

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: I01-2017

DATE: 2017-07-27

INQUEST INTO THE DEATH OF:

AHMED ESSOP TIMOL

BEFORE THE HONOURABLE MR JUSTICE MOTHLE

ON BEHALF OF THE NATIONAL PROSECUTION

AUTHORITY:

ADV PRETORIUS

ADV MALOTWA

ADV SIGN

ON BEHALF OF THE FAMILY:

ADV VARNEY

ADV MUSANDIWE

ADV FAKIR

ON BEHALF OF THE SAPS:

MR LITHOLE

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PROCEEDINGS ON 2017-07-27

COURT: Yes, Mr Thompson

MR THOMPSON: As the court pleases, M'Lord. At this stage I beg
leave to withdraw as counsel appearing on behalf of Mr Rodrigues.

COURT: Yes? Those are the instructions now?

MR THOMPSON: Those are the instructions from my attorney.

COURT: Okay, you are excused, Mr Thompson.

MR THOMPSON: As the court pleases.

MR COETZEE: Thank you, M'Lord. Coetzee here, M'Lord I have
10 been instructed to act on behalf of Mr Rodrigues, so I will be acting
from here onwards on behalf of Mr Rodrigues as well as Mr Els.

COURT: Yes.

MR COETZEE: But we have consulted, me and the attorney had
consulted, there is no foreseeable conflict in the interest of both of
these witnesses that will come to testify in the court.

COURT: Yes.

MR COETZEE: M'Lord, may I while I am on my feet also address the
issue of the application which my learned colleague mentioned to be
brought today.

20 COURT: Yes.

MR COETZEE: M'Lord, the... I will not be proceeding with that
application and M'Lord my interpretation of the Inquest Act and more
in particular Section 17 and Section 17(A) which deals with the re-
opening of inquest proceedings, deals specifically in Section 17(A)(2)
which indicate as far as possible the re-opening should continue in

front of the same judicial officer. M'Lord, then Section 12 of the Inquest Act deals with the continuation of an inquest by a different judicial officer and it make provision where the judicial officer has died.

I will submit that the same practical issues will apply in this instance as well.

COURT: Yes.

MR COETZEE: And in the last sentence of sub-section 2 of Section 12 it indicates that the new judicial officer may cause any person who
10 has already given evidence at the inquest to be subpoenaed to give evidence as if he had not before so given evidence.

COURT: Yes.

MR COETZEE: And I believe that deals basically with a reconstruction situation that was previously raised and I will not move that application.

COURT: Thank you.

MR COETZEE: Thank you, M'Lord.

COURT: Okay, advocate Pretorius?

MR PRETORIUS: Thank you, M'Lord, yes I do not ... it was good that
20 we considered the matter of the reconstruction of the matter.

COURT: Yes.

MR PRETORIUS: The previous presiding officer have a very good summary of the evidence of Mr Joul Rodrigues specifically as well as newspaper reports for his recall. So, I think it is more than sufficient.

COURT: Yes.

MR PRETORIUS: So, I will leave it at that. I would like to call professor Don Vorster, M'Lord. Professor Vorster?

CLERK: Your full names and surname?

WITNESS: Donald Hough Vorster.

CLERK: Do you have an objection in taking the oath?

WITNESS: No.

CLERK: Do you swear that the evidence that 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.'

10 **DONALD HOUGH VORSTER**: (duly sworn statement)

COURT: Thank you. Professor you may be seated if you so wish. ---
Thank you.

Just make sure that when you speak you speak into that microphone. --- Thank you.

Yes.

EXAMINATION BY MR PRETORIUS: Thank you, M'Lord. Professor Vorster, what is your qualifications? --- I have an M.Sc degree from the London School of Economics, a PhD from the University of Cape Town... from the University of Cambridge, UK.

20 And social psychology that is your field of ... [intervene] ---
Social psychology was a specialisation in both instances.

And have been head of the department and dean for a number of years, if you can just enlighten the court as to that, please.

--- Certainly, I had been at the University of Cape Town in the Department of Psychology for 40 years, this year the 40th year. I have

been head of department on three separate occasion, they have a rotating headship. I have served as deputy dean, Faculty of Humanities on and off for a period of about 10 years. Formerly, officially retired so I carry the rank of Humeritis professor.

And just incidentally you have done more than 160 publications, not so? --- I have more than 160 publications. I have run out of counting.

Just to round off this, you also gave evidence in a number of criminal cases, about two dozen of criminal cases you gave evidence, 10 not so, professor? --- That is correct, M'Lord.

That just as a background as to your expertise, professor. Now, professor you have done the search on detention and torture in South Africa, and I think it is about 35 years ago that you did this research, not so? --- Correct, if I may begin a story to the court, I ... on completion of the PhD degree in the early 80's returning to the university of Cape Town and following the deaths and detention of in particular Steve Biko and then on a later occasion Aggott I think in the early 80's it became [indistinct] at least some of us as psychologists to investigate psychological aspects that were underway in terms of 20 security legislation in South Africa, particularly the holding of detainees.

The voice that was missing in those years, M'Lord was the voice of detainees themselves. That is, there was a good deal of noise from the state, from all kinds of parties, but very few ever heard the voice of detainees themselves. So, it was my intention to

investigate by interviewing political detainees and that is what we proceeded to do in the early 80's a period roughly from 1982 through to the first publication of the report in 1985.

We interviewed security detainees in all major centres around South Africa, Johannesburg, the greater province, Durban, East London, Port Elizabeth, Cape Town, so it was an urban based study. We obtained former detainees simply where we could, simply where we could. It was a concentration on those that had been held under conditions for interrogations, Section 6 of the old Terrorism Act
10 and a handful of those under Section 29 of the new 1982 Act. But mainly for purposes of interrogation, I think 76% of cases that we interviewed were interrogation, related security detainees.

We trained 9 interviewers, extensively in a rather different method to interview detainees at some length. What we found in pilot work was that detainees objected, former detainees objected to being closely scrutinised and cross-examined, so a different approach was taken and that is a rather open ended interview situation which was far more relaxed for a political detainee. In other words, to put it in very ordinary terms, we asked them what happened, what happened
20 to you? Tell us what happened to you. We adopted a slightly different approach in viewing detention.

We regarded detention as a process and not simply as a single event. Let me elaborate – many people are put under stress before they are even detained. How so? Many of them are under situations of surveillance, some of them are threatened with detention,

threatened with arrest and a whole series of events occur even before they are detained. So what we did was to draw a line to illustrate on a piece of paper and said: Tell your story, beginning before you were detained, what happened earlier on? Were you under surveillance, were the police looking for you and so on.

Then what happened at the moment of arrest? How were you arrested, what time? And we were searching for a detailed description of what had happened to them. So the general form of the interview was open ended, all interviews were audio recorded and
10 subsequently transcribed. From the transcriptions we worked to code information to eventually produce a series of tables, for example what actually happened in terms of kinds of torture and later health symptoms during detention, and health symptomatology after release from detention.

So the study looked at a processual aspect of detention as a series of events as sets of processes, occurring over time.

Let me ask some pointed questions a little bit here, professor. Now this was inter-disciplinary study eventually? --- This was an inter-disciplinary study.

20 Legal, historical and then psychological? --- That is correct.

Right, historical and [00:12:05 – 00:12:11 *faulty soundtrack*]
--- ... the time period covered was for 1974 to 1984, so a decade, that is detainees who were detained from 1974 through to 1984, that decade.

You eventually published a book called 'Detention and

Torture' with contributions of judge Dennis Davis and Diana Sandler.
--- That is correct. The book is ... it follows. It is by Don Vorser,
myself and assistance from Dennis Davis, who is now a high court
judge and the research assistance at the time was Diana Sandler.

M'Lord, I beg leave to hand it up as Exhibit K. Exhibit K.
We were still busy with the inter-disciplinary study. It was under the
auspices of UCT, not so, the criminology, the Institute of Criminology?
--- Correct, although... [intervene]

Can you just elaborate on that? --- Certainly, although I
10 was based at the Department of Psychology the Department... the
Institute of Criminology, Dirk Van Zyl Smit as director, was keen to
house the study, in other words to look after the administrative
aspects, to look after the financial aspects and he was quite keen to
put a roof over the head of the study, in other words to look after the
procedural aspects, administrative aspects of the study, so it was
done under the auspices of the Institute of Criminology and it was the
Institute of Criminology that produced and published the initial reports
in 1985, late 1985, somewhere around September, October 1985.

And this was all done according to the principles of the
20 social sciences, scientifically done in accordance with the social
sciences? --- That is correct, M'Lord. It is an empirical study, the
one that we are concerned with here is an empirical study that is
separately, we looked at legal aspects, separately we looked at
historical aspects, from the beginning of security law way back in the
50's and the progression of increasingly Jeconian legislation over

time, but the study... particular study that is rather unique in this aspect, is the empirical study and by empirical normally philosophically is meant simply information taken in through the sensory data system.

In ordinary [indistinct] in the social science it is through observation and the observation in this particular case with interviews, with the former detainees.

And incidentally I think all 400 interviews is still available at UCT, not so? --- All the interviews is still available. The sample size and so for any further reference, M'Lord the sample size was 176 cases of security related detention, mainly interrogation. However, a handful were repeatedly detained so we interviewed 158 individual detainees, but we referred to the data, the unit of analysis is 176 cases of detention.

What was the purpose of this empirical study of you, professor if you can just elaborate, what was the purpose of your book? --- Primarily to hear the voices of security related detainees. These had been muffled at the time. I was a psychologist, it was apparent that psychological techniques were being used in security related detention, and it became incumbent on us to hear from detainees themselves what psychological and physical aspects pertained to their experience of detention.

Ja, incidentally even before the Rabie commission the voice of the detainees were not heard at that stage. --- That is correct, sir they were not heard.

You refer to the Timol matter, I think on page 27 of your book when you discussed the political, the historical context, if you can just look on page 27 of your book. --- Certainly.

The top paragraph I think from about the 2nd sentence there, 'After the period of relative politically calm from the mid 1960 to the early 1970.' --- Right.

And then in 1971 the security police raided the homes of 150 people of all races in various parts of South Africa, at least 7 people were detained in terms of Section 6 of the Terrorist... one of
10 whom Ahmed Timol died.' And then you also refer here to Dr Salim Essop's case, not so? --- Yes, correct.

Now, but I have a few questions for you, what do we mean if we say that detention is a close system, what will it mean if we say detention is a close system? --- Close... by describing detention as a close system, I refer to three things. The first is the legal situation. The legal situation particularly under Section 6 of the Terrorism Act which was in fact re-enacted as Section 29 in the early 80's. It meant that legally one had no access to detainees. One could not put motions in a court of law to produce the body of a detainee. The
20 legislation, the security legislation prevent even legal access.

So the first aspect there is a close system which was covered by law. The second, and the most important for our purposes here, is that the detainees were entirely in the hands of the security related officials. Not only the security police but of course the handful of doctors and any other personnel that may have been brought in.

Only later after the death of Biko in 1978 and yet again in the early 80's were systematic regulations brought to bear whereby there were visits and in ... even in that case the visits were usually the form of other judges, people within the legal structures, that is very little independent access.

So the three tears of this close system of detention is one legal, two the security personnel themselves, the security police. In fact detainees were entirely in the hands of the security police in terms of any decision. They could be held *in communada*, they were
10 held *in communada*. They were held for lengthy periods and those periods could be renewed. Even from as early as the Original 90 days Act and then the 180 days Act in the early part of the 60's, these detention orders could be renewed.

In other words they could be held almost indefinitely without being put through a court of law, without being subject to the access to the normal process of justice. The third aspect of this what we describe as the close system, detention without trial is the experience of the detainee. Detainees would have felt enormously vulnerable in such a situation. Very often they were held in solitary confinement or
20 in places away from other detainees and therefore not even having access to this [indistinct] of other detainees, let alone families, legal operative, anybody on if you like, their side of the fence. This was fenced off, so detainees were... [intervene]

Detainees support committees, the parents, the detainees parents' support committee also only came later, as the support

structure. --- Detainees parents support committee only came later and even so that was simply often support upon release from detention, but within the system of detention itself it was a close system. The media did not have access, you could not report. We did not even know in some of the occasions whether the person had been detained or not.

