

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 101-2017

DATE: 2017-06-27; 2017-06-28

INQUEST INTO THE DEATH OF:

**AHMED ESSOP TIMOL**

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**BEFORE THE HONOURABLE MR JUSTICE MOTHLE**

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ON BEHALF OF THE NATIONAL PROSECUTION

AUTHORITY:

ADV PRETORIUS

ADV MALOTWA

ADV SIGN

ON BEHALF OF THE FAMILY:

ADV VARNEY

ADV MUSANDIWE

ADV FAKIR

ON BEHALF OF THE SAPS:

MR LITHOLE

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**COURT RESUMES ON 27 JUNE 2017**

[10:01]

COURT: Before we proceed. Mr Pretorius.

MR PRETORIUS: M'Lord.

COURT: I am informed that yesterday one of the people attending the proceedings came forward to mention that his brother was also detained there and he was thrown out and he fell down. Now, my clerk sent that person to either you or Mr Varney. Do you know about that?

MR PRETORIUS: I have had no enquiries, M'Lord. Really that could  
10 be very important.

COURT: It is very important. Apparently it happened around 1976 and that information is important to the extent that it may be relevant here. I think it needs to be investigated. You will recall that in my opening statement, yesterday, I made a call to the public for people to come forward.

It is situations such as this which may not have got the kind of profile that this particular hearing has, which may be similar to this and may be of assistance to us. So it is important that hopefully the media will then make it clear to those who may be having such  
20 information to come forward and when they do we will refer them to you.

I hope you will assist us of the captain there. We will be able to investigate. We are not going to go into the merits of that but to see to what extent it could be relevant to the current proceedings. That is what I am interested in.

MR PRETORIUS: By all means, M'Lord. We will immediately follow up and all I want to say also if they do not feel comfortable with us they can always come through Webber Wentzel also if they are not comfortable with us, M'Lord.

COURT: Yes. Every such people coming forward we will need to have that information investigated, verified and to see to see to what extent it will be relevant to what we are having here.

MR PRETORIUS: We will do it immediately.

COURT: Okay fine. Thank you, very much.

10 Yes, Mr Varney, you may continue with Mr Essop this morning.

MR VARNEY: M'Lord, just to confirm I have checked with my instructing attorney and we have been unaware of this particular incident. But we will also be happy to assist where we can.

COURT: Yes, please. My registrar here will refer such people to yourself and also to Mr Pretorius. Please follow up, I would like to know about it.

MR VARNEY: As the Court pleases.

COURT: Yes, Mr Essop if you are ready you can come through. You are still under oath. You took the oath yesterday. --- Yes.

20 You are still under oath. --- Yes, I accept that.

**MOHAMMED SALIM ESSOP**: (s.u.o.)

COURT: We will proceed. Yesterday when we adjourned I requested you to have a look at your statement. --- Yes.

And see if you can pick up anything that you might have either de-emphasised or not mentioned at all. Did you pick up any such? ---

Yes, I think there were a few points but the one point in particular was the method of the mule kick that was used on me.

Yes. --- During the interrogation when I was tortured. I am not too sure, I sufficiently emphasised the impact it made on my body and the effects it had on me, both physically and psychologically. As I explained, yesterday, the mule kick was something that security officers executed on me by asking me to sit on a non-existent chair and then kicking me from the sides or with their feet or sometimes... they obviously wore heavy shoes, or with the heels. Now, that over a  
10 fairly long period the effect is that the legs stiffen a lot and at times I was obviously trying to... you could not squat, or sit in a like squatting position for too long. So you sort of rise but they still kept on kicking. So after a considerable period, probably more than half an hour and maybe 40 minutes the legs actually stiffen. The legs are like rods, almost immovable rods. This is the method that was used by two officers but it was also repeated by another officer who single-handedly executed this form of torture. You are there as a detainee and it makes you almost like a stiff rod. You are obviously suffering a lot of pain and I even remember that at times I was such a  
20 stiff, you know, I suppose constituted now both anatomically and physiologically that even a touch on me like this would shove me in one motion down as if throwing a rod down. Right and if I was on the ground they would still keep on kicking so this was absolutely devastating in terms of survival I will say.

Yes, and I will go back to the time when you were admitted to

the hospital. Were you conscious at that time or did you not have an idea of what was happening to you? --- My memory of that whole period from the time I was taken away from John Vorster Square and I was first in the General Hospital and then at Hendrik Verwoerd Hospital is very hazy. I cannot say I have any real level of consciousness. I cannot recollect much at all. I cannot give you an account. I do not have that memory. I would say in some kind of daze in some kind of coma I am just not well. In fact, there is one statement made by one of the nurses who said: "this guy is not going  
10 to make it."

Yes, the period, let us now pin down the period. You were arrested with Mr Timol on the 22<sup>nd</sup> of October, a Friday. --- That is right.

To the best of your recollection, you were in the hospital on Tuesday, the following Tuesday. --- 26<sup>th</sup> yes.

The 26<sup>th</sup>, Tuesday the 26<sup>th</sup>. --- I also recorded that on the basis of documents I sighted later from the two cases that were heard in court whereby FASA protested against the torture that was meted out to me.

20 Yes. --- There was an initial hearing by Justice Margo and later... that was on the 28<sup>th</sup> of October and then on 25<sup>th</sup> of February there was a second hearing by two Justices. One was Justice Seron.

Yes, we will try and sort ... [Intervenues]. --- I checked all those documentation and that is where I got a lot of information. I also checked all the newspapers about what had happened to me.

Yes. So we are talking a period of about four days of torture. Friday evening ... [Intervenues]. --- I will say continuous torture four days maybe a little more.

Well, okay. Now, during that period, and this is critical for this particular hearing, you said that there were some of the people, interrogators, who kept coming in, in pairs, it gave the impressions that it was only between you and Mr Timol. --- Yes, I definitely got that impression. Some of the pressures that were posed to me related to the underground work that Timol and I did. That information would  
10 have not been known to anyone except, in my view, to Timol.

Can you recall who in particular were these interrogators?  
--- Well, the one I can remember very well is Fourie.

Fourie? --- Yes.

Do you know his rank, were you familiar with him? --- Ja, he was of a senior rank. I think he was a colonel but I cannot say that I am actually sure of that. But I have a record of it in my accounts that I have got. I have got a proper record of his rank.

How many times would he have come in and out? --- Well he was the one who interrogated me also at Newlands Police Station. He  
20 came in, in the vault from office 1013 a good few times. He was, I would say, I think there was also Gloy.

Gloy? --- Gloy [spelt]. I think his rank was also high.

Yes. --- I must also say to your Lordship that I did not come to know the names of all, the interrogators. Later I was trying to locate pictures of the interrogators in the newspapers and I did find a good

few pictures but a lot of the interrogators I do not think they ever featured in the newspapers.

Oh. --- I would say there were a big team.

So it was several teams that kept coming in. --- Yes. I will tell you they worked in a team.

Yes. --- They had shifts and if I made a rough count, even then I made a count, and later when I tried to write things up, in my case alone I would say I must have encountered probably more than 15 interrogators.

10 Who came at different times? --- At different times. Not every single moment.

Yes. --- Most of the time they were two. Sometimes even three and occasionally one.

Okay. --- But I should also add here, like I said yesterday, never was I ever alone. I think that is a point I really want to emphasise. I was never at any single moment alone. Never.

20 Would you be able to recognise these people if pictures or anything could be shown to you? --- Yes, some of them I would say. Some of them. It is a lot of years ago. I have only newspaper pictures myself.

Yes. Because it is essential. --- Yes.

I would be particularly interested in those you say came to you who could have had information, probably received from Mr Timol. It means for example that it may well be that they were also interrogated, Mr Timol. --- Yes.

Those are the ones I am more interested in to find out if you could identify those people for that purpose. --- Yes, sir. If I have the opportunity to see pictures I would gladly look at them and I could identify perhaps at least say that yes, I have seen the person or if I knew the name I would prefer that.

Yes. The documents you said you perused on your release relating to your interrogation were they hospital records? --- Sorry, which documents are you referring to?

The hospital records about you staying at the hospital. --- Well  
10 there were two sets. One is a whole collection of newspaper articles.

Yes. --- The other are reports. The exact records from the court on 28 October 1971 and the second court records 25 February 1972.

They were medical records included there? --- Ja, my father got hold of all the records he could and we can make both records... we have... I did have the second record available to me and we have identified the first record as well. So we can make the two records available and that could be Exhibits in this inquest.

Yes. The kind of injuries you sustained during your interrogation could you describe that to us in full? --- Well, I have  
20 mentioned the stiffening of my body particularly my legs that became like rods. I think there were marks on my body. I think there were marks on my face. I was bleeding at different times from different parts of my body often from my face, from my mouth. I think there were wounds on my chest. There were scratches as well, bruises of various sorts. There were sort of dark spots on my legs, above my

knee. Right, in other words, my thighs. That is what I would say about what I would have noticed myself.

Yes, and on the hands, on the wrists here? --- There were probably some injuries there too but... and the tufts of hair pulled out from my scalp. Tufts and tufts. That was in Colonel Failing' office when Sergeant Klein, the guy we had arrested together with his colleague, Timol and I, and he had pulled out a certain amount but the torturer that came later and Colonel Greyling left me with this torturer. He made a real mess-up of me. He pulled out quite a bit of my hair  
10 and I saw the hair on the ground.

Colonel Greyling himself did he at any stage assault you or touch you? --- Sorry, who?

Colonel Greyling. --- Colonel Greyling I would say did not assault me at all. I will also go further and say that whenever the assault took place in his room, there were two assaults one by Klein, you know the interrogating officer who came in after Klein was discharged. He, conveniently I would say, excused himself. He went out of the room. So he was not observing the torture either.

The last question from me, were you at any stage yourself in a  
20 situation where you had your head covered with a balaclava or something. --- No, a plastic bag.

A plastic bag? --- Yes.

For how long did that endure? --- That was a good amount of time. It was put on, I was hyperventilating. I could not see through the stuff too well because they often held, you know they tied

something around the neck, my neck, and then they often held a plastic bag also. So sometimes their hands would be around and they might have moved my head a little and sometimes in a kind of a squatting position when they did this. It went on for a while, I would say between 20 and 30 minutes. Where occasionally they release the bag and put it back or just untie the bag from where it was tied to my neck and then released it. But I was hyperventilating and I was all suffocating.

What kind of bag was it? Was it a transparent plastic bag? --- I  
10 think it was transparent and I do not have a very clear memory what kind of bag it was. A stiff bag I would say. You know perhaps not even a fully transparent bag.

Would it be the same as the bag that you saw the person who you say might have been Mr Timol? Is it a similar bag? --- No, I thought, when I saw Timol being walked along in the passage way and he was dragging his feet, I could see that, it was dark, a dark bag, I think it was a black hood.

A black? --- Hood.

A black hood? --- Ja.

20 So it was not a plastic bag? --- No, I don't think it was a plastic bag but remember I am some distance from where he was and I would say I would probably be maybe eight to ten metres away. I cannot give you the exact measurement but it was some distance.

Thank you, very much Mr Varney.

EXAMINATION BY MR VARNEY: Your Lordship, you were

questioning Mr Essop about whether he would recognise photographs. I would like to draw to your attention that in the book of the Buccaneers Kajee, Team on the Quest for Justice he managed to trace pictures of some of the police officers concerned and they are published in this book. The only problem is that most of the pictures include the names of police officers concerned. I can tell you that we have asked Captain Pernell to trace the police files of all these officers and if he is able to those police files there should be photographs in there. But I was wondering if I should not put up this book as an

10 Exhibit with these photographs, if I have no objections from my learned friends.

COURT: What would be the evidential value of this? Look I need the witness to identify the people who did that to the extent possible. But I want us to do it in such a way that it is not... [Intervenues].

MR PRETORIUS: M'Lord can I ask that we hold back the Exhibit. Eventually or obviously, I do not know... let us first take the other option, the possibility that in the files we will have photographs without the names on.

COURT: Yes.

20 MR PRETORIUS: Then try and do that more properly with the witness.

COURT: I think that is how it should be done.

MR PRETORIUS: Let us first do that and see how far we can get with that, M'Lord.

COURT: How long will it take? Can you find out from the captain how long will it take?

MR PRETORIUS: It will take some time. I think we will work on it M'Lord but I am not sure that we will do it in this sitting, as far as I am speaking now to Captain Pernel, we will not deliver it in this setting. If this witness is bringing back his original notes for the second sitting we can try and do it for the second sitting.

But as I am speaking to you now, we are not going to conclude it in this week.

