again, Mr Coetzee. If you are correct on that you could write me a note and come back to me on that. I will give you that latitude, but my understanding of it, he painted all

possible scenarios and in the end he concluded that there is the story that he has jumped or dived out of the window is not consistent with the place where he fell.

MR COETZEE: M'Lord, I have in his evidence ... his evidence under oath here, M'Lord at X, that is marked X that is part of volume 9A that we received and it is X then in brackets 673. He said the following: 'The Deysel version I think is possible if we knew what and if we had enough evidence of how the person left the body, if we had photographic evidence or something like that, it would have been possible and so is Rodrigues' based on the scenario that I put together.'

That is what he says, M'Lord and that is why I say, from my reading from this... [intervene]

COURT: What particular scenario was he talking about?

MR COETZEE: M'Lord, he was ... this was with reference to scenario 3 and 4 that he was discussing.

COURT: He concludes that (1) if it was a dive, he could have landed even 13m and then comes on and say that for him to land where he landed now, he was certainly pushed. He had... there was some force behind it or thrown over, then you say you took that to be consistent with the scenario of with the evidence of... [intervene]

MR COETZEE: M'Lord, I am reading his evidence what I read to you.

COURT: I will look at it, I will look at it.

MR COETZEE: Your Lordship can look at it... [intervene]

COURT: You say it is page 673?

MR COETZEE: It is page 673X, X673, it is very strangely numbered, M'Lord in volume 9A.

COURT: Okay, I will check.

MR COETZEE: It is not a continuous numbering... [intervene]

COURT: I will check because... [intervene]

MR COETZEE: I am not going to address that, Your Lordship. Your Lordship will look at that and if you do not agree that is my interpretation as to what he said.

COURT: Okay.

10 MR COETZEE: But I will ... I will concede that it is not clear what he said there, but that is how I understood it and obviously Your Lordship will once again look at this. M'Lord, but if we look at various scenarios and one of the scenarios as to the cause of death that was put forward is the possibility what I called the 'winter scenario' that he was dangling outside the window when he kicked and that is from the Inside Boss reference on the book and I deal with that.

M'Lord, the fact of that, and that is also a similar scenario as if he was on the roof and he thrown and swung and thrown over the roof. This street in front of the police station is quite busy, one see
20 that even in that one photograph that was handed up with the plans of... photograph of the John Vorster square at that stage. There are people walking there and we know that at the Dollar filling station there were people there, it was just a busy part of town.

To hang or to dangle a person out of a window while he would have been screaming, that would have drawn attention from the

whole neighbourhood, M'Lord and that in itself make it extremely unlikely, similarly if he was alive and he was well and he was being swung over from the roof, one would have expected the risk of being seen and why this is important, M'Lord is that this police station and as we have seen, have got many sides and there are much more obscure sides than the southern side, if you want to throw somebody off the roof, where you can throw them off the roof. You do not have to do it in full view of Johannesburg.

COURT: Well it depends on the state in which he was. We just
10 assumed that he was in a position to scream, that is if I accept that submission, I must assume he was in that position although the doctors now say that he could not have even eat comfortably with a broken jaw. So there are many factors, you see I am going to stay away from speculation. I am going to keep to the facts. There are many theories that one can come up with and which would explain some of the things here, but in the absence of evidence, I will stay away from what you describe as speculation.

MR COETZEE: Yes, M'Lord and that is exactly what I said over the
page on paragraph 78 is that one should be ... one should steer clear
20 away from unsubstantiated speculation and that is what Your Lordship do.

COURT: Yes.

MR COETZEE: M'Lord, so that basically deals with the cause of death, M'Lord. M'Lord then I deal with possible findings that the court can make and in this regard, M'Lord I first of all want to say that I am

in agreement that the court now and even in 1972 should not and could not necessarily have made a finding of suicide, M'Lord. It is a very difficult finding to make, even on reading the record.

M'Lord, but the scenario that I have ... [intervene]

COURT: But how difficult was it? I mean the magistrate was given a story that the person jumped on his own, and he concluded it was suicide, unassisted.