With your expertise, professor I must ask you the question, does detention provide potential hazards to the mental and the physical health of detainees? --- Indeed, that is what we surmised at
10 that case and that is what we further investigated by interviews and we will speak to the results shortly, yes.

Yes, you can go over to the results, what was the results, if you can just tell us exactly what did you find, because of your research? --- Very briefly just to touch on what we were talking about as the process. We found for example that indeed matters before detention and the early phases of detention were pertinent. That is people were... did experience surveillance on the part of the security police, did experience harassment, investigation, threats. They were already been watched in many cases before they were detained.

20 The process of arrest was often hostile, often late at night, often aggressively done. This would send a clear message to the detainee that you are now in the hands of authorities who are hostile. The main set of findings for our purposes here, maybe discussed in terms of the table that we provide on page 102. The incidents of reported physical torture. Just before I proceed to that, M'Lord I

should say a word about the generalisability of this particular sample. The sample that we interviewed, 176 cases of detention, we assessed this against all known population parameters of detainees between 1980 and the end of 1982.

The reason we did not investigate the wider population from 74 to 84 is very often that information was not public. Very often in the given year there was no public reporting on parameters of the population. In many instances our sample matches closely in terms of age, in terms of gender, in terms of racial category, in terms of areas
10 of involvement in activism and work. In all these respects this can be regarded as an adequate sample in terms of generalisability to the wider sample of security related interrogation sections.

So, having said something about the sample and the generalisability, we turn to the key findings. Of the sample 83% reported being subjected to some form of physical torture. Let me pause here and say, I differentiate physical torture from psychological torture. United Nations' definition of torture has recognised psychological aspects as well. We will touch on that shortly and we will probably spend less time on that. I simply want to say at this
20 purpose that from the point of view of the detainee, there is no separation between physical and psychological, it is all one package. It is what happens to you.

So when I am reporting this, I am artificially making a distinction between physical torture and psychological torture. Having said that, these are the general findings of the sample as a whole.

83% experienced some form of torture. In terms of frequencies, the most common forms of torture were as follows: beatings 75%, let us just pause there. That includes a whole range of things, including pushing, shoving, slapping across the face, beating around the head, punching, kicking, the mule kicks that is referred to in Ahmed Timol's case would fall under that category for example.

The second most frequent category, forced standing. The third category, main abnormal bodily position. I think somewhere in this case there is reference to detainees being forced to sit on
10 imaginary chairs, if I could enact it, it is to be told to sit in this kind of posture, apart from being a ludicrous posture to sit in, in other words embarrassing and degrading in many aspects, of course this can be highly debilitating physically and when you are kicked in a position like this, or punched in a position like this one is extremely vulnerable.

Forced gym exercises, bag over a head, famous method in the Cape, electric shocks, food deprivation and we can pause here and recall that a number of these occurred in the case of former detainee who reported earlier in this case. We can touch on that and say that there is a checklist that were experienced, and these are
20 likely to have been kinds of things that Ahmed Timol was subjected to. Strangulation, suspension, there are all different modalities of suspension. One of them in the South African situation and we in parenthesis say these are the same methods used all over the world.

Other studies have shown very similar methods and similar frequencies of methods. When we talk about suspension there are a

number of ways, but the key was to put a broomstick between the knees of a person, here and here and to suspend them on a stick and then to handcuff the person onto that stick as well and you are enable to swing them around in fact to ... in parts of South Africa this was called the helicopter method. Dreadful and of course highly debilitating.

So, the bland word suspension covers a whole series of further aspects. Cold water, sometimes we have heard in this matter as well, also urination where people sit and you are pouring cold water
10 over to revive them, they also urinate over them. Order deprivation, application of cigarettes, chemicals, bright light, excess cold, excess heat and so on.

I also want you to touch on the psychological forms of torture, if you can just ran down through the psychological ... I think we find it at 105, page 105 of the book. --- Certainly. First of all I could summarise psychological aspects in terms of four categories before I go to the actual details and say that psychological torture which for years was not recognised, as a form of torture and this study was one of the first in the world that started to put clearly on the map
20 the motion that psychological aspects should be regarded as part of the total package recognised as torture, partly on the back of United Nation definitions.

So, the four major classes of forms, the first involves communication. Usually distorted communication. I will give examples in each case. For example one form that was widely used

in the Eastern Cape was to inform you that the police would kill members of your family. Now it is a form of lying, it is a form of distorted communication, but it can be enormously stressful to a person who knows that they are held totally in the closed system of detention. That is the first form, all kinds of distorted forms of communication.

False accusations, offers of threats, bribes, all kinds of forms of false communication. If I could pause here, M'Lord and try and take an everyday example. In our everyday life we often refer to
10 people close to use to verify reality and we also have access to newspapers and the media and these are forms of testing the veracity, the radical aspects of reality. However, when you are held in a closed system of this sort, and then subjected to distorted or false information, it can have a very powerful affect. So the first category is this distorted communication.

The second category of psychological aspects are mental weakening aspects. For example, use of drugs, use of scam execution, quite often they would put a gun to your head and say, we are going to kill you.

20 Or they hand you over the stairs? --- Or they hang you over the stairs, or in Alby Sax's case way back in Wineberg he wrote a book about it and Alby Sax was indeed also dangled over a stairwell by his legs and threatened with being dropped. There are a whole series of forms of mental weakening devices. One of the most powerful of course is sleep deprivation. The lack of sleep is probably

among the most powerful of all devices and of course it is a physical aspect but it is also a very powerful psychological weakening device being deprived of sleep, being deprived of food, being deprived of water.

Being told to stand, the statue form of torture for.. stand on bricks or simply stand on one leg for hours and hours and then all of these aspects are mental weakening devices. The third category could be called psychological terror tactics. Again scam executions, extreme stresses, being knocked around, threats of killing of the family and so on, all kinds of devices which could be put under the form of psychological terror tactics. It is to put extreme fear, stress, anxiety in the minds of detainees with worries that this will be continued further.

Simply threats that we will prosecute, threats in those days of being prosecuted and life sentences on Robben Island or the rest were all part of a standard baggage. The fourth category of psychological devices will be regarded as degrading devices. Humiliations, being forced to undress, electric shocks to the genitals. Being bitten extraordinarily by dogs. Being subjected to animal bites of various sorts. Humiliating postures as I have said before, nakedness in various forms. They are all kinds of degrading devices. Degrading to your religion for example.

Degrading to your family, people would make degrading remarks about your mother, for example and in a closed system these degrading aspects are... so the details, I will just read out a few of

them. Solitary confinement, verbal abuse, threatened violence, the alternation between good and bad interrogators. Misleading information, the witness or the knowledge of others torture.

Very often detainees claimed that hearing the screams from cells down the corridor was enough to put them into a state of absolute terror or witnessing as in the present case, witnessing, getting a glimpse of another detainee who can hardly stand and is being supported by members of security police. This kind of witnessing is a form of again, psychological terror tactics. Threats of
10 execution to the self of a family, offer of rewards, undressing, constant interrogation, constant interrogation is a form of weakening, mental weakening device and one of the aspects of this case we have heard that interrogation went on and on and on in a fairly unbroken fashion.

What needs to be said here, M'Lord is just one thing, that one of our findings was that interrogation, if very largely conducted by teams, we think very often because we see certain movies of an individual policeman interrogating an individual subject, these are the films that is from abroad. The fact of the matter is that our study revealed that interrogation is conducted by teams. Furthermore the
20 teams often rotate in terms of 8 hours on 4 hours off, 4 hours... another team moves in so it is quite possible to have extended periods of fresh interrogators but an absolutely debilitated, exhausted detainee.

I do not want to dwell too long on this, and we also got to touch on some of the theories. You have looked at post-traumatic

stress syndrome and you also looked at learned helplessness, all those things you made applicable to the consequences of detention, no so, professor? --- That is correct. All these theoretical aspects and I do not wish to detain the court here on such matters, the matter of theory is long and complex and rather tedious and I do not think helps us in this particular matter, but there are a range of theories from the 1950's on up to the present day in trying to account for way detention is stressful. The crux of it is that our claim here and our findings are that detention is a highly stressful situation. It works
10 through the operation of stress whether the label is DDD, debilitating, dread and whatever it is [00:39:03 – 00:39:43 faulty soundtrack].

I want to take you through to your conclusions and that is in chapter 7 on page 153. Tell us in your own words, after you have done your research according to your social sciences, what conclusions did you make regarding detention and torture in South Africa? --- The conclusion we drew from this research in a nutshell was that torture formed a relatively systematic and widespread form of abuse during security legislation over this period, that is we are talking actually to generalise from the 60's onwards well into the 80's. This
20 conclusion then dated 97, sorry 87, this book was published in 1987 and I quote: 'Results provide clear evidence that both physical and psychological methods of torture are employed on a widespread and fairly systematic scale in South Africa.'

The number and the range of health problems, both during and following the release from detention indicate the severity of

treatment at the hands of security officials. We need to say as well that in the appendix I give results of other studies elsewhere in the world, but these results are similar to other highly stressful situations and other research reporting on particularly stressful situations. This is not unique research to South Africa. There are not many studies, at least in those days it was a long time ago, 30 years ago, not many studies but there were a handful of studies internationally, particularly those studies showing that the health symptomatology post-detention was remarkably similar in other samples, in other parts of the world.

10 Chile, South America, different parts of the world where torture was used.

Now, detainees cannot manufacture this. They are not skilled medical operatives so if they were reporting similar kinds of symptomatology it adds support to the validity of this particular study. The findings, to repeat, is systematic torture conducted through South Africa in security legislation in this period.

I conclude my evidence in chief in that, M'Lord. I see it is 10 past 11. Maybe we should take a tea adjournment.

COURT: Yes. We will proceed with your questions [indistinct].

20 Professor, you will come back 11:30 for us to continue with questions.

--- Certainly, M'Lord.

We are adjourned until 11:30.

COURT ADJOURNS

COURT RESUMES

COURT: Professor you are still under oath.

DONALD HOUGH VORSTER: (still under oath)

COURT: Mr Varney?

CROSS-EXAMINATION BY MR VARNEY: Thank you, Your Lordship.

Professor Vorster, your book has a section dealing with the inadequate safeguards in place to prevent the physical torture of detainees. More specifically you set out certain inadequacies in laws and regulations to prevent the following: (1) The psychological torture and abuse of detainees. (2) Inadequate laws and regulations to ensure appropriate medical care of detainees and you also point out various other inadequacies. I want to focus just on the failure to
10 prevent psychological torture and abuse of detainees for the moment.

Would you ... would I be correct in saying that these inadequate laws and regulations actually encouraged such torture and abuse in those days? --- Certainly, M'Lord certainly they would have created a climate in which it was possible.

And can you describe to the court why these laws and regulations made it easier for both physical and psychological abuse to be carried out? --- To repeat in a sense what I said earlier, it is the close system of political detention in South Africa, that is the lack of access to the old legal requirement of [indistinct] of being able to
20 produce the body by lawyers, so the lack of access, the lack of access to independent medical officers. This would have promoted a climate in which it was possible, in which the security police would at least would have believed that they may act with impunity.

In your book you also make reference to the Rabie commission of enquiry, to matters related to the operation of South

Africa security laws. You seem to be saying that there was some significant shortcomings in that particular commission, can you highlight the main ones? --- I just want to say this for the court, all of these events occurred later.

Yes. --- Certainly after the events that concerned this particular inquest. I just want to note that and say that these events ... the series of events were as follows: The death of Biko in detention and then certain enquiries that started to say, what is going wrong? The Rabie commission and reports from the detainees per support
10 committee. So the inadequacies at least one of the chief inadequacies was not to hear from detainees themselves. The other inadequacies of not getting independent legal advice, there was a series of criticisms by certain lawyers over the years. It was not the first time, and if I could just make mention also of a Unit Nation report, published in 1972 which detailed 74 pages were listed in the book, 74 pages of details describing torture in the years 67 to 72.

So there was other criticism at the time that was not adequately dealt with by the Rabie commission.

And in preparing for this particular testimony that you are
20 giving us today, did you have occasion to look at the affidavits of Salim Essop and perhaps some of the other torture victims who have supplied evidence to this court? --- I have had a speed read of such evidence, yes, M'Lord.