COURT: Mr Essop, I know you are stationed in Britain, would you be able to come back to help us with it? --- I will be very willing to do  
10 that.

With the identity of those people that you can recall, is very critical here. --- Yes.

So if you could help us with that. They will make available photographs to you and it will be several photographs and you will have to pick up those from those photographs whom you mentioned in your evidence that kept coming to you and so on. ---Yes, I will be happy to do that. If the NPAT could send digitalised copies to my legal team.

Yes. --- They could transfer them to me even before I return.

20 Yes. --- What I can also do is send, you know, just the photographs of people I could locate from the newspaper cuttings I have to my legal team.

Let us do it this way. In order to ensure that the evidence is correctly recorded give us an indication when will you be coming back. --- I am returning sort of middle of next month to the UK. I have things

to sort out. Things to do there and I hope to return a few days before the second hearing takes place.

Okay on [indistinct] then hopefully we shall have got the pictures. I would like the identification of the pictures to occur in terms of the processes that will not lead to anything that will affect the quality of your evidence. The pictures will be put to you without the names.

It will be several pictures probably of some other people and I hope my teacher will not be there. You will then identify from those  
10 pictures the people who were interrogating you. I want that identification to come out that way so then it must not be like they have given you a bunch of pictures which you have sifted through and then you selected people. It must be like an identity parade situation.  
--- Yes. Yes. Yes.

Okay, we will do it then when you come back. They should not send you anything digital. We will do it then when you come back and to the best of your recollection. --- Yes.

I know this thing happened many years ago. --- Yes, more than  
46 years.

20 Yes. To the best of your recollection, that is how I prefer it now.

MR PRETORIUS: Taking note, M'Lord.

COURT: Yes, please. The other thing Mr Varney whether you will be able to help me with his records of this witness when he was hospitalised, medical records. I would like to have a look at those medical records and the extent of the injuries and everything else and

the case he has been referring us to.

I am sure Mr Bizos, if he still remembers, might be able to help us with that. The case that was brought before Justice Margo and the other Judges please let me have those records. I would like to go through them.

MR VARNEY: M'Lord, on that score, if memory serves me correctly we did send one of the attorneys to the legal offices involved in that case.

COURT: Yes.

10 MR VARNEY: We have recovered the judgment in that matter.

COURT: Yes.

MR VARNEY: To the best of my knowledge we have not as yet recovered the balance of records but we will keep looking.

COURT: Ja, keep looking. I know that records of the Court, High Court, Supreme Court then, are in the archive or something. See to what extent you can get from that file.

MR VARNEY: We will do, M'Lord.

COURT: Yes, I will appreciate that.

Do you have any questions?

20 MR VARNEY: Yes, M'Lord, I have about eight or nine questions.

COURT: Yes.

MR VARNEY: Just to wrap up certain dispute issues.

Mr Essop, we are hoping to finalise your evidence this morning. After my questions the prosecution also have some questions for purposes of clarification and then this afternoon will be the

inspection-in-loco and you will be required to accompany his Lordship and answer questions and point out.

Your Lordship, just one issue of clarification. The Pretoria Academic Hospital must bring to your attention that the name actually did change again and ironically today is named after another detainee.

COURT: Steve Biko.

MR VARNEY: Steve Biko, just for the record.

COURT: It is Steve Biko Hospital, yes.

MR VARNEY: Mr Essop, yesterday his Lordship clarified your  
10 conditions of detention and you advised the Court that you only ate  
once, besides the sugar cubes, apart from the times when you  
collapsed, you did not sleep. Were you at any time, outside of the  
moments when you were writing your statements, allowed to sit on a  
chair? --- No. Normally there was not a chair in the room except at  
the time when I wrote the statement.

You have given evidence already on your sighting of Ahmed  
Timol and I am not asking you to recount that in your evidence, but I  
do want to hear from you why it was you thought that Timol happened  
to be in that passage when you caught a glimpse of him. Where was  
20 he heading to? Where was he heading from? --- Right. He was  
moving away from the toilet area, I would say. So he was passing. I  
was from the north side so he is going west. He is going along the  
passage way. If that is the door, that is the vault and I am looking  
through this way that is the door, he is passing that way. That is  
south, that is north so that is ... [Intervenues].

So he will be heading away from ... [Intervenes]. --- That will be west and that will be east. He is moving away from the toilet area he is going to the other side. Not towards the stairwell side to the other side.

Thank you. This is the same washroom where you were taken to a few times to relief yourself and significantly, as you testified, to wash blood off you. --- That is right. There was a washroom and there was also a urinal area.

COURT: He was coming from that direction? --- From that direction.

10 Now, just as a follow-up to that. Apart from that person you saw, which you say was Mr Timol, did you see any other detainee during that time of your detention there? --- No.

Somebody else. --- No. None whatsoever. I also want to add apart from not sighting anyone I heard no screams from the vault I was kept in, meaning somebody else outside screaming or shouting or anything or pleading or anything like that. I could not hear that from the vault I was kept in.

MR VARNEY: On that score. Were you the head around the [indistinct]? --- Yes, I explained yesterday that I was slapped very  
20 often. Very high slaps on my face and at one stage I almost go blind, you know, in my right eye because the slap was so hard.

Did it affect your hearing in anyway? --- I do not think it affected my hearing.

Okay. --- I do not think so. I did recover my sight. I did say that yesterday as well.

Right. Earlier today in response to a question from the Court you mentioned that you had marks, visible marks on your body. Can I ask you, Mr Essop, do you recall how long those marks were on your body? --- You mean after I was taken away from John Vorster Square?

Yes. --- Well, the first few days you know when I spent time in the hospital and I cannot tell you exactly how many days I was there at the two hospitals, maybe two days, I cannot tell you exactly. That we can always check to the medical records and the court records that  
10 I have talked about so far. I do recollect regaining consciousness in the office come hospital room if you like, next to the hospital section at Pretoria Prison. Right, Pretoria Central Prison. I do recollect coming to consciousness but I must tell you when I came to consciousness I was looking at myself and there was a mirror in that office it was, as it was designed, I guess. Looking into the courtyard and I use to look at myself. I cannot say I saw too many visible marks but I can say to you that I was lying prostrate on the bed. There was a mattress and sheets were provided and there was a blanket and so on. I could not rise. I was still very immobile. There was an injury I felt to my limbs  
20 and I could not rise. I remember I forced myself to get up because they had put a toilet pan, a portable one, a bucket, for me to use. I think sometimes they brought the hospital kind of like little device where you sat on it and you did your business privately. It was an effort to try like shift my body, you know like getting off the bed. Almost like falling. Remember at night with the windows open with the

lights on that is how I stayed right through, with the lights on at night. Daytime obviously it was very good light because it was a very big window. If I wanted to get up, I could not get up. Later, I should ought to say the injury I think on my legs were severe. Captain Snypel would come, he would bring in an African prisoner, a long term prisoner, fairly strong guy and he would tell him to lift me out from the bed. This is a little later, right, he would ask he prisoner to lift me out and then hold me up so I would put my shoulder on the prisoner... sorry I will put my hands on the prisoner' shoulder and then drag me  
10 out of the office.

Mr Essop, sorry to interrupt you. Your affidavit actually does set out in some detail your slow process of recovery. --- That is right.

I would actually like to move onto other matters. --- Yes.

If I may, thank you. If we can return to John Vorster Square. You testified yesterday and it is also in your affidavit that towards the end you were in a state of near total collapse. You mentioned that you were in severe pain and agony to the point where death would have been some form of welcome relief. Suicide was out of the question because you said yesterday and this morning you were never  
20 left alone. I want to ask you, Mr Essop, before you lost consciousness and there were these kinds of thoughts that were going around in your head, would you have had the physical capacity to commit suicide if the opportunity arose? --- No. I don't think I would have had the physical capacity at all. First of all I was never left alone so I could not have moved too far without being watched and captured very

quickly if I did try to run. The only place I could have jumped from a window, if you like, would be from the office where the vault was located. Right and I could have like maybe tried to open a window and try to jump there, which was impossible. I could not do that because there was always an officer. I was never on my own. So I do not think I was physically able to do that. Besides I would say I was getting more and more incapacitated from a medical, physical point of view, if you like. I was suffering a lot.

COURT: But mentally did that thought pass through your mind? ---

10 Well, let me explain to your Lordship. You know for me life has been one long process of survival. I do not see myself as a victim, ever, under any circumstances. I see myself as a survivor. I see myself as protesting right through. That whoever even tries to kill me I would try to prevent that happening. Mentally, I don't have any disposition to even contemplate suicide. I do not know where I got this but I did read a lot about great leaders like say for example Mohammed Madani. You know people engaging in disobedience. Martin Luther King. I even knew then much about people like that. They were people who protested under any circumstances. People like Gandhi,  
20 would go on a hunger fast almost to the point of death but he could control it. He knew how to control his body. I admire the man enormously. My great heroes outside South Africa are people like that. Martin Luther King, Mohammed Ghandhi, people like that. I have a strong will to live. I know what suicide means from a medical point of view, from a psychological point of view. I did to some

extent... I have my Degree in Medicine. I did a Degree in Psychology. I read a lot on suicide. I have read books when I did develop mental psychology on death and dying. A famous book by an American psychologist Kübler-Ross.

COURT: Yes. I am trying to get you back to the time when you were in detention. --- Yes.

When you were being interrogated. --- Yes.

The question is at that time, with all these pressures around you, did the thought of taking your own life come to you? --- No.

10 At that time? --- No. Let me put it this way when I was dangled from the stairwell by the two security officers who would interrogate me and then also torture me, when they dangled my body down and showing me ten floors down and they were telling me that I could fall ten floors, to have a good look, that is the time... Look I must tell you I did not contemplate suicide which is different from saying that if they drop me well they have done it. In other words, somebody killed me. Not me taking my life.

In other words, you were submitting to the possible eventual end of life. --- Yes, if death comes at any moment I mean I have to  
20 take it whether it is a natural death or an unnatural death. If somebody wants to kill somebody today, and that happens anywhere, you cannot control that. I would see this as something they did as a threat to kill me and as something they would even have done to literally kill me.

Now, during your underground work with Mr Timol did you come

across any documents or any pamphlets that suggested to members of the South African Communist Party that in the event they are captured they should consider suicide as one of the options? Or did you at any stage have a discussion around something like that from him. Hear something like that from him? From Mr Timol. --- From Mr Timol.

Yes. --- Well, first of all, I did not come across any document from the South African Communist Party or from the ANC; I personally did not come across that kind of information in any of the documents.

10 The documents that Timol and I circulated did not carry that kind of information. There was the Incur Lego Communist Party document that Timol and I circulated. It was issue 1. There was an issue 2 which was in February 1972 which was after Ahmed Timol' death. He would never have been responsible for that. Let me just comment on this. We did talk about... you know we are doing this very dangerous work. We did talk about that. We did talk about should something happen what do we do. We did not dwell too much on it. We just felt we had to go through it. At the time of arrest we were sitting at Newlands Police Station. We did talk very quickly about that and I  
20 remember I told him very emphatically: "Ahmed, we are going to go through this. We are going to go through this. We are going to come out of this." He looked at me, he was silent and he sort of like nodded. But he was, I do not want to use dirty language, but he was shit scared. He was really scared. Right and I looked at him and said: "Ahmed, we will pull through this." He sort of said, ja. Something

along those lines. I do not think... can I maybe also just develop this point a little further in terms of giving you some kind of profile of Ahmed, a personally profile. You know Ahmed was not somebody who ever wanted to die. He loved life. Even if you look at the political work he did and I did, both of us, when you go into that kind of work... look let me explain to you. Somebody like... we were not of the calibre of like say Nelson Mandela or Bram Fischer. But people of that calibre when they undertake work, whether it is legal or illegal, they had understanding of [indistinct] projector of their life. They know  
10 where they will be heading. They know they will be arrested. They would even anticipate that something awful could happen once they are arrested. Well, we had that anticipation. We had the ideal of the political projectory. We would go through life, on the fact that when we were working we knew that something could happen and I personally felt that whatever happened once we were getting into this kind of stuff, this kind of political work, you will inevitably be at some point taken in. You could expect that. But you had to carry on. Look I will also go as far as to say if we had at any stage been aware of being watched and being captured we would have both tried to flee.  
20 We were not the kind of people who would be sitting ducks if you like. We would say, I would say, we were brave people like so many others in this country who would defy the authorities. We would not want them to capture us. We would not want them to kill us. We loved life. We enjoyed life. Ahmed and I were people. You know Ahmed if you look at some of his pictures he is a man who smiles. He had a natural

smile on his face. I spoke to his girlfriend in the UK. I had a long interview with her. I tape recorded the whole interview. I made a transcript of it and we talked many times, because we are good friends, and she never had the impression either that Ahmed was suicidal ever no matter what he did. She knew to some extent of his political involvement with the banned organisations in exile. She knew that. But she never... Ahmed loved life. Ahmed was like me and that is in one respect why we were such great friends. We enjoyed life. We went out. We did all sorts of things. We ate out. We entertained  
10 ourselves. We were not inclined in anyway. We were not. I do not remember Ahmed ever telling me that he had instructions that look if you are in a difficult situation or you had to give your friends away, you have to give their names away, or they were torturing you to a point where you could not take this torture any longer then you know do this. Or there were any suggestion that look you could have this little drug or something like that that is also happening in different parts of the world, have this little drug always with you and then just take it if you think it is too difficult for you to go to the whole extent. We never talked about it. W just had one idea we were doing this  
20 work.