MR COETZEE: Yes, M'Lord what I have tried to do is to set out for Your Lordship a scenario which does not necessarily go to suicide.

10 Even if it is found that he might have jumped through the window, that it did not necessarily have to be suicide. M'Lord, and for that reason, and for the... Mr Kasrils' evidence is quite important in that regard where he says his then wife escaped from the security police under the ruse of going to hospital and most certainly that escape would have also involved risk.

If Mr Timol was indeed assaulted to the extent that he was disorientated, one ... and that he might not have known if we look at the evidence, that he might have had a hood over his head for large portions of these interrogations or whenever he is being moved in and
20 out of offices, that he might not have known where he was.

COURT: Well, that would contradict Rodrigues, because he said he found him sitting there, on the table looking at Gloy and Van Niekerk... [intervene]

MR COETZEE: M'Lord, but the scenario is one have to look at these things and for him, even in that situation and we have got Rodrigues'

evidence that said that he just stared aimlessly in front of him, which could have been the stare of a disorientated person. I do not want to speculate because I ... I am warning against speculation, M'Lord but all I am saying is that even if he jumped, suicide is not the only inference that one can make, even if one should find that he jumped through his own volition through the window.

The only inference is not necessarily that he jumped in order to commit suicide. It might have been in order to escape when he saw that these burly men, Van Wyk and Gloy left the building, they left him
10 with an administrative person that he might have summoned up the courage to escape, not realising that he was on the 10th floor, and that is the only scenario in which I mention this that if the court should for whatever reason find that he jumped through.. it does not necessarily mean that he jumped in order to commit suicide, M'Lord.

COURT: That is going to be hard to find, because that evidence was not before the first inquest, it is not before me here, that he was escaping some kind of pressure or torture or anything, I do not have that evidence, so I will not make that kind of finding, there is no way.

MR COETZEE: As the court pleases. M'Lord, then I deal with certain
20 issues and my conclusion that I get to is that I am not convinced that we can make a positive finding, or the court can make a positive finding as to what exactly happened in room 1026, moments before the death of Mr Timol. One can really make inferences as to what happened to him, but it is difficult apart from those inferences to say that Mr Van Niekerk or Mr Gloy murdered him in the office and threw

him out of the window, or that they threw him out of the window whilst they were threatening him in trying to get him to talk.

If a court cannot make that finding, my respectful submission is that the court needs to bring out a conclusion which is inconclusive in say that I do not necessarily know what happened there, but that Mr Timol died whilst he was in the care of police officers and more in particular in the police officers under the name of Van Niekerk and Gloy, that I can find. As to what transpired there, I cannot make a finding but I can refer it to the attorney general to
10 investigate.

COURT: I hear you.

MR COETZEE: M'Lord, may I just... M'Lord I think I have used up my words. Thank you for the opportunity.

COURT: Thank you, thank you very much. I see you gave me a list of authorities here, I really appreciate that.

MR COETZEE: Thank you, M'Lord.

COURT: Yes, thank you. We have now come to the end of the proceedings. What is left for me is to go and consider this evidence that is before this court as well as the evidence of the 1972 inquest. I
20 need to come back then with an answer to Section 16 of the Act, Section 16 specifically requires me to answer four questions. (1) The identity of the deceased, that is not in dispute. (2) The date of death, that also is not in dispute. (3) The cause of death of the deceased and the manner in which it occurred. The cause of death is not in dispute, all the doctors agree, but the circumstances are the area in

which I need to go in.

And the fourth question is whether any person can be held liable for that and if so, I must refer to that person. So I am going to be going into these aspects and you said it, Mr Varney that you buried me with a mountain of paperwork and that is the mountain I have to climb and it is going to take quite a while, but certainly I am going to try my best to do it within a very short period. If everything comes right it might be before the end of this term. I will let you know of the date. I will give you lead time and as soon as I have prepared it, I will
10 give you lead time, all of you.

But between now and I can safely say, between now and the end of week after next, if there is any written submission you wish to send through to me, you are welcome to do so. All three legal advisors and representatives, you are welcome to do so. After that I will not be able to accept anything because then I will be busy writing. Thank you very much, we are adjourned.

COURT ADJOURNS