And in terms of the types of torture that were alleged in those affidavits, would you say there was considerable or substantial

overlap with the types of torture that you have highlighted in your book? --- Indeed, that is correct.

And so would it be fair to say that certainly in apartheid era in security detention those types of torture were common practice? --- They were common practice, that is my chief claim, M'Lord.

Are you aware of South African Communist party doctrine or policy or perhaps instruction or directive to its members that if they are detained, interrogated and tortured, that they should rather commit suicide than betraying their comrades or the party? --- I saw this
10 document in the pack given me in preparation, but I cannot speak with any authority on this. I do not know it from first hand. I can only surmise that... I have no knowledge of it really.

Ja, so in the research that you and your colleague carried out, you never came across..? --- I did not come across that.

Okay. --- Nor any similar device, no.

Nor in relation to any other party, ANC or [intervene] --- No, indeed no.

And finally, these... [intervene] --- I was aware, if I could just add a point here, that the body called the Detainees Parents
20 Support committee, including among others David Webster who himself was assassinated, you will recall in the apartheid years, the DPFC provided information to political activists as a partial preparation for dealing with detention. That information was a fairly accurate portrayal of the kinds of symptoms that one could experience during the course of political detention, but there was no talk of

committing suicide, nor suicide as a way out of detention, certainly not.

Thank you. So these very serious practices that you have highlighted in your book, are you concerned that some of these practices of torture in police custody are still taking place in South Africa today? --- I have read newspaper articles to that effect. I have no personal knowledge but certainly I have read allegations to that effect. There was a study conducted by the University of the Western Cape in the 90's. The author was Fernandes, professor Fernandes,
10 as I recall which did look at torture by ordinary policemen in the post-apartheid period, but that is a long time ago, that would be the early 90's. I do not know... ahh, I do know, there was a major study again from the University of Western Cape literally about a year ago, I remember appearing at a briefing and helping them prepare documentation, University of the Western Cape.

Let us say, about 18 months ago, so there has been recent documentation, in fact the legal centre at University of Western Cape has provided a historical set of documents of all the years prior and then up to about 2015, so we could get such documentation.

20 We will be submitting an annual report of Iped, the body that deals with police and complaints, the 2017 and 18 year which suggest that there are some 223 cases of deaths in policing custody for that year that are being investigated. But there are some 2 550 cases of assault being investigated by the police and apart from those assault cases, some 27 cases of torture alleged against the police which are

being investigated which suggest that not all these practices have been eradicated. --- Correct.

M'Lord, no further questions.

COURT: Thank you. Yes, Mr Coetzee?

CROSS-EXAMINATION BY MR COETZEE: Thank you, M'Lord I have got only a few questions. Sir in your study, empirical study, did you use a base line of normal detainees, in other words detainees that were not necessarily political detainees or security related detainees, to see the effect of normal incarceration and detention of ordinary
10 criminal persons? --- No, sir we did not. As in the side I should say in an unpublished ... we had never published this [indistinct] as I recall, we simply took an ordinary sample of students at the University of Cape Town and University of Western Cape as I recall a long time ago, and we gave them a checklist of health symptoms, similar to the health symptoms reported here and of course very few of them reported such symptomatology, but no sir, we did not conduct a... as it were a controlled group.

Yes, and this detention and torture and I am more specifically referring to the 70's and 71 that period, or the period that
20 you looked at, was this a unique thing to South Africa, this form of detention and torture? --- Was it unique to South Africa?

Yes. --- No, sir. No sir, somewhere in this book we list something like 98 other countries that had been reported by Amnesty International. There had been the annual reports of Amnesty International, the sad truth of the matter is that this form of abuse is

very widespread. It has been historically and it is very widespread in the world, at that time, 1970's.

During your research, so did you at all consider or investigate the prevalence of suicide during detention, and I am not differentiating between security detention or normal detention, but suicide within the structures of detention? --- No, we did not investigate this. I am aware that such studies have been done, but we did not investigate it, no.

Thank you, M'Lord that is the question I had.

10 COURT: Yes, thank you. There is only a question from me. The pieces of legislation that were applicable.... [intervene] --- I am slightly deaf, sir, sorry.

The pieces of legislation that were applicable at the time, you spoke more of the Terrorism Act, Section 6 of the Terrorism Act. Then it was followed by Section 29 of the Internal Security Act. --- Correct, sir.

Now, Internal Security Act in an amended form is still in place today. Have you conducted a study to see whether the conditions of a detainee under Section 6 of Terrorism Act would be
20 different now in terms of the measures that have been placed through amendments? --- I have certainly not conducted such study and I know of no such study.

Oh, okay. --- We... somewhere in the book we make a distinction between the years... different years of detention and so we actually have a comparative table somewhere that compares those

detained earlier and those later. I am just trying to see if I can find such a table. But as I recollect, we did not have enough sample size to make such comparisons meaningful. The crux of the answer to your question is, no we do not really know.

Yes, no thank you very much. Any questions?

MR PRETORIUS: No re-examination, thank you, M'Lord.

COURT: Thank you very much, professor, you are excused. ---
Thank you, M'Lord.

Next witness, is it Mr Varney's witness?

10 MR VARNEY: Your Lordship with the leave of the court we would like to call our next witness, that is Frank Kennan Dutton.

COURT: Yes.

CLERK: Your full names and surname?

WITNESS: My full names are Frank Kennan Dutton.

CLERK: Do you have any objection in taking the oath?

WITNESS: I do not.

CLERK: Do you swear that the evidence that you are about to give is the truth, the whole truth and nothing but the truth?

WITNESS: I do.

20 CLERK: Please raise your right hand and say: 'So help me God.'

FRANK KENNAN DUTTON: (duly sworn statement)

COURT: Thank you, Mr Dutton, you may sit down if you want. ---
Thank you, M'Lord I prefer to stand for the moment.

Yes?

EXAMINATION BY MR VARNEY: Thank you, M'Lord, with your leave

I would just like to hand up two documents as we may make reference to them during the course of Mr Dutton's evidence in chief. M'Lord the first document is a blown up photograph of room 1026. It comes from the book authored by Mr Enthias Kajee, Timol request for justice. A blown up photograph can be seen adjacent to page 97 and we have marked that document as C8.

COURT: Yes?

MR VARNEY: And the next document is the police file for one J Z Van Niekerk and that document is marked J2. I can confirm that all of
10 my colleagues have been given copies.

COURT: Yes.

MR VARNEY: Okay, I have just been passed a note that Mr Dutton wishes all of us to speak as loud as possible. I will endeavour to do so. Mr Dutton did you make out an affidavit for purposes of this inquest? --- Yes, I did.

And you have a copy of that affidavit? --- Yes, I do.

And you confirm the contents of this affidavit as being your affidavit? --- Yes, I do.

Your Lordship, for the record this affidavit is part of volume
20 H of the record. It is marked H7.

COURT: H7, *ja*.

MR VARNEY: Mr Dutton we need to deal with your expertise and your personal background and your affidavit discloses a great deal of background, dealing with your professional career. It is a very interesting and distinguished career but time does not really permit us

to go through it piece by piece. But what I would like to do is just to highlight some aspects and perhaps you can confirm that they are indeed the case. If you wish to add, then please do so.

You describe yourself as an international policing, an investigation expert and that you carried out complex investigations in South Africa and a range of other countries, Bosnia, Croatia, [indistinct] Sudan, Afghanistan, DRC and a number of other countries, too many to mention. --- That is correct.

10 Other highlights, you have been in the South African Police force before it became was a service, for some 38 years and you were also the first head of the director of special operations, also known as the Scorpions. --- That is correct.

And you received the Order of Boabab in gold from the president of South Africa in recognition of your policing work locally and abroad. --- That is correct.

You joined the police on the 1st August 1966 and you carried out your police training for 1 year and thereafter you did general policing duties in various places. --- Yes, that is correct. I did a year's police training in 1967.

20 Thank you, and that covered all basic policing activities. --- Yes, it did.

And you commence work as a detective in 1971. --- Yes.

And during the course of your work you had occasion to investigate hundreds of political violence cases, some of which involved cover ups. --- Yes, as from 1985.

And more particularly those cover ups involved police cover ups, is that correct? --- Yes, correct.

In 1992 you headed up the KwaZulu Natal investigation team for the Goldstone commission and can you just describe to the court what did that commission do and more particularly what were you investigating? --- The commission was a commission to enquire into the causes of violence in South Africa. I was appointed as the head of the investigation unit for KwaZulu Natal and I might add that state advocate Pretorius was on the secretariat of that commission.

10 And you also headed up an independent investigation to look into head squads within the KwaZulu police? --- That is correct.

And then from 1996 you were seconded to the United Nations International Criminal Tribunal for the former Yugoslavia where you investigated [indistinct] war crimes and crimes against humanity in Bosnia and Croatia and ultimately you commanded all field investigations in Bosnia, Croatia and Cossiva. Can you just describe briefly what kind of field investigations these entailed? --- Well, the one were when the refugees were being forced out of Cossiva by the security forces and they were flooding over the
20 borders into Macedonia and Terrano at Scopia and Macedonia and coming into refugee camps and we were collecting evidence from them concerning the method and the way in which they had been expelled from Cossiva.

So that was Cossiva. The one in Bosnia we all.... there were continual investigations in Bosnia but included amongst that of

course was the exhumation of mass graves.

So you were investigating the likes of massacres and atrocities, so you would say you are quite familiar with crime scene investigations? --- Yes, I am and in fact in Cossiva it was a very interesting crime scene investigation because it entailed a whole country.

You returned to South Africa in December of 1999 and that is when you were asked to establish and head up the Scorpions which you did so until 2004, when you resigned. --- Yes, that is correct.

10 In broad strokes, can you just advice the court what have you been doing since your retirement? --- Well, since my retirement I have been acting as a consultant investigator to a lot of different organisations. The United Nations Development program, the Global Funds which distributes aid in respect of TB, AIDS and malaria. [indistinct] where we investigated sexual offences. I have been appointed to head the investigation units into different commission of enquiry, one in Dafur and the other in East [indistinct].

The Dafur enquiry that was appointed by the UN Security Council. --- That was appointed by the UN Security Council.

20 And I understand you have also been involved in reforming the police force for the Island of Seychelles? --- Yes, that is correct. Initially I was employed by the UN to do an assessment of the peace force in Seychelles and after that the Seychelles government employed me to implement the recommendation that I have made.

And currently you are investigation Reynard Patchon on

behalf of the provincial government of KwaZulu Natal and you are also a member of the National Planning commission? --- That is correct.

In your affidavit you have outlined that ... how you got involved in the Ahmed Timol matter and that ultimately you were instructed to collect new evidence for the purpose of re-opening the inquest. It is all set out in great detail, there is no need for us to recount that in your evidence. --- That is correct.

But perhaps there is something emerging from your accounts of what you did, which amongst other things was to track
10 down Mr Salim Essop. We heard evidence from him in the first week, as well as a number of other victims of torture who were detained at John Vorster square. What did you feel it important to take their statement and ensure that they were submitted to the inquest court? -
-- When I started the investigation, I was given a lot of material. The original inquest documents, those that do exist. I was given the book written by Mr Kajee. I was also given the book that was written by Mr George Dizoz and in particular the chapter on Indians can't fly, and it became apparent to me that the people that had been detained had not been called as witnesses to the original inquest, even though they
20 were available.

And what were the implications of that, Mr Dutton? --- Well the implication of that is that the inquest court could not have arrived at a proper finding if they had not heard all the witnesses.

I want to turn to part of your affidavit where you suggest that the death of Mr Ahmed Timol in police detention ought to have

triggered two investigations. Why do you say it ought to have prompted these two investigations and perhaps describe to the court what these investigations ought to have been? --- Well, the one investigation is obviously the death and the cause of death and if anybody was responsible, into the death of Mr Timol, but there is another aspect as well which under police regulations any police officer who allows a prisoner to escape, that is a departmental investigation. It is a disciplinary offence.