Now, the person who is identified or is thought to be the handler if Mr Timol in the SACP do you know who it was? The person Mr Timol was communicating to. --- Yes.

For underground work. --- Yes.

Do you know the person? --- I do not know the person. Well, let

me explain to you. There are two things here. The *nom de plume* that was used in his correspondence was Stephanie. So he wrote to a Stephanie.

Yes. --- This Stephanie replied to him.

Okay. --- Almost all the correspondence was with Stephanie. Some of that stuff is available, the correspondence. Now, who was this Stephanie, it was alleged that this Stephanie was Stephanie Kemp. I think she was still married to the advocate, Albie Sachs.

But then at that time you did know. --- No. No. No. I must tell  
10 you I had no knowledge of the correspondence. That was Ahmed' work.

Okay. --- But in my trial the correspondence was brought out and in Ahmed' case the correspondence was also brought out. I did not know the correspondence. I established over the years who Stephanie was and if the Court wants to hear I can tell you what the whole process was.

No. No. No. I just want to know your state of mind as at that time. What you knew and what you did not know at that time, at the time of Mr Timol' death. I know there are a lot of things that came out  
20 subsequent thereto. But my interest is at the time when you were working underground with Mr Timol and whether you knew whether there was this Mr or Ms X whose name might have cause Mr Timol to ... [Intervenues]. --- That is different from Stephanie.

Yes. --- Stephanie was the person he communicated with abroad.

Yes. --- Mr X, can I account MR X then?

Is it information you had at the time you were detained? --- Not at the time when I was interrogated. It is information I got subsequent to my release from detention when I was brought to court for trial.

Yes, then in that case all I want to know is that did such a person exist, Mr X? ---The story runs like this.

But you do not give me the details of him, whoever he was. I just want to know if there was such a person who existed. --- Right. My view is that there was no Mr X. It is an absolute fiction.

10           Okay, let us leave it there then. Right you may proceed, Mr Varney.

MR VARNEY: Thank you.

[Mechanical failure 10:49]

... You have mentioned that your physical capacity was diminished towards the end of your detention. Your state, you have described it, but can you just confirm one last time that when you left John Vorster Square and presumably for some period before departure what state were you in? --- I was in a state of near death. I would say I was in a sort of coma. I did not have very much  
20           consciousness. A little before that, coming to that, I had felt that life was going out of me. I think sometimes when people become very ill they are aware that life is going out of them. I felt like life is draining out of me. This was not only a psychological feeling but it was physiological. It had to do with my body functions. I just felt like I was going, at any time I was going.

Thank you. You testified that you were never left alone. Can I ask you if you were ever left in the company of the administrative staff, support staff, individuals who might have been making the coffee? --- In my case I would say no. I think all the people who interrogated me, with the exception of Klein and [indistinct] who were all with the South African Police. Klein obviously assaulted me I had mentioned that. The whole interrogation office, if you talk about the interrogation as such, which is focused on our political underground work, I do not remember a single person who I could call as a clerk or  
10 a secretary or somebody in administration. I would say all the officers were security officers of various ranks. I cannot say there was a single person ... I mean I did not even know their names but I felt they had a certain way, a certain behaviour, a certain code of conduct amongst themselves. I suppose they were people who knew the South African Police as such and they know Security Police also as such. I think the behaviour of the two categories of police is different.

Thank you. While we are talking about coffee, were you ever offered coffee or tea? --- No, I have mentioned the thing about food. No. I told you we were brought once some food that would be nice  
20 but it was already cold.

No coffee or tea? --- There was no coffee; there was no tea, nothing.

Thank you. We can now move to your recovery. The period at Pretoria Central Prison. I do not want to dwell for too long on this because it was post John Vorster Square after the death of Timol. But

in your affidavit you do allege that you sustained certain further abuse.

--- Yes.

Can you briefly describe that? --- Okay. I was in Pretoria Central Hospital in that room next to the medical section which was an office converted into a bedroom for me specially. Still lying in bed most of the day occasionally rising but this would be probably early December. I cannot give you a date, right, I lost count. But I can say more or less I could establish the month and days and so on, according to the routine of prison I could make out this was a  
10 weekend or this was a weekday. Right, I could make that out. Captain Snypel was the man in charge of me at the prison. He brought me three or four people. One of these was a man who wore a white coat and he appeared to look like a doctor. I would not say he was a doctor.

COURT: Who is Scheepers? --- Snypel [spelt].

Is he a captain? ---In the prison, He is not security. He is not police.

In the prison? --- In the prison.

Okay. --- He is a trusted captain who. I think, he had close  
20 corporation with the securities. He was a very trusted prison officer. So they brought in these three or four men, Snypel. He told me, he introduced them in a way, not by name, he said they came to help you. They just want to look at you and talk to you. Obviously I cannot do anything about this. They asked me, I think there was a chair, they said sit down and they are going to help you. Then he went out and

the men who were there the two guys held me. The guy with the white coat he brought a case more or less looking like a doctor's medical case. He took out a case and he had a syringe inside. He took this out and I think it was already preloaded or he might have loaded it then, I cannot be exactly sure. They said they are going to calm me down. Then we can have a nice talk. They said I might be a bit frightened or nervous and this will help me to relax. Anyway the syringe was put into my left arm. Remember I cannot say anything about this is what they want to do so I, actually being a medical  
10 student, I said what are you putting into my body? What is that stuff, what is in your syringe? He says no, it will help you, it will calm you. Well, there is a kind of shorthand for this kind of thing. They are talking drug and there is a pharmacological name for the drug. On the other hand I don't know whether it was LSD. I never established that but this drug was shot into my arm, the needle was pushed in and very quickly I just felt very high. I sort of like floated in the air. I felt like I was on another planet almost. I felt great calmness. I was almost in a kind of transcendental existence. I do not know what the drug was whether it was LSD or some kind of talking drugs. I should  
20 also mention that I did see the syringe. It was a relatively large syringe and it was loaded. I would say the dose was fairly large and I really went high in my mind and I would say that perhaps even if the dose was large enough it would have killed me. I know that people on LSD trips do die. Anyway I did feel very relaxed. I was then asked questions. I remember some of the questions. It was all about who we

knew et cetera. Because I was hallucinated and I was feeling like very, very relaxed and like living on another planet of existence. I gave it a go at singing which normally I cannot do. I felt there was something happening now. But that is what my memory is.

Thank you, Mr Essop. Just on that incident this was not your normal medication you were taking. --- I was a physically fit person. I was under no medical treatment of any sort. I was exceptionally healthy. I was already into health foods.

10 But you had been taking medication previously. --- I did not take any medication.

For purposes of recovery. According to your statements you had stopped taking the medication by that time. --- Medication?

Well, let me see if I can find it? --- Yes, can I just look at the...  
Something I was taking because I was ill?

COURT: Let me put it in context. At the time of your arrest were you taking any medication for any kind of ailment? --- No. I had no medical condition. I was a perfectly healthy person. I was never taking any medication whatsoever.

20 So any medication that might have been administered to you subsequent thereto came out of your experience in detention? ---  
Yes, if something was given to me. I did request at times headache tablets in the prison.

MR VARNEY: Yes. In effect that is precisely what you say in your affidavit that at that point you received the injection you were no longer receiving any medication not even headache tables. --- Yes. I

did request headache tablets occasionally I did feel a headache. I do not know whether it was due to those terrible slaps and all the falls I had and knocks on the head I had. I do not know if it was due to that but I did have headaches and occasionally I did ask for headache tablets.

Thank you, Mr Essop. --- That was all the medication I would say I had.

Thank you. Let us move onto another issue we need to clear up. Yesterday you testified and it is also in your statement that after  
10 you had provided your statement the police were dissatisfied. They felt that you had not given enough and you testified that your torture after that was particularly ferocious. Now, also in your statement you say that you have seen Timol' statement that he made to the police and in your view, it is in your affidavit, you said the police would have wanted more. We do not have time for a close analysis of Ahmed Timol' statements. Can you briefly indicate to the Court maybe with just one or two examples why you are of the view that the police would have wanted more? --- From Ahmed Timol?

Yes. --- Right. The kind of life he led in London the people he  
20 met and the political keeping in particular I think they wanted to know more about that. There is nothing of that in the statement except some [indistinct] and about how the cell structure, which he was supposed to like set up in South Africa worked in terms contact with the people in London. There is nothing in his statement about the people who met him in London. So that is missing. So if you look it

like... let me put it this way. I think Ahmed received strong political education in London. Living with a range of people who were politically minded, like him, and also Ruth Lagoney, his girlfriend, told me Sunday mornings was a day when he went to what was almost formal political classes. Various people ran this. He would be going on a Sunday morning. So there is nothing of that in his statement. The other thing is he did receive training in working with secret ink if you like which is how he conducted his correspondence with Stephanie. He had training for that. He does not mention all of that.

10 The last thing I would say, which is in a way important, he did go to Moscow. Now, I do not know how he went to Moscow. Because as far as I know now and even then I knew he held a South African passport. I suppose if you went to Moscow and your passport was stamped it might be a bit of a big question mark when you return to South Africa. But he did go to Moscow. He went to the Marxist Leninist institute there in Moscow. The shorthand for that was party school. There were various people there. Our ex-president, you know, Mr Thabo Mbeki, and Ahmed went to the same place, party school.

20 Okay. --- He made no mention of this in his statement.

Thank you, Mr Essop. Mr Essop, I have two more questions for you and then thereafter I want to put just for the sake of completeness the documents that you were referring to. The second last question. The police version is that the pre-injury... the pre-death injuries on Timol' body that could not be ascribed to the form were probably

attributed to a brawl Timol was involved in before his detention. You have testified that you were with him prior to the arrest and in fact at the arrest and that you socialised with him on a regular basis. In fact, you were close friends with him. Did you hear of such a brawl or know of such a brawl? --- Right, on the night of the arrest there was no brawl. There was no encounter with anyone who tried to threaten us or attack us or anything. None whatsoever. We had been to various places. We were in Fordsburg in the early part of the evening. We then went to Newclare. No brawl there. Each time we were  
10 visiting a friend in Fordsburg a friend, another friend in Newclare and then we went to Bosmont Hotel and no brawl there.

Prior to the evening did you raise a brawl or perhaps see visible signs? --- No, we were together from around 18:00 and we were arrested at 23:00 so between 18:00 and 23:00 I would say I observed nothing. If he had any kind of marks he would have looked dishevelled. He usually appeared neat in his dress. I would have probably asked him what happened to you, you look a bit like you are not in a good state. There was nothing like that.

The days preceding, there was no news or discussion of a  
20 brawl? --- No. Not at all.

Thank you. --- The last point I will make about the story of a brawl you know there are people who are of a certain temperament and who can quickly get into a brawl. Who are argumentative and very quick with the fists and whatever. Ahmed was never of that type. He was a mild, soft character. A very nice personality, very friendly

even to people who might have been hostile to him. If somebody swore to him he is not the one who would turn the other cheek but he would appropriately handle the situation.

Thank you. Your Lordship, I do not know if you want to take the tea break.

COURT: It is normally at 11:15.

MR VARNEY: At 11:15 okay. I think I can conclude with Mr Essop before tea.

COURT: No, you can only conclude when you come back.

10 MR VARNEY: Oh it is 11:15 already.

COURT: Your junior is supposed to draw that to your attention. We adjourn until 11:30.

**COURT ADJOURNS** [11:07]

[11:31] **COURT RESUMES**

COURT: Mr Essop, you are still under oath. --- Yes.

**MOHAMMED SALIM ESSOP**: (s.u.o.)

COURT: Yes, Mr Varney, you may proceed.

EXAMINATION BY MR VARNEY [Continued]: Thank you, your Lordship.