10 So, by Mr Timol exiting through the window, it is effectively an escape from custody so there should have been a departmental investigation. Looking to different issues as to what the inquest should have looked at, although often those issues would have been parallel, but there should have been the departmental investigation, should have looked to see that all instructions, police instructions were obeyed, the standard operating procedures were obeyed, that whether Mr Timol was restrained, whether there was sufficient guards guarding him, issues like that. That enquiry, in my view, ought to have ended with some of the members having disciplinary steps taken against them.

20 And to the best of your knowledge, and the investigations that you have carried out, did you find any evidence of such disciplinary enquiry? --- No, there was no disciplinary enquiry held.

Or rather administrative enquiry which could have resulted in disciplinary? --- That is correct.

And in fact you go so far as to say that certain individuals

should have been particular subjects of such an enquiry. Your statement suggest this at paragraph 26, is that captains Van Niekerk, Gloy and sergeant Rodrigues, can you explain why they should have been subjects of an administrative enquiry? --- Well, from the inquest it appears that they were the people that were in control of Mr Timol.

And you also highlight that, and this you get from the founding of the inquest magistrate that the police regarded Mr Timol as a valuable find that the police wanted to keep. --- Yes, that is correct.

10 Are you suggesting that because of the status of Mr Timol, that really should have called for an administrative enquiry? --- Most definitely.

And do you have any idea why there appears to be no such an administrative enquiry? --- Well, the only reason that I can think of is that it was a part of the cover up, because that enquiry ought to have taken place, particularly because Mr Timol was such an important arrest for the security police. The security police at that time had been struggling with bucket bombs going off in different cities. Sometimes simultaneously and it was a huge embarrassment
20 to the security police and so when Mr Timol was arrested and identified as the head of the cell, the main unit in South Africa, he obviously was a suspect in all these bombings and by him escaping and being killed in his escape, placed the police in a very bad light.

And if there had been a serious, methodical administrative investigation, could it have potentially uncovered evidence that could

have been of use to the original inquest? --- Yes, definitely.

Let us now move on to the actual investigation into the death of Ahmed Timol. You have reached the conclusion that the investigation that was conducted at the time, amounted to a cover up of the truth? --- Yes.

And what you do in your affidavit is that you set out what should have happened in that investigation and you set out certain following basic requirements and steps. I think it really is important that you take the court through those steps and explain why you think
10 these certain steps should have happened. --- Certainly. It is important for any investigation but particularly for an investigation into a death of a person to be considered impartial and thorough. To achieve this, it needs to meet at least the following basic requirements: The investigators must be independent and as impartial as reasonable possible. All available evidence must be collected, reserved and presented to the inquest court, including all potential witnesses must be interviewed, their statements obtained and they must be made available to the court.

There must be a very thorough scene of crime investigation.
20 A thorough and impartial post-mortem should also be held. All relevant material must be made available to the inquest court. I have made on the independents and impartiality of the investigation and although in 1971 it would have been challenging for the South African Police to have selected a truly impartial investigator, however they could have taken steps to try and achieve this. They could have

brought in an investigator who had a ... who had built up a credibility and a reputation for fair investigations, from a different part of the country, possibly and an investigator who had a proven track record.

The South African Police at that time had many very qualified investigator who could have conducted an investigation like this. Although this was not done at the time in 1971 in South Africa, and since this investigation was important, not only because Timol was an important prisoner but also because of the repressive laws that existed in South Africa and particularly the detention without trial,
10 that when a detainee died in custody it put the government and the country under a lot of pressure, from international organisations, from other nations.

It also persuade anti-apartheid people to enhance their resistance. So, if the South African Police wanted to demonstrate to everybody that this was indeed a suicide and not a killing through torture or any other means, then they should have sought this impartial investigation and to do that they could have selected a, for example a credible independent lawyer to act as an observer to the investigator. They could have brought in an international police officer
20 to act as an observer.

They did not do that and instead they appointed general Buys who headed the detective branch at Pretoria headquarters. And general Buys very quickly demonstrated that he was in fact not impartial, because he made a report to the Report newspaper that he believed that Timol had committed suicide and this was right at the

beginning of the investigation, a conclusion he should not have reached at that stage.

And what impression would that have left in the minds of the wider public? --- Well, the impression it would have left and which I think it did leave, is that the investigation was not impartial.

Just turning to the question of taking statements from security branch members, you say that they only took statements of security branch members who were directly involved in or another way with Mr Timol. What should they have done? --- Well, that is rather
10 like if you have a death in the bedroom of a house and the only people you talk to are the people in the bedroom and not to the people in the other parts of the house. So in this case they should have spoken to everybody on the 10th floor, and they should even had made a chart what each person was doing and where they were on each of the 5 days that Timol was in detention.

They should have asked them what they heard, whether they heard screaming. They should have asked them have they seen anything unusual, had they seen a man with a blindfold walking down the corridor. Did they see a man that had to supported because he
20 could not walk properly. Have they seen any torture apparatus? All these questions should have been asked to everybody on the 10th floor, at least on the 10th floor.

And why is that surprising that no black police members featured in the investigation? --- I know that... I do not know the exact number but I know that there was a large contingent of black

members that worked on the 10th floor, who were attached to the security branch, and it is surprising that none of them made a statement, none of them were approached for their view or for what they knew about the death of Ahmed Timol.

You have made reference to the police version dealing with a Mr X, and according to the police version accepted by the original inquest court was that once Mr X came into room 1026 where Timol was present and announced that he knew where Quinton and Hendry Jacobson were, that apparent or alleged startling news prompted Mr
10 Timol to exit the building through the window and commit suicide. ---
Yes.

So you raise a number of question which I think are disturbing ones and can you take the court through the questions that arose in your mind in relation to this Mr X. --- Well, Mr X was obviously a very critical witness if that version was true and a statement should have been recorded from him and he should have been made available to the inquest court. No statement was taken from him, he did not appear before the inquest court and [indistinct]. This is surprising because at that time and right through the 1980's
20 the security police made use of secret witnesses in court and these witnesses would give evidence in camera or they would give evidence in various ways so that their identities would not be revealed.

Mr X could similarly have given evidence at the Timol inquest and it surprises me that he did not.

COURT: On that very point, could there have been any law at that

time, which protected witnesses such as Mr X from making statements or being identified, was there to your knowledge, any law or police regulation that... or police policy that would have prevented it? ---
Not that I am aware of, M'Lord.

Proceed.

MR VARNEY: As the court pleases. --- Can I comment further?

Yes, please do. --- The other surprising thing about Mr X, if he was such a secret witness, if he was for example an undercover agent and that had infiltrated the community or an organisation, then it
10 is completely illogical that he should go up to the 10th floor where there were numerous detainees being held and go to the door, go into the office where Timol was being held and make this announcement, because it would just mean that at a later stage Timol could have disclosed that Mr X was a security branch agent. Anyone of the other detainees who happen to see Mr X could also have disclosed his role.

Now, undercover agents are used in police forces throughout the world. But an undercover agent never goes to a peace building or to a peace office because of the danger of it blowing his cover.

20 So, what conclusions do you draw from this scenario? ---
Well, I wonder whether Mr X actually existed.

Indeed in your affidavit you go so far as to say that Mr X version is a concoction devised by the police to explain the suicide of Mr Timol. --- Yes, exactly.

And investigating the wider scene what do you think the

police ought to have done, and I mean a wider scene, around the building perhaps? --- Well, the investigation should not have been restricted to the 10th floor, it should have been widened to the entire John Vorster square. There may have been people, policemen or visitors to the police station standing in the grounds that might have seen the fall. There may have been people, as we heard for example with advocate Matthis who happened to see the body falling when he looked out the window.

So, there ought to have been office to office enquiries done
10 at John Vorster square to see whether anybody have any information that could assist the investigation.

And what about simply walking across the road from the impact zone to ask people in shops and filling stations and others, given it was during the daytime, anybody might have heard or seen something. --- Yes, exactly and that ought to have been done. You know, appeals could have been put out to the public to come forward with information, if anybody had seen anything significant, nothing like that was done.

Is that not the most basic elementary, you know, 101 of
20 investigations that you do reach out and you do start talking to people in the vicinity? --- If you want an investigation with an accurate result you have to reach out to people and the wider you reach the better your result.

Let us turn to the scene of crime or incident investigation.
What would be the most important sights of a crime scene

investigation in this case? --- Well, apart from the body which I will not discuss because that is the post-mortem examination, but certainly there were three crime scene. One is the place where Timol actually fell, the place his body or his person came to rest on the ground. The second is the office where he was held and from where he allegedly jumped, that office 1026. And then at least of the John Vorster square police station the 10th floor. So then I discuss where the body came to rest.

Now, factually what happened was that Timol's body was
10 removed within minutes from him falling. If there were compelling reasons to move Mr Timol, the position of his body ought to have been marked, either using paint or using tape or using rope or something. It is a very common thing we all see on TV, you have a body laying on the carpet, taped out.

It may seem obviously but why would the police want to mark the position of the body? --- Well, because you want to preserve the scene as best as you possibly can and if there was a compelling reason to remove the body, you would want to record where the body was for your scene of crime investigation. The scene
20 investigation is where one gets your best evidence in terms of forensic evidence which is more reliable than oral evidence.

What else should have happened at the crime scene? --- The crime scene, a plan ought to have been drawn of where the body lay and measurements taken between key points so that later, even 46 years later you could reconstruct that scene exactly. And then of

course the scene should have been photographed and promptly and thoroughly photographed, not two or three photographs, hundreds of photographs, every aspect of the scene should have been photographed.

While the body lay there? --- While the body lay there, yes and that again is... it is easy to reconstruct the scene from photographic evidence where for example may have laid or where a wrist watch fell or any other aspect, where the branches of the shrub that apparently were stripped, all these things should have been
10 properly and carefully photographed.

But what if it happened perhaps in the late afternoon, we know that the police say that he fell around 3:50pm, nightfall was approaching, I think that is probably disputable, but let us assume that it was close to night time, is that a good excuse not to photograph? --
- No, it is not. The South African Police in 1971 were in possession of flood lights, they could have flood looked the area for photographs and obviously flash photography was in use in 1971, so the other alternative is you could have kept the scene exactly as it was until morning, and that is often the case that one does.

20 You mentioned something from brigadier Pattel's evidence, he spoke of an indentation in the earth which indicated to him where Mr Timol had fallen. What do you say should have been done in respect of that indentation? --- Yes, brigadier St John Pattel testified that he did not see the body in sight, but that he had found an indentation on the ground which indicated to him where the body lay.

Now that indentation should have been examined forensically so that it could be reproduced, the depth of it so experts could be called in later on to examine the indentation and the hardness of the earth to determine whether that indentation was made by a body falling, rather than maybe somebody scratching an indentation.

So it is that the depth and position could have been measured? --- Yes, very important, it would also have indicated the position in which the body fell.

In the absence of tape measures and photographs, you also
10 mention that certain steps should have been taken in relation to blood stain on the earth? --- Yes, I understand that Mr Timol bled while then after the fall. I think it would have been important for samples to have been taken of that blood and for it to have been compared to the blood of Mr Timol. At that time they did not have DNA technology but they could do blood grouping. And that would have assisted one to come to a conclusion, a strong conclusion that the body that was in the mortuary, the person identified as Mr Timol did actually fall in that position.

You also make mention of the position of windows in the
20 building itself. Why was this important? --- Well, the position of windows whether they were open or closed. Advocate Matthis testified for example that he looked up and he saw that the windows were all closed. If that is in fact the case, then Mr Timol could not have exited from a window and conversely if there were open windows or a open window it would support the case that he did exit from a

window.

And also if the position of windows in the building had been recorded we get a better idea as to whether Mr Timol might have bumped into or hit one or more windows? --- Yes, exactly.

Coming back to photography, you have spoken about the crime scene itself. Your statement says that there should have been more photographs taken of the surroundings, why is that? --- Well there should have been photographs of the surroundings, I have mentioned the shrubs, there should be of the wall if there was any
10 wall, how close the traffic was from the road from where the body lay. Photographs of open windows, so just generally anything of interest and not only of interest to record those photographs so if for example now, 46 years later we want to see if there was an open window or something protruding against which Mr Timol could have fallen, we could examine that photograph and find out, very clearly what the position was.

And why do you say an expert on trajectory of the fall should have been secured? --- Well, that is also very important in a suicide case where there might be doubt as to whether it was in fact suicide
20 or he might have been pushed, to find out how far he landed from the building and whether that trajectory, according to an expert is where he would have likely have fallen. The only position that I know of in this particular case is brigadier Pattel, he said the body lay 10 feet from the building and he also observed damage to the shrubbery. So, it may be that the police needing to account for injuries to Mr Timol,

needed him to fall through the shrub and a trajectory expert would be able to say whether that was feasible, whether he could have fallen through the shrub.

Let us turn to room 1026. --- Yes.

The so-called second crime scene and can you take us through, this is at page 24 of your affidavit. --- Yes, again photographs and plans should have been properly drawn and prepared of every aspect of the office, including windows, position of telephones, position of filing cabinets, positions of waste paper
10 baskets, everything should have been recorded. The office should have been forensically examined for fingerprints and blood stains. I know that brigadier Pattel says that he did an inspection for blood stains. That is not sufficient, a forensic expert needs to look for blood stains, because there is a possibility that if there were blood stains, they might have been cleaned and a layman would not see those blood stains, a forensic expert would be able to find them.

The office should have been searched for items such as food, food wrappers, drinks and containers, drink containers and clothing. Any recovered clothing that might have belonged to Timol
20 should have been forensically examined for blood stains, for body fluids that should have been examined for signs of violence, tears and rips. The contents of the waste paper bin ought to have been very carefully checked. Timol was sitting at the desk and according to the evidence he was busy writing statements. He could have written a suicide note and dropped it into the waste paper bin, but we do not

know whether anybody checked that.

The phone number and the last numbers dialled. I cannot remember in 1971 whether the telephones had recall capacities. I think they did, but in any event assuming that they did, those numbers should have been recorded and investigated. The window through which Mr Timol jumped ought to have been forensically examined for fingerprints, blood and traces of shoes polish and mud. If he went through that window Mr Timol would have left forensic traces of him leaving that window. Those examinations were not done. The precise
10 position that the investigators found the window in, should have been recorded.

Was it fully open, was it closed, was it halfway open, was the latch tightened, how easily did the closing and opening mechanism work, and all these aspects should have been noted.

And you have made reference to the 10th floor, but just take us through the more specific investigations that should have happened on that 10th floor. --- Well an inspection should have been held of the entire 10th floor, looking for any unusual or suspicious item. There could be torture apparatus, electric shocking machines, there
20 could have been bags, hoods for a person's face, there could have been blindfolds and all these things should have been looked for. Mr Timol was held on that floor for almost 5 days. I think it was 4 hours and 17 minutes. Evidence of his presence and the nature of his detention should have been closely examined on that floor, including what food he ate, were there plates, were there knives, were there

forks.

Could food be warmed there or cooked? Were there... was there tea and coffee making facilities? How many mugs were there, were fingerprints taken of the mugs? Toiletry items, did Mr Timol have a toothbrush, if he had a toothbrush it should have been examined forensically for traces of blood, especially because we have heard that he may have been bashed around the mouth. The bathrooms and toilet should have been examined very closely for blood, particularly basins. In the track below the basin, even the
10 minutest amount of blood can be recovered and identified forensically.

Let us turn to the moving of Mr Timol from the point where he impacted the garden. There is evidence from the police that he was moved very quickly and taken first to the foyer of the building and then subsequently moved to the 9th floor. Now you stated that as far back as 1967 when you did your police training, you were taught basic first aid and on that course what were you taught about what to do when coming across somebody with very serious injuries? --- In 1967 as in previous years and years afterwards, it did not continue, I do not know for how long it continued every police recruit was taught basic
20 first aid. The course lasted for 6 months and there was a period, I would think almost every day, it maybe not every day, maybe 4 days out of 5, a period of 40 minutes devoted to first aid.

I was in an English speaking troop and our troop chose to do the St John's ambulance course. The Afrikaans students chose to the *Noodhulp Liga* course. Both are very similar. We were taught various

things about bandages and how to do bandages to scalps and to arms and pressure bandages and all sorts of things but the one thing that remains very clear in my mind is that we were taught not to move people who had very serious injuries.

It is something which played out in my police career. After my training I went home to Greenwood park police station and I will assume either a crew on a police van or in fact the driver of the police van, and almost every day we attended accident, car accidents and people were very often very seriously injured in accidents and we did
10 not have to practice the first aid we were taught because the ambulance service would arrive very soon after the accident, soon after our arrival and indeed sometimes they arrived before our arrival.

So there was no real need for us to practice it. I can remember one occasion when I did practice it and it was not very successful in this way and that is that I came across a motor accident within seconds of it happening and the passenger, front seat passenger had gone through the windscreen and cut his throat and blood was just pumping out of his throat and I tried to put pressure on the wound to stop the bleeding but it did not work, I mean the blood
20 just pumped out it is like trying to stop a hole in a garden hose. Within minutes a doctor arrived at the scene and he took over from me, but this person unfortunately died soon afterwards.

So we did not move patients, unless we had to and as we heard yesterday if a person was laying on a very busy highway on the road and there was a very real danger that he might be killed or

further injured by passing vehicles, then we would move him. So, when I saw in this particular case that they had moved Timol's body so quickly and in a blanket, because we were taught and we witnessed it and one was part of it, when the ambulances arrived they put people onto a board or alternatively onto a stretcher, and they were very careful about it. So, why Timol was put onto a blanket and carried away, I cannot understand that and I cannot understand what the reason was.

Especially when he was laying in a garden, some distance
10 away from the traffic so there was no danger that he would be hit by a moving vehicle. And we will lead evidence on this point, there appeared to be no barrier in those days, so an ambulance could easily have stopped fronting onto the garden and he could have been moved in an emergency vehicle for emergency treatment or he could have been treated on the spot. --- Yes, exactly. I am quite certain that in Johannesburg, well I have not got any experience of it, but I am quite that within Johannesburg within minutes an ambulance could have been there. We certainly know that Dr Kemp arrived at the scene within 10 minutes. Now why these members felt it important to move
20 Timol in the manner that they did to the foyer of the building, I cannot phatom it, I cannot understand what they were trying to achieve. They said that he had a pulse rate, or they felt a pulse. He should have just remained where he was until help could have been brought to him.

Well, in your statement you go further to say that in your

view as an experience officer moving Mr Timol in those circumstances is consistent with an attempt on the part of those involved to ensure that he did not survive and it is conduct in your view that is consistent with a cover up. --- Yes, most certainly. I think that by moving him, the crime scene investigation could not take place, could not [indistinct]. I might mention that I know Deysel, the person that felt the pulse, that he had first aid training at police college, and he certainly knew that he should not do it.

Let us return to Quinton Jacobson and you will recall that
10 this is the individual ... [intervene] --- Sorry before we go there, I want to add something to this.

Please do. --- If Mr Timol died on the scene, then of course he should have remained there, I think we have discussed that, but I just want to point that out, even if he died there was no reason to move him and in fact all the more reason to leave him where he was because police protocol are that a crime scene remains exactly as it is.

And indeed should remain a crime scene until the investigations thereof is complete, no matter how long it takes? ---
20 Exactly.

And in your experience sometimes how long can these crime scene investigations take? --- Well, I have been involved in investigations where the crime investigation can take up to a week.

And everything is left as is? --- Everything is left as is and great care is taken, great, great care is taken in recording precisely

where each little thing is.

Would the body in those cases stay there or would it be removed once it has been properly marked? --- The body would stay there for as long as necessary and it would ultimately be probably one of the first things that would be moved, but not quickly. There is a lot of forensics that have to be done on a body before it is removed and the body would... the positioning of the body would be properly recorded. Obviously photographic evidence would have been obtained of exactly where the body lies.

10 Thank you. Returning to the facts around Mr Quinton Jacobson and we have already spoken about Mr Jacobson and Mr X so we will no revisit those facts. You point out in your affidavit that the police viewed Mr Timol as the head of the main unit of the SACP in South Africa and that Quinton Jacobson was a co-conspirator of Mr Timol. But you raised doubts about that conclusion, can you explain why you are so doubtful? --- Yes, I think it was Gloy and Van Niekerk who said at the original inquest that they had reason to believe that Quinton Jacobson was a co-conspirator and they had also indicated that they believe that the mere mention of the fact that they now knew
20 where Quinton was, in their opinion prompted Timol to leap out the window.

Now, Quinton was subsequently arrested, after the death of Timol and in Quinton Jacobson's department of justice detention file I found that there was a letter, it is a letter of motivation to the secretary of justice, from the security branch dated the 8th of November 1971

and it is said that Quinton and his group, because Quinton was not arrested by himself. Initially he was arrested with 4 other people, had been found in possession of the document Inkululeko, sorry I cannot pronounce it properly, number 1.

Now, and this was a letter from brigadier Kruger to the secretary of justice in paragraph 77 to 78.

Just for the record, Mr Dutton, that would be volume B, M'Lord Exhibit L. --- Sorry, could I have some more water please?

I beg your pardon, Your Lordship it is volume L, not volume
10 B.

COURT: Yes, I see here in the notes it appears as volume L.

MR VARNEY: Yes.

COURT: Are you referring to the Inkululeko document? Or reference to the file of Quinton? --- Yes.

Oh yes.

MR VARNEY: It is the letter from brigadier Kruger to the secretary of justice, page 77 to 78.

COURT: Yes?

MR VARNEY: M'Lord, my learned junior has alerted me to the fact
20 that that was an error which we meant to correct. It should be Exhibit G7, that is the police file for Quinton Jacobson, I suppose the department of justice file for Quinton Jacobson.

COURT: Yes?

MR VARNEY: Please proceed, Mr Dutton. --- In the letter brigadier Kruger says that Quinton and his group were found in possession of

Inkululeko number 1. Now, if this was so we know from the inquest and it is not disputed, that Ahmed Timol produced Inkululeko number 1 and he distributed it. So if that, if that pamphlet had been found in the possession of Quinton Jacobson, it would certainly establish a link between the two of them, between Ahmed and Quinton. Now, the secretary of justice writes to the Minister and he repeats this and says that Inkululeko number 1 was found in possession of Jacobson and his group.

10 It is surprisingly when Quinton Jacobson is prosecuted and charged, he is charged by himself but he is not charged for possession of the pamphlet. Now we know too that the pamphlet was a communist document and the possession of it in 1971 was illegal in terms of the Suppression of Communism Act and the possession, the mere possession of that document was a serious offence and the possessor was likely to face a lengthy term of imprisonment. Looking at the judgment for the case concerning Quinton Jacobson, Timol does not feature in that at all, there is no link between Timol and Quinton and so that really takes the legs out of the version that the mere name of Quinton Jacobson startled and frightened Timol to such
20 an extent that he jumped through the window. There is no evidence of any connection between the two of them.

And in your statement you say that this version is most likely a crude fabrication on the part of the security branch. You stick with that version? --- Yes, very definitely.

M'Lord, we are approaching 1 o'clock and before I get to the

next line of questions I wonder if we should not take our lunch adjournment?

COURT: Are you going to be a while with what is remaining here?

MR VARNEY: I would say probably about another 15 minutes.

COURT: No, no then we may have to take an adjournment. We will adjourn until 2 o'clock, 14:00.

COURT ADJOURNS

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COURT RESUMES

COURT: Mr Dutton you are still under oath.

FRANK DUTTON (s.u.o)

10 COURT: Yes Mr Varner?

MR VARNER: Thank you M'Lord.

COURT: Is there something Mr Coetzee wanted?

MR COETZEE: M'Lord I thought of doing it at the end of the session. I have been instructed by the police and I will do that now when I am on my feet, that on 27th July at about 09:00 they tried to serve a subpoena on a witness which was identified Mr Adam Ahmed, and it appears and there is an affidavit by Brigadier Tchibou that it appears that the witness avoids service. He first denied that he is the person, then refused to identify himself and then he absconded M'Lord. They Court not serve
20 the subpoena on the witness.

COURT: Okay. We will deal with that later.

MR COETZEE: Yes. I was Thank you M'Lord.

EXAMINATION BY MR VARNEY: As the court pleases M'Lord. M'Lord before we commence in the evidence that Mr Dutton gave, reference was made to the Regulations of the South African Police.

COURT: Yes.