20 Mr Essop, the police version they might have referred to as a certain tipping point when Timol was in room 1026. This morning his Lordship asked you about Mr X. You suddenly arrived and provided information which according to the police was somewhat explosive in nature. So dramatic and so damning that according to the police this was the tipping point which led Timol to ultimately commit suicide by diving through the window. I want to put the names that the police

allegedly told Timol. It appears that these three names were individuals from abroad, twin brothers Quinton and Henry Jacobsen and a third man by the name of Martin Cohen. I would like to ask you whether you are familiar with those names and if so, in what circumstance? If you had occasion to meet any of them please tell the Court. Then with the circumstances you are familiar with would have warranted that kind of response from Timol. --- Okay. I am familiar with two of the names, Quinton Jacobsen and his twin brother Henry Jacobsen. This familiarity has to do with before my detention.

10 It has not to do with now. At the time I do not think the name Martin Cohen, the third person mentioned, ring any bells with me. I would not have necessarily known him even if I had encountered him. How did we come to know, how did I come to know one of the Jacobsen' at least. Did we ever visit Quinton Jacobsen' studio in Johannesburg which was on Pritchard Street not from the High Court here. Did Ahmed ever go to the studio himself? Well let me give you the story. We had a friend by the name of Ebrahim Lehare. He came from a wealthy family and his father was very close to my mother. He frequented our house a lot and he was also a relative. So Ebrahim  
20 was a relative. Ebrahim was a kind of a very [indistinct] type leading a free lifestyle and moved around in the world. He studied in Pakistan in one of the high schools getting a kind of A level qualification. He was a smooth operator like somebody would say. Through him I met a number of people too. He was also more my friend that Ahmed' but when Ahmed came back from England we occasionally went out with

him too. His father bought him a house and a car and everything, a wealthy family and we would be visiting him. So when Ebrahim said look I have met these wonderful guys, they are photographers and they had a lovely studio and why don't we go there. So I said fine let us go there, it would be nice. I am a nosy kind of person, I like to explore and a very free minded person too. Just Ebrahim Lehare and Ahmed Timol. I was doing photography and we got equipment and we thought we might learn a trick or two and we will come to know some professional photography. I was an amateur photographer obviously.

10 So Ebrahim takes us in his car. We parked it somewhere and we get off and go to the studio. He was familiar with the studio. Henry was there and meets us and a very nice warm personality, a lovely guy. I still remember the face, a young face. Quinton was not there. There were some other people there but we had a very brief introduction. I cannot remember the names. They had a fairly large studio; it was a ground floor studio. They used as accommodation too and a lot of people came there. They had people, all kinds of interesting people. More of my medical student friends in the same class as I, Ian Hill, used to go there as well.

20 To the best of your knowledge Henry and Quinton Jacobsen were they in the underground? --- Okay. So Ebrahim never told us anything about Quinton being politically involved in anything whatsoever. Ebrahim never told us that Henry or anyone else at the studio was doing any political work. Now, so we go there and Ebrahim at some point leaves the country. Ebrahim was being forced in a way

by his parents and family to get married and he did not want to do that at that stage. He still wanted his free lifestyle et cetera. So; he decided to leave but he was a big spender and he did not have enough money. I think he took some money from Quinton Jacobsen in particular and he probably left an IOU with Quinton Jacobsen. He might have said something to Quinton that look I have got a good friend, Ahmed, he works at a school and you can perhaps retrieve the money later. I do not really know the story but Ebrahim went off and I was close to him and I helped him. We went shopping a few days  
10 before so Ebrahim left the country. He never returned. He wrote a letter which was then presented in court I think in the Quinton Jacobsen trial. I am not too sure if it was presented in my trial but it was around. There was a newspaper article which placed this later, because Ebrahim had been travelling around the world he was also called international. So there was this big splash in the paper that international had written this letter to Ahmed Timol that you must not go to the studio. He does not trust Quinton and Henry and tell Salim not to see Henry again. Something along those lines. So Ahmed gets this letter and he comes to me and he says Ebrahim sends him this  
20 letter. Remember Ebrahim's friendship with Ahmed is not as deep as mine. He says Ebrahim has written this letter to him but he does not know anything about Jacobsen and why is he writing this. Besides what does Ebrahim know about us? I said but I never spoke to him about anything and he said he never spoke to him either about anything.

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134

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[Mechanical

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11:40]

**COURT ADJOURNS**

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**COURT RESUMES ON 28 JUNE 2017:**

[10:01]

COURT: Mr Essop, you are still under oath. --- Yes.

**MOHAMMED SALIM ESSOP**: (s.u.o.)

COURT: Just before... I just want to ask you questions on one aspect but before I do so, I just want to place on record that yesterday at 14:00 that was Tuesday, 27 June 2017, we went on an inspection-in-loco at the police station which was called John Vorster Square and the witness testifying now took us through the various places where he was interrogated, where he was held and  
10 in particular the vault that he referred to in his evidence.

We were also shown the room where Mr Timol, according to the version of the police, jumped out of that window. We went to the place where, according to the version of the police again, he landed and he was found shortly after he jumped. We also had an opportunity to look at the various conditions that were there.

There is slight changes of renovation as well as furniture and painting but otherwise some of the conditions that were found there were as they were if I am to follow the evidence of Mr Essop. He described in detail how he was taken to the office of Colonel Greyling  
20 and moved to the other floor, tenth floor, where he was held until on that Tuesday when he had passed out and he was taken out of that place.

I need to also place on record that after we took the evidence of Mr Essop we then visited again the same passage where Mr Timol was held and as the witness will be testifying on Friday who took us

through there and showed us how she recognises the places where she was held but could not recall the exact room and that is going to be clarified on Friday when we resume with her testimony.

At this point I just want to ask you, Mr Essop, relating to your evidence, you say that you were charged and convicted. When did your trial start and when did it end? Can you recall? --- My trial started on, I think the 13<sup>th</sup> of June.

You first appeared on the 8<sup>th</sup> of March, if I recall. --- I appeared in the Magistrates Court in Johannesburg on the 8<sup>th</sup> of March. Then  
10 the trial actually began on 13 June 1972.

13 June 1972, yes. --- I was convicted on 31 October 1977.

You were convicted when, sorry? --- 31 October 1972.

Now, throughout the trial I take it you were still in custody. --- I was awaiting trial and was kept in custody. My counsel did try to obtain bail but not bail was provided. One of the co-accused, Mrs Amina Desiah, she was the only one who received bail and there were two other co-accused, Yusuf Nesiah and Indecent Moodley. They were offered bail.

At that time you could, I take it, receive visitors from your legal  
20 representatives as well as family, while awaiting trial, was that the position? --- We did receive visitors from the family and from counsel when initially after 13 March 1971 were taken to the Fort where we were kept as awaiting trial prisoners. There we did receive family visits. But when we went to Pretoria, we did not stay too long at the Fort. We were taken to Pretoria and we received no family visits there

except when we appeared in court at the Synagogue in Pretoria and the families were able to communicate during breaks with me as well as the co-accused.

Now. --- But we did have counsel at Pretoria Central Prison. We were able to see our attorneys and our advocates.

While you were on trial or awaiting trial did you hear anything about an inquest into the death of Mr Timol that was being contemplated? --- I heard absolutely nothing. I had no newspapers available to me. I was initially in the section, in the room I was next to  
10 the prison hospital. I was under 24-hour guard. At night there were uniformed officers standing outside the window. Nobody could pass anything to me. No prisoner ever attempted to pass information to me. When I was taken to the main section of the prison on the first floor I received no information. My co-accused was with me then.

Did they not inform you... What I am trying to establish from you, I want to know whether at any time before you were convicted, at any time, while you were awaiting trial or while the trial was continuing, either the legal representatives or the co-accused or from any other person, did you hear if there was some inquest that they  
20 were talking about relating to the death of Mr Timol? --- No. Until I made the appearance at the Magistrates Court in March I had no information about Ahmed Timol' inquest. There was no information ever provided to me. It is only in the Magistrates Court on the 13<sup>th</sup> of March that I learnt that Ahmed Timol had died.

Yes. --- So I had no knowledge of an inquest. But when I was

awaiting trial there was information about the inquest coming through.

That is what I want to know. --- Yes.

When was this? --- When we were awaiting trial we were at the Fort initially and later at Pretoria Central Prison. My two co-accused, I mentioned the names, we were kept in a single cell on the first floor of one of the buildings in Pretoria Central Prison. We had access to newspapers and obviously we were consulting with our legal teams and we did know what was happening about the inquest.

They told you about the inquest that was to be held? --- Yes. I  
10 mean once the inquest began and the newspapers were full of information.

Yes. Did you indicate at some point that you were arrested with Mr Timol and that you might be of assistance to the inquest? --- Yes, I mean that was a matter that was raised by counsel in particular. In fact, I also raised it that wouldn't I be a very significant witness at the inquest. Well, I do not know what the arguments were, but I was never brought to the inquest.

The state prosecutor did not call you or contact you. --- To the best of my knowledge, your Lordship, I do not recall that the state  
20 prosecutor or anyone from the state proposed that I be called to the inquest give an account of anything at all about my detention or about Ahmed Timol and my arrest.

Had you been called, you would have been available to testify. You understand? --- I would have been very happy to testify. I had a willingness to testify. As I already mentioned I did enquire about

appearing. I cannot take it further in the sense that the state made no proposal for me to appear.

Thank you. Any questions Mr Varney?

FURTHER EXAMINATION BY MR VARNEY: Your Lordship just one questions for purposes of clarification.

Mr Essop, can you recall approximately how many interrogators interrogated you in the beginning of your detention until the end? --- I would say it was a very large number. I cannot give you an exact number but I am sure the number is more than 15.

10 More than 15? --- Yes, as large as that. But I cannot tell you the exact number. They were in and out. There were different people as I said yesterday and the day before I think doing their shifts.

You mentioned that every few hours that shift would change? --- Every few hours. There was no regular pattern. Like a shift of four hours, or two hour or six hours. It was rather haphazard. It was according to what they were discovering in their investigations maybe with other attorneys.

Generally speaking with the shift change it would be approximately two individuals? --- Usually I was with two individuals.  
20 There were times when they were three I would say and occasionally there was one.

No further questions your Worship.

COURT: Thank you. Mr Pretorius.

FURTHER EXAMINATION BY MR PRETORIUS: Thank you M'Lord.

You wanted to study law but you did not study law, Mr Essop,

but do you know whether there was any legal impediment from you given evidence at the inquest? --- Well, I did know even then a little about the Security Legislation, not much. The detention was *incommunicado*. Right the law... I was never told by the way during detention that I had been held under the Terrorism Act of 1967. That Act allowed the police to detain anyone they suspected of doing political work of an illegal nature indefinitely and they could also not allow the detainee to have any contact with lawyers or with family or even medical personnel. Even if you were ill the idea was that the

10 state would be looking after you and you would not have any recourse to anyone outside the prison and the state system.

Even when you were in hospital they went to the state president to see if they cannot get authority for access to you. --- Yes. I think I came to know a little about that. I think it was the Prime Minister BJ Vorster and I think his answer was in the negative and there were even questions I raised to him which I read in the newspapers at the time whilst I was awaiting trial.

Thank you.

COURT: Thank you very much, Mr Essop, once again. That

20 concludes your evidence but as I said as we progress with the hearing it may well be that with the next sitting they may want to call you again especially in terms of identifying those particular people who were interrogating you.

You were in the south wing you said. Okay thank you very much. You are excused for now. --- I was in the north wing.

You were in the north wing, okay. You are excused for now. ---

Thank you very much.

**NO FURTHER QUESTIONS**

COURT: Yes, Mr Pretorius.

MR PRETORIUS: Your Lordship, I would like to call Mr George Bizos (SC).

COURT: Yes, Mr Bizos before you are sworn in I want to place on record for everyone here that way back in 1980 as an articled clerk I worked with Mr Bizos and his junior was Advocate Eric Dane. When  
10 we defended Dr Robeiro I was an articled clerk to the then attorney Ms Seneke who later became the Deputy Chief Justice.

We worked for very long hours on that case. *State v Robeiro and Mashilo*. If you can recall Mr Bizos that you were consulting with them and we even sat throughout the trial in Pretoria. They were also held under the Terrorism Act and later charged in terms of section 2 of the Terrorism Act.

You were the [indistinct] counsel in that case and I had the pleasure to work with you. I thought I should place that before the legal representatives that if anyone has a problem with that let us deal  
20 with it now before Mr Bizos takes a stand. Is there any problem with it?

MR VARNEY: No objections whatsoever.

COURT: Yes, Mr [indistinct].