MR VARNEY: That were in application during October 1971, and he made specific reference to the Regulations that prohibited members allowing detainees or prisoners to escape. M'Lord we have a copy of those Regulations, which we have marked H8. We would like to hand those up. All the representatives for the parties have been furnished with copies.

COURT: Yes? It is Regulation what? H?

MR VARNEY: H8.

10 COURT: 8.

MR VARNEY: So volume 8. Just for the record M'Lord it is Regulation 58 sub paragraphs 25, and we would say sub paragraph 26 is also relevant.

COURT: Regulation 58 you are saying? 58(6).

MR VARNEY: So yes. It is Regulation 58. It is titled 'Offences against duty and discipline'.

COURT: Yes?

MR VARNEY: Then it would be sub paragraph 25. I can read it to you if you wish ...[intervene]

20 COURT: No I have it here.

MR VARNEY: Thank you.

COURT: While we are at it, Mr Dutton were there Regulations or Standing Orders for the police in regard to preservation of a crime scene, which you testified about? If you can recall? --- M'Lord that would be contained in SAPS for investigation of crime, but it would be

standing orders. But I don't have them available.

Oh okay. No fine. You can proceed.

MR VARNEY: Thank you M'Lord. Mr Dutton you have made certain averments in your affidavit dealing with the fact that Mr Rodriguez was issued with a letter of commendation for services to the state. This is at paragraph 84 of your affidavit. --- Yes.

You say he bought his discharge on 5th June 1972 and on 20th June 1972 he received a letter of commendation from Commissioner of Police General G J Joubert, and this was just 2 days before the
10 Magistrate issued his finding into the death of Timol on 22nd June of that year, which exonerated the police from any wrongdoing. Mr Dutton I would like you to have reference to that letter. Your Lordship we are now dealing with the police file for Mr Rodriguez. It is marked J1. The letter in question is on page 77.

COURT: Page 77?

MR VARNEY: Page 77. It is in Afrikaans and with the Court's leave I will read the first two paragraphs. My learned colleagues, if I get the translation wrong are free to correct me.

COURT: Yes?

20 MR VARNEY: It reads as follows:

'Dear Mr Rodriguez

On the occasion of your resignation from the service I would like to express my deep appreciation for the dedicated service that you have delivered to the state. Your conduct has been determined as exemplary. The

achievements of this distinguish is proof that you always served with an unblemished record in a faithful and competent manner.'

Now Mr Dutton in your affidavit you have expressed surprise at the fact that Mr Rodriguez was issued with such a letter of commendation. Why have you expressed surprised? --- Yes indeed I am surprised. Firstly I would say that in my knowledge for my entire career in the South African Police it was very seldom that the Commissioner provided a letter of commendation. If a letter of
10 commendation was provided it was normally done at a provincial or district level. So that would be the first point. But the second one that I find curious with this is that Mr Rodriguez joined the SAP on 9th February 1956, and on 27th June 1956 he was convicted of statutory perjury for contravening Section 9 of Act 16 of 1914 and given a suspended sentence for 5 years, provided he was not again convicted of an offence involved dishonesty.

Mr Dutton if we can just pause there. Your Lordship there are two references to this conviction in his personal file. The first one is on page 83, where the record is reflected. Firstly Mr Dutton I just want to
20 point out an error in your affidavit where you say it was a suspended sentence for 5 years provided he wasn't convicted of an offence involving dishonesty. In fact details of the offence or rather the sentence reads as follows, and Your Lordship I am going to translate the Afrikaans:

'He was givenRather his sentence was

postponed for 6 months, so long as he does not commit an offence involved dishonesty.'

What should also be pointed out is that where the nature of the offence is set out, there is the word 'geskrap' and it looks 15-01-1957. Do you know what it means by geskrap? --- No I don't. But I think No I don't.

Okay. Your Lordship I can advise we are investigating what geskrap means, whether he was subsequently pardoned on that date, whether he perhaps had the sentence or conviction overturned, or
10 whether it was some internal administrative procedure. And once we have concluded our investigations we shall bring it to the attention of the Court.

COURT: Yes?

MR VARNEY: The other reference on page 85. Mr Dutton can you explain what this document is about and highlight the section dealing with offences? --- Yes. This document is an application form by Sergeant Rodriguez for re-enlistment into the South African police. That is document 85.

And that is dated, it looks like 28th October 1975. --- That is
20 correct.

Does he disclose any offences? --- He discloses 'Statutorie myn eet' in 1956, Pretoria. Then he writes the words 'uitgestel' and (geskrap).

M'Lord that appears at the bottom of that page under the heading See Optreddings / Offences. Mr Dutton can you also provide

other reasons for your surprise that he was issued a letter of commendation? --- Yes. I am just trying to find my place. So Sergeant Rodriguez did not have a remarkable police career. He was employed in a clerical position in the finance section at Headquarters for his entire career. During this period the SAP28 which is the leave register he took a total of 301 days sick leave between 9th February 1957 and 15th November 1971. Out of these 301 days is included 53 days sick leave in relation to sport related injury. That is regarded as Those 53 days would be regarded as injuries on duty.

10 Sorry are you saying the 53 sport injury related days are separated from the 300 odd days or included? --- It is included in the 301 days.

M'Lord if I can refer the Honourable Court to pages 92 as well as page 17 of the Rodriguez Police file which enumerates the different leave periods. It looks like the most detailed schedule is in fact on page 92 and it is on a form titled 'SAP 28'. --- Then my shall I go ahead?

20 Please go ahead. --- Then my final reason is or sorry my next reason is that Sergeant Rodriguez was the person in the room with Timol when he apparently escaped. And as I said earlier that is a disciplinary offence. And I am also surprised because Mr Rodriguez personnel file does not disclose that he had received any letters of recommendation.

Before you move on to letters of recommendation. You seem to be saying that his failure to stop Mr Timol exiting room 1026 through the

window, is really something that should be held against him? --- Yes very definitely.

Were you surprised that Mr Rodriguez ultimately could not stop Mr Timol exiting the window of 1026? --- Yes I am.

Why? --- Well Mr Rodriguez was a man of six feet tall, and at the time he weighed about in excess of eighty kilograms. He was a sportsman, he played rugby. He did Judo, he did wrestling, he did boxing. So and as we have also heard that Mr Timol was a small man weighing I think sixty kilograms, sixty one kilograms I think.

10 According to the post-mortem. Yes according to the post-mortem report he weighed approximately sixty five kilograms in weight and he was one metre sixty centimetres high. --- Yes.

M'Lord for the record the personal file does have medical records for the years 1956 and 1975. In 1975 he was one metre eighty nine centimetres high and weighed eighty seven kilograms. That medical history is contained at page 91 of J1, and his 1956 medical history is contained at page 93 of the same document. According to those records he was six feet high and weighed one hundred and forty two pounds. The reference as to his sporting activities, he played rugby
20 and that can be found between pages 12 – 21. He was also involved in athletics and that can be seen at page 14. There are also references to him being involved in karate and boxing. I don't have those particular references right now. --- Sorry not karate. Judo.

Okay. Sorry Mr Dutton you were talking about the fact that he wasn't issued with any particular letters of recommendation. --- He

didn't have any letters of recommendations from his superior officers. He didn't have letters of recommendation or praise from members of the public for extraordinary duties he might have done towards a member of the public. He doesn't have any recorded achievements, he doesn't have any medicals for bravery or good service. So in fact his service record is rather blank and remarkable. And I question why the Commissioner would have issued a letter to him, saying that he had performed his duties in an exemplary way.

So last Tuesday 18th July you say you attended at SAP
10 headquarters to inspect member file 20 ...[indistinct]. ...[indistinct] or
were there more letters? --- There was no letter.

COURT: There was no letter? --- There was a similar letter for
recommendation.

MR VARNEY: Commendation.

COURT: Or commendation, on all the 28 files? --- On all the 28 files.

MR VARNEY: Mr Dutton what conclusion do you draw from these
facts? --- Well the conclusion that I conclude is that he was being
commended for his role in the Timol matter, and I say that based also on
what Mr Paul Erasmus said about the letters that he received, where the
20 letters do not specify what they were given for. But the member would
not.

Right. Mr Dutton just for the sake of completeness at pages 78
and 79 of the police file for Rodriguez there is a certificate of service. --

- Yes.

Am I correct in saying that that is a pretty standard document

that is issued to those who leave the service? --- It is a pretty standard document that most members would receive. It is a service record. Again that service record describes his service as exemplary. I don't think You know very few members get a recommendation like that.

And few would get a personal letter of commendation from the Commissioner himself? --- I can say that I have never heard of it before.

All right. Let us turn to the last part of your affidavit Mr Dutton.

10 You have already testified and you have set out a large number of steps that you believe the police ought to have taken in the after math of Mr Timol's fall to death. You testified that eventually none of these basic steps have been taken, and you have also concluded that these lapses are consistent with a cover up. Are there any other reasons that you might be able to refer the court to, why you believe that this particular incident was covered up by the police? --- Well I can only refer to my experience of cover ups in the security branch on other investigations.

20 Are you saying that from those experiences and observations that this particular cover up, the cover up that you have asserted took place, is consistent with that wider pattern of cover ups? --- Yes exactly. It doesn't stand by itself.

And in your experience Have you had personal experience of security branch members willing to perjure themselves and misdirect courts? --- Yes.

Can you point to some examples? --- Well I can point to the

example of Steve Biko where at the Truth Commission hearings, the security branch members that were involved admitted that they had lied to the inquest. Eugene De Kock at the Truth Commission hearing. In July 1999 in Pretoria admitted that he had deliberately misled the Harmse Commission. The numerous admissions by SB members before different TRC amnesty committees of deception and cover ups that they practise to prevent the truth from becoming known. TRC amnesty case 2000/59. The Applicants were Johannes Felder Van Der Merwe, the Commissioner of South African Police and others. That
10 concerned a case where a man had been the victim of torture, electric shock torture, and he died at John Vorster Square on the 10th floor. The Commissioner of Police conspired with the other members to conceal this crime. They arranged for the body to be taken away secretly to Kamatipoort where it was fed to the crocodiles. They then took quite elaborate steps to set up a deception that the man had escaped. So those are a few of the cases. I also have many cases of my personal experience which I investigated and where there were very definite attempts to prevent the investigation from being successful.

And you have mentioned some of those cases in your affidavit.
20 But you also speak about debriefing certain security branch members who were involved with the Vlakplaas operation. You did so on behalf of the Goldstone Commission. And in so doing did you also come across attempts by those individuals to cover up past crimes? --- Yes that is correct. There were three individuals Brood Van Heerden, Chappies Kloppers and Willie Nortje, were three members of the security branch

that worked with Eugene De Kock. They decided to come over to the Goldstone Commission and disclose what they knew. As a result they were put on a witness protection programme, and myself assisted or rather let me put it this way I assisted in the debriefing of these three men. State Advocate Pretorius was present. They disclosed numerous cases of cover ups and very serious cover ups, in murder cases, in torture cases, in cases where perhaps they just didn't like the person anymore. As a result of this information Eugene De Kock, a Colonel in the Police force was eventually convicted. I can't
10 remember whether it was for 30 counts of murder or 60 counts of murder, but it was a significant amount. And many counts. Paul Erasmus the witness that testified before the court 1 – 2 days ago, I also debriefed or assisted in his debriefing in Denmark. I think in about 1994. Again Advocate Pretorius was with us. Paul Erasmus as you heard spoke about many cases of cover ups, and he was in a position where he not only spoke about it, he was able to produce in most of the incidents documentary proof. In the cases of Brood Van Heerden, Chappies and Willie Nortje, what they told us was proventhat was proven against Eugene De Kock.

20 Thank you Mr Dutton. Now Mr Dutton finally if I can draw your attention to your visit to police head quarters last Tuesday where you have advised the court that you inspected a large number of documents. Did you have occasion to inspect the police file of one J Z Van Niekerk?
--- Yes I did.

M'Lord for the record we have just handed up this document

marked J2. Following your inspection did you reach the conclusion that there was something in these documents that should be drawn to the attention of this inquest court? --- Yes.

M'Lord can I refer you to page ...[intervene]

COURT: Just 1 minute. Oh yes. Yes. You are on J2 right?

MR VARNEY: J2 that is correct.

COURT: Yes. Page?

MR VARNEY: 120. The pages of interest are 120 and 122. Perhaps I will just give a short description of the letter on page 120. It is a
10 confidential letter addressed to it looks like District Commissioner in Pietermaritzburg. It comes from the Attorney General, Mr Harward. The letter attaches a dossier. The letter also advises that the attorney declines to prosecute or pursue the claims made by one Wilfred Macheke, and these complaints were made against Mr Van Wyk, lieutenant Colonel Schutte, and Captain Tlou. Mr Dutton whyAre any of those names significant for purposes of this inquest and if so, why? --- Well firstly because of the date of the allegations which was during 1971 and because of the nature of his complaint.

Can we first deal with who these individuals who the complaints
20 were made against are Captain Van Niekerk? --- Captain J Z Van Niekerk is the same person. The same Van Niekerk in the Timol matter.

Was he one of the individuals that interrogated Mr Timol? ---
Yes he was.

Captain Tlou? --- And Captain Tlou was also an individual that interrogated Timol.

But Lieutenant Colonel Schutte was not implicated in the Timol matter? --- That name is not familiar to me.

Okay. M'Lord these names and their forces numbers are set out in detail on page 122. 122 provides a short summary of the complaints made. At the top right hand corner the force number of Captain J Z Van Niekerk is supposed. That is force number 27394K. Below Schutte's name is Captain J H Tlou and his force number is recorded as 31323P. Then in brackets underneath those names in Afrikaans reference is made to the fact that all three are members of the
10 South African Police – veiligheids take, security branch ...[indistinct] head quarters.

Mr Dutton do you want to draw our attention to what you believe is particularly relevant in the complaint by Wilfred Macheke? --- Yes. It is the nature of the assault that he alleges.

In fact can I ask you to read to the court the most relevant part of his complaint? Just for the record he was arrested on 19th February 1971. If you drop one, two, three, four, five, six, seven, eight, nine lines down after he was given breakfast. --- Okay.

Could you read the next perhaps 5 – 6 lines. --- Without being
20 asked questions he was struck with a stick on the head. The other hit him with an iron ...[intervene]

Sorry. Can you start at he was given breakfast? --- Okay. He was given breakfast. There were three European detectives present. Without being asked questions he was struck with a stick on the head. The other hit him with an iron over the head several blows. He tried to

defend himself and received blows on his hands. He was also struck with a stick over the buttocks. The third one choked him at about 2:00pm.

Thank you. I think we can pause there, unless there is anything else you wish to highlight. And in your view was is this of relevance to his inquest? --- Because of the evidence of Dr Holland who said that blunt force, and she I cannot remember if she said in evidence that an iron for example. But she certainly told us that during consultation have caused the injury to the top of the head. She also found evidence
10 of strangulation. So I thought it was relevant.

Is there evidence that Captain Van Kerk and Captain Tlou were involved in the interrogation of Timol? --- Yes there is.

No further questions. --- Sorry.

Is there something else? --- Yes I have. The file I inspected at the police This one I have got nowI don't know whether I missed this or whether these documents weren't in the original file that I read. But if you go to page 137 these are further charges against the whole list of security policemen. Number 4 is Lieutenant J Z Van Niekerk, number 7 is Captain J H Tlou. If you turn to the following page
20 138 and the succeeding pages, there are a number of complainants complaining about assault. So for example Albert Kweze on top of page 138 says that he was arrested on 10th February 1971, he was taken separately to a sound proof office where he was questioned at Caledon Square. He sat on a chair and was pushed off and fell onto the floor. He was told to sit on an imaginary chair for quite a time until he fell down.

When he recovered he had to repeat sitting in that way. He was also slapped in the face, hot water was poured onto his hands and shirt. Later he was dragged to the lift on his way to the cells. Halfway down the page is a summary of what a man by the name of R C Willcox will say. He says that on 10th March 1971 he was taken to Caledon Square for questioning by security policemen. He was made to sit on an imaginary chair until he fell down. This was repeated several times. He was made to stand with his toes on bricks and hold two bricks above his head while running on the spot. He was sworn at throughout the questioning. That at 5:00pm on the same day a young security policeman buttoned up his shirt and twisted his collar causing him to choke. On the following page 139 on the top. A name I can't read the initials but the surname is spelt V E N K A T R A T H M A N and he says he was arrested on 10th February 1971. He was questioned and made to stand against the wall with his hands held above his head. When his hands sagged, they were pushed up again. He was later made to hold books above his head. He was kicked on the legs and punched. His arms were twisted by Lieutenant Van Wyk. He eventually made a statement. He was again questioned and he was again made to stand against the wall holding books above his head. He was hit with the handle of a feather duster on the head and shoulders. He broke down and made a statement. He was brought to Pietermaritzburg on 7th June 1971, he was questioned by the security police there. He was punched and grabbed by his testicles by an unknown white security officer. Halfway down the pages Kindiso Zimbani.

Zimbababani. --- He was at Lesikisiki. He was arrested on 6th December 1970 by the security police. That he was questioned and then hit with sticks on his buttocks by unknown whites. That one Dreyer was present but he did not assault him. That he was tied to a tree, blind folded. That some object was placed on his ears, penis and legs and then there was electric shocks and that it was very painful. That they kept on questioning him and he later made a statement to a white person. That he was tied to a tree for 4 days and only released when he had his meals or to be questioned. After Christmas 1970 he was
10 again questioned and shocked. Then he was transferred to Pietermaritzburg where he complained and was examined by a doctor. That he can only say that Captain Van Niekerk that is our Captain Van Niekerk assaulted him with a stick and does not know who applied the electric shocks. Over the page the second paragraph see A7 count 5. Bugani Mung will state that he is at present awaiting trial prisoner and that he was arrested by the security police in Johannesburg on 20th January 1971. That he was taken to Meadowlands police station and was questioned by Captain Van Niekerk and Tlou and that Captain Van Niekerk slapped him in his face. That he was taken to Pretoria and
20 questioned and was again slapped in the face by Captain Van Niekerk. That Captain Van Niekerk placed office pins and pebbles in his shoes. That he later made a statement to the security police. The next paragraph the last sentence. During the night he was assaulted by two Bantu security men until they were stopped by Captain Van Niekerk. That on Tuesday he was again handcuffed and made to stand the whole

day and the whole night. We then go to the bottom of the page and it is a Mr Cada Hassim who will say that he is a presently awaiting trial prisoner. That on 17th February 1971 he was arrested by Major Schoon and detained at Greytown. That he was questioned during the whole night and not allowed to sit. Then he asked Lieutenant Els for water but this was refused. That he was continually questioned during the night. That he was threatenedI can't make it out[intervene]

COURT: What were the nature of these hearings? --- Pardon M'Lord?

10 Were these internal hearings or was it case before court? ---
M'Lord this is what is known as a precee. So where a person makes a complaint against the police, a criminal complaint and it is investigated. At the end of the investigation the investigating officer is required to draw up a precee and this is the precee a summary of the case.

Yes? --- It goes onto the front of the docket and it sent to the Attorney General, to assist the Attorney General to read the matter.

I see. --- Do you want me to continue?

It is quite a number of them. I think they are in there.

MR VAREY: Your Lordship I have actually been taking As you can
20 see this is a very substantial document. I have been paging forward.

COURT: Yes?

MR VARNEY: I think what we would need to do is to study this document in more detail, because there are certainly more allegations coming up.

COURT: Yes.

MR VARNEY: Perhaps what we need to do is compile them in a discreet document for Your Lordship. But I think that the witness has probably read sufficient at this time.

COURT: Yes, I have the document. All that remains is for counsel to draw my attention to areas which I must focus on. I am not sure whether I will be able to go through the entire document, but it is important I be guided by counsel on what is relevant to the people who were involved in this particular case.

MR VARNEY: As the court pleases M'Lord.

10 COURT: Yes.

MR VARNEY: Mr Dutton can I check, is there anything else? --- There is one more point I think I need to bring to the attention of the court. On page 75 of this file.

COURT: Yes? --- This is a matter which occurred on 29th June 1959. I haven't read the whole thing, I haven't had time. But this is the death of a person. Somebody died. So we need to look at that one too.

MR VARNEY: Mr Dutton thanks for drawing that to our attention. We are going to have to grips with this very substantial document that runs to probably several hundred pages. More than 300 pages. Your
20 Lordship I have no further questions for this witness.

COURT: Thank you. Advocate Pretorius.

CROSS-EXAMINATION BY MR PRETORIUS: As the court pleases M'Lord. Mr Dutton you have given comprehensive evidence. I just want to know were you involved with the Motherwell investigation? --- Yes I was.

Did that involve a cover up? --- Yes it did.

Was it security police? --- It was security police.

Thank you M'Lord.

COURT: Before you question, can you enlighten us on just this piece of evidence that you are talking about? Give a brief account of what you have just talked regarding the Motherwell case? --- In the Motherwell case?

Yes. --- M'Lord the Motherwell case involved the placing of a bomb under a motor vehicle. The correct case hey? The white security
10 officers had become disillusioned for some reason with a few of the black security officers. I have heard different accounts as to what that disillusionment was about. The one account is that as we heard Paul Erasmus testify, cheques were coming into the post office in Port Elizabeth and they managed to change or open a bank account. The security police managed to open up a bank account similar to the name that the cheques were meant for, and they would just make a small alteration on the cheque and then deposit all these cheques into that bank account and they would misappropriate the money. And there was
20 a dispute between the black members and the white members, because the black members felt that they weren't getting sufficient share of the money. That is the one story I have heard. The other is that the security police mistrusted or came to mistrust these particular black security branch policemen. They arranged for a They arranged for an explosive expert to come down to PE and he placed a bomb under the car. Then these black security branch members were sent on a trip.

Somebody was waiting with a detonating device and when they went past they detonated and killed them all.

How many? How many were killed? --- I can't remember. I think it was I think it was four M'Lord.

Yes. --- But I am not absolutely certain.

And what happened thereafter? Did they attempt to cover it up? In what way? --- Well they covered it up in the way that it was alleged that the ANC had killed security branch members.

I see. Okay thank you.

10 MR PRETORIUS: You were the main investigator on that case? ---
Yes.

Thank you M'Lord.

COURT: Thank you. Yes Mr Coetzee?

CROSS-EXAMINATION BY MR COETZEE: Thank you M'Lord. Mr Dutton I am not even going to try and defend the indefensible here. I hear your evidence and I take heart to it. But there are certain questions that I need to ask you sir. The one issue you raised was that one would have expected an impartial oversight in the investigation in regards to Mr Timol's death. Now in 1971 and bearing in mind the
20 involvement of the security branch. --- Yes.

Was there ever a possibility in the climate it was then, for independent oversight in relation to anything done by the security branch? --- The point why I say that is that if Mr Timol had in fact committed suicide as was alleged, they could have had an impartial and open investigation to prove that so that the evidence would show

without any doubt that Mr Timol had committed suicide. So that is why the impartial oversight would have been so important, and they could have done it, if they wanted to. And this is why I am ...[indistinct] amongst other reasons that there was a cover up, because they didn't want to do it They couldn't do it.

My question is more with regard to the structure and in the way and as you have testified, the way in which the security branch operated in that stage. --- Yes.

The powers that be, would they have ever allowed any aspect of
10 the security branch to be investigated by an independent source? ---
Sir I investigated them.

Not in 1971. --- No not 1971, but in 1985, nothing much had changed.

Yes. And what I am getting at sir isand please it is not criticism or anything like that. What I am getting at is that the way and the evidence that you have now testified to and what we have here, that was almost common practise within the security branch. Especially if one has a look at what you have referred to, the issues by Eugene De Kock and the other members that came out in basically uncovering what
20 was happening in the security branch. This is almost a trend if I can say that within the security branch. The way what you have testified.

--- Yes that is correct. I would say that probably in the 1960's and the 1970's we weren't aware of that trend. But as the years went on and matters started to be exposed, that trend became apparent. You know security branch commanders appeared, and I include General Van Der

Merwe and I include Minister Vlok and I include people like Brigadier Schoon that we read about just now. These people appeared before the Truth Commission and they claimed that they were forced to act outside the law. They admitted that, because of the circumstances of the country. But that reason doesn't stand up to scrutiny because many people were arrested. Many ANC, let us call them terrorists.