MALE SPEAKER: None whatsoever.

COURT: Fine, very well then we will proceed. Can you do the oath?

REGISTRAR: Your full names and surname?

WITNESS: George Bizos.

REGISTRAR: Do you have any objection in take the oath?

WITNESS: No.

REGISTRAR: Do you swear that the evidence you are about to give is the truth, the whole truth and nothing but the truth? If so, please raise your right hand and say: "So help me God."

WITNESS: So help me God.

**GEORGE BIZOS**: (d.s.s.)

10 COURT: Thank you. Thank you very much. You may be seated. ---  
Thank you, M'Lord. Mr Varney.

EXAMINATION BY MR VARNEY: Your Lordship, may I start with this housekeeping matter.

COURT: Yes.

MR VARNEY: My junior who was with us this morning, unfortunately his wife and daughter were involved in a car accident.

COURT: Oh.

MR VARNEY: Luckily both are well and there are no injuries. But he is attending to them and he will join us as soon as he is available.

20 COURT: I am sorry to hear that. Were they seriously injured?

MR VARNEY: Not injured at all. They are merely shaken and upset.

Your Lordship, we are very fortunate to have the calibre of Mr Bizos. Mr Bizos I have been instructed by the Timol family as well as Salim Essop to express my enormous gratitude to you for the courage and fortitude and persistence that you displayed in

representing their interest back in the early 1970's and indeed they want to express their gratitude in representing detainees and families of detainees over many decades. They are indebted to you and indeed I may say on a personal note the country is indebted to you.  
--- Thank you.

M'Lord, with your leave, I would like to commence my examination of Mr Bizos by reading the foreword of his book NO ONE TO BLAME. It is less than two pages and the foreword was written by Sir Sydney Kentridge (QC). With the leave of the Court, M'Lord, I  
10 would like to hand up a copy of the book. I am taking care to hand up a new copy because my copy was signed by Mr Bizos in 2004 and I want to hold onto that.

COURT: So you are giving me the unsigned one?

MR VARNEY: [Indistinct].

COURT: I may just do that.

MR VARNEY: Your Lordship in [indistinct] with my learned friend, Mr Pretorius, we were thinking that perhaps it might be appropriate that we start a new volume of Exhibits that we are handing up, if you are in agreement.

20 COURT: Yes, I am in agreement. Where are we now, G? Ja we are on G.

MR VARNEY: As the Court pleases. M'Lord here is the foreword as authored by Sydney Kentridge (QC).

"This book is about a continued search for truth.

The truth about deaths of 60 and more people who

died in the hands of Security Police during the years of Apartheid in South Africa. It is also about the repeated failure of judicial officers to recognise that truth even though it was staring them in the face,

10 In South Africa, unlike some other countries, an inquest is held as a matter of course after any death other than that of natural causes. The death of the political activist who died in Security Police custody are no exceptions. In each case an inquest was held by a Magistrate, often a senior Magistrate.

20 As this book shows in the face of circumstantial and medical evidence pointing plainly to Security Police culpability the Magistrate would time after time exonerate the police. In case after case where to a disinterested observer the untruthfulness of the police witnesses would have been evident, the Magistrates refused to make any finding against them.

Why was this so? Why did the Magistrate so readily accept the unconvincing police excuses? There may be many indictnations for this apparent predility. The background and training of the Magistrates and in all cases promoted from the

ranks of public prosecution may have made them reluctant to disbelieve police witnesses especially when the witnesses were senior officers.

In many cases however, one is driven to conclude that the Magistrates had no real desire to reach a true verdict. Consciously or unconsciously they seem to have seen it as their duty to protect the organs of state at all costs.

10 This may seem to be too severe a conclusion considering the cases of detainees alleged by the police to have committed suicide in detention. The Magistrates in those cases do not even seem to have asked themselves the most obvious question: "Why should a prisoner, why would a prisoner commit suicide when according to the police version he had the option of remaining silent under interrogation.

20 The great virtue of this book however, is that readers may judge for themselves. The evidence, including the cross-examination of the police officers was set up with meticulous fairness. You may judge for yourselves whether in truth no one was to blame.

George Bizos is the only person I know who could have written this book. He was in the thick of most

of the forensic battles described. On accounts of the searching out of evidence in the face of obstructive authority the cross-examination of the police witnesses and the building up of each case make absorbing often exciting reading.

My only criticism of the author is that he consistently underplays his own remarkable skill, persistence and courage in the face of an often hostile force in an always hostile establishment.

10 [Indistinct] and this great advocate to keep alive the ideal of justice in South Africa' darkest times."

M'Lord, I thank you for your indulgence.

Mr Bizos, do you have a copy of your affidavit? --- Yes.

Do you confirm that this is your affidavit; do you confirm the contents thereof? --- I do that to the best of my ability I told the truth.

Thank you Mr Bizos. I should say that Mr Bizos it really is one of the more detailed affidavits that I have seen submitted in an Inquest Court and I have no doubt it would be extremely helpful to this Court when it has to deliberate in its findings. I do not intent to canvass  
20 everything in the affidavit but I do wish to highlight a few matters.

I wish to commence by asking you... and I am also not going to take the Court through your *curriculum vitae*. Your CV is one of the most well known in South Africa. M'Lord, it is attached as Annexure A| and it makes for absorbing reading in itself. We are not going to go through your CV but I will say that as an advocate the foreword written

by Sydney Kentridge (QC) as set out you probably more than any other advocate has appeared in cases dealing with the abuse and torture of detainees and in some cases the deaths of detainees.

In other words, Mr Bizos you are well placed to help this Court establish the context in which the Timol case took place. I would like you to consider some of the cases that you have been involved in. Would you be able to tease out what you regard as the most important commonalities, common to all these cases?

I think of the Timol matter, I think of the Agot matter, I think of the  
10 Biko matter and we would like to hear from you what those commonalities might be. --- Yes, M'Lord, nobody in this world can do alone the things that have happened in South Africa. I was fortunate to be junior counsel to the great lawyers in South Africa. I was junior to Issy Maisels for the Timol matter. I was junior to Sydney Kentridge in the Biko matter. I had graduated to the upper class so to speak taken Silk for the last case Dr Agot. We together with attorneys cannot make sure of them all had their help. We believed that not all police were liars. We actually persuaded some of them to [indistinct] to themselves to tell at least part of the truth. Let me start with Timol. Issy Maisels was the  
20 leader of my group. He heard that the attorneys for the Timol family had come to be the Katralias close friends and they offered me work. When I told Issy Maisels that I was asked to act for the family the greatest lawyer in South Africa, Issy Maisels, said: "George please tell the family that I will lead you, which he did. He was the most respected leader who had done numerous cases including the treason trial which lasted

almost five years and the accused were acquitted. He did not concern himself with the amount of money that may be available for him and his junior and his attorney. He thought that if needs be I will do this case without charging a fee because I want justice to be done. We consulted with the family and we prepared to appear at the inquest. A colleague, a *ware Afrikaner* came to Maisels and me and said that he had piece of paper written by the Communist Party in which it was said that people, if they caught should commit suicide rather than betray their comrades. Fanie Cilliers acting for the police in the case came with a sheet of

10 paper to Maisels. Maisels called me and Fanie Cilliers said have a look at this document. I have been told that a copy has surfaced and it will be handed in, in due course. But what it purported to do it purported to be a document written by the leaders of the Communist Party that instructed the people that were their members rather to commit suicide than betray your comrade. The final paragraph on this document purported to be written by the Communist Party having regard that we have people like Issy Maisels, Archbishop so and so from Natal Soggot another member of the Bar and George Bizos on our side we will overcome. Fanie Cilliers told Maisels that he had all these clients that

20 this was a highly defamatory statement that he was not prepared to use it and he allowed us to have a look at it and said as far as he is concerned we were honourable colleagues of his. He was not prepared to make this document public. I am told that history sort of repeats itself even a long time after. I am told that although this document was not put into the record because Cilliers would not have it. I think there

was most probable a threat that if senior police officers insisted that the document should go in he was going to drop the brief. I am told that the document has become available. It was secretly handed to the Magistrate in another case without it being produced but nevertheless used by the Magistrate in the other case as one of the reasons why the deceased in that case committed suicide. There is the document.

Mr Bizos perhaps I ask you to come in on that particular point. ---  
Yes.

You correctly point out that Magistrate de Villiers relied on this  
10 document in order to support his finding that Timol had committed  
suicide and yet it was never entered as an Exhibit. That meant that you  
and your leader were deprived of the opportunity of asking questions in  
relation to this document. Do you have a comment on that? --- Well, I  
can only say that unfortunately the security police were a law unto  
themselves. They actually decided which Magistrate would take which  
case. Unfortunately, there were Security Police, there were prosecutors,  
there were senior prosecutors that did the bidding of the security police  
and there was nothing that we could do about it.

I was intending to come to it a bit later but perhaps we can wrap  
20 up our questions on this particular document. I am actually not going to  
put the contents to you because you are familiar with it and you have  
already commented plus the type is incredibly small. I think you will  
struggle to read it. The question I do have arises again from the finding  
of the Magistrate because he stated in his finding that the deceased,  
Ahmed Timol, had been involved in distributing this document. As you

are aware the document is titled “[indistinct] of Freedom February 1972, number 2.” So that is of course several months after Ahmed Timol had died. Clearly he could not have been involved in distributing this document and could obviously not have sight of its contents. Can you comment on notwithstanding those facts the finding of the Magistrate? --- Well, we thought that the document would be at least shelved when Fanie said he was not prepared to use it. We believed that there would be sufficient humanity to tear it up or put it away. Not to be handed over to the Magistrate behind our back and what sort of Magistrate was it that

10 takes into consideration of giving a judgment on a document that was not placed before him. The trouble was, if I may expand, to honour. I have listened to him, M’Lord the whole of his evidence. There is a portion of vital evidence that Maisels and I and the Katralias and others knew that the young man was comatose three or four days after the death of Timol. On the floor of the tenth floor passage. I spoke to him, and said did you know that you comatose on the tenth floor of the building [indistinct]. Did you know that a doctor came and examined you [indistinct]? Did you know that your father made an application through us, Maisels and me and Katralias about you being in a hospital in

20 Pretoria and no, I did not know that I was in a hospital either in Johannesburg where he was in the Indian section of the General Hospital? Did you know that the doctor was called as a witness before three Judges that your father made an application that he should be allowed to see you, his son. No, I did not know about that. But it goes further.

Mr Bizos, I have one last question in relation to this famous document Incuraleka Freedom number 2. --- Yes.

COURT: What page? Perhaps before you deal with that. I would like Mr Bizos to just.... He says it goes further. You were narrating what you know happened to Mr Essop. That he was comatose at some point. Is that our understanding? You were about to tell us what happened to him. --- I will come back to that.

Yes, please, I would like you to conclude. --- It is not of importance M'Lord.

10 Yes, it is of importance. --- We, Maisels and I and the attorney, brought an application before three Judges. He did not know anything about it. For the right of a parent to see their child in prison. No, he did not know. What happened was one of three judges was Judge Becker. If you do not mind, M'Lord, we, counsel, think differently about different Judges. But I do not remember who the two were but Judge Becker when Maisels said our client' son is somewhere, we do not know where and the relief we were seeking was that the father should be told and the family where is the son. Is he alive? Is he this is he that is he this and the other? Judge Becker said where is he? Mr Eloff Senior  
20 member of the Bar said he is in Pretoria. Judge Becker in Afrikaans said: "*Waar is...*" he never mentioned the name of the senior doctor.

MR VARNEY: The senior district surgeon of Johannesburg. ---Yes. Buckofse. Buckofse was a well known name. He said: "*wat makeer Buckofse hulle?*" Why was he taken away from Johannesburg because he was a good doctor Buckofse? There was no answer. I think that the

doctor was concerned. He suggested to the counsel of the police that they should really have a meeting with Maisels and me and come to an arrangement that an opportunity be given to eh father to go and see his son. Eloff said let us have an adjournment and he was told, I think, by the senior police around the courthouse we are not prepared to talk about it. We have the power to isolate an imprisoned person not to be seen by anybody. Not to give any information about him or her. Not to do this not to do that not to do that. I do not know who suggested to Eloff if this was so you better go to the Prime Minister, John Vorster. We  
10 took an adjournment. Eloff was away for about two hours. He came back. He told us that he had spoken to Prime Minister Vorster and unfortunately the Prime Minister was of the view that the police officers about the secrecy of people that they arrested is not anybody' business other than the police higher rank officers told Eloff that unfortunately my hands are tied, I cannot interfere with the senior police officers. I think that what was said by Sydney Kentridge must have been wonderful news to the senior police. Justice would never mean anything to them. They were the bosses. They were going to arrest. They were going to detain. They were going to beat up and if I may say having regard to  
20 the fact that over 70 people died in detention of the security police show that they thought the field is ours. We will do what we want to do and we don't have to report to anybody. This is why I think [indistinct].

Mr Bizos on that point if I may highlight a few passages from your affidavit which I think encapsulates what has been common to security police detentions. M'Lord, I do see it is 11:05 are we going to take an

adjournment at 11:15?

COURT: Yes, indeed or rather we take it now. Are you moving to something new?

MR VARNEY: Yes, we could take the adjournment now and then move onto a new subject.

COURT: Okay. We will take an adjournment now. Mr Bizos we will be coming back at 11:30 and we will continue with this, with your evidence. Thank you very much. We will adjourn at this point.

**COURT ADJOURNS:**

**COURT RESUMES**

10 COURT: Yes, Mr Bizos is still under oath? --- Correct.

**GEORGE BIZOS** (s.u.o.) (Continues)

COURT: You may proceed Mr Varney.

**CROSS-EXAMINATION BY MR VARNEY** (Continues): Thank you Your Lordship. Mr Bizos, I now wish to turn to the treatment of detainees and in particular the treatment of the young Essop Ahmed Timol. I want to put to you a passage that is in your affidavit in which you quote Colonel Greyling at the security branch.

Your Lordship, this is at paragraph 54.

COURT: Yes.

20 MR VARNEY: Of Mr Bizos affidavit, which is in Volume C, page 71.

COURT: Thank you. Page 71?

MR VARNEY: Yes, paragraph 54 which is at the bottom of the page.

COURT: Yes.

MR VARNEY: I read as follows:

“When Greyling gave evidence, that is Colonel

Greyling, he said that the detainees were not ill-treated at the allegations of torture were an aversion of the communist and the liberal press and he and his fellow police officers regarded people like Essop as their children and because of that view of detainees such as Essop, they could have never ill-treated detainees because they regarded them as their own children.

And looking back on such evidence, what is your response to that Mr Bizo? --- It is a very bad lie. We have a person who was [indistinct] and did not know what happened for days in his life. Was, is this what you do with a child?

MR VARNEY: Thank you Mr Bizo [intervenes] --- If I, if you take a number, I think. I do not know whether it is for the affidavit, but once it comes to mind, the one that went to the mother of Timol and you know like [indistinct] father was, she was concerned about her child before history and she asked questions about Timol.

And the mother, Timol mother said where is my son. How is my son? Are you treating him well and please do not hit him. I am his mother. I never hit him and what is his answer to the mother? It is your fault that your son is in jail, because you did not hit him. If you had hit him, he would not be what he is and by implication we hit him for what he is.

And they joked about it. The chapter on Timol in my book is ...

In fact, Mr Bizo, you do quote that exchange in your affidavit, M'Lord that is paragraph 90 of his affidavit.

COURT: Yes?

MR VARNEY: And just to assist you the quote of the security [indistinct] in question is in response to what Ms Timos said, he replied you did not beaten, that is why we are now beating him. Mr Bizos, I want to make brief reference to the judgment handed down by Mr Justice Theron. The same civil case you were referring to earlier. --- Yes.

In which Mr Justice Bekker was also involved. --- Yes.

The return day of the final judgment in the restraining order matter. With the leave of Your Lordship, I would like to hand up a copy  
10 of the judgment. My colleagues have been provided with copies as well.

COURT: Is it in a bundle?

MR VARNEY: It is not a bundle as yet, so we [intervenes]

COURT: It will be under G.

MR VARNEY: G2 I believe.

COURT: Yes.

MR VARNEY: And one for Mr Bizos as well. M'Lord, I must tell you that this is the copy of the original judgment and so the typed is unfortunately really small. My learned friend Mr Pretorius says he has  
20 another, another copy of that judgment in which the type is much bigger and he has undertaken to circulate copies of the [intervenes]

COURT: Yes, I will appreciate that, yes.

MR VARNEY: Mr Bizos I just [indistinct] to quote, probably just one passage to you. M'Lord, it is on page 18 of the judgment. It is about halfway down [intervenes] --- The writing is too small [intervenes]

The writing is too small [intervenes] --- So if you could read it out loudly please?

I am going to read it as loud as I can. M'Lord, I would understand you would struggle to read the small type, as I struggle myself. So, I have had this written out and [intervenes]

COURT: We now at the aid of additional pair of eyes as you can see.

MR VARNEY: Yes indeed [intervenes]

COURT: [Indistinct] my best to read with you, proceed?

MR VARNEY: So, it is about halfway down, page18 and just by way of  
10 context, the court is dealing with the evidence of Colonel Greyling, who  
we have heard about before in this inquest and in particular the court is  
dealing with the failure of Colonel Greyling to alert the court to the  
injuries referred to by Doctor Kemp in his report.

And it was disclosed that Doctor Kemp's report refer to some 11  
injuries that he had discovered in examining Mr Essop in John Voster  
square. I read as follows:

20 "It is observed that again no mention is made of Doctor  
Kemp's examination. As I have said before, indeed the  
first medical examination of the detainee on the  
morning of the 26<sup>th</sup> of October, the Colonel."

And I emphasise here Mr Bizos:

"The colonel was unable or perhaps unwilling to  
take the court into his confidence and give the true  
reason for this. Indeed, he dismissed this question with  
the answer I do not know. In the light of what we have

said, how can any court accept the Colonel's evidence on any aspect of this?

On any aspect of the injuries that were apparent to Mr Essop's body as referred to in the medical report of Doctor Kemp."

Now Mr Bizos, in the light of the finding of Mr Justice Theron in this matter, do have any comment to offer or perhaps comparison to make of the finding of Magistrate De Villiers in relation to the injuries sustained? I beg your pardon, let me withdraw that, that question Your Lordship.

10 It was obviously Doctor Essop was not or Ms Essop was not so before [intervenes]

COURT: Yes.

MR VARNEY: With the magistrate. But do you have a comment to make on Justice Theron's finding in relation to the evidence of Colonel Greyling? His failure to acknowledge the injuries that Doctor Kemp has discovered? --- You know unfortunately that there were people in the administration of justice who did not do what was expected of them and I do not know what happened. I did not see it happen. I did not ask why is this young man laying [indistinct] on the passage [indistinct].

20 What has to be frank and not shy to say I am sorry, but you did not perform your duty. Your duty was to actually not torture people and if they were tortured and you saw it in, especially if you were a person who is administering justice, you should not have the title, unless you do what you have to do.

Most of our judges, most of our magistrates lived up to that, but

there were unfortunately some of them thought that they are so called [indistinct] to the apartheid regime was more important than justice and truth.

COURT: Yes.

MR VARNEY: Thank you Mr Bizos. If I can turn to the evidence of a pathologist, who was employed by the State and who had to examine Mr Essop at the hospital in Pretoria. His full name is Doctor Heromod Ntjako, I can get this pronunciation correct, Heronomus Kogh, as mentioned he was employed by the State as a pathologist, he examined  
10 the injuries as alleged by Essop's father, Mr Ishmail Essop.

And as you have testified earlier Mr Essop had caught a glimpse of the injured Selene Essop in his hospital bed. According to Mr Kogh's evidence when he was examined on this point, he disputed the injuries as alleged by the father, Mr Ishmail Essop. And in your affidavit you assert that Doctor Kogh had lied under oath when he stated that he had not seen any injuries.

And in that port, when he was asked to explain himself he said, well I was not referring to the specific injuries that the father had alleged. Do you have a comment to make about the evidence of this  
20 state pathologist and in your view did that particular pathologist, in his evidence, betray the values of his profession? --- [Indistinct] to try and side track into something instead of admitting yes there were injuries, he finds something to say which is an insult to any person that can read and write, or even people who cannot read and write, who cannot [indistinct] by lying.

Unfortunately, unfortunately there were doctors who, they were two doctors in the Eastern Cape that we will deal later who [indistinct] any injuries [indistinct]. I have no explanation as to why they had not done anything to feel [indistinct] injuries that he had that lead to his death.

But, we will do it later. They actually lied. The Eastern Cape doctors.

MR VARNEY: Yes. --- They lied. The medical profession years later, could not accept that the two doctors that so be, did their duty as  
10 doctors. The finding was no one to blame.

MR VARNEY: Yes. --- But what happened is that the medical profession did not leave it there. They applied to Judge Boshoff in the Pretoria to set proceedings in order to examine whether these doctors lied or not. Or did they do their function or not. [Indistinct] the legal profession appointed a commission.

They were both found guilty of not looking after their patient as they should, they were struck off the roll. Another example of professional people actually lying because they are directed by those who are in authority for the wrongs that they are doing.

20 Yes indeed a disgrace Mr Bizos. While we are on the question of the medical profession and the role of pathologist, if I can return to the Timol matter and in your affidavit we know that paragraph 82 of Mr Bizos's affidavit.

COURT: Ja?

MR VARNEY: Page 79 of the record in Volume C. He makes specific

reference to the three pathologist that had examined Mr Timol's body and in your affidavit you say as follows and I am going to read:

"The scientific evidence showed that the injuries on Timol's body were probably inflicted while he was in custody."

So pre death but during custody.

"Three pathologists testified, the state pathologist, Doctor Scheepers, Doctor Glugman, Johnathan Glugman for the family and Doctor Kogh for the police.

10 The main difference of opinion later to the timing of pre-death injuries which Scheepers and Glugman dated to the time that Timol was in custody and Kogh dated some days earlier."

In other words, before Timol's detention and as we have already heard from you this is the same Doctor Kogh who examined Essop in hospital and testified that there is no injuries as alleged by his father. My question Mr Bizos is that, here you have three pathologists testifying in the first inquest.

20 Doctor Glugman for the family, a state pathologist Doctor Scheepers and both Doctor Scheepers and Doctor Glugman testified that the injuries were sustained during the period of custody and only one, Doctor Kogh, who happened to be for the police testified that they predated the period of detention and yet Mr Bizos the Magistrate does not accept the evidence of the two pathologist, he accepts the evidence of Doctor Kogh.

Do you have a comment to make on that? --- Well, we know that, let me say something about the two doctors that said that they were [indistinct]. Doctor Kogh could not have been a fool. He knew that if the, if a young man was beaten up in the way that was eventually clearly established and he was arrested the same time as Timol.

Why was the younger man beaten to almost death and Timol was not touched? What does logic tell us? He, Kogh, it was not the only case. He was the police's favourite. He saw no evil, he heard no evil and his clients were doing the country a great service and he was  
10 helping them by lying.

I do not know what happened with him, with Kogh eventually.

MR VARNEY: Was it the practise of the police at that time to have their favourite specialist, their favourite experts, were they, had they produced time and time again in these proceedings? --- Oh yes the doctors who actually were prepared to tell the whole truth as to what has happened to the detainee or [indistinct] security police. They chosen, they played dumb. They thought that some of our questions that were not possibly answerable in an honest way were really and I am sure they did not tell that criminal clients for that time.

20 You know these people, the communists, they are people who do not believe in the administration of justice in the country. They were, the security police during the period, particularly from mid-70's to almost the three years before the release of Mr Mandela when things started changing, they thought that the Magistrate is one of us.

He will accept what they will say and that happened and that

really was the terrible reputation that the police of Justice at South Africa during the apartheid [indistinct] was not accepted. And I want to say this, I do not want to make generalisations. I am fond of a statement made by an English judge, that generalisations are the product of vulgar minds.

We had judges, proportionately less in number magistrates. We had prosecutors, Afrikaner prosecutors who would actually not take the nonsense of the investigating officer and they would go into their boxes and tell the truth and we would appreciate it. I think that they paid the  
10 price for it. You are not likely to get promotion. You were not likely to be applauded by some of your friends and Politicians.

And I think that there were sufficiently strong minority, in fact, Voster, sorry Prime Minister Voster was asked Mr Prime Minister you are adduced of appointing judges who come from your stable. Forgive me, but the [indistinct]. The, you appoint them and people criticise you for actually appointing judges who are not like to do judges to certain sections of the population.

And Voster had some sort of sense of humor if you consider it [indistinct]. He said, you know you are quite right, we do appoint our  
20 people as judges, but our trouble is that after six months, they think they are on merit. And they no longer do what I, what we tell them to do. This is the private [indistinct].

MR VARNEY: Yes. --- Well he will probably say it was a joke, but my Jewish friends have a wonderful phrase [indistinct]. A bitter joke.

COURT: Yes indeed.