Yes. --- Were arrested. And when they appeared before the High Courts and the Supreme Courts in South Africa, they asked to be treated as prisoners of war in terms of the Geneva Convention.

10 Invariably the state not invariably In all the cases the state successfully opposed that and said that there wasn't a state war. So there is a contradiction between what was said to the Truth Commission and what has been said to many Supreme Courts.

Especially in the evidence that you have referred to here later on in page 136 and further of J2. It seemed to me that senior officers and I believe a Captain upwards they are referred to as senior officers if my memory serves me were involved with a lot of these direct actions with suspects as they were then classified? --- Yes. I would say very definitely. And in some cases even more senior people. We
20 have heard Paul Erasmus talk about the bombing of Kotze House where very senior generals were involved and the minister.

Yes. If the standard of forensic investigation in 1971 is obviously and I don't think that can ever be doubted, a far cry of what it is today, but at that stage the scene preservation and specifically the crime scene preservation where a person has died, can you perhaps just enlighten

as to what was procedure? Apart now from what you have said and I take note of what you have said with regard to retaining the position. Was there forensic investigators to sweep for blood trace and trace material and that aspects? Were that available in 1971? --- Yes very definitely.

I can just. --- We in fact had a very large and very good forensic policing section. The headquarters was in Pretoria and these forensic experts could fly or could come to crime scenes. But locally in the cities, each city had what was known as a local fingerprint office and
10 they had forensic specialists there as well. And this was the case certainly in 1971.

Yes. Do I understand your evidence correct that there was no or there is no record of for example fingerprints being lift off the window in room 1026? --- We only have the evidence of Brigadier Pattel about that, but I don't know. There is certainly no evidence that Timol's fingerprints were found on the window.

Sir when we come to confidential sources and undercover police officers and all of those cloak and dagger stuff, are there files for these or these undercover operations? --- There is different levels or they
20 operated with different levels. But in the case of Mr X in the Timol case he was described as being a security policeman, so there wouldn't have been a special file for him.

All right. At that stage did they need approval from the Attorney General to do undercover work where they might implicate themselves?
--- I am not certain.

Sir and with regard to your investigation of the 9th and 10th floor at John Vorster Square as it then was in 1971, was there or were there any specific holding cells on those floors for the security branch, or were they using the normal holding cells in the building? --- That is an important point and I will tell you why. Mr Timol and Mr Essop were A detention order was issued for both of them. And both detention orders specified that they had to be held in the police cells at John Vorster Square. That didn't happen. They were held in my view illegally in the offices on the 10th floor. And if one examines the reason for that, 10 one can only come to the conclusion it was for reasons of torture and it was for reasons of sleep deprivation. Because instead of putting two guards at night as Gloyen Van Niekerk say they did to guard the prisoner and slept on a mattress, they could quite easily have just taken him down a couple of storeys and lodged them in the police cells and it would have been a very easy way to deal with it. But the reason they couldn't do that is because they were beating these men. They knew that if they took them to the cells, the person in charge of the cells would see their injuries and it was practise as well that at least once a day an officer had to visit the cells. He would see the injuries and he 20 may even have ordered that these people be taken to the doctor. And I am not saying that was a fool proof system. It was far from a fool proof system. But it created an element of risk for them, so they kept them on the 5th floor. On the cells as well, every time they took them out, there would be an occurrence book entry. What time they went out? What time they came back? Did they have any injuries? That is why they

were kept on the 5th floor and not the cells.

COURT: 10th Floor? You are saying 5th floor. --- Yes.

Is it 5th or 10th floor? --- On the 10th floor.

10th floor. That is where they were kept? --- That is where they were kept.

Then where are the cells located? --- Pardon M'Lord?

Where are the cells located? --- The cells I think are on the 3rd floor.

3rd floor? --- Yes.

10 Okay. This being managed by the uniform branch of the police? Or the Detective branch? --- Partially managed by the uniform branch, and partially managed by the security branch.

Okay.

MR COETZEE: Is that the cells? --- That is the cells.

Okay. Sir your evidence as I understand it is that Rodriguez was in fact an administrative person within the security branch? --- Yes.

20 Now within your experience and your investigation, would such a person would an administrative person who deals with salaries and those administrative, would they be involved in the operational side of the security branch? --- Generally not. But in this particular case it may have happened, and I will tell you why. Because the security branch at John Vorster Square in this Timol case, over 2 – 3 days they had arrested I am not too sure of the exact number, but several detainees. And they were depriving them all of their sleep. Now if you are going to deprive a person of his sleep for 24 hours over a 24 hour

period, you need a rather large team to do that. And if you have got 7 – 8 detainees the team of course has to be a lot larger. These It is done on a rotational basis. So you can imagine that if you multiply that by 5 days you have got a very big staff. So I believe what would happen in those cases and this is in fact what Paul Erasmus testified to yesterday, everybody is called in to assist with the sleep deprivation. So it is possible that they would have called in somebody like Rodriguez as well, even though he wasn't a man experienced in field work. But he could perform guarding duties.

10 Do you know what was the posting position of Warrant Officer Els? --- What his?

 What was his posting in the security branch? --- He was one of the investigators, or one of the interrogators let me put it that way of Professor Knight. Now we know that because we obtained the detention file of Professor Knight from the Department of Justice who are the custodians of those files. Professor Knight had complained to a visiting Magistrate, and that is another point. There were visiting magistrates and that is why they had to keep them on the 5th floor, so that the Magistrate couldn't see them.

20 On the 10th floor? --- On the 10th floor, sorry. Sorry to come back to Professor Knight. In his detention file he complained to the visiting Magistrate that he had been assaulted. The type of assault that Professor Vorster demonstrated this morning with your arms being and a broomstick ...[intervene]

 A helicopter spin. --- Yes. He was hanged like that for a

considerable period. We are not certain how long. He can't remember too clearly. As a result he lost the use of both his arms. And his complaint to the Magistrate resulted in a criminal case being opened. The investigator in that case was a person fromI forget the police station But he took statements from every policemen that came into contact with Professor Knight. And there were I think 26 of them or 23 of them. To show you to demonstrate the size of the teams that worked with a single suspect. Now in the Timol case very few policemen identified themselves as being involved in that interrogation.

10 Sorry the point I need to make is Warrant Officer Els was named as one of the people and a statement was taken from him as one of the interrogators of Professor Knight.

That has been referred to as the A16 statements. --- Yes.

Without justifying it and please understand I do not try and justify any of the actions. --- No.

The hierarchy within the security branch and the rank structure, and within the police at that stage within those branches, what would have been the result of defiance? If you defied orders or if you refused to partake in any way, in any of these actions which you have described,
20 what would have been the result thereof for a police officer? --- As a police officer you are not required to carry out illegal instructions. So if somebody told me as a policeman no matter who he was, whether he was the Commissioner or security police officer or whoever, and if he told me to hang somebody in a similar way to Knight, I would have said no.

Granted. And it is the correct answer obviously. But within the culture that there was in the security branches and I am not trying to illicit psychological evidence, massaikosis of the unity of a branch like that and it is a fellowship it is a brother-ship I have heard that it was being referred to in other matters within the security branch. --- Well let me explain to you. The South African police was divided into three branches. One was the uniform branch which was by far the largest. The other was the Detective branch, and the other was the security police. The security police were there to maintain the internal
10 security of the country. Okay. Now if that culture developed in the security police it was because of bad leadership. And it should never have developed. And it should never have been tolerated. And it should never be made light of.

Yes. --- What these people did was criminal.

COURT: But then Mr Dutton I think what counsel wants to get from you, is that given the nature of the work that they were doing and the circumstances and environment which prevailed at that time, would it have been possible for a junior official within that unit of the security police to break rank and defy an order or the way in which they
20 operated? --- M'Lord it was possible. He might not have remained in the security branch if he broke rank like that, andBut it was possible. It was up to the individual to decide whether he wanted to do these acts or not.

Yes that would be the ideal situation. But now are you saying to me that his removal from the security branch would be the kind of

consequence that would follow and would that be the only consequence? Taking into account the fact that he had knowledge of some of the activities which were clearly illegal Would he have been allowed to say okay fine go to the Detective branch or something?

--- Well you are quite right about that M'Lord, because of the Motherwell bombing which shows that the consequences could be very severe.

Yes.

MR COETZEE: Yes. That was where I was going with the question.

10 Thank you M'Lord.

COURT: Yes.

MR COETZEE: Sir apart from the police officers that broke rank, and I am talking about Erasmus and the people you referred to, which happened here at the end Late 80's, early 90's thereabouts that it happened Before that time Before that became disclosed, to your knowledge were there any of the security branch officers that in fact broke rank and in fact turned against their fellow security branch officers? --- Yes there were and they might not have done it openly. But people asked for transfers from the security branch back to the
20 uniform branch or back to the Detective branch. And there were a number of these people. But they didn't break ranks. They did it in a way that would be compatible, that wouldn't put them at risk.

Yes I understand what you say. Thank you M'Lord I have got no further questions for the witness.

COURT: Thank you. Mr Varney do you want to ask any follow up

questions?

RE-EXAMINATION BY MR VARNEY: M'Lord just one. I also just wish to seek some clarity from Mr Dutton in relation to the culture of the security branch. My learned friend has spoken about the brother-ship that existed amongst security policemen, and you have mentioned that it was quite difficult to break ranks although there were some exceptions to the rule. Would you agree that by and like the rule was that security branch members stuck together, and hardly ever broke ranks? ---

10 Yes. Because of the acts that they were committing, they had to stick together.

And of course one always hears about the golden rule of policing, which is I am not a policeman, but police don't tell on each other. Did that exist at the time? Or was there such a culture? --- So some extent there was that type of culture, and that culture definitely existed within the security police. In the other branches it might not have been so strong.

20 Yes. But let us focus on the security branch, because I want to put it to you that because of this brother-ship, the camaraderie, this bond that existed between security police officers that they made covering up so much more possible. That made covering up quite viable. --- Yes it did as well as other factors. John Vorster Square for example, a member of the public can't wonder into those offices. There is gates and bars. Whereas at a police station members of the public visit the police station all the time. So these conditions, these secret conditions and the camaraderie made covering up very easy.

Thank you M'Lord. Nothing further.

COURT: Thank you. Thank you Mr Dutton. --- Thank you M'Lord.

NO FURTHER QUESTIONS

COURT: Thank you for your evidence. Mr Varney where are we now?

MR VARNEY: Your Lordship we have no further witnesses for today. In respect of tomorrow it looks like we just have one witness.

COURT: Yes?

MR VARNEY: Which is Mr Moodley, who is going to provide the court with expert evidence on the question of trajectories. We have been
10 pushing him to finalise his report. I am hoping that it will be finalised today, and we will distribute it before he gives evidence tomorrow.

COURT: You are hoping to distribute it today still?

MR VARNEY: Let me take instructions on that. M'Lord my attorney advise me that it will be distributed tomorrow morning.

COURT: Yes okay. Thank you very much. We will adjourn until tomorrow morning at 10:00.

MR COETZEE: M'Lord may I just refer back to the issue ...[intervene]

COURT: Oh sorry.

MR COETZEE: That we stood down earlier on just after the lunch
20 break. M'Lord this is the matter of the service of the subpoena on Mr Adam Ahmed. M'Lord I have here an affidavit by Brigadier Tshabalala who tried to affect the service on Mr Ahmed which indicates that he could not serve it on him and it appears as if he is avoiding service in this regard M'Lord. We could not and currently he cannot be traced.

COURT: Let me see the affidavit. Is Brigadier Tshabalala here?

MR COETZEE: No. I do not think he is here currently M'Lord.

COURT: Will you arrange that he be here tomorrow morning? Let us go into this.

MR COETZEE: M'Lord I will have to enquire from members of the police service that might be. He will be here tomorrow morning M'Lord.

COURT: Please.

MR COETZEE: He will be here.

COURT: Because we would like to get to this. I need to hear the other members before I can proceed on this matter.

10 MR COETZEE: As the court pleases M'Lord.

COURT: We will adjourn then until tomorrow 10:00.

MATTER POSTPONED TO 2017-08-28

COURT ADJOURNS