MR VARNEY: I think we do need to recognise that there were these very notable acceptations and that these judicial officers and the prosecutors and the police officers in standing up [indistinct] for law, they took considerable risk and as you say suffered as a result through lack of promotion.

I want to turn to the investigation. --- Once I was counsel, I was counsel for the Namibian people [indistinct].

COURT: [Indistinct].

MR VARNEY: Yes? --- And he made a speech equal more or less in  
10 importance as Mr Mandela's speech, [indistinct]. I remember the opening words used by [indistinct]. M'Lord, from [indistinct] M'Lord, I, we are charged before a judged who is a stranger to us. We are here and are strangers. We are not taken seriously, we are human beings and this was their opening paragraph.

Judge Ludolf who was the judge was asked by van Niekerk, academic, whether he ever took instructions from the [indistinct]. The judge had a drinking problem and he resigned [indistinct] and he told the academic, yes I was given instructions and what was it... I was telephoned by the Prime Minister and was told that the, that we have  
20 enough trouble with the United Nations people.

Because the Namibians were considered not part of South Africa but early independent country and he said, he told me that they had enough trouble with UN [intervenes]

Yes, Mr Bizos, that is [intervenes]. --- Do not sentence anybody to death [intervenes]

But certainly worthy of further, further research? --- Yes, like you said, I have regretted that I listened to him [indistinct]. Because, this speech made by [indistinct] it was not his speech, these bloody communists, George Bishop's wrote it and using the cable, they do not know how to use the words [indistinct]. You will excuse me, I am very happy [indistinct] if he wrote his own, but this was the thing that we had to live with.

It is true that I had a relationship with Mr Mandela. He made a very long speech, because it is a natural thing that comes from, would  
10 you look, I am accused of having used the words, if needs be in relation [indistinct]. I think that is [indistinct] but anyway.

MR VARNEY: Thank you Mr Bizos, [intervenues]. --- [Indistinct] you cannot, you either with them or you are against them. You cannot talk to me about justice, you cannot talk to me about what I should or should not do, I am on this side of the government and everything, everybody that tries to stand in this in front of it and not allow it to do what it wants to do, is something that I am not going to do.

Thank you Mr Bizos. --- Okay.

If I can turn to the investigation in the Timol case. I want to quote  
20 a passage from your affidavit. Your Lordship, I am now on paragraph 36, page 67 of the record as contained in Volume C. Mr Bizos, this is a quote from the Rapport newspaper translated into English. The quote is from the investigating officer assigned to the Timol matter.

A certain Major General Stoffel Buys. --- Stoffel?

Buys? --- Yes.

Head of the CID. So the passage in your affidavit reads as follows:

“The investigation was given to the head of the CID,  
Major General Stoffel Buys.”

Before the investigation was complete, before Major General Buys finalised his docket and handed it to the prosecutors, Buys told Rapport Newspaper that Timol had jumped and in the newspaper Buys is quoted as follows:

10 “The atmosphere in room 1026 was the most relaxed atmosphere imaginable in such circumstances. He explained that Ahmed Timol was sitting calmly in a chair. There was security men with him at one stage, two of them left the room. Mr Timol suddenly jumped up and out the door, a security man jumped to intercept him, but the Indian then stormed to the window and jumped through it.

He was not scared or injured by anybody at any stage.”

20 Now Mr Bizos, what do you make of this statement by the investigating officer to the press, before he concludes his investigation? --- He was doing, in his eyes, his country a favour that they should not be accused of killing the detainees. It is too really obvious that it was a lie that the press was interested in, in [indistinct] any harm done to Timol without any check to anybody [indistinct].

In order to, to say that the government was... I want to make a

comparison. If the Minister of Justice was able to say to a gathering of the national list party in Pretoria, that the death of Bhiko left him cold, why did you expect anything better from the general? It is too obvious.

Yes, Mr Bizos, this same investigator and officer Buys, under cross-examination by Izzie Mazels, he apparently broke down in court and had to be excused for medical reasons. Or do you think there were other reasons why he broke down and had to be taken away? --- You like to be cross-examined by Izzie Mazels? Is it a [indistinct]. I think that he did not really realise that he was called out and it was not  
10 [indistinct] it was really, he was really caught out, because you know, Buys will [indistinct] spoke very little Afrikaans.

But he was man enough in Pretoria about the condition of the young man and Mazel's asked then why did you not allow the father of the child, of the son to see his family, his son? [Indistinct].

MR VARNEY: Mr Bizos, if you can just hold one moment. M'Lord, I do not know if we can ask for the door to be closed so that we have a greater ability to hear the witness?

COURT: Yes, I have raised this several times, because I noticed that it is being interfering with the, with the whole... If I can ask people who  
20 are seated there, please switch off those microphones, those that are before you. I think, or are they being controlled from a particular point?

MR VARNEY: Unfortunately I do not think there are microphones on this side.

COURT: Okay, but are you able to take what he is saying?

STENOGRAPHER: Yes.

COURT: Okay, it is going to be difficult. It is going to be difficult. Please tell her that I need the transcript after this. Okay, okay, I am informed Mr Varney that there are some cables that are running through there and it makes it difficult to close the door completely.

MR VARNEY: Oh I see.

COURT: We just have to make due with the centre, we will work from the transcript.

MR VARNEY: I see.

COURT: Understand that the transcript will come out of, the evidence  
10 will come out of the transcript.

MR VARNEY: As the court pleases.

COURT: Yes.

MR VARNEY: Mr Bizos, I am sorry to interrupt you, but we are having some difficulty hearing. --- Yes I hear the noise but [intervenes]

We had, we, they are trying to close the door. There are cables there which makes it difficult. --- Alright.

We have send somebody to close it as much as possible. --- Yes.

You may proceed.

COURT: What... I need to say this Mr Bizos, we have your affidavit,  
20 most of the things that you are relating are in the affidavit. ---  
[Indistinct]

MR VARNEY: Mr Bizos, yes, please proceed to a very important issue if I may and that deals with the versions of the police put up during the first inquest to explain what happened in Room 1026 and of course Mr Bizos you will recall that room 1026 is the very room from which the

police alleged that Mr Timol jumped, dive, threw himself out of the window and met his death.

And I want to you to summarize the version, because in fact, there were three police versions. Not one, not two, but three. Your Lordship, if I can direct you to paragraph 66 of Mr Bizos affidavit and it is at page 75 of the record in Volume C. Mr Bizos, it reads as follows:

“The police provided three different versions as to what happened after Mr Jacques Rodriquez.”

If you might recall, Mr Rodriquez was the police man who were  
10 provided, was providing coffee, according to the police and [indistinct]  
with the salary pay cheques. He was left alone with Mr Timol and this  
after the alleged incident involving the supposed Mr X spoke about  
these three names.

“The different versions had Timol running towards the door, turning and then running towards the window and then jumping through the window. It also had Rodriquez running in different directions in that room, around the table, and in the process tripping over different chairs.

20 When General Buys was confronted with the different versions, he dismissed the differences as a matter of interpretation. The Magistrate of course had to deal with these discrepancies. The Magistrate found that these discrepancies were nothing more than a misunderstanding between the officers.”

What does that conclusion of the Magistrate, that three different police versions, is nothing more an misunderstanding between the officers. What does this say about that particular court and how it applied its mind? --- [Indistinct] I, I had appeared before this Magistrate, but not very serious matters. He, apparent to be, if I may use the expression, quite civilised.

Sorry, what is that expression? --- Civilised.

Civilised? --- Polite, but the feedback he had received from members of the police and certain members of the community, we know  
10 what the joke was of that group, that what Bazils and Bizos managed to prove is that [indistinct] Indian's cannot fly and this was the slogan and I suppose even reasonably educated man of character.

Cannot stand up to that sort of authoritarian that it did not prove anything other than Indian's cannot fly. That, the communists really want to take over and we have to deal with them. Not in accordance with the provisions of justice. But to destroy [indistinct]. This is what a substantial portion, particularly the white community felt.

And we were dis-perished by unspeakable names, I do not want to repeat them, because they are very hurtful, particularly to the people  
20 without my white community and we just had to live with that and do our best. We did have some success. Too many times for the benefit of these people that we thought that [indistinct] ruling and we cannot really interfere with what they believed the country should be doing.

MR VARNEY: Thank you Mr Bizos. Mr Bizos, in your affidavit you have made some very astute observations about the conditions of detention

that many security branch detainees were held in, including both Mr Ahmed Timol as well Mr Salem Essop. And I just want to put one or two of these observations to you.

M'Lord, this is in paragraph 74 of Mr Bizos's affidavit, page 77 of the record. Mr Bizos you have reminded us in your affidavit that the detention order issued against Timol, specifically ordered that Timol's detention was to be in the police cells at John Voster Square and I emphasise police cells.

Not the offices, the police cells. In your affidavit you suggest and  
10 I think with good reason as to why this detention order was not carried out at all. Certainly not in the case of Mr Essop and I think we can safely conclude the same in respect of Mr Timol. Because from the moment, certainly Mr Essop arrived and until the moment he left, after odd some days, he was never placed into a police cell.

And in your affidavit you say well this allows the police, for starters to deprive the detainees of sleep. Secondly you say that administratively it means that no records are being kept. Normally in the police cell type situation, an occurrence book is kept and all occurrences are being recorded.

20 Meals being brought in, including of the condition of the detainee, any complaints that might have been [indistinct]. Now in your view, Mr Bizos, ensuring that there were never once placed in the police cell, how did this assist the police when it came to explaining themselves in relation to the treatment of detainees such as Essop and Timol? ---  
You know I have a lot of respect for a Sergeant of the police force

behind the counter. He respect you, he talks to you, he makes a lot of why you are there or what you want to do. The security police claimed authority over everybody, including according to Prime Minister Voster himself.

He felt that he could not interfere with this and, you know if I may, one of my son's was here during my, the, two of my sons at Wits University were distributed pamphlets the police station. Not the police station, the train station and the Sergeant took the youngest son, Alexis, to the vehicle and he held pamphlets which they were  
10 distributing and he waved to his older brother that he was being taken.

The elder brother rushed and asked this Sergeant why are you taking him? He said it is none of your business. You get in as well. They were taken to the 10<sup>th</sup> floor. This was in the 80's by the way [indistinct]. There was a Colonel on the 10<sup>th</sup> floor and Colonel asked the younger one what is your name? Alexis Bizos.

Are you related to the lawyer? It is my father. What is your name to the older one? Damon Bizos. Now, please do not go and tell your father that we arrested you. You promise me that you will not tell you father that and he said to the Sergeant take these gentlemen back to  
20 their car.

About three weeks later [intervenes]

MR VARNEY: It just goes to show that the Bizos name even then counted for something. --- About three, three weeks later I was politically case, the Colonel comes up and says Mr Bizos, thank you that you did not take any steps against us, because they have taken your

children in. I said are you the Colonel, yes, I do not remember his name and I told him, you know Colonel, if you treated everybody's children like you have treated mine, you would not have that much trouble.

But you know the, there was this thing that we are the boss. We, you know, I do not know, if what would have happened to the young people. They were disturbing pamphlets and the one that was here, being the youngest, he is also the least form of [indistinct]. He does not have [indistinct] as he was leaving, he said he have a copy of this, of the pamphlet.

10 It appeared, you know that they were prepared to take two youngsters, university students to the 10<sup>th</sup> floor and God knows what would have happened if they did not have the name that they had. And it is, it is worrying to not only me, but to the legal profession as a whole. That dictators and those, so many dictators are [indistinct] are no good for the country.

MR VARNEY: Thank you. --- We have lived through it. We hoped that things will get better.

20 Mr Bizos, this morning you handed me copies of what looks like a very useful journal article. It is titled the Inquest into the death of the Steven Banto Bhiko. I am going to provide copies to my colleagues and I am going to hand up a copy of this article to the court as an exhibit. I believe you have your own copy. --- Yes.

And if there is anything that you would like to bring to the attention of this court in relation [intervenens] --- Well I would like to comment on it, I read it last night. It was, it was found in my papers with

the date of the 17<sup>th</sup>. My son always looking through my papers.

Your Lordship, with you leave, I would like to hand up this article, the authors are Dean and Lewis Pollack.

COURT: To be marked what? G2?

MR PRETORIUS: G3.

COURT: G3, we have G, we have G1, this should be G2.

MR PRETORIUS: As the court pleases.

MR VARNEY: Please proceed Mr Bizos? Do you wish to raise anything in particular about the case of Steve Bhiko? Anything particular arising  
10 from this journal article? --- Yes. I was not in the case that he gave evidence in Pretoria. When the, when his organisation office [indistinct] were arrested and charged with terrorism. He was not arrested or charged and he gave evidence in which I followed, even though I was not in the case.

He gave evidence before Judge Boshoff, not a left [indistinct] things. He actually charmed Judge Boshoff as a witness. That he gave it, what the black lawyers association [indistinct] and he actually, I know [indistinct] the judge actually was impressed by his ability to explain himself to what he stood for, what he hoped would be done.

20 Not very much different to what we achieved in the early 90's in relation to the future of South Africa. And he gave up a very good [indistinct] in order to play a role [indistinct]. He was well known and I had came to the [indistinct] I am sorry, but at my age, I forget names easily and I have got to think a little.

MR VARNEY: Take your time. --- Canridge had something to, even

though he had not appeared in the Zamu case. And I think he certainly had children at the university and the reported to him, so he was afraid of what Bhiko was about, as was mine. We were surprised by his arrest and we did not get any information of what the charge was.

And what he had to answer. The statement emerged from the [indistinct] that he was arrested. It was not for a big issue, not so big [indistinct] arrested but after a while they were released the charge or of course they would be kept in custody without family connections, without lawyers being seen, everything that was in the terrorism act to  
10 read [indistinct] the [indistinct] officers of the police, the boss.

They were running the show. It was quite a shock for people in the media. People in political organisations that Bhiko and he associate was arrested and they all came to be kept. He was kept away from the big guns of the police for a while and he was then transferred and it is always the top floor of the police [indistinct] Eastern Cape.

It came as a shock when it was announced that he had been arrested or [indistinct] of the smaller town in the Eastern Cape. He was put in a cell and of course, he stayed [indistinct] actually was ill. It could have been kept a secret, it was in the [indistinct]. People called why,  
20 what is going to happen, nobody really got an answer.

There were two doctors who was district surgeons. They had admit that he had been not well. It was ruled that he died because he was on a hunger strike. Nobody could really contradict that and of course as I have said earlier, the [indistinct] justice with his death was announced, said that Bhiko's death left him cold.

And in order to, it was a meeting of the [indistinct] party, annual general meeting. One of the people in the audience said that you must please [indistinct] his death and [indistinct] exact word, but everybody laughed about the [indistinct] that he was dead and again, we, I was approached [indistinct].

With the attorney, we actually tried to get information of Bhiko. The two doctors that were eventually, years later, struck of the roll for the failure to look after him. I called a specialist. He was a little bit better than the two, but they did not, he said that you must do this  
10 [indistinct] and the other did not do that.

And it was really, we thought an open and shut case, because we had evidence that he had been beaten up and we had corroborative evidence on this similar fact bases that if this is what they done to Essop, how much different would that treatment have been for Bhiko. The rest is well known.

COURT: Yes. --- They did not look after him properly.

MR VARNEY: That is right. --- The doctors were not in control. He was put into a van.

Thank you Mr Bizos. --- Taken to Pretoria naked.

20 Yes. --- Handed over to the doctor who actually examined him and he said that he was practically on his death bed and he could not do anything about that and that night he died.

That is right. Thank you Mr Bizos. And we had this very useful account by the [indistinct]. I have to keep an eye on the time now Mr Bizos, we are approaching lunch and I do have one final question to put

to you, which would conclude the evidence in chief. I may do that before lunch Your Lordship?

COURT: Yes.

MR VARNEY: I wish to read to you the concluding, the last two paragraphs of your affidavit that we have submitted to this court. And I want to seek your, whether you have anything further to add to this very true [indistinct] precluding paragraphs. Your Lordship, I am at paragraph 103 on page 83.

COURT: On page 83?

10 MR VARNEY: 83 of the record in Volume C. Mr Bizos you have set out in your affidavit, your concluding paragraphs the following:

“In my respectful view there was no basis for Magistrate De Villiers to exonerate the police involved in the interrogation of Timol. There was sufficient indication that Timol that had been brutally tortured during his police detention. The magistrate uncritically accepted the police version, even though it flew in the face of forensically established facts and the probabilities.

20 In doing so he did what was expected of him by the Apartheid regime. The interest of justice and truth demanded this deeply floored finding be over turned.”

And Mr Bizos those are very strong words, certainly I can tell you that from the perspective of the family, the family believes in those words 100 percent.

Before we close your evidence in chief, do you have any comment to make on your conclusions, anything you wish to add? --- Well, the conclusion that I think is that it is not only one fact. The Magistrate, if he wanted to discharged [indistinct] should have said if he had injuries, why did he not and one can only [indistinct] and say well you know the big boss said that we must exonerate him, we are going to exonerate him.

What affect would that have on the people of South Africa and you know you have a copy of the book. I have ordered to assist you,  
10 have put... and I have written all the time what the issue is.

COURT: Thank you. --- Instead of reading the whole book, may I suggest that somebody gets similar.

Yes. --- [indistinct] page numbers.

Yes, the markings here on the evidence. Yes. --- Because I have done seven cases. I believe that the initiative taken by the Timol family is one where the principle of similar fact evidence is at this [indistinct] and we have already been doing it. We have been dealing with Essop.

I do not, I do not need my copy of the book in the immediate  
20 future and I would suggest [indistinct] that the matters were the, important facts about where justice were defeated is marked in my book. I have taken it on.

Yes. --- What would show you that I have thought very carefully of whatever I wrote in the book.

Yes. --- And I am not alone. I do not want to harsh speak about

myself, but to draw Your Lordship's attention that there is a, there are brief judgments about what is being said [indistinct] by not only Canridge which we have heard, but Chief Justice of the [indistinct] also on the cover.

Other people, Minister of Justice and the director of the legal recourses centre and others. I want to assure that [indistinct] that although I am praised in the book and in the comments, I have spoken the truth and the judgments that I may have made have been accepted our courts and there are reasons given why I believe that justice was  
10 defeated in relation to the 69 people that were treated in a similar manner.

And that it is the function which Your Lordship has, which is not going to be easy to use the rule about the factor and similar factor evidence, because you, if you use that ruling, you are entitled to use nobody would be able to say that what is [indistinct]. Is it the truth and that the particularly non-white people were treated terribly during the Apartheid years.

The facts are there. I did not get any criticism from anybody for anything that I have said in the book. Nobody, I have been praised not  
20 for me to blow my own trumpet, you would read it, but I think that history is important. There is no time, if those would say let it be bygones be bygones, [indistinct] of a hurt that was caused to their loved ones during this period.

And a judgment with respect that what was said, was not correct, was not judge. And I believe that it would be accepted by the people.

There are others, the other ones, the other ones are no different [indistinct] if I may [indistinct] of committing suicide. Let us assume that that is so.

The magistrate, Mr Kotze wrote a judgment of 75 pages, exonerating the police completely. He actually was beaten up. He later complaint to the [indistinct]. He may well committed suicide, but the issue is why would he commit suicide? He was kept in custody for 70 odd days.

10 He was promised that he would soon be released. He will see his family and he told them that, but something happened after you [indistinct]. To people to cover, one of them was according to senior people in the police [indistinct] and the other was lieutenant who had a very highly place, member of the police and they assaulted him.

He laid a charge, he was seen by another detainee. He looked not himself and if he actually commits suicide, was it because these two officers who are unidentified in the papers threatened him with greater violence. It is certainly the evidence of the fellow detainee who was released eventually and could [indistinct] statements, dealt in the [indistinct].

20 And the way would be that it is not forgivable for someone [indistinct] to be driven to a state that the other detainees said that he looked very bad. In the 175-page judgment [intervenes]

COURT: I will get hold of it. I will get hold of the judgment and you are quite correct that they have some kind of relevance to these proceedings as to how detainees were treated. I will get hold of those

judgments Mr Bizos, thank you very much for your statement. --- Thank you.

Thank you.

MR VARNEY: M'Lord, may I conclude our evidence in chief by offering a very short quote? And this is by Arthur Chackleson, the late president of the Constitutional Court, it actually appears on the back of the book No one to blame.

COURT: Yes.

MR VARNEY: M'Lord, it reads as follows:

10            “No one to blame explores the implications of torture, deaths in detention, murders by death squads and the failure to find anyone culpable. Throughout his career George Bizos has confronted these concerns with courage and dedication. No South African lawyer did more to challenge the abuse of power by the security forces under the apartheid.”

M'Lord and I submit that that is an appropriate manner in which conclude the evidence in chief of Mr Bizos. We have no further questions from him.

20    COURT: Thank you very much. Mr Pretorius, do you have any questions?

**CROSS-EXAMINATION BY MR PRETORIUS**: M'Lord, I will be very short. We have got his affidavit, we have got his book et cetera and I cannot conclude better than that. Maybe just one. Advocate Bizos, you also appeared in the State v Quinton Jacobson, not so? --- Yes, he

was arrested eventually and I defended him.

He was found not guilty? --- He was found not guilty by Judge Marais.

There was no relation actually between the case of Ahmed Timol and the Jacobson case, not so? --- I think that this idea that Timol was going to do things with Jacobson, is nonsense really. It is true that Jacobson had a brother, a bit of a problem fellow, but the photographer highly professional gave satisfactory evidence before Judge Marais. The attorney general of the [indistinct] prosecutor. He had no answers  
10 to the evidence given of Jacobson.

It was admitted that they had some sort of meeting together with the troublesome brother of the photographer and they may have met, but he was... if the suggestion that Jacobson was going to be drafted to the communist party, they looked the wrong way I think. Because he was a very, a very good photographer.

COURT: Yes. --- He had to explain why did he photograph the police headquarters from the road. And he was asked for an explanation, why did you film the police headquarters, was that part of the ... and he was quite clever and he said, if a photographer has to give a reason why he  
20 has taken every photograph, he must give up his profession. It was there.

Thank you. --- And as the deputy, Attorney General Prosecutor [intervenes]

MR PRETORIUS: On that note M'Lord, I would like to conclude my questioning. I would just like to hand in later the judgment in that

specific case. I have got it with me as G3 then.

COURT: Oh, you will hand in later?

MR PRETORIUS: I will hand in later, G3, I do not have enough copies for everybody now.

COURT: Okay.

MR PRETORIUS: But I have got it with me, I will ask that it be handed in and on that note I conclude, thank you M'Lord.

COURT: Yes thank you. --- If I may just add, Jacobson had contacts, the day of his release, he took me to the Queen's birthday party.

10 COURT: Mr Bizos, my clerk managed to transfer your markings to the exhibit, thank you very much. It is now, your markings are in exhibit. --- Yes, you will keep that one.

I will go through this. --- Yes.

And I look forward at some point also getting a signed copy from you. Thank you very much Mr Bizos. --- Thank you.

Yours was a very long career and I can say, as I have said when I have opened that there is a chapter in that career where I was part of it, working with you and, and I believe that there are others who, as you correctly said, were traveling that path. Who have made a contribution  
20 at the times when there was no constitution even to fall back on.

And they did [indistinct] work. Your evidence is going to assist us enormously, because we are hoping, as judiciary that in this age, this kind of situations, wherever they may arise, should be stopped. But the evidence here that is being lead, we still have to hear from other witnesses.

It is going to be a journey as I have said which [indistinct] and I am to get all the evidence I can get from other people. If you find some other evidence that you may want to hand in, by all means contact Mr Varney and I will take it from there. But for today, thank you very much for coming through and we are about to adjourn the proceedings.

I thank you. --- Thank you M'Lord, I will be available at the legal resources.

Yes, okay thank you. --- And will be able to assist and I may I say M'Lord, that I did not work on this alone. There are about five young  
10 women in the audience, employees of the legal resources that have really assisted. I think of something, I am computer illiterate, but they know where to find things and I want to thank them for their contribution.

COURT: Yes, the court joins in that and we are indebted to your assistants. --- [Indistinct] stand up.

Do you want it to be a court order? --- [Indistinct]

**NO FURTHER QUESTIONS**

UNKNOWN FEMALE: [Indistinct] as our court representative.

COURT: Thank you very much for being of assistance. Is that, is that evidence today?

20 MR VARNEY: Your Lordship, this is our final witness for today.

COURT: Yes.

MR VARNEY: Tomorrow in the morning we will be calling Professor Niak and in the afternoon [indistinct] of the Late Ahmed, Mohammed Timol.

COURT: Yes.

MR VARNEY: And then on Friday we only have one witness and we expect to adjourn at lunch time.

COURT: Okay, thank you very much. Okay fine then very well, we will adjourn until tomorrow 10 o'clock and whereupon we proceed with the evidence. We adjourn.

COURT ORDERLY: All rise.

**MATTER POSTPONED TO 29 JUNE 2017**

**COURT ADJOURNS**